POLITICAL AND LEGAL ASPECTS OF CITIZENSHIP

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INTRODUCTION.

Across much of the globe over the past decade two of the most powerful organizing processes have been those of ‘globalization’ and ‘citizenship’. But nowadays and last years only globalization issue is on the top of scientists’ attention and citizenship issue remains in the shadow of the last. Nevertheless the fact does not reduce the urgent side of citizenship problem. It is thought that even exactly movements to demand rights of national citizenship which had been enormously powerful in one continent after another, led to the global mankind. From the whole history people wanted to be citizens, individuals men and women with dignity and responsibility, with rights but also with duties, freely associating in civil society. And nowadays the needs a such and the searching of modern modes of citizenship are continuing. Thus my reference to the problem of citizenship is not accidentally.

The problem of citizenship is one of the most interesting aspects of International law. According to International law the Rights of Independence and of Territorial Supremacy include internal freedom from outside interference. The former involves supreme authority over all persons or property located in the territory of a state. As a result of this Right the state decides who are its citizens, the permission to allow aliens to enter its territory and the conditions under which they reside or work in the state, regulate the property rights of its citizens, etc. The same Right also refers to the external independence of states. This means an assertion of supreme authority to determine its relations with other states and, in consequence, responsibility to others for its lawful obligations toward other states.
The Right also includes a number of rules concerning the control of a state over its citizens when they journey beyond the territorial boundary of that state.

Thus, it is clear that citizenship depends entirely on municipal law and is not regulated by International law directly. But a certain number of rules of International law apply and regulate certain aspects of citizenship, such as human rights, statelessness, etc. And also Territorial Supremacy of each state is not absolute. This principle, or Right, is subject to limitation imposed by rules of International law.

Generally, there exist different opinions, especially dualistic and monistic views on the interaction between international law and citizenship, or population.

Radical monists claim that international law directly regulates the status of populations by the rules of international law. From their point of view this is objectively impossible because, they think, international law can and must regulate only interstates relations.

Moderate monists and supporters of dualism argue that international law can directly regulate interstates relations and define the status of population and certain individuals if it were the will of states that created international norms concerning their jurisdiction over persons.

Nowadays most of writers consider the granting of the free access to international judicial bodies for individuals, as sides in legal proceedings, as one of the major evidence of possibility of direct regulation of status of these individuals by international law.
Literature on citizenship is vast and changing from fundamental researches on the issue to periodicals and books of international law, and also internet sites devoted Conferences on Citizenship. The main sources of citizenship issue are International Declarations and Conventions and also bilateral agreements, which will be discussed in the work in question.

In the framework of these major legal sources of citizenship issue I will try to define the notion of citizenship itself as well as examine the legal and political aspects of citizenship and the practice of the European Union with Turkey in the field of citizenship policy.
1. LEGAL ASPECTS OF CITIZENSHIP.

1.1. Definition of Citizenship.

Each state is composed of a multitude of persons and, as part of its sovereign powers, exercises jurisdiction over those persons. Its primary concern is with those individuals who are its citizens, its true members.

Citizenship was invented and defined in four distinct historical contexts: the Greek city-state, the Roman Republic and Empire, the Medieval and each produced its own distinct interpretation of citizenship.¹

The term of “citizenship” at first was declared and juridically conformed in French Declaration on Human and Citizen Rights in 1789. The term itself originated from a word “city”, “town dweller”. In English it is a “city”, “citizen”. In German – “burger” – is not only citizen but – an inhabitant of a city.²

It is worth noting that allegiance institution preceded citizenship institution, and it meant “submission to a monarch”. Even nowadays in the constitutions of several states there are different terms for definition of submission of persons to a state. For example, a term “citizenship” frequently is used in the states with republican forms and a term “allegiance” can be found in the Monarchic states.³ Formerly it was used for a sign of

³ ibid, p.371
submission to a monarch. Nevertheless this term together is not used in the legislation and constitutions of some Monarchic states, such as Belgium, Spain, Netherlands, and ultimately has been changed for “citizenship”.  

A term “citizenship of juridical persons” more frequently is used in an international practice and legislation of states. For example, according to Civil Code of Turkey a term “citizenship” means also “all juridical persons and associations”.  

A term “citizenship of juridical person” is also used in the Russian legislation, that means the “submission of this person to the certain state”.

In Anglo-American theory and practice and in many countries legal writers as well as legislators employ two terms in the connection with citizens and state, and it should be kept in mind that the two may not always be synonymous: “citizens” and “nationals”. “National”, in popular usage, has a broader meaning than “citizenship” does. For example, before the Philippines became independent, the inhabitants of the archipelago were nationals of the United States but not citizens thereof. When the Philippines became independent, all Filipinos not naturalized in other countries became citizens of the Republic of the Philippines and lost their status as nationals of the United States.

On the other hand, a citizen of any country is, at the same time, a national of country. This is American writers’ point of view.

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4 ibid, p.372.
7 op.cit., LIKASHUK I., p.381.
Because domestic laws of states relating to citizenship vary greatly, the following discussion uses the terms “national” and “nationality” as referring more adequately to an international law approach. The relationship between state and citizen represents a link through which an individual normally can and does enjoy the protection and benefits of international law. If an individual lacks a citizenship tie to a state, he is without protection if a wrong is done to him by any government, for without this tie no state would be willing to protect or take up his cause against the government that had committed the wrong.

In the United States, for example, “national” means a person owing permanent allegiance to a state, and “national of the United States” means either a citizen of the United States, owes such permanent allegiance to the United States.\(^9\)

For example, today most of the 15,000 Samoans in the American Samoa are the United States “nationals”, not the United States citizens. They are, for instance, not permitted to vote in presidential elections.\(^10\) It is clear that citizen and national here are used interchangeably.

According to the opinion of Peter Malanczuk, Professor of International Law in Erasmus University, nationality may be defined as the status of belonging to a state for certain purposes of international law. “As a general rule, international law leaves it to each state to define who are its nationals, but the state’s discretion can be limited by treaties, such as treaties for the elimination of statelessness. Even under customary law,

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\(^9\) ibid, p.327.
\(^10\) ibid, p.328.
a state's discretion is not totally unlimited; for instance, it is obvious that international law would not accept at valid a British law which imposed British nationality on all the inhabitants of France.

Indeed, the modern tendency is for international law to be increasingly stringent in restricting the discretion of states in matters of nationality. In fact, the nationality laws of different states often have certain features in common”, - claims Peter Malanczuk.11

Thus, citizenship is the bond that unites individuals with a given state, that identifies them as members of that entity, that enables them to claim its protection, and that also subjects them to the performance of such duties as their state may impose on them.

Each state is free to decide who shall be its citizens, under what conditions citizenship shall be conferred, and who and in what manner shall be deprived of such status. The point is that, according of most of writers, citizenship issue depends on municipal law and is not regulated by international law.12 But contrary to popular belief, there exist only a few rules of customary law, of multilateral treaties, and of “general comprehensive global Law-making treaties on the subject, none has as yet met with success.13

Despite the acknowledge fact that most of the details of citizenship are governed by domestic law, a limited number of rules of international law apply in this sphere and

13 Ibid, p.49.
do regulate certain aspects of citizenship. Thus the Permanent Court of International Justice held in the case of "Nationality Decrees Issued in Tunis and Morocco", that the discretion regulating to citizenship that normally represents an exclusive prerogative of each state may under certain conditions be restricted by some form of international obligation and that in such cases jurisdiction, which in principle belongs solely to the state, would be limited by rules of international law.\textsuperscript{14}

It is worth noting that the fundamental source of citizenship issue is the Universal Declaration of Human Rights, adopted in 1948.\textsuperscript{15} Thus Article 15 of the Declaration provides that everyone has the right of nationality and that no one shall be arbitrarily deprived of his nationality or denied the right to change his nationality.\textsuperscript{16}

And also other adopted conventions and regional covenants as the international sources of citizenship issue exist: International Pact on Civil and Political Rights; UN Convention on The Reduction of Statelessness; Convention on the Citizenship of Married Women; Convention on the Elimination of All Forms of Discrimination Against Women; Convention of The Rights of Child; Optional Protocol to Vienna Convention on Diplomatic Relations and on Consular Relations; European Convention on Human Rights; Convention on Dual Citizenship; European Convention on Extradition; Convention on Certain Questions Relating to Conflict of Nationality Law; The Geneva Convention on the Status of Refugees; UN Declaration on Territorial

\textsuperscript{14} op.cit., WHITEMAN M.Marjorie, p.348.
\textsuperscript{16} ibid.
Asylum; Covenant of Scandinavian States on Civil Issues, - and will be disclosed in the next paragraphs of this work.

1.2. Acquisition and Loss of Citizenship.

Acquisition of Citizenship

Citizenship may be acquired through either of two modes: by birth or by naturalization. Most of population of almost all states acquires its citizenship by the birth method, that is reflected in the universally recognized norms and principles of international law, that each child has a right of citizenship. According to the content of principle 3 of Convention of The Rights of Child, 1959, and to Paragraph 3, Article 24 of International Pact on Civil and Political Rights, 1966 and also Paragraph 1, Article 7 of Convention on Child Rights, 1989, a child without any strings does not stay as a stateless person.\(^{17}\)

Law of the soil (jus soli). By general agreement, customary international law, any individual born on the soil of a given state of parents who are citizens of that state is regarded as a citizen of the state in question. Beyond this point, for example, the United States and most Latin American States follow the law of the soil, according to which mere birth on the soil of a state is sufficient to create the bond of citizenship, irrespective to the parents allegiance.\(^{18}\) There are exceptions to this rule, based on comity or courtesy rather than on international law: children of foreign diplomats, and


in a few cases, foreign consular officials are not claimed as its citizens by the state on whose soil they happen to be born, that is reflected in the Optional Protocol to Vienna Convention on Diplomatic Relations, 1961 and in Optional Protocol to Vienna Convention on Consular Relations, 1963.\textsuperscript{19}

The concept of jus soli was illustrated in the classic case of Wong Kim Ark. Wong Kim Ark was born in San Francisco in 1873 of Chinese parents who were subjects of the Emperor of China but were permanently domiciled in the United States. Because they were Chinese, the parents were then not eligible for United States citizenship by naturalization. Wong Kim Ark went to China in 1894 and on his return to the United States in 1895 was refused admission to this country by the collector of customs, on the ground that he was a Chinese Laborer, not a citizen, and not within any of the privileged classes named in the Chinese Exclusion Act then in force.\textsuperscript{20}

Wong Kim Ark sued for a writ of habeas corpus, claiming American citizenship on the ground of birth. The case eventually came by appeal before the Supreme Court of United States. The Court decided in favor of Wong Kim Ark: under the Fourteenth Amendment of the Constitution of United States ("all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State where they reside"), his birth on the United States soil conferred citizenship on him at birth.

\textsuperscript{20} op.cit., WHITEMAN M. Marjorie, p.368.
Law of the blood (jus sanguinis). Most European states, on the other hand, adhere primarily to the civil law principle of the law of the blood, according to which a child’s citizenship follows that of the parents, regardless of the place of its birth.

Thus a child born to French parents, for example, in the United States would be a French citizen under the jus sanguinis as well as an American citizen under the jus soli. In the United States that individual would be an American citizen, in France a French citizen, and in Ghana, a citizen of both France and the United States.

Each of these principles, jus soli and jus sanguinis has their own shortcomings. Because a lot of states introduced both systems simultaneously. Britain and the United States at first introduced this method. According to this the citizenship of these countries can be acquired by both children of own citizens regardless of the place of birth and children of aliens born at their territory.\textsuperscript{21}

Countless controversies concerning the nationality of individuals have arisen over the years because each state stresses one of the two modes of citizenship. Generally, when two states have a claim on a person’s allegiance on the basis of birth, the state asserting its primary preference as to principle and exercise actual control over the person of the individual is acknowledged by the other claimant to be the sovereign of the person in question.\textsuperscript{22}

Naturalization. A second mode of acquiring citizenship is through naturalization, that is, through a voluntary act by which the citizen of one state becomes the citizen of

\textsuperscript{22} op.cit., CHERNICHENKO S.V., p.79.
another. Although normally involving an individual, naturalization may also apply to whole groups through an executive or legislative act. It is in such collective naturalization that the voluntary aspect of individual naturalization may be absent.\textsuperscript{23}

Each state possesses, under International law, a sovereign right to decide what aliens to admit, to whom to grant citizenship, and under what conditions. This right might appear to conflict with the pledge, contained in the 1948 UN Universal Declaration of Human Rights, to treat individuals without discrimination (in terms of race, color, sex, language, religion, opinions held, and so on). In the practice, however, the sovereign right over admission still prevails over that pledge. Thus, several states discriminate in varying degrees against persons of Asia or Africa ancestry; a number of states have established educational qualifications for entry; physical and mental defects are grounds of inadmissibility under the laws of many members of the community of nations; individuals with criminal records frequently are denied permission to cross borders; and in many states, political opinions or membership in specified political groupings are causes for none admission. Some countries exclude aliens whose occupations are not needed. So the willingness of states to grant naturalization varies greatly from state to state.\textsuperscript{24} States, for example, like Switzerland, which wish to discourage foreigners from settling permanently, insist on a very long residence qualification, but in Israel any Jewish person is entitled to apply for naturalization without needing to fulfil any residence or other qualification.\textsuperscript{25}

\textsuperscript{23} op.cit., KIUZNETSOV V.I., p.183.
\textsuperscript{25} op.cit., MALANCZUK Peter, pp.263-264.
In all states, naturalization usually is fulfilled by municipal law. Most of states claim certain term of residence on the soil in question. For example, it is 5 years in France and the United States, 7 years in England and Norway, 10 years in Spain and so on. There are also other conditions of naturalization such as property. Condition on the importance of effective link with a state is contained in some of International Acts, such as covenants of Versailles System: Article 51 of Nei Covenant, 1919; Article 6 of Washington Covenant on Civil Issues between American states, 1923.27

Besides UN Convention on Reduction of Statelessness, 1961 provided the provision on the preference of 5-year residence. Agreement of Scandinavian States on Civil Issues signed in 1969 provided the residence of 7 years. Possibility of naturalization are often facilitated if the interested person served in the military forces, was in the Civil Service of this state.29

The procedure of naturalization is defined by the legislation of each state. It can be noted the four types of procedure of naturalization: 1. Naturalization realizing by supreme government bodies; 2. naturalization realizing by bodies of state administration (usually by agencies of interior); 3. naturalization realizing by local government bodies; 4. juridical naturalization.30

As it has already been noted, naturalization also may be collective. Collective naturalization, also often purely internal in nature, may on occasion bear an indirect

27 ibid, p.391.
28 ibid, p.397.
29 ibid, p.398.
30 ibid, p.342.
relationship to international law when it is based either on treaty provisions, as cession of territory, by collecting state, or on conquest followed by annexation of the conquered territory. 31

During cession of territory the inhabitants may protest against the collective naturalization of the acquiring state. So the cession of territory process is as usual provided with the right of optation (option of citizenship), in other words with the right of interested persons to retain their previous citizenship.

But optation is not always a way of acquisition of citizenship. For example, possibility of optation is contained in the Conventions on Dual Citizenship. 32 If a citizen of one state has simultaneously a citizenship of another state he is granted the right to opt for one of citizenship. In this way he does not acquire the citizenship, because the optation leads here only to the loss of one of citizenship. 33 Although in some cases the optation is an independent mode of acquisition of citizenship. It played the same role, for example, in the Soviet-Polish Covenant on Repatriation, signed on March 25, 1957. According to the covenant the repatriates from the Soviet Union to Poland lost the Soviet citizenship and acquired the citizenship of Poland after the crossing of Soviet-Polish border. 34

Frequently acquisition of citizenship appears in the issue of marriage of woman with an alien. 35 This question is one of the most interesting aspects of citizenship.

31 op.cit., CHERNICHENKO S.V., p.88.
33 ibid, pp.69-70.
34 op.cit., CHERNICHENKO S.V., p.96.
Traditionally, law of most countries deprived a female citizen of her citizenship when she married an alien. In the course of time, however, this old common-law principle underwent considerable changes.

Nowadays it is adopted that a marriage of woman does not impact her citizenship. According to the Convention on Citizenship of Married Woman adopted in 1957, “the marriage does not influence to the citizenship of wife as well as its annulment” (Article 1 of the Convention); “Wife-alien may acquire the citizenship of her husband” (Article 3 of the Convention).36

Concerning to the Convention on the Elimination of All Forms of Discrimination of Women, “a woman married an alien has a right to retain her citizenship or as voluntary naturalization to acquire a nationality of her husband” (Article 9 of the Convention).37

For example, in the Russian Federation, the law on Citizenship claims that – “with the case of marriage, the citizenship of Russian Federation may be acquired in the order of registration” (Part 1, Article 18 of the Law).38

In the United States, for instance, in 1855, an act of Congress conferred the United States citizenship on any alien woman who married an American citizen.39 Then, in 1907, another act provided that any American woman who marries a foreigner shall take the nationality of her husband and went on to state that such a woman would resume her American citizenship when the marriage in question terminated; resumption of

36 ibid, p.73.
37 op.cit.,“Sbornik Pravovikh Dokumentov i Sogloseniy OON”, p. 120; www.unher.ch, 2001.
38 op.cit., “Grajdanstvo Rossiyaskoy Federatsii”, p.12.
39 op.cit., WHITEMAN M.Marjorie, p.372.
citizenship in the United States or by registration at any American consulate. Great Britain had enacted similar legislation, and by 1908 all major countries in Europe and the Americans had created the uniform rule on this subject, because European and Latin American states had long followed policies virtually identical with those found in the 1907 law of the United States.40

Another complicate question has arisen with respect to the citizenship of children, particularly illegitimate offspring and foundlings.

A number of international conventions have been developed to deal with such questions, but limited ratification has caused the problems to continue.

One question appears to be of interest to this connection: the status of children removed from the country of their birth by their parents when those parents subsequently became citizens of different states.

For instance, under the United States legislation, a native-born United States citizen taken abroad by his parents while under the age of 21 years loses his American citizenship through the parent’s foreign naturalization unless the citizen in question returns to the United States to establish a permanent residence before his twenty-fifth birthday.41

Most countries now hold that minor children follow the citizenship of their parents, and when the latter changes through naturalization, the nationality of the minor child changes accordingly.42

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40 ibid, pp. 374-377.
41 ibid, p.385.
42 op.cit., BOIARS I.R., p,92.
There are also the cases of acquisition of citizenship to persons staying out of the territory of state due to the great services.

In 1934, the communist Dmitrov, Bulgarian citizen had been granted the citizenship of USSR. But the acquisition of freedom of state or city does not mean the naturalization.\textsuperscript{43}

Finally, it is worth noting that the citizenship may not be acquired without need of a person. Although in practice, for example, the constitution of Argentina of 1949 provided the possibility of acquisition of citizenship after the five-year residence. It was the cause of protest of many countries. In the result, the Ministry of Foreign Affairs of Argentina declared that a such provision of Constitution had not meant the enforcement granting of citizenship.\textsuperscript{44}

\textbf{Loss of Citizenship.}

Each country establishes its own rules and determines the acts or omissions that would cause loss of its citizenship to native-born citizens, naturalized citizens, or both.

Thus loss of citizenship is possible: a) as a result of voluntarily withdraw from citizenship (expatriation); b) in denaturalization, enforcement deprive of citizenship of naturalized person by government; c) on the base of situation if international treaty; d) change of citizenship, in case of denaturalization, marriage and etc.\textsuperscript{45}

\textsuperscript{43} op.cit., LIKASHUK I.I., p.410.
\textsuperscript{44} ibid, p.422.
\textsuperscript{45} op.cit., KOLOSOV V. M. and KRIVCHIKOVA E.S., p.82.
On the universal level there are some provisions provided by the Convention on Reduction of Statelessness, 1961.\footnote{WEIS P., "Nationality and Statelessness in International Law", Alpen Press, New-York, 1979, p.33.}

Article 5 of the Convention claims that if the legislation of the state provides the loss of citizenship in the situation of change of the personal states such as marriage or end of marriage and adoption, the loss in question is a condition of acquisition of another citizenship.\footnote{op.cit.,"Sbornik Pravovikh Dokumentov i Sogloseniy OON", p. 145; www.hri.ca, 2001.}

According to the Convention a citizen does not lose his citizenship in the result of departure, reregistration or in the result of the same other causes if he becomes a stateless person after that.\footnote{ibid.}

The Convention admits the possibility of the loss of citizenship by a person who lives abroad long and at the same time the Convention claims that the long residence may be considered just as the permanent seven years. This rule is used for avoiding abuse of aliens in the case of acquisition of citizenship by him for own gain and without effective link with the certain state.

The Convention coined the common rule that a state should not deprive of person’s citizenship, if he stays as a stateless in the result. Then a state is granted the right to make an exceptions to this rule, if it makes certain reservations against the Convention. But it is worth nothing that the same norm is not generally acknowledged.\footnote{ibid.}
As we have already noted there are two major ways of loss of citizenship: denaturalization and expatriation. It is clear that the questions of denaturalization and expatriation are closely connected with both naturalization and citizenship. So the acts that cause expatriation or denaturalization vary from country to country, and no complete list can be drawn up. They include, among others, voting in foreign elections, service in the armed forces of another country, acceptance of an office abroad that is reserved under the relevant laws for citizens of the foreign state in question, desertion in time of war, disloyalty, treason, and formal renunciation of citizenship either though naturalization abroad or through an official declaration filed with an embassy, legation, or consul of one's country. 50

For example, in the United States, expatriation, that is, a formal renunciation of citizenship, raises no further legal questions: the individual in question has lost his former citizenship. In the interesting case of Davis, District Director of Immigration Service of United States, a former citizen of the United States formally renounced his citizenship in order to become a "world citizen", and was denied entrance as an immigrant without a visa. In many such cases decided by American courts, "intent" plays a major role: the government must prove that the individual in question intended to renounce his American citizenship by whatever act had been involved in the case. 51

In the case of naturalized citizens, for example, in Canada, many recent cases indicate that if the defendant procured his Canadian citizenship illegally, such as by

50 ibid
51 op.cit., WHITEMAN M.Marjorie, p.398.
fraud or by omitting relevant information at the time he or she applied for such citizenship, the latter would be subject to deportation. The same procedure is distinctive for the United States legislation too, so that is the United States, illegal procurement of citizenship was reintroduced as a ground for denaturalization in 1961.

It should be mentioned that many of the defendants in recent denaturalization cases had also been accused of war crimes committed during World War II. The case of Fedorenko illustrated that point, who was deported to the Soviet Union in 1984 by the United States. He had been charged with lying to immigration officials on entering the United States in 1949, about his job as a Nazi death-camp guard.

Most prominent in this category of cases was the Rumanian Orthodox Archbishop Valerian Trifa, also accused of war crimes. He voluntarily gave up his American citizenship before it was taken from him in 1980, but remained in the United States until he was deported to Portugal in 1984. Trifa had requested to be sent to Switzerland, but that government refused to take him; the United States then asked West Germany to admit him, in as much as he had left Rumania under German SS protection during World War II, but the Federal Republic refused because he was not a German citizen.

Another way of loss of citizenship is a special act of state, declaration of a supreme office or a verdict of justice. There are some cases of massive loss of citizenship in question. For example, about two millions of people were deprived of citizenship on the same basis after Russian Revolution in 1917. It caused the protests of

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52 op.cit., BOIARSI.R., p.136.
53 op.cit., WHITEMAN M.Marjorie, p.401.
54 op.cit., KOLOSOV V.M. and KRIVCHIKOVA E.S., p.93.
many countries and some of them even denied to recognize the legal power of any acts of the Soviet Union. The same practice occurred in Nazi Germany in 1941, after the 11th Declaration on Imperial law of Citizenship, that deprived of citizenship of Jews resided abroad.  

At the last time we were the witnesses of tendency of limitation of right of state to deprive of citizenship. For example, the legislation of some countries provides an order according to which a citizen may not be deprived of his citizenship. For instance, according to the Constitution of Russian Federation a citizen may not be deprived of his citizenship at all (Part 3, Article 6 of the Constitution). But here only the decision on acquisition of citizenship in the case of relevant information in the time of applying is an exclusion.  

In Switzerland, a citizen may not be deprived of the citizenship, but its excludes in the case if a citizen having citizenship and residence out prejudiced state interests. For example, it was frequently used during World War II. The legislation of some countries, such as China, Denmark, Germany, Ethiopia, Japan does not provide the deprivation of citizenship. 

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56 op.cit., WESTON H. Burus and St.Paul, p. 56  
57 op.cit., CHERNICHENKO S.V., p.132.  
58 op.cit., BOIARS I.R., p.142.  
59 op.cit., KOLOSOV V.M. and KRIVCHIKOVA E.S., p.104.
1.3. Dual Citizenship and Statelessness.

Dual Citizenship.

Nowadays, as it was noted earlier, individuals may hold two citizenship concurrently.

At one time dual or multiple citizenship was regarded as undesirable. Unwillingness of a state to grant to its citizens the right to expatriate themselves by being naturalized in another state, formulated in “doctrine of indelible allegiance”, originally formulated on Great Britain but abandoned later by that state. Under this theory, an individual cannot lose his citizenship without the prior consent of his sovereign. Such consent was usually denied until well past the middle of the last century.

The fact that that rule is being abandoned by many states reflects a realization that dual citizenship is not as undesirable as people used to believe, and dual citizenship is likely to become more common in the future as populations continue to become more mobile.

So a few states have insisted, down to recent years, that recognition of naturalization should hinge on explicit approval by the recognizing state of each individual’s naturalization abroad.

Nowadays dual citizenship is possible: a) through territorial changes; b) through migration of population; c) in the case of legal problems during using rules on the

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61 op.cit., MALANCZUK Peter, p.264.
acquisition of citizenship; d) in the result of marriage and adoption; e) through naturalization.\textsuperscript{62}

It may not be noted three different approaches concerning dual citizenship in international practice: 1. recognition of dual citizenship; 2. abandon of dual citizenship; and 3. assumption of dual citizenship.\textsuperscript{63}

Thus there are three types of covenants devoted the issues of dual citizenship.

First, covenants are purposeful to the regulation of dual citizenship. For example, agreement between Russia and Turkmenistan signed in 1993 provides the recognition of the rights of both citizens to acquire the citizenship of both states.

Second, covenants are purposeful to the abolishment of dual citizenship. For example, a lot of agreement on the abolishment of dual citizenship, at one time USSR signed with many states. So USSR signed the agreement with Mongolia in 1937 and according to this a person having dual citizenship could opt one of his citizenship during certain time, usually a year. This person had to preserve his citizenship of a state where he resided permanently if he did not opt for a citizenship in favour in the certain time, indicated in the agreement.\textsuperscript{64}

Third, covenants are purposeful to the elimination of consequences of dual citizenship. The Convention on Certain Questions Relating to Conflict of Nationality Laws signed at the Hague in 1930, was a modest beginning. This instrument stated that a person having two or more citizenship could be regarded as its national by each of the

\textsuperscript{62} op.cit., LIKASHUK I.I., p.453.
\textsuperscript{63} op.cit., KOLOSOV V.M. and KRIVCHIKOVA E.S., p.116.
\textsuperscript{64} op.cit., LIKASHUK I.I., p.458.
states whose citizenship he possessed (Article 3 of the Convention); that a state could not afford diplomatic protection to one of its citizens against a state whose citizenship such a person also possessed (Article 4 of the Convention); that in a third state a person having dual citizenship should be treated as if he had only one (Article 5 of the Convention); and that a person possessing two citizenship acquired involuntarily was entitled to renounce one of them but only with the permission of the state whose citizenship he desired to surrender (Article 6 of the Convention).  

In general, states today follow in practice almost all of those provisions, despite the absence of general conventional rules.

Because of certain social, economic and political causes the institute of dual citizenship is recognized in many countries, such as United Kingdom, Bangladesh, Germany, Israel, France, Turkey, the United States, Russia, Armenia and some Latin American States. On the one hand, dual citizenship creates a certain political advantage for a state, on the other it contravenes the regulations of individual’s legal status. So it may be negatively reflected on the relations of a person having dual citizenship with other citizens. Although a person having dual citizenship may enjoy rights of states a citizen of which he is. It may lead to certain legal problems and despite being provisions of the Hague Convention that ultimately brings interstates problems. Generally in practice two problems arise: First, which state can claim against a third state? Second, can one of the citizen’ states claim against the other?

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65 op.cit., RODE, pp.38-41.
66 ibid, p.43.
As regards claims against third states, the most widely held view is that both states can claim, although the view has not gone unchallenged. As regards claims by one citizen’ state against the other, the orthodox view is that all such claims are inadmissible but there have been cases, particularly in recent years, which indicate that the state of the master citizenship can protest the individual against the other citizen’ state.

The orthodox rule applicable to dual citizens was that one citizen’ state could not protect the dual citizen’ states tried to abuse this rule by imposing their citizenship on all persons in respect of whom a claim was likely to be brought. For instance, the Mexican Constitution used to impose Mexican naturalization on all foreigners who acquired land in Mexico. The United States contention was supported by several decisions of international arbitral tribunals, and in 1934 Mexico altered the relevant rules of its constitutional law. It was explained that hence force becoming the father of illegitimate children born in Mexico was to be regarded as an accident in the life of mankind, and not as evidence of permanent affection for the Mexican nation.68

It was not until many years later that international law began to limit the power of states to turn themselves into claims agents by conferring their citizenship on individuals who had no genuine link with them.69

The leading case is the Nottebohm, a German citizen, owned land in Guatemala, and realized in 1939 that his German citizenship would be an inconvenience to him if

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68 op.cit., MALANCZUK Peter, p.265.
69 op.cit., WHITEMAN M.Marjorie, p.482.
Guatemala entered the war on the Allied side. Therefore, in 1939 he went to stay for a few weeks with his brother in Liechtenstein and acquired Liechtenstein citizenship, thereby automatically losing his German citizenship under German law as it stood at that time; he then returned to Guatemala. When Guatemala later declared war on Germany, he was interned and his property confiscated. Liechtenstein brought a claim on his behalf against Guatemala before the International Court of Justice, but failed. The Court held that the right of protection arises only when there is a genuine link between the claimant state and its citizen, and that there was no genuine link between Nottebohm and Liechtenstein. The effect of the decision is not altogether certain; the Court did not say that Nottebohm and Liechtenstein citizenship was invalid for all purposes, only that it gave Liechtenstein no right to protect Nottebohm against Guatemala.\footnote{op.cit., MALANCFUK Peter, p.266.}

It is significant that the Nottebohm case, like the Mexican law mentioned above, was concerned with a change of citizenship, or, more specifically, with naturalization. It is uncertain whether international law would apply the same tests to acquisition of citizenship at birth, for instance, or upon marriage. It is possible to acquire the citizenship of a country by virtue of being born there, without having any genuine link with that country; is such a citizenship caught by the rule in the Nottebohm case? May be it would be better to think in terms not of genuine links but of what is acceptable under customary law. Thus it is perfectly normal to acquire citizenship at birth under the
jus soli principle, but the Mexican and Liechtenstein laws on naturalization were regarded as suspect by the relevant courts because they were not accepted under customary law.

Claims may also be made on behalf of companies possessing the citizenship of the claimant state. For these purposes, a company is regarded as having the citizenship of the state under the laws of which it is incorporated and in whose territory it has its registered office. As noted by the International Court of Justice in the Barcelona Traction case, which concerned injuries allegedly inflicted by Spain on a Canadian company allegedly controlled by Belgian shareholders, even if the company operates in a foreign country and is controlled by foreign shareholders, the state whose citizenship the company possesses still has a right to make claims on its behalf. The Court thus distinguished the Nottenbohm case. If there is no “genuine link” between the company and the state whose citizenship the company possesses, it may be that the citizen state would have no right to make claims on the company’s behalf. What the Court was really saying in the Barcelona Traction case was that the mere fact that a company operated abroad and was controlled by foreign shareholders did not, by itself, prevent the existence of a genuine link between the company and the state whose citizenship it possessed.\(^7\)

As a rule, a state is not allowed to make claims on behalf of its citizens who have suffered loses as a result of injuries inflicted on foreign companies on which they own

\(^7\) ibid, p.266.
The decision of the International Court of Justice in the Barcelona Traction case recognized one exception to this rule: when the company has gone into liquidation, the citizen state of the shareholders may make a claim in respect of the losses suffered by then as a result of injuries inflicted on violence. In this case the claim failed because the company had not gone into liquidation. Where the injury is inflicted by the state whose citizenship the company possesses, it may be that the citizen state of the shareholders is in a more favourable position as regards making claims. The International Court of Justice left this point open in the Barcelona Traction case. But even in these circumstances it is probably necessary to prove either that the company has gone into liquidation or that the injury in question has deprived it of so many of its assets that it can no longer operate effectively.

**Statelessness.**

Statelessness – that is, the lack of nationality – used to occur only rarely before World War I: the relatively few recorded instances usually pertained to the accidental loss of citizenship without the corresponding acquisition of a new one, frequently in connection with illegitimate children.


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\[72\] op.cit., WHITEMAN M. Marjorie, p.512.  
\[73\] op.cit., MALANCZUK Peter, p.267.  
\[74\] op.cit., WEIS P., p.49.  
\[75\] ibid, p.53.
Stateless persons – that is “de facto stateless” individuals – are persons who have a citizenship that does not give them protection outside their own country. This category embraces most of the individuals commonly referred to as refugees.

In Africa, for example, true refugees are defined as people who are outside their country of origin because of persecution or who have fled general conditions of violence. This is a definition of Organization of African Unity Convention. On the other hand, a true stateless person – that is “stateless de jure” – is quite rare, being an individual who has been stripped of citizenship by his own former government; however, such action took place on a massive scale during the post – 1917 Russian civil wars, during the Nazi regime in Germany, and on a smaller scale, normally limited to individuals, in the former Soviet Union.76

The scale of the problem of de facto statelessness has been, and still is, staggering both in numbers and in terms of human misery. Some two million persons fled Russia during the post-revolutionary years. After the end of World War II in Europe, some 8 million displaced persons had to be helped; of these were eventually repatriated or resettled. At the end of 1989, the cite only a few African countries; more than 1,5 million Palestinians existed as refugees in the Middle East; well over four million Afghan refugees were still in Pakistan and Iran; and almost 300 000 ethnic Turks expelled by Bulgaria had fled to Turkey. The total number of international refugees in 1989 totaled over 14,36 million. None of the 1989 totals included resettled refugees. Of the more than 2 million refugees who escaped following the fall of Indochina from

76 op.cit., DUNNE Michael and BONAZZ Tiziano, p.59.
Cambodia, Laos, and Vietnam, over 1.5 million had been resettled by the end of 1989. Repatriation of refugees would appear to be a simple solution if the actual problems involved were ignored.

Being aliens wherever they go, stateless, persons have to right of entry, no voting rights, are frequently excluded from many types of work and are often liable to deportation. States usually issue passport only to their own citizenship, and this makes it difficult for stateless people to travel when they want to. And the traditional position concerning stateless persons in international practice is simple: no state may claim on their behalf.

Most of international attempts to relieve the distress of stateless persons have been based on some international agreement.

During and after World War II, the United Nations Relief and Rehabilitation Administration (UNRRA; 1943-1947) carried on global and massive relief activities. It was succeeded by the UN International Refugee Organization (IRO), active in many countries between 1947 and 1952.

More recently came the failure of a 92-member UN conference held in Geneva in 1977 in order to conclude a treaty under which refugees would be protected from being returned to the state from which they had fled. A second conference called by the UN High Commissioner for Refugees, met in 1978 in Geneva. Its specific subject had been

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78 op.cit., MALANCZUK Peter, p.264.
79 op.cit., WEIS P., p.57.
consultation about the flow of refugees from Vietnam, but no reportable accomplishments were recorded.\textsuperscript{80}

In June 1979, the United States government announced that it would double the intake of Indochinese refugees to 14,000 monthly, and in the same month, Vietnam signed an agreement with the UN High Commissioner for Refugees to allow an "orderly departure" of emigrants and accepting assistance from the UN agency in the granting of exit visas for "family or humanitarian reasons". These steps did not halt the Indochinese exodus, and a conference on Indochinese refugees, called by the UN secretary-general, met in 1979. The tangible results of this meeting in Geneva consisted in the agreement by a number of South Asian countries to take 260,000 refugees and a multinational pledge of about 190 million dollars for the relief program.\textsuperscript{81}

In order to call attention to the staggering dimensions of the African refugee problem, the first International Conference on African Refugees Assistance (ICARA) was held in 1981 in Geneva under United Nations. About 600 million dollars was pledged by various countries. ICARA II met in Geneva in 1984 in order to resolve these problems, and the solutions were to be implemented by various UN agencies, in addition on the office of the High Commissioner. It was also hoped that at least 800 million dollars would be pledged by the participants. On February 7, 1985, the Office of the UN High Commissioner for Refugees launched the first of several appeals for funds

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\textsuperscript{80} ibid, p.59.
\textsuperscript{81} ibid, p.60-65.
to assist refugees in four African countries: Sudan, Ethiopia, Somalia, and the Central African Republic.\(^2\)

As it has been noted there are also stateless persons and nowadays it may arise: a) when one state deprives a person of its citizenship and does not give him a possibility to acquire at once a citizenship of another state; b) through the loss of citizenship if this person voluntarily surrendered citizenship of his state and did not acquired the citizenship of another state;\(^3\) c) through the change of woman’s citizenship due to the marriage, that according to the legislation of state her living she automatically loses her citizenship after marriage with an alien; d) in the consequence of territorial changes.\(^4\)

It is worth noting that one of the earliest instruments intended to alleviate the plight of stateless person was the Special Protocol Concerning Statelessness, signed in The Hague on April 12, 1930. The agreement had been signed by 20 governments. And accessions had been depositied by four others when it was announced that the protocol had at last entered into force on October 11, 1973.\(^5\) The People’s Republic of China then informed the UN Secretariat that it would not recognize the ratification by the Republic of China (1935), and consequently the secretary-general deemed the Chinese ratification as withdrawn and the protocol as not in force.\(^6\)

The situation of some stateless persons was improved by the entering into force of the 1951 Geneva Convention on the Status of Refugees, which was ratified or acceded

\(^2\) ibid, p.66.
\(^3\) op.cit., KOLOSOV V.M. and KRIUCHIKOVA E.S., p.143.
\(^4\) op.cit., CHERNICHENKO S.V., p.152.
\(^5\) op.cit, WEIS P., p.89.
\(^6\) ibid, pp.89-90.
to by 54 countries. The 1951 Convention contains among other matters, a core of basic rights of stateless persons.\textsuperscript{87} In addition, the 1954 UN Conference on the Status of Stateless Persons drew up the Convention Relating to the Status of Stateless Persons, but that agreement, originally signed by 22 states, has not yet come into force.\textsuperscript{88} Again, the Convention on the Reduction of Statelessness, adopted in August 1961 by the UN Conference on the Elimination or Reduction of Future Statelessness, entered into force on December 13, 1975.\textsuperscript{89} But that instrument by which it was attempted to introduce some order into the world's mass of conflicting citizenship laws, has received to date only eight ratification. From a global point of view, its practical effects should be viewed as slight at best. Similarly, the Organization of African Unity Convention of Refugee Problems in Africa of September 10, 1969, suffered from minimal endorsement by member states: when the convention entered into force automatically on November 27, 1973, through ratification by Algeria, the instrument had been ratified by only 14 of the OAU's 42 member states. The convention expended the definition of the African refugee and contained specific regulations concerning nondiscrimination, voluntary repatriation, and the issue of travel documents.\textsuperscript{90}

Thus recent years states have entered into treaties to reduce the hardship of statelessness by providing special travel documents for stateless persons, and to eliminate it altogether by altering their citizenship laws.\textsuperscript{91}

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\textsuperscript{87} ibid, p.93.
\textsuperscript{88} ibid, p.93.
\textsuperscript{89} op.cit., "Sbornik Pravovikh Dokumentov i Sogloseniy OON", p.195; www.hri.ca, 2001;
\textsuperscript{90} ibid, p.103.
\textsuperscript{91} op.cit., MALANCZUK Peter, p. 264.
2. POLITICAL ASPECTS OF CITIZENSHIP.

In this part of the work a problem of Extradition and the Right of Political Asylum will be discussed as the political aspects of citizenship.

It is worth noting that a problem of extradition and the right of asylum are the two of the most disputable issues in the contemporary international law. Although the notions of extradition and asylum were not completely elaborated, but they are widely known from the history of International Relations.

For demonstration of antiquity of these institutions we may refer to the treaty signed between the king of Hettus, Khatusheal II and Egyptian Faro, Ramseus II in 1296 BC. It is said in that agreement: “If anyone flees from Egypt and goes to the country of Huttus, the King of Huttus will not detain him but will extradite to the country of Ramseus”.

In that period the institution of extradition was practiced on a wide scale to fled slavers.

Thus what are extradition and asylum today? Are they the multiple parts of human rights or citizen’s rights or exclusively the right of state? Are they the interference in the affairs of other state?

2.1. The Problem of Extradition.

A common interest in preventing flight abroad from foiling the apprehension and punishment of a fugitive from justice has led to interstate cooperation and to the

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92 op.cit., KHUDNETSOV V.1., p.148.
development of procedures by which fugitives can be returned to the state in which the alleged crime was committed. The process, always including a formal request for the surrender of the persons wanted, together with certain well-defined conditions for surrender, is called extradition.\textsuperscript{93} In Terlinder Ames, extradition was defined as "the surrender by one nation to another of an individual accused or convicted of an offence outside of its own territory, an within the territorial jurisdiction of the other, which, being competent to try and to punish him, demands the surrender".\textsuperscript{94} Extradition today is normally based on a bilateral treaty, in the absence of a generally accepted convention on the subject.

The surrender of wanted fugitives was not transformed into a legal duty until the members of the community of nations created a network of bilateral extradition treaties. These fall into either of two categories: the older, traditional type, which contains a specific list of offenses for the commission of which a fugitive will be surrendered, and the newer type, of twentieth century origin, which contains no such list but which provides for extradition in all cases in which the offense in question is punishable in both countries, involved in a given case.\textsuperscript{95} Thus, for an offense to give rise to extradition, it must either be included specifically in the treaty, or be regarded as a crime under the laws of the contracting parties, or both.

It should be pointed out that in modern at least, international law knows no duty to extradite apart from treaties. A state may voluntarily decide to surrender a fugitive from

\textsuperscript{93} op.cit., CHERNICHENKO S.V., p.163.
\textsuperscript{95} op.cit, WESTON H. Burus and St. Paul, p.79.
justice, but a legal right to demand such surrender and a correlative duty to acquiesce in such a demand can exist only where created by treaty.

Until recently, all extradition treaties were bilateral in nature. On April 18, 1960, however, the European Convention on Extradition, drawn up in Paris in December 1957, entered into force and was supplemented by two additional protocols, one on October 15, 1975, and a second one March 17, 1978.\textsuperscript{96} By 1985, the original convention was in force for 18 countries, including Cyprus (Greek side), Israel and Turkey.\textsuperscript{97} In Latin America an earlier regional Convention on Extradition, adopted at the Seventh International Conference of American States in 1933, represents another effort to substitute uniformity in extradition practices through multilateral treaties for the prevailing diversity in practice based on bilateral agreements.\textsuperscript{98}

Up to about the middle of the eighteenth century, extradition treaties covered primarily the surrender of political fugitives. Gradually, ordinary crimes began to be included as reasons of the surrender of an alleged offender. But the second half of the last century, however, the revolution in transportation had made the speedy escape of criminals ever easier; hence extradition treaties became increasingly general in character. Interestingly enough, as the scope of these agreements expanded to include more categories of criminal offenses, political offenses ceased to play a part, and today they no longer form a basic for the surrender of fugitives.

\textsuperscript{97} op.cit., GOODWIN-Gill, p.67.
\textsuperscript{98} op.cit., WHITEMAN M. Marjorie, p.533.
Although extradition treaties vary considerably in regard to the offenses listed in them as the basis of surrender, the actual procedure utilized in extradition has been standardized fairly well all over the world.

A request for the surrender of an alleged fugitive criminal must be presented to the foreign state through the diplomatic agent of the seeking government. When such a request is received, the foreign government institutes an investigation through its juridical agencies to determine whether there is sufficient evidence, in accordance with the local law, to warrant an arrest of the fugitive.\textsuperscript{99} It should be noted that so-called common-law countries require such a showing of sufficient evidence, whereas civil law countries frequently view such a showing as a usurpation of domestic jurisdiction by a foreign court. The United States and Iran, for example, do not have, at the time writing a treaty of extradition.\textsuperscript{100} Thus, although the deposed Shah of Iran lived briefly in the United States (1979-1980), his country made no attempt to present a formal demand for his extradition. But after the Shah had moved to Panama, Iranian authorities prepared a formal request for his detention and subsequent extradition. The 450-page document was to be presented by a French attorney representing Iran to Panamanian government on March 24, 1980.\textsuperscript{101} The Shah, however, elected to leave Panama, with his family, on March 23, 1980, and moved to Egypt, at the invitation of President Anwar Sadat.\textsuperscript{102}

\textsuperscript{100} ibid, pp.174-176.
\textsuperscript{101} op.cit., WHITEMAN M. Marjorie, p. 542.
\textsuperscript{102} ibid, p.543.
Panamanian laws would have required the arrest of the Shah as soon as the extradition request had been filed with the host country’s foreign ministry.\footnote{ibid, pp.544-545.}

If sufficient evidence is submitted and accords with the local law requirements, the fugitive is held pending the arrival of law-enforcement agents of the seeking state. The agents then receive the fugitive into their custody and return him to the state in which the crime was committed.\footnote{op.cit., CHERNICHENKO S.V., p.182.}

When the fugitive has been surrendered and is tried, the principle of specialty requires that he must be tried only for the specific offenses mentioned in the request for his extradition — unless the asylum state permits otherwise.\footnote{ibid, p.184.} In other words, the fugitive may only be tried for offenses committed before extradition and for which he was surrendered. Examples of the operation of this principle abound on the history of the law. One of these examples is Samuel Insull case.

There was a great amount of publicity in Samuel Insull case decision of The Greek Court of Appeals in 1933. In that instance, the United States requested the extradition of the former Chicago banker Samuel Insull, on Charges of embezzlement and larceny.\footnote{op.cit., WHITEMAN M. Marjorie, p.548.} The Greek court ruled twice that the evidence submitted law to prove that the fugitive had deliberately intended to evade laws of the United States when he concealed or transferred certain assets, and it ordered the release of the detained Insull.\footnote{ibid, pp.548-550.}
The government of the US asserted that the Greek court had exceeded its proper functions and notified Greece of the termination of a brand-new extradition treaty concluded between the two states. Amusingly enough, Insull was incautious enough to leave his Greek sanctuary and to venture in a chartered Greek with the Turkey. The US filed a request for his extradition with the Turkish government, and the latter remove Insull from the ship and permitted his transportation to the US. At the time in question, extradition treaty was in force between the US and Turkey.

Insull's case illustrates the frequently forgotten fact that an extradition treaty does not have to be in existence for a country to surrender an alleged fugitive from justice. That can always be done on the basis of comity if the sheltering country is willing to extradite.

Naturally, because a fugitive might decide to leave his current place of refuge at the first hint of the start of extradition proceedings, most treaties provide for his or her arrest after informal-say, telegraphic-request, pending the preparation and sending of a formal extradition request.\textsuperscript{108} Normally the agreements limit such temporary detention to a relatively brief period of time, such as forty days.

The return of a surrendered alleged fugitive to the seeking state through the territory or airspace of third countries requires permission for such transit.\textsuperscript{109} Normally no difficulties are encountered in securing such permission in the case of charges of homicide or other serious crimes. On the other hand, offenses in the sphere of fraud may

\textsuperscript{108} op.cit., CHERNICHENKO S.V., p.186.
\textsuperscript{109} ibid, p. 190.
lead to problems for the seeking state. Many countries, particularly those following Roman-law systems, have varying definitions of fraud and quite often the arresting officers escorting the surrendered individual to the seeking state have to plan circuitous routes of travel to avoid the airspace of such countries.\textsuperscript{110}

Another complicating factor in extradition is the manifest unwillingness of most states to surrender their own citizens to another state when those individuals have fled back into their country. Most states in country continental Europe as well as in Latin American hold to the concept that a crime committed by one of their citizens anywhere in the world constitutes a violation of their own law just as much as the law of the state in which the offense took place. These countries then proceed to reserve for themselves the trial and punishment of the offender when he comes within their jurisdiction refusing to honor extradition requests for the person of the fugitive. By contrast, Anglo-American practice follows the principle that crimes must be tried where they have been committed and that criminal courts lack jurisdiction over crimes that took place outside the territory of the state in question.\textsuperscript{111} This means that if say, for example, the US refused to surrender an American citizen who is charged with the commission of a crime in France and who had fled to this country, he would not be tried and punished for what he did.

This paradoxical situation has led to the widespread adoption of the doctrine of reciprocity.\textsuperscript{112} If the requesting state is shown to be willing, by past performance, to

\textsuperscript{110} op.cit., GOODWIN-Gill, p.87.
\textsuperscript{111} op.cit., WHITEMAN M. Marjorie, p.570.
\textsuperscript{112} op.cit., CHERNICHENKO S.V., p.193.
surrender its own citizens for trial by the courts of another country, the detailing state is normally willing to surrender its own citizens. But this system does not operate in certain countries in which the local constitution prohibits the extradition of nationals to other countries. Numerous extradition treaties provide specifically that neither of the contracting parties will surrender its own nationals to the other party.

Because the principle of reciprocity may lead to non-punishment of guilty parties, efforts have been made by legal experts as well as by governments to add to the principle an obligation by his own government to prosecute the accused person for the offense with which he was charged by the state denied surrender of his person. Thus the Montevideo Convention on Extradition (1933), a regional instrument, imposed this obligation (Art.2) on the parties to the agreement subject to certain conditions surrounding the crime in question.\textsuperscript{113}

An interesting series of events concerning the extradition of citizen took place in Colombia during the effort to end the reign of the "narcoterrorists", the drug cartels operating in Colombia. Two bilateral extradition treaties with the US (1888, 1941) did not allow the extradition of citizens to the other party. A modern treaty with the US (1979) however provided for the extraditing country's own citizens to be surrendered thereby departing from the traditional international rule of exempting one's own from extradition to another state.\textsuperscript{114} The Supreme Court of Colombia, however, threw out the treaty (June 25, 1987) because of claimed procedural faults in presidential approval of

\textsuperscript{113} op.cit., WHITEMAN M. Marjorie, p. 590.
\textsuperscript{114} op.cit., GOODWIN-Gill, p.92.
the treaty. The US maintained on the other hand that the agreement was still in force. In August 1989 Colombian President Barco revived the treaty in invoking emergency powers and on October 4, 1989, Colombia’s Supreme Court upheld the relevant presidential decree, asserting that the previous procedural faults relating to the treaty had now been remedied. By July 2, 1990, 17 leading Colombian drug traffickers indicted in the US were arrested and extradited to the US at the latter’s request. However, on September 5, 1990, President Cesar Gaviria offered immunity from extradition and cuts in sentences to any “drug barons” who would turn themselves in, conditions laid down by the traffickers the previous January.115

The most interesting aspect of extradition from a general point a view and the one receiving the greatest amount of publicity has to do with political offenders.

It has been pointed out already that a virtually complete reversal in state policy took place during the nineteenth century, when political offenses were removed from the list of crimes for which individuals might be extradited. Modern extradition treaties specifically exempt political offenses, most likely because liberal and democratic governments have developed a strong antipathy toward the idea of surrendering political offenders into the hands of despotic or dictatorial governments. But it must be kept in mind that there is no generally recognized rule of international law prohibiting the extradition of political offenders.116

115 op.cit., WHITEMAN M. Marjorie, p. 592
Extradition being asserted to be a matter of domestic practice, and each state is free to determine the extent to which it will adhere to the practice. Japan, for instance, does not grant asylum to alleged political offenders, as a matter of long-standing policy, and so the problem does not arise there at all. The Japanese government will send political defectors or seekers of political asylum to third countries of their choice.\textsuperscript{117} In the absence of a treaty, a state is therefore free to surrender a person accused of a political offense without violating any principle of international law. Even of a treaty does exist, a state may choose to surrender a political offender if the surrender should be dictated by national policy. This relatively new interpretation, found originally in a few court decisions, gained acceptance through the provisions of the 1957 European Convention on Extradition.\textsuperscript{118}

Practically all extradition treaties and relevant national laws contain a reservation of non-extradition for political offenses, starting with the French-Belgian Treaty on Extradition of 1834 (Article 5). Some states have even included the principle in their constitutions, such as in the Grundgesetz (Article 16, Section 2) of the Federal Republic of Germany.\textsuperscript{119}

The question then arises: What is a political offense? In general terms, it is an act directed against the security of a state. Until recently, treaties as well as court decisions tended to define such an offense in relatively narrow terms. In order to be political in nature, it was maintained, the action in question had to satisfy the following conditions:

\textsuperscript{117} ibid, p. 102.
\textsuperscript{119} op.cit., CHERNICHENKO S.V., p.203.
1. It had to be an overt act; 2. It had to be done in support of political rising; 3. The rising had to be connected with a dispute or struggle between two groups or parties in a state as to which one was to control the government.\textsuperscript{120}

In other words, a political offense may be an act that although it is in itself a common crime, acquires a predominantly political character because of the circumstances and motivations under and for which it was committed. The injury done in generally held to have to be proportionate to the results sought. By that is meant that the stakes at issue must be sufficiently important to justify, or at the very least to excuse, the impairment that the act in question has caused to private legal values.

On the other hand, war crimes do not fall within the sphere of political offenses and therefore represent acts that do give grounds for extradition. One of the most publicized recent instances of extradition for such crimes was the surrender of Klaus Barbie by Bolivia to France in 1983. Barbie, the Nazi “Butcher of Lyons”, had lived in Bolivia since 1951 under the alias of Klaus Altmann, under which name he had been granted Bolivian citizenship in 1957.\textsuperscript{121} He had been jailed in early 1983 on charges of fraud stemming from a debt owed to a mining company. After extradition requests by the Federal Republic of Germany and by France, Barbie paid the sum in question, was stripped of his Bolivian citizenship, and turned over to the crew of a French military jet. The French government planned to prosecute Barbie again under a new French law on charges of crimes against humanity. He had already been twice sentenced to death in

\textsuperscript{120} op.cit, WESTON H. Burus and St. Paul, p.105.
\textsuperscript{121} ibid, p.108.
absentia by military courts in Lyons in the early 1950s. France, however, abolished the
death penalty in 1981.\textsuperscript{122}

In any case, the earlier convictions were no longer valid because a 20-year statute
of limitations had expired. But there was no such limit, under a 1964 French law, for
crimes against humanity. After a delay of four years, Barbie went on trial in 1987,
before a three-judge court and a jury of nine citizens. He was convicted on July 3, 1987,
and sentenced to life imprisonment. He was 73 years old at the time.\textsuperscript{123}

The problem of political offenses has been immensely complicated because the
term has been used by two distinct meanings. The so-called purely political offenses
embrace all definite acts aimed at the state without involving the commission of an
ordinary crime, whereas so called relative political offenses involve the commission of
an ordinary crime connected with political act aimed against the state in such an
intimate manner that both have to be viewed as a single "political offence".\textsuperscript{124} It is
obvious that determination of the first category represents few obstacles to a court, but
the determination of the existence of a relative political offense of a nature to prevent
the extradition of the fugitive in question still bedevils judges in most countries. On the
other hand, the circumstances in a given case may be of such a nature that the
determination of a relative political offense is relatively easy.

Purely political offenses usually have been limited to three categories of acts:
treason, sedition and espionage.\textsuperscript{125} So-called relative political offenses involve political

\textsuperscript{122} ibid, pp.108-110.
\textsuperscript{123} ibid, p.111.
\textsuperscript{124} op.cit., CHERNICHENKO S.V., p.207
\textsuperscript{125} op.cit., WESTON H. Burus and St. Paul, p.114.
acts as well as “acts connected therewith”. A relative political offense is therefore characterized by the existence of one or several common crimes closely connected with a political act. Such offenses always pose a delicate problem for national courts, as the desire to see a crime punished conflicts with the obligation not to surrender a political offender. The obvious but frequently difficult-to-achieve solution is to determine the degree of connection between the common crime and the political act. Here again, national determination and national standards come into play. But fundamentally it is true that acts which have the character of an ordinary crime and appear in a list of extraditable offenses may, because of the motive and the object of the act, become political crimes or offenses. As such they render the perpetrator immune from extradition – if the political motivation is deemed to outweigh the criminal action.

2.2. The Right of Political Asylum.

During the nineteenth century, a few occasions were marked by the appearance of the supporters of lost revolutions such as participants in the Paris Commune. Then the twentieth century became the era of the political escapee. At times the number of seekers of asylum ran into thousands or even tens of thousands: White Russian refugees, both civilian and military; Jewish persons escaping form Hitler’s Germany and later form countries dominated by him; of Russian ethnic minorities; escapees from Chinese-occupied Tibet; the countless, voluntary exiles from Iron Curtain countries and Custro’s Cuba; and more recently the multitudes leaving portions of Indochina, as well as thousands of African refugees. The Federal Republic of Germany was faced by 1986

126 op.cit., DUNNE Michael and BONAZZ Tiziano, p.59.
by the flood of asylum seekers, a large proportion entering with ease from East Berlin with the connivance of the German Democratic Republic. Just before a tightening of West German asylum rules in 1986, some 27 000 Turkish asylum seeking boarded about 600 buses in Istanbul, bound for East Berlin, then points beyond. Canada, also in 1986-87, was besieged by some 1 000 foreigners a week, all claimed refugee status and asking for asylum. Some of these were in fact “fake” refugees, such as several hundred Sri Lankans who landed in Newfoundland, being ferried ashore by the lifeboats of a West German ship after having lived for several years in West Germany. In 1989, over 60 000 asylum seekers filed claims with the Immigration and Naturalization Service to remain legally in the United States; that total was reached by the first five months of 1989.\(^{127}\)

Thus the basis and procedure of granting asylum and the status of individuals granted an asylum depend from a municipal jurisdiction.

For instance, national law in abolitionist countries binds the governments not to extradite individuals to countries instituted a capital punishment. It is worth noting that this was reflected in the national law of European Union states. We were the witnesses of that approach in Abdullah Ocalan issue while Italian government had denied to extradite him to Turkey and refereed to its own national law.

On the other hand obligations of states to grant or not grant political asylum to a certain category of individuals are provided by the norms of International law.

The Geneva Convention on the Status of Refugees adopted on July 28, 1951,

\(^{127}\) op.cit., POTAPOV V.I., p.37
defined the notion of political asylum. According to the Convention in generally just citizens of European countries would be able to be granted political asylum.\footnote{ibid, p.68}

The Convention defined who could be accorded asylum: "a refugee is a person who as a result of events occurring before January 1, 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear, unwilling to return to it.

A fairy recent example illustrates the expanded concept of asylum: on May 26, 1973, the Italian government granted political asylum to the commander as well as to 30 officers and men of the crew of the Greek Navy. The vessel had dropped out of NATO maneuvers off Sardinia, and when it reached the part of Fiumcino, the crew members in question came ashore and requested political asylum.\footnote{op.cit., GALENSCAYA L.N., "Pravo Ubejisha", Pravo Press, Moscow, 1989, p.45.} The grant of asylum was especially interesting because mutiny normally represents an extradition offense.

Even of an asylum does not meet the conditions laid down in the Geneva Convention, in full or in part, because general international law knows of no rule limiting political asylum to "political criminals". In fact, it is rather difficult to be precise in the terminology applicable to this special sphere of the rules governing extradition. According to American writers, the terms 'political refugee', 'political offender', or 'political fugitive are rather flexible in usage. United States statues are not specific as to the meaning of 'political offender' or 'political offence'. The legislation
on extradition does not define either term. The writer prefers application of the term 'political refugees' to the groups and individuals mentioned above.\textsuperscript{130} They do not fit into either of the two major categories of political offenders, and in almost all instances, they fall instead under the provisions of Article 33 of the 1951 UN Convention Relating to the Status of Refugees and of the 1967 UN Protocol Relating to the Status of Refugees. Paragraph 1 of Article 33 of the convention reads as follows: “Prohibition of Expulsion or Return 1. No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers or territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of particular social group or political opinion”.\textsuperscript{131}

Examples of the positive (grant of asylum) or negative (denial of asylum) handing of real or alleged political refugees are so plentiful that only a small number of examples can be cited here. In late July 1976, the Netherlands granted asylum to Viktor Korchnoi, a Soviet grandmaster and at the time of the world’s second-ranked chess player; in July 1977, Boris Itaka, a Soviet embassy official in Uganda, defected to the United States and was granted asylum and etc.\textsuperscript{132}

In the framework of United Nations it was tried to codify the following issue: UN General Assembly carried the Declaration on Territorial Asylum on December 14, 1967.\textsuperscript{133}

\textsuperscript{130} op.cit., WHITEMAN M. Marjorie, p.602
\textsuperscript{131} op.cit., POTAPOV V.I., p.74.
\textsuperscript{132} op.cit., WHITEMAN M. Marjorie, p.604.
Concept of political asylum and to a certain category of individuals were defined on the Chapter 2, Paragraph 1 of the Declaration. According to the Declaration, an individual who perpetrated crimes against humanity, military crimes has no a right to seek or enjoy an asylum.\footnote{ibid.}

Conventions on Tortures, adopted in 1984 argues that not one participant state should extradite an individual to another state of there are serious reasons an individual to another state if there are serious reasons to think that tortures threaten him there.\footnote{op.cit., GALENSCAYA L.N., p.62.}

Thus the right of political asylum means the granting an opportunity to an individual or individuals to be sheltered from persecution for political grounds in his or their country.

As it is already clear one type of political asylum is territorial asylum, that means the granting an opportunity by any state to an individual or individuals to be sheltered from the persecution for political grounds in its own territory.

But the general subject of political asylum includes a special form known as diplomatic asylum, that means the granting an opportunity to any individual or individuals to be sheltered from the persecution for political grounds in diplomatic premises and consular premises of another state or in a foreign military ship.\footnote{ibid, p.74.}

On hundred of occasions, individuals either guilty of political offenses or qualifying as political persecutes have chosen to stay in their own country and to seek asylum in foreign embassies or legations.
The passage of time saw the growth of a conviction by the receiving states that an unlimited grant of asylum by foreign diplomatic missions represented, in essence, an unwarranted intervention in the internal 'affairs of the missions' host state. As a result, the sphere of diplomatic asylum was circumscribed little by little, and many states abandoned the practice entirely, normally by issuing suitable prohibitory instructions to their diplomatic agents.\textsuperscript{137} Today extensive practice of the grant of diplomatic asylum appears to be restricted to the Latin American republics where the practice has been employed so consistently that it can be said to represent by now a principle of regional international law.\textsuperscript{138}

General acceptance of diplomatic asylum led, in turn, to efforts aimed at providing adequate regulation of the granting of such asylum. Beginning with a conference in Montevideo in 1889, a series in Latin American conventions have been devoted to the subject.\textsuperscript{139} In 1948 the Ninth Conference of American States, meeting in Bogota, drafted the American Declaration of the Rights and Duties of Man, which provided, in Article 27, that, - "every person has the right, in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, in accordance with the laws of each country and with international agreements".\textsuperscript{140}

This provision could be interpreted to include the "foreign territory" represented by foreign embassies and legations.

\textsuperscript{137} ibid, p. 78.
\textsuperscript{138} ibid, p.78.
\textsuperscript{139} op.cit., WHITEMAN M. Marjorie, p.605.
\textsuperscript{140} ibid, p.573.
At times the exercise of the doctrine of diplomatic asylum has produced striking results, as to either the number of individuals involved or the publicity received from the actions taken. Thus during the early phases of the Spanish Civil War, some 12 000 opponents of the Republican government of Spain found shelter in various embassies and legations in Madrid, while a great amount of bitter denunciation, culminating in two cases laid before the International Court of Justice, was caused by the granting of diplomatic asylum by the Columbian Embassy in Lima to Victor Raul Haya de la Torre, the leader of the Peruvian Aprista party.\textsuperscript{141}

Following the Chilean military coup of September 11, 1973, the National Committee for Aid to Refugees was formed under the auspice of the UN High Commissioner for Refugees. This body was to find safe havens for thousands of foreign and Chilean political refugees – some of whom had already fled to foreign embassies. Chilean authorities created four sanctuaries, and over 3 000 persons moved into them. The government then issued about 6 500 safe-conduct passes, and gradually the refugees left the country, once other states agreed to admit them. By January 3, 1974, almost 1 500 non-Children refugees had left the country; 1 800 registered foreign refugees remained; 1 210 other foreigners were livening as refugees in private homes; and 23 were known to be in prison.\textsuperscript{142}

One of the latest instance of a grant of diplomatic asylum took place in Lebanon. Rebel general Michel Aoun’s forces suffered a decisive defeat at the hands of Syrian

\textsuperscript{141} ibid, pp.573-579.
\textsuperscript{142} ibid, pp. 579-580.
troops, and the general fled to the French embassy in Beirut. The French authorities granted him and his family asylum, despite the refusal of the Lebanese government to allow Aoun on a number of charges, including a claim that he stole some 75 million dollars in state funds. The French demand for Aoun's safe conduct to leave the country and the Lebanese demand for his surrender by the French ambassador had not been resolved.\textsuperscript{143}

It is worth noting that appeal for the granting of asylum (territorial or diplomatic) does not mean that such asylum will be immediately granted.

According to the main clause of international law concerning the granting of territorial asylum, granted asylum by one state must be respected by all other states. In other words the granting asylum is the sovereign right of state. There a state may grant or deny an asylum.\textsuperscript{144}

Thus it is clear that from international law asylum ends where extradition begins. In other words a state has a right to grant asylum to fugitive criminals unless it has bound itself be treaty to extradite them. The right of asylum means the right of a state to grant asylum; an individual has no right to demand asylum.\textsuperscript{145}

The vital legal consequences of the granting political asylum is an obligation of state not to extradite an individual granted such asylum.\textsuperscript{146}

It is worth noting that an individual who claims political asylum is a political criminal in his country.

\textsuperscript{140} op.cit., GALENSCAYA L.N., p.84.
\textsuperscript{141} ibid, p.96.
\textsuperscript{142} ibid, p.99
\textsuperscript{143} ibid, p.153.
The point is that it is very heavy to determine who has to decide – is an individual a political criminal or not? Can he claim a political asylum or not?

This unsolved problem may be the reason for emergence of conflict situations between states. According to the Declaration on Territorial Asylum ultimately this issue is solved by a state which grants an asylum.147

That an individual perpetrated common crime is not been granted an asylum is widespread opinion.148

According to the rule kept in some international treaties an assassin or a person who attempted upon the life of ahead of state is not political criminal and he can be extradited.149

It is thought that the similar problem emerged between Turkey and Italy in Ocalan issue. The leader of “PKK Abdullah Ocalan’s airplane has landed in Italy, where according to the national law government has no the right to extradite an individual whom threatened capital punishment in his own country. Refered to the national law Italian government has denied to extradite Ocalan to Turkey and suggested to try him in Italy.

Thus who gave the right to Italy to try Ocalan? Or on the other hand-why must Ocalan be tried in Turkey where he is threatened capital punishment?

Turkish side argues that Ocalan is an ordinary terrorist. According to the agreement between Turkey and Italy, two sides of the agreement are obliged to combat

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149 op.cit., GALENSCAYA L.N., p.87.
against terror and extradite terrorists each other.\textsuperscript{150} This is also reflected in the UN Declaration on eradication measures of international terrorism, signed in 1994.\textsuperscript{151}

So who is Abdullah Ocalan? Is he a leader of "kurdish national liberation" or an ordinary terrorist? Whose court must try Ocalan in order to pronounce a righteous sentence?

In Ocalan issue we were the witnesses again how this problem on international law became the sources of manipulations by states.

Italy neither granted Ocalan political asylum nor tread him. Thus it also did not extradite him to Turkey. In other words if Italian government thought that Ocalan were not a terrorist it could grant him political asylum. On the other hand, Italy did not grant asylum to Ocalan and did not try him it could extradite him to Turkey. You see Ocalan was charged with death of 30 thousand people.

Thus it is clear that relations between states ultimately influence on the issue of granting political asylum.

The second legal consequence of the granting political asylum concludes that a state which granted political asylum to anyone has a right of quasi-diplomatic defense in the evidence of violation of rights of this individual abroad.\textsuperscript{152}

This issue may emerge where granted individual temporarily goes to the third country. A question that – is the individual himself granted a right for quasi-diplomatic defense in this situation or not?

\textsuperscript{150} op.cit., BOIARS I.R., p.172
\textsuperscript{151} op.cit., POTAPOV V.I., p.104
\textsuperscript{152} op.cit., GALENSCAYA I.N., p.102
It is worth noting a state which granted an asylum has a right for rendering defense. This defense may be called quasi-diplomatic and its difference from diplomatic defense is that it renders aid not its own citizens.\textsuperscript{153}

In 1995 after abortive coup, the district procurator of Baku, in Azerbaijan, Mr. Makhir Cavadov asked for political asylum from Austria. Austria granted him the asylum. After three years Mr. Cavadov left Austria and continued his political activity in Iran against the authority of Heydar Aliyev, the President of Azerbaijan.\textsuperscript{154}

Heydar Aliyev asked for Iran to extradite the former procurator to Azerbaijan. But Iranian side denied to extradite him and refered to the quasi-diplomatic defense of Cavadov by Austria.

Thus this accident showed the distrust among nations. And taking into account standoff between the two countries, Iranian government also did not ban Mr. Cavadov to engage in the political activity in its territory. It else time showed that issue of political asylum and extradition directly depends from relationship among states.

The third consequence of the granting political asylum to anyone is responsible for this individual’s activity. Thereby a state is obliged to hinder the committing of acts of violence by an individual against his own state in the duration of enjoying an asylum.\textsuperscript{155} This does not mean that he has no right of critique his state. According to International Law the same critique is possible. The main propositions about

\textsuperscript{153} ibid, p.106
\textsuperscript{155} op.cit., GALENSCAYS L.N., p.109
inadmissibility of define actions by individuals with political asylum have been formulated in the Declaration on Territorial Asylum.\textsuperscript{156}

According to the Declaration a state granted an asylum must not let individuals enjoy an asylum to be engaged in activity contradicting the objectives and principles of UN.\textsuperscript{157}

\textsuperscript{157} ibid, pp. 225-226
3. CITIZENSHIP LAWS OF THE EUROPEAN UNION AND TURKEY.

In this part of the work I will try to describe the citizenship policy of Turkey and the European Union, in the framework of Turkish Civil Code and the Treaty on European Community.

Citizenship of Turkey and European Union are two different models of nationality. Turkey has a stable citizenship system with the common as many countries have and simple notion of citizenship, in other words with the mixture of jus soli and jus sanguinis. In this work I am going to discover especially naturalization in Turkey through the Civil Code in question.

In contrast to Turkish citizenship and the nationality anywhere, citizenship of the European Union is generally a new one. On November 1, 1993 the Treaty on European Union, the Maastricht Treaty finally limped into force after suffering thorough mauling in many member states of the Union. On that day every citizen of a member state of the Union became also a citizen of the European Union. In legal terms, this represents a very significant and interesting step in the development towards European Union and generally towards concept of citizenship. In this work legal concept of citizenship of the European Union will be also examined.

The Treaty on European Union amended the European Community Treaty, *inter alia*, by introducing into it a new Part Two Article 8, Citizenship of the Union. In commences with the creation of citizenship of the Union by baldly stating that henceforth it is established. It provides that, "every citizen holding the nationality of a member state shall be a citizen of the Union". Article 8 (2) goes on to state that citizens of the Union shall enjoy the rights conferred by the treaty and shall be subject to the duties imposed thereby. The European Community Treaty establishes the four fundamental freedoms: the free movement of goods, persons, service and capital. These rights are therefore now attached to citizenship of the Union. Whereas previously they attached exclusively to citizenship of a member state. At the moment these two categories are identical, so the enjoyment of the rights by virtue either of national citizenship or of citizenship of the Union does not appear material.

While the rights of the treaty as regards persons are normally considered in the context of free movement, which will be considered in the below, there are also other rights, such as freedom from discrimination on the basis of sex, rights of job security on transfers of undertakings and consumer protection rights. These rights too, presumably citizenship of the Union as well as nationality of a member state. As the

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160 ibid.
161 ibid.
163 op.cit., CESARANI David and FULBROOK Mary, p.34.
now attach to treaty provides that citizens of the Union shall enjoy the rights conferred by the treaty there does not appear to be any reason why those rights are limited to those set out in Article 8 European Community itself.\textsuperscript{164} Indeed, the wording clearly suggests that all rights conferred by the Union.

In accordance with the changes introduced by the Treaty on European Union, these rights have been extended to include certain civic rights: to vote and stand for election in certain circumstances and protection by the same conditions as nationals of the state.\textsuperscript{165} These rights which define the relationship between the individual and the state in respect of participation in public life and the individual vis-a-vis other states approach a convergence between the concepts of citizenship and nationality as understood in a number of member states.

No simple answer exists to the question of whether citizenship and nationality are the same thing of different in what way. For example, in the United Kingdom the British Nationality Act 1981 creates British citizenship but does not create or define British nationals.\textsuperscript{166} UK nationals are define exclusively in exclusively in terms of the European Union. Therefore a division may be perceived between citizenship as regulating the position vis-a-vis the state of citizenship and nationality in relation to other states: in the case of UK nationals other member states. However this is by no means universally accepted or applied in UK law.\textsuperscript{167}

\textsuperscript{165} ibid.
\textsuperscript{166} op.cit., SORENSEN Madledy Jens, p.53.
\textsuperscript{167} ibid, p.56.
In many member states the concepts of citizenship and nationality are not clearly distinguished. However where a delineation has occurred nationality has come to mean the affiliation of an individual with a state from the point of view of international law, while citizenship implies the host of rights domestically attached to that affiliation. Elsewhere, national has been described as a term denoting the quality of political membership of a state. Perhaps a more practical definition is that of close, for whom nationality is the external face of a complex concept which also possesses an internal face which is citizenship.\textsuperscript{168}

Such a division of meaning between the two terms would appear to hold true for citizenship of the Union. As every national of a member state is a citizen of the Union, the quality of nationality appears to be the international law relationship of the individual as participant in a member state to the Union. It is the relationship of the individual vis-a-vis a member state which creates his or her international law status in respect of the Union. But the creation of a link between the individual and the Union which is that of citizenship implies a host of rights attaching to the Union exercisable by the individual. There is suddenly a direct link between the Union and the individual.

\textbf{Rights and Duties in the Union.}

\textbf{Residence.} Generally, in order to participate in the life of a state the first step is to enjoy a right to live in such part of the state as may be desired.\textsuperscript{169} In an attempt to provide further particularity to the rights of citizens of the Union, Article 8A (1)

\textsuperscript{168} op.cit., CESARANI David and FULBROOK Mary, p.38.\textsuperscript{169} op.cit., CESARANI David and FULBROOK Mary, p.42.
European Community states that every citizen of the Union shall have the right to move and reside freely within the territory of the member states, subject to the limitations and conditions laid down in the treaty and by the measures adopted to give it effect.\textsuperscript{170}

The right of free movement for economic purposes across European Union borders is fundamental to the Union and has existed from the Community's inception. It has been extended to include three categories of economically inactive persons: pensioners, students and persons with sufficient means so that they do not become a burden on the member state's social assistance schemes.\textsuperscript{171} The right to move for an economic purpose includes a right of residence for the same purpose. A right of residence may found a right to family reunion. These rights contained in Articles 7, 48-66 European Community and supplemented by the directives on the economically inactive create an entitlement to across the borders of the member states and to remain on the other side.\textsuperscript{172} The group of persons most notably exclude from the exercise of free movement rights is the unemployable who are reliant on state social assistance benefits. There is no right or protection for these persons to move across the Union in search of better social assistance benefits.\textsuperscript{173} However, citizens of the Union do have a right to move to another member state in search of work and may have a right to assistance for the initial period while looking for work.\textsuperscript{174}

\footnotesize{\textsuperscript{170} op.cit.,"The Convention on European Community".\
\textsuperscript{171} ibid.\
\textsuperscript{172} ibid.\
\textsuperscript{173} ibid.\
\textsuperscript{174} ibid.}
Article 8A (1) European Community now adds a new element: the right to move and reside freely within the territory of the member states.\textsuperscript{175} It is a principle of community law frequently upheld by the Court of Justice that rights of free movement cannot be invoked in respect of situations which are wholly internal to a member state, where there is no factor connecting them to any of the situations envisaged by Community law.\textsuperscript{176}

\textbf{Expulsion.} The right of residence in Article 8A (1) European Community is subject to the limitations and conditions laid down in the treaty and by the measures adopted to give it effect. The right of free movement has been subject to limitation on grounds of public policy, public security and public health.\textsuperscript{177} How does this proviso on public policy grounds apply to citizens of the Union? If citizens of the Union have a right to live in any part of the territory of the Union then the application of this proviso excluding them from part of the Union must be akin to an internal restriction on movement. In the United Kingdom, for example, such a restriction exists in the Prevention of Terrorism Act 1989.\textsuperscript{178}

The public policy proviso has been limited by the European Court of Justice in respect of member state nationals exercising economic rights outside their country of nationality as follows: 1. a member state relying on the public policy proviso must show that the measure in question is justified on the basis of some objective which forms part of public policy; 2. the public policy proviso must by an exception to the general

\textsuperscript{175} ibid.
\textsuperscript{176} ibid.
\textsuperscript{177} ibid.
\textsuperscript{178} op.cit., SORENSEN Madsedy Jens, p.53.
principle of free movement and construed restrictively; 3. exclusion can only be justified where the person’s presence or conduct constitutes a genuine and sufficiently serous treat to public policy; 4. state on public policy grounds even though it cannot place a similar restriction of its own nationals. 179

All of the decisions of the Court of Justice on which the above summary is based pre-date the establishment of citizenship of the Union. The Court of Justice specifically noted that it is a principle of International law, which the European Community Treaty cannot be assumed to disregard in the relations between member states, that a state is precluded from refusing its own nationals the right of entry or residence. 180

The Creation of a direct political link between citizens of the Union itself has already been highlighted as a potentially fundamental change to the status quo. It is by no means clear what consequence this may have for the power to expel a citizen from one part of the Union to another. However, at the very least, it would appear likely that the test on expulsion and the test in the member states on internal restrictions such as contained in the Prevention of Terrorism Act 1989 must be consistent as manifestations of the same power.

**Political Participation.** The right to exercise political rights both actively by voting and passively by standing for election is granted to citizens of the Union by Article 8B European Community. 181 Article 8B (1) establishes that every citizen of the Union, residing in a member state other that of which he is a national shall have the

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180 op.cit., CESARANI David and FULBROOK Mary, p.52.

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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. Article 8B (2) provides that citizens of the Union residing in a member state of which he or she is not a national shall have the right to vote and stand as a candidate in elections to the European Parliament in the member state in which he or she resides under the same conditions as nationals of that state.\footnote{182}

Therefore, through Article 8B (1) and (2) citizens of the Union are entitled to full participation in the political life of their state of residence of two levels: municipal and European. Arrangements are made for transitional adjustments and implementing measures. Participation in political life at national level in a state of which the individual in not a national is intentionally excluded from the rights attaching to citizenship of the Union.\footnote{183}

**Remedies Against Maladministration.**

On the issue of the bundle of rights attaching to citizenship of the Union, the Maastricht Treaty introduced a right for every citizen of the Union to petition the European Parliament and to apply to the Ombudsman established under Article 138D European Community. This Ombudsman, also a child of the Maastricht Treaty, in fact may receive complaints from any natural or legal person residing or having a registered office in a member state.\footnote{184} The tension between the two provisions of the treaty, Article 8D and Article 138D as regards who may have access to remedies against the

\footnote{182} ibid. \footnote{183} ibid. \footnote{184} op.cit., SORENSEN Madledy Jens, p.103.
administration, reflects the uncertainty that permeates the question of rights attaching to citizenship as opposed to fundamental human rights, which must be available to all persons irrespective of citizenship.\textsuperscript{185} Article 8D may be considered to echo the classic position as set out by T.H.Marshall whereby the right to juridical protection is a defining prerogative of the citizen.\textsuperscript{186} Article 138D represents the alternative perspective that equality before the law is a fundamental right which must be available to all persons on the territory.\textsuperscript{187}

The Ombudsman's remit is to conduct inquiries into instances of maladministration in the activities of the Community institutions or bodies with the exception of the Court of Justice and the Court First Instance acting in their juridical capacities.\textsuperscript{188} This role is rather curious, as it limits the right of the Ombudsman to protect the citizen of the Union from maladministration in the respect of the institutions of the Community rather than those of the Union.

The concept of allegiance has not here been considered in respect of citizenship of the Union or indeed of citizenship generally in view of the increasingly difficult correlation between the two which has been noted elsewhere. Suffice it to say that the ideas relating to the duties attendant on citizenship are in a state of substantial flux. Beyond a rather nebulous concept of a duty to be loyal, which must none the less be compatible with the right to free speech and the much more concrete duties-where they

\textsuperscript{185} op.cit., CESARANI David and FULBROOK Mary, p.66. 
\textsuperscript{187} op.cit., CESARANI David and FULBROOK Mary, p.67. 
\textsuperscript{188} op.cit., SORENSEN Madledy Jens, p.104
exist in some member states — to vote and to undertake military service, there is little agreement on what the duty side of citizenship might include.

**Statehood of the Union and Citizenship.**

The preamble to the Treaty on European Union which introduced citizenship of the Union states that the member state are resolved to establish a citizenship common to nationals of their countries.\(^\text{189}\) It goes on to state that they are similarly resolved to implement a common foreign and security policy including the eventual framing of a common defense policy, thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and the world.\(^\text{190}\)

This is picked up in Article B setting out the objectives of the Union, inter alia: “to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the eventual framing of a common defense policy which might in time lead to a common defense; to strengthen the protection of the rights and interests of the nationals of its member states through the introduction of a citizenship of the Union”.\(^\text{191}\)

By the inclusion of citizenship of the Union in the European Community Treaty by way of its amendment the member states have placed it within the competence of all the Community institutions. The common foreign and security policy forms its own “pillar” in the terminology of the treaty and is not subject to the jurisdiction of the Court

\[^{189}\] op.cit., McCRUDDEN C., p.45.
\[^{190}\] ibid, p.46.
\[^{191}\] ibid, p.47.
of Justice.\textsuperscript{192} The objective of a common foreign policy may include measures taken in respect of the international community vis-a-vis citizens of the Union.\textsuperscript{193}

Article 8D European Community provides that every citizen of the Union in the territory of a third country in which the member state of which he or she is a national is not represented, shall be entitled to protection by the diplomatic or consular authorities of any member state on the same conditions as nationals of that state.\textsuperscript{194} In this way a collective Union-wide responsibility for citizens of the Union abroad is established. It is of course limited to circumstances where the state of nationality is not represented. Nonetheless, the principle may be seen as a form of subsidiary, in that the Union has developed onto the member states' representatives abroad responsibility for protection of the Union's citizens.\textsuperscript{195}

As Union citizenship includes increasing elements of nationality so it must have a state to which to attach. If the Union is a state, the objectives of a citizenship must be sufficiently closely attached to its external persona that the nationality side of its citizenship is within its competence. Indeed, it is difficult to imagine how things could be otherwise.

The question of statehood of the Union is certainly open. Some commentators have come to the conclusion that citizenship of the Union cannot be a nationality because the Union lacks statehood.\textsuperscript{196} However, it is possible that the development of

\textsuperscript{192} op.cit., "The Convention on European Community.
\textsuperscript{193} Ibid.
\textsuperscript{194} Ibid.
\textsuperscript{195} op.cit., McCRUDDEN C., p.69.
\textsuperscript{196} Ibid, p.78.
statehood and citizenship proceed hand in hand. As the Union absorbs an increasing number of the elements of statehood so its citizenship must acquire attributes of nationality. The decisions of the Court of Justice referred to above certainly seem to indicate some justification for the position of Professor Bleckmann that the Community as an entity itself possesses personal jurisdiction.\textsuperscript{197}

**Acquisition and Loss of Citizenship of the Union.**

According to Article 8 (1) European Community every person holding the nationality of a member state shall be a citizen of the Union.\textsuperscript{198} Therefore, the question of who is a citizen of a member state remains a matter exclusively of domestic law. This definition of nationals was not the same as the definition for the proposes of UK domestic law. On the reworking of British nationality law in 1981, when a new Declaration was made for Community law purposes, a rather heterogeneous group of persons with British status were included.\textsuperscript{199}

This status quo is reinforced by a Declaration to the Treaty on European Union on Nationality of a Member State. So that there could be no doubt about national sovereignty over citizenship questions it 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". Just so that indecisive states like the United Kingdom could change their minds about who their nationals are from time to time the Declaration goes on to state "Member States may declare, for information, who

\textsuperscript{197} op.cit., SORENSEN Madley Jens, p.152.
\textsuperscript{198} op.cit., CESARANI David and FULBROOK Mary, p.90.
\textsuperscript{199} op.cit., SORENSEN Madley Jens, p.179.
are to be considered their nationals for Community purposes by way of a declaration lodged with the Presidency and may amend any such declaration when necessary." \(^{200}\) It may be assumed that it is a matter for the Member State to decide when it is necessary to amend its declaration.

When presented with the question of the value of national citizenship before the creation of citizenship of the Union, the Court of Justice held that a member state was not entitled to refuse to recognize a person as a national of another member state. \(^{201}\) However, the Court did add a proviso, almost as a footnote, that this national competence must be exercised with respect for Community law. It remains a matter for speculation what this proviso may mean.

Therefore, the national laws of the member states as regards acquisition and loss of citizenship, which vary dramatically from state to state, create the parameters of citizenship of the Union. It is within the exclusive domain of the member states to decide to whom the Union belongs and who belongs to it. The member states alone through the configuration of their nationality laws permit or deny political participation in the Union to its residents.

**3.2. Citizenship of Turkey.**

First of all, it should be described the history of development of Turkish Citizenship. It is worth noting that Turkey has the great history and experience in citizenship policy because she is a successor of Ottoman Empire.

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\(^{200}\) op.cit., CESARANI David and FULBROOK Mary, p.93.

\(^{201}\) ibid, p.101.
With "Tabiyet-i Osmaniyye dair Nizamname" (April 8, 1284 - January 23, 1869) that was established by Ottoman Empire, the state benefiting from European rights had established first law about citizenship rights for preventing easy change of citizenship of non-muslim ottomans, with the aim of benefit from illegal ways.\textsuperscript{202}

First clauses of this Code, consisted of nine clauses, included decrees about acquiring Ottoman citizenship with "birth" or another ways.

Citizenship with birth was acquired in the cases of progeny base, having both parents, or only father with Ottoman citizenship (clause 1) in response to this clause, in Ottoman children having foreign parents could demand Ottoman citizenship in three years only after reaching discretion age (clause 2). Beside this, giving citizenship to foreigners with the way of naturalization was accepted by the Code.\textsuperscript{203}

In the Republic period the first decree was Turkish Citizenship Code, being accepted on May 23, 1928 with No 1312. This decree was in force since January 1, 1929 till year of 1964.\textsuperscript{204}

In this decree, that contained 16 clauses, "original" and "acquired" citizenship cases were foreseen. Citizenship with birth, depending on blood was acquired with being born from Turkish mother, or being from Turkish father, inside or outside of marriage, in Turkey or in foreign country (clause 1 and 2/C).\textsuperscript{205} The phrase of being from Turkish father also included determination belonging of that child to father in

\textsuperscript{202} op.cit., ULUOCAK Nihal, p.19.
\textsuperscript{203} ibid, p.20.
\textsuperscript{204} ibid, p.20.
\textsuperscript{205} ibid, p.20.
case of out of marriage birth. In just the same way, the Code, being in force with year of 1964, had made clear this case under concept of "circumstance change" in its 2\textsuperscript{nd} clause.

With the same Citizenship Code considering children born in Turkey, with unknown parents, or having either stateless mother or father, on the base of birth place as Turkish citizen was accepted (clause 2/A,B).\textsuperscript{206}

As defined before, in 4\textsuperscript{th} clause of Citizenship Code of year 1928 political goals were pursued, instead of preventing statelessness so, the base of birth place was applied to foreigners too. Consequently, foreign children being born in Turkey were considered as Turks since their birth.

The Code of 1928 year, had given place to "acquired citizenship" too; citizenship was acquired later with decree of the Ministers Committee (clause 3,5,6,14) or by marriage.

Turkish Citizenship Code that is in force today was accepted on February 11, 1964 with No 403, and got in force in three months after publish. Relating to application of this Code, the regulations were published.\textsuperscript{207}

Finally, on February 13, 1981 with Law No 2383 important changes were made to 1964 dated Citizenship Code. Related with this Code another regulations were published, and changes were made in some clauses of 1964 dated regulations.

\textsuperscript{206} ibid, p.20.
\textsuperscript{207} ibid, p.20
1964 dated Turkish Citizenship Code had taken as a base citizenship of father in acquiring citizenship on the base of blood, since changes made in 1981; consequently, acquiring citizenship from Turkish mother or father (1981 Code, clause 1).

The principle of acquiring Turkish citizenship with birth was appropriated from 1964 dated Code (clause 4).

In comparison to 1312 dated Code, in 1964 Citizenship Code the cases making possible of acquiring citizenship later were arranged rather detailed; arranging effects of adopting a child (clause 3), marriage (clause 5) to citizenship, preventing of statelessness were regarded; cases of acquiring Turkish citizenship without administrative decrees, with "way of optation" were expanded (1964, clause 12/b,c and 1981 dated Code, Appendix 2, clause, and 1964, clause 13) and finally, with decree of authorized post conditions of acquiring citizenship later and people that can benefit from this way were arranged with a large scope.\textsuperscript{208}

The decree determining principles of acquiring citizenship of 1982 dated Turkish Republic Constitution is like this: "Everybody connected to Turkish state with citizenship bond is Turk. The child of Turkish father or Turkish mother is Turkish.

Citizenship of child born from foreign father and Turkish mother is determined by Law. Citizenship is acquired with conditions shown by Law…" (clause 66/1,2,3…).\textsuperscript{209}

While defining "Turkish" in the 1\textsuperscript{st} paragraph of clause, just being seen enough existence of valid citizenship bond, particularity about "net considering difference in

\textsuperscript{208} ibid, p.21.
\textsuperscript{209} ibid, p.22.
religion, madhap, race…", that was somewhat a partly made clear in previous Constitutions, was stated with more modern formula.

The ways of acquiring Turkish citizenship are determined as "way of Law" (clause 1-5), "authorized post decree" (clause 6-8), and "right of optation". Such arrangement is seen in Swiss Citizenship Law too, just as in this Federal Code, Swiss citizenship is acquired with "law necessity" (par le seul effet de la loi), or "merci" decision (par decision de l'autorite). 210

Turkish Citizenship Acquired With Birth. Having "original acquisition" attribute, citizenship acquired with birth is acquired with necessity of law, and it is certain. In other words, it doesn't change till person haven't reached his discretion age, but can be lost in conditions foreseen by Law.

Depending on Turkish Citizenship Code, citizenship with birth is acquired with cause of "Nesep way" or "birth place". In this last case, "preventing statelessness" aim is active. 211

Acquisition of Turkish Citizenship by the Way of Nesep. Being Turkish father or mother at the moment of birth: depending on 1st clause of Turkish Citizenship Code, that was changed with law on February 17, 1981, "children born from Turkish mother or being from Turkish father inside or outside of Turkey are Turkish citizens since their birth." 212

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210 SAVIN Alex, "Grajdanskoe Pravo Evropeiskih Stran", Arena Press, Moscow, p.102.
211 op.cit., ULUOCAK Nihal, p.22.
212 ibid, p.24.
Inside or outside of Turkey: a) being from Turkish father; b) born from Turkish mother and could not acquire father's citizenship; c) children born from Turkish mother in illegitimate, are Turkish citizens since their birth (1964, clause 1, old form).

For instance, being influenced from male-female equality in 1981 dated English Citizenship Code acquiring citizenship from mother, *jus sanguinis* was accepted. In previous Code of year 1948 acquiring only from father with the way of *Nesep* was brought to base. But in this Code system *jus sanguinis* citizenship was valid only for one generation. However, in 1948 dated code it was allowed to profit from this way along generations.\(^\text{213}\)

Being foreign mother at the moment of illegitimate birth: in Turkish Citizenship Code this condition is arranged in another clause under name of "change of condition" (clause 3). So that, "illegitimately born child from foreign mother: a) amendment of *Nesep*; b) *Tahakkuk* of step-father with authority; c) with one of the ways of recognizing, if is bounded to Turkish citizen with *Nesep* bond, becomes Turkish citizen from birth.\(^\text{214}\)

According to the same Civil Code, “as do not recognizing children whose marriages are prohibited, or children born from adultery of married male and female” (clause 292) won’t let that child acquire Turkish citizenship according to 2\(^{nd}\) clause of Turkish Citizenship Code.

\(^{213}\) ibid, p.25.
\(^{214}\) ibid, p.26.
Acquisition of Turkish citizenship with birth place (jus soli). In citizenship codes decree relating to acquiring citizenship with jus soli usually is aimed for preventing statelessness. Consequently, this forms original citizenship source with second degree.

According to Turkish Citizenship Code, “children, that are born in Turkey, and can’t acquire citizenship from mother or father with birth, are considered Turkish citizen since their birth; children found in Turkey are considered to be born in Turkey, if reverse is not proven” (clause 4).215 So, for acquiring citizenship with this way mainly two condition will be looked for:

1. Not acquiring citizenship of mother and father with birth. In this topic these probabilities must be thought about. (Turkish Citizenship Code instructions, 1964, clause 7): a) being known of mother and father at the moment of child’s birth; b) being stateless of mother and father; c) impossibility of child’s acquisition of citizenship with the way of Neseş from mother or father according their national rights.

2. Being born of child in Turkey. In France, for example, according to Citizenship Code expresses meaning of motherland, colonies and sea over countries lands (clause 6).

Somewhat apart in determination of state lands always consideration of disposals bringing changes of authorized French Merciler, as a result of application of international pacts, codes and Constitution.216

Latterly Acquisition of Turkish Citizenship.

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215 ibid, p.29.
216 ibid, p.30.
Later acquired citizenship is citizenship not acquired with birth. This citizenship isn’t effective to the past. In other words, citizenship is considered being acquired since the date of completion of juridical procedure or inform of “optation right”. This citizenship is steady as citizenship acquired with birth. Concerned can withdraw from Turkish citizenship using his “optation right” (Turkish Citizenship Code, clause 27/b, c/28) or getting “withdraw permission” (Turkish Citizenship Code, clause 20). Only in too exception cases, with different reasons from than Turkish citizens from birth these people right can lost their Turkish citizenship (Turkish Citizenship Code, clause 25/f, clause 26/l).\textsuperscript{217}

According to Turkish Citizenship Code, the citizenship is gained later with “marriage”, “adopting a child”, “optation” ways and with the “decree of authorized post”.

\textbf{Acquisition of Citizenship with Decree of Authorized Post (Telsik Naturalization).}

In Turkish Citizenship Law as an authorized post “approval right” of Committee of Ministers was started clearly. Just as, giving a part to phrase “possibility of giving Turkish citizenship” to foreigners realizing legal condition in related clauses of Turkish Citizenship Code (clause 6, 7, 8), in the Regulations it was expressed more clearly that because of concern of not certain grant of rights to person carrying all conditions foreseen by Turkish Citizenship Code for acquisition of citizenship to sovereignty right

\textsuperscript{217} ibid, p.21.
of the state, giving or not giving citizenship to that person depends on “approval right” of Committee of Ministers (Regulations, clause 10). 218

**Generally being into citizenship.** Generally got in to citizenship is possible, and its conditions in summary determined with considering competency of person, not being detrimental to society that will be included in and probability of fusion with this society.

a) Competency Condition. The Citizenship Code, searched to person that will be got into citizenship is stateless according to national code, and majority according to Turkish Law (Turkish Citizenship Code, clause 6/a). 219

In some citizenship codes, not giving a part to “national law” in this topic, a “majority age” was determined for naturalization. For instance, this is French Citizenship Code, clause 66, age 18. In this last arrangement not request French citizenship. In spite of this, according to Turkish Citizenship Law all decrees of national laws making requesting person majority must be provided, as same in being a stateless of that requesting person, and application of Turkish law. 220

In spite of talk only about “majority” in Turkish Citizenship Code, requesting person also must be reached age of discretion. Joining of person lost all his power to Turkish society mustn’t be thought. Consequently, if a foreigner is reached age of discretion and limited in using his rights, the conditions and way in which citizenship request will be solved is determined with persons national law.

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218 ibid, p.51.  
219 ibid, p.51.  
220 ibid, p.52.
b) Conditions of not being detrimental and load to society. It was looked for having good ethics of concerned (Turkish Citizenship Code, clause 6/c). In the Regulations explanation is like this: “not being detrimental person in society and environment, not having bad behaviors and crimes that are met unpleasantly by public, such as, smuggling, forgery and swindling, being a hard-working, useful person to his family and society with his art and profession” have proven to either to country in which lives or to Turkey (clause 11/c). 221

From the point of view of general health, not having a disease forming danger (Turkish Citizenship Code, clause 6/f); looking for concerned not being infected to any infectious disease, that could threat the health institution (Regulations, clause 10/d).

Having a profession or salary that can provide his and living in Turkey (Turkish Citizenship Code, clause 6/f). Foreigner must state his “profession” and “in which activities are involved” in petition.

c) Conditions of fusion with society. Have resided for 5 years in Turkey before application date (Turkish Citizenship Code, clause 6/b); “residence” condition, that can procure fusion of person requested for getting to citizenship with society which will join, has generally taken a part in citizenship codes. The period for realizing this condition based on profit of The State is determined as long or limited period. For example, in Swiss Citizenship Code this period is 12 years (clause 15/l), and in French Law it is 5 years (clause 62). 222

221 ibid, p.53.
222 op.cit., SAVIN Alex, p.130.
The important peculiarity is definition of “residence” concept. As told before, in foreign laws phrases with the meaning “residence” are used: according to Swiss Citizenship Code, “residence” for a foreigner in Swiss is being in this country fitting to laws about foreigner. In Turkish Citizenship Code, “residence” is defined as: “living of a foreigner in Turkey fitting to laws” (clause 9/1). Laws told above are “Law about Residence and Travelling of Foreigners in Turkey” (15 July, 1950/5683 no R.G. 24 July 1950/7564) and according to concerned decrees, “Passport Code” (15 July 1950/5682 no R.G. 24 July 1950/7564).

It was said that residence concept must be determined according to pacts and must be continuous. In case, if residing foreigner leaves country in a period of 5 years before application, the total period spend out of country can be at most six months. If a foreigner with residence according to Turkish Civil Code in Turkey leaves Turkey or stays out of Turkey with the education or another obligatory reason, not depending on that total period spent. Out of Turkey exceeds 6 months, residence period isn’t considered interrupted. The only condition of this procedure is saving of residence in Turkey by concerned during this period. In instance, according to French Citizenship Code a person who can not show his effective link with French society should not be a citizen of France.

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223 ibid, p.133.
224 op.cit., ULUCAK Nihal, p.53.
225 op.cit., SAVIN Alex, p.45.
**Exceptional getting in Citizenship.** In the way of "exceptional getting in citizenship" a private condition of an applicant of residence for the same persons (clause 7/1).²²⁶

The Citizenship Code claims:

a) Children reached discretion age born from previous Turkish citizens after out of their Turkish citizenship (clause 7/a). These are children of persons lost Turkish citizenship from a foreigner. Age of these children is defined by municipal law (clause 6/a).

b) Persons marred with Turkish citizen and their children reached discretion age (clause 7/b). On the one hand, foreign citizenship at the moment of her marriage; foreign woman whose husband has became Turkish citizen; on the other hand, foreign mail who married with Turkish citizen and children reached discretion age of all these persons will be able to use this clause. As it has been noted age of these children would be defined by the municipal law.

c) Persons with Turkish origin, their wife’s and children reached discretion age.

The State can lighten the acquisition of citizenship to foreign persons who know its language, have origin of its nation and culture. For example, French Citizenship Code provides that persons having bond with French culture and knowing French may be acquired French citizenship (clause 64-1).²²⁷

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²²⁶ op.cit., ULUÇAK Nihal, p.57.
²²⁷ op.cit., SAVIN Alex, p.68.
d) Persons with the decision of marriage with Turkish citizenship and in this way resided in Turkey (clause 7/c). These are the persons who has a residence in Turkey and valid passport, but also intended to marriage with a Turkish citizen (male or female) or have children from a Turkish citizen (clause 11/c).

e) Persons providing technology, having achievement in the fields of science, technology or art (clause 7/d).

For example, according to French Citizenship Code persons having fundamental achievement and persons who may be helpful for France without any conditions are acquired French citizenship (clause 64/6).\textsuperscript{228}

f) Persons acquisition of which is necessary by the decision of Cabinet Ministers (clause 7/c).

By this decision a foreigner may be acquired Turkish citizenship exceptionally (clause 11/e).

\textbf{The Procedure of Naturalization.}

Requirement of Applicant: A Person who wants to be acquired Turkish citizenship must apply to the most Supreme Civil Body of Turkey or to Turkish Consular abroad with the application including personal information (clause 10, 14), and also documentary evidence (clause 15).\textsuperscript{229}

Interview: Civil officers and consular abroad have to send the applications also included their notes and opinions to Ministry of the Interior (clause 14, 16).

\textsuperscript{228} ibid, p.70.
\textsuperscript{229} op.cit., ULUOCAK Nihal, p.62.
CONCLUSION

It is very difficult to discover and research the citizenship problem in our globalized world. The point is that complexity appears due to the diversity of multiple components of the modern world order and also of international relations. Nevertheless a state remains still as a main and fundamental actor on the international arena. In this connection I will try to make some major points.

First of all, it is worth noting that discussion between monists and supporters of dualism about the interaction among international law and citizenship is still continuing. From my point of view, position of moderate writers is much constructive than radicals'; that international law can directly regulate interstates relations and define the status of population and certain individuals if it were the will of states that created international norms concerning their jurisdiction over persons.

Second, it is clear that citizenship issue depends on municipal law and it is the bond that unites individuals with a given state, that identifies them as members of that entity also subjects them to the performance of such duties as their state may impose on them. But here, we have to make a note that there exist some rules of customary law, of multilateral treaties, and of general comprehensive global law-making treaties on the subject in question, that regulate certain aspects of citizenship.

Third, each state possesses a sovereign right to decide what aliens to admit, to whom to grant citizenship, and under what conditions; and nowadays this sovereign right prevails over the pledge to treat individuals without discrimination in the case of naturalization.
Fourth, in the case of political aspects of citizenship it is thought that each state is free to determine the extent to which extradition will adhere to the practice; that a state may choose to surrender a political offender if the surrender should be dictated by national policy or state interests. And also it is clear that the right of asylum is the right of a state to grant asylum and individual has no right to demand asylum.

Fifth, as it was already noted only the citizen enjoys the full rights and duties of political membership. In a globalized world order, however, these traditional affiliations based on territorial sovereignty seem increasingly eroded in their meaning by more and more primary associations with the non-territorial aspects of global market forces and by the stress upon ethnic and sub-state identities that take precedence for many citizens over the allegiances to the state. And then there are the emerging new electronic communities borne of the internet, reshaping and demolishing loyalties according to the generally libertarian priorities of the “netizens”.

Given these trends, the traditional arranging of identities and loyalties by citizenship exclusively at the level of the territorial state seems increasingly quite obsolescent. But the main question here, - is the world ready for alternatives in the form of overlapping allegiances and multiple bonds of citizenship?
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