

**CITIZENSHIP BY INVESTMENT
PROGRAMMES: EXPRESS
NATURALISATION FOR BULKY
WALLETS. AN ARBITRARY *DE JURE*
STRATIFICATION?**

ELENA PRATS

SUMMARY

I. INTRODUCTION. 2. CIPS: A FAST ROUTE TO BULKY WALLETS. 3. CIPS IN THE EUROPEAN UNION (EU). 4. IS THE STRATIFICATION ENTAILED BY TALENTED AND CHECKBOOK CITIZENS AKIN? 5. LAST REMARKS.

CITIZENSHIP BY INVESTMENT PROGRAMMES: EXPRESS NATURALISATION FOR BULKY WALLETS. AN ARBITRARY *DE JURE* STRATIFICATION?

ELENA PRATS¹

I. INTRODUCTION

Is there a relation between migration and stratification? Quoting Jasso (2011) 'migration and stratification are increasingly intertwined. One day soon it will be impossible to understand one without the other.'² Replying to this question and figuring out in which manner migration and stratification intertwine has been the object of much attention during the last two decades. This increased interest has been reflected in the broader number of articles published on the subject, as well as in the attention that the relation has caught in different sorts of academic activities, such as the 19th Nordic Migration Research Conference 2018 (NMR-Conference), where this article was first presented.

Despite the rise of interest, the study of the relation between stratification and migration (and citizenship) has been mainly focusing on features such as origin,³

¹ PhD candidate at the Uppsala University. Department of Philosophy (Engelska parken, Thunbergsv. 3H, 75126 Uppsala, Sweden) elena.prats@filosofi.uu.se More info available at: <https://katalog.uu.se/profile/?id=N17-78>

² JASSO, G. (2011): «Migration and stratification», *Social Science Research*, 40(5), 1292–1336. <https://doi.org/10.1016/j.ssresearch.2011.03.007>

³ For a good insight into the relation between stratification and origin check, among others, CROWDER, K., SOUTH, S. J., & CHAVEZ, E. (2006). «Wealth, Race, and Inter-Neighborhood Migration», *American Sociological Review*, 71(1), 72–94. <https://doi.org/10.1177/000312240607100104> and MALMUSI, D., BORRELL, C., & BENACH, J. (2010). «Migration-related health inequalities: Showing the complex interactions between gender, social class and place of origin», *Social Science & Medicine*, 71(9), 1610–1619. <https://doi.org/10.1016/j.socscimed.2010.07.043>

ethnicity⁴ or gender,⁵ paying special attention to those immigrants, who are put in a disadvantaged position by those policies. Yet, a few innovative studies⁶ have shifted their views to approach the phenomenon of the intertwining between migration and stratification to focus on those people benefiting from policies fast-tracking their naturalisation route in order to attract their talents.⁷ These talented skilled immigrants usually come in diverse forms, but the most common are elite athletes, acclaimed scientists and scholars, and successful professionals.⁸

The spectrum of policies granting residence or citizenship to talented people is extremely wide and diverse, yet when focusing on citizenship, policies share a common feature, that is, that the bestowing of citizenship is done in most cases as particular and discretionary decisions based on the unique features of the individual who

⁴ For a good insight into the relation between stratification and ethnicity check, among others, KEITH, VERNA M., & HERRING, CEDRIC. (1991). «Skin Tone and Stratification in the Black Community», *American Journal of Sociology*, 97, 760–778 and Murguía, E., & Saenz, R. (2002). An analysis of the Latin Americanization of race in the United States: a reconnaissance of color stratification among Mexicans. *Race and Society*, 5(1), 85–101. <https://doi.org/10.1016/j.racsoc.2003.12.006> and VILLARREAL, A. (2010). «Stratification by Skin Color in Contemporary Mexico», *American Sociological Review*, 75(5), 652–678. <https://doi.org/10.1177/0003122410378232>

⁵ For a good insight into the relation between stratification and gender check among others, KOFMAN, E. (2004). «Gendered Global Migrations», *International Feminist Journal of Politics*, 6(4), 643–665. <https://doi.org/10.1080/1461674042000283408> PIPER, N. (Ed.). (2008): *New perspectives on gender and migration: livelihood, rights and entitlements*. New York: Routledge.

⁶ Some of them are GKOUVAS, T. (Ed.) (2013). *Wanted and welcome?: policies for highly skilled immigrants in*. Place of publication not identified: Springer and SHACHAR, A. (2006). «The Race for Talent: Highly Skilled Migrants and Competitive Immigration Regimes», *NYU Law Review*, 81; SHACHAR, A. (2011). «Picking Winners: Olympic Citizenship and the Global Race for Talent», *The Yale Law Journal*, 120; SHACHAR, A. (2016). Selecting By Merit. In S. FINE & L. YPI (Eds.), *Migration in Political Theory* (pp. 175–202). Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199676606.003.0009> and SHACHAR, A., & HIRSCHL, R. (2013). «Recruiting “Super Talent”: the New World of Selective Migration Regimes», *Indiana Journal of Global Legal Studies*, 20.

⁷ Currently, this race for talent with its focus on skills-based admission categories involves countries all over the world. SHACHAR and HIRSCHL point out that it was initiated by the United States in the amendments to the Immigration and Nationality Act (INA) of 1952. After this formative event, several countries followed the same route. Some examples are Canada (1967, “point system”), China (1967), Australia (1973), New Zealand, Denmark, Singapore, Taiwan and South Korea (2013).

⁸ An interesting example of an initiative established to attract talent to Europe is the Bluecard. As a way to accomplish with the 2000 objective of the Lisbon European Council of becoming the most competitive and dynamic knowledge-based economy in the world, in 2007 the European Commission adopted the proposal of creating the EU Blue Card. The aim was to make Europe a more attractive destination to professionals from outside the EU by facilitating access to the Union to those with adequate education or sought-after skills who have an employment contract or a binding employment offer. More information is available on: <https://www.apply.eu/BlueCard/> (accessed 20/7/2018).

is granted citizenship.⁹ Thus, some key facts concerning *talented citizens*¹⁰ are the following; First, that their bestowing of citizenship is done *ad hoc*, not as the consequence of a programme establishing a systematic patron. Second, that the discretionary decision granting citizenship is made considering the particular and unique features of the talented applicant that reflects in the quality of her work.

The last few decades have opened the door to a different form of wanted migrant, the checkbook migrant/citizen,¹¹ whose main coveted feature does not come in the form of a specific skill that can increase national pride—as in the above—mentioned cases. In the case of the checkbook migrant it comes in the form of their economic capacity, —money, a fungible asset, which does not necessarily entail a causal relation with the applicants' skills.¹² States offer their 'invitation letters' to the wanted wealthy applicants by establishing what has been named Immigrant Investor Programmes (IIPs). Those are programmes that open a fast-tracked-route to this new kind of migrant—the checkbook migrant, who find themselves in the top of the stratified structure of migration policies giving access to the country by the mere fact of investing in the state.

IIPs do not only fast-track the migration route but under certain circumstances, as it is the case of citizenship by investment programmes (CIPs), even to citizenship. In the coming section, I will present in detail what CIPs are, introduce briefly their history, and point out what programmes exist currently in the European Union (EU). Moreover, when presenting the particular programmes in the EU, I will introduce the general requirements that other naturalisation applicants need to fulfil, to prove that CIPs entail a *de jure* stratification in facilitating the route to citizenship to wealthy applicants. In the last section, I will compare both categories of privileged new citizens, talented and checkbook, and point out their differences in the stratification of naturalisation they represent.

⁹ While it is true that there are some programmes —as the above mentioned Bluecard— that facilitate in a systematic way access to the countries to talented people, granting citizenship to the gifted applicants is done usually in the form of discretionary decisions.

¹⁰ In the category of *talented citizens*, I include mainly those elite sportspeople, scientists, scholars and artists whose citizenship is granted individually on the grounds of their skills.

¹¹ In the category of *checkbook migrant*, I include mainly those migrants whose permits (temporary or permanent) are obtained merely through an investment in the state following a pre-established programme. In the category of *checkbook citizens*, I am including those citizens whose naturalisation is granted by an investment in the country following a pre-established programme. This is the particular (potential) immigrant I am interested in addressing in this essay.

¹² For instance, the case of someone, whose wealthy position is the consequence of a large inheritance or of winning the lottery.

2. CIPS: A FAST ROUTE TO BULKY WALLET

As has been introduced in the previous section, CIPs are a specific kind of IIPs, whose particularity is that the aim of the programme is to bestow citizenship¹³ in exchange for an economic transaction.¹⁴ My definition of CIPs is the following:

‘CIPs are laws that in a *systematic* way grant citizenship in exchange for *economic transactions*, which *waives or significantly*¹⁵ *reduces requirements* that other naturalisation applicants need to fulfil, such as, but not exclusively, residence, language or civic tests.’

Although the first countries establishing CIPs were small island-states struggling with economic problems and using the programmes as ways to improve their damaged economy,¹⁶ the programmes quickly spread all over the world.¹⁷ The vast amount and changing nature of the policies make it challenging to know the exact number of programmes worldwide, yet there are some scholars (Džankić, 2012; 2018) who have been working on scrutinizing and determining which are the CIPs established by European Union (EU) member states. The study of these programmes has a particular interest because the bestowing of the national citizenship implies

¹³ The difference between IIPs and CIPs resides in the fact that the former grants visas or residence permits, which potentially can end in allowing the subject to naturalise, while the purpose of CIPs is principally the bestowing of citizenship by waiving or cutting naturalisation requirements that in other cases would apply (like the period of residence, civic and language tests, etc.). That is to say, the reason for the general IIPs is *to open a route* to acquiring citizenship, the reason for the particular programmes called CIPs is *to end it* by granting *status civitatis*.

¹⁴ The required economic transaction can come in different sorts, depending on the particular programme. The most commons are in real state, public treasury or what has been incorrectly called a donation, that is, a direct economic contribution (donation entail that nothing is given in exchange, but in the case of CIPs applicants disburse their money expecting to get the citizenship in exchange).

¹⁵ An example of a significant reduction of the requirements can be found in the CIP in Bulgaria, where the residency requirement is much lower for checkbook citizens than the one for ordinary naturalisation (e.g. one year for investors, five years since having long-term or permanent permit for other applicants).

¹⁶ This is the case of Saint Kitts and Nevis, a federation of two islands in the West Indies, that according to Džankić (2012) runs the oldest programme granting citizenship on the grounds of investment. The programme was established by the adoption of the Constitution and Citizenship Act in 1984, as a way to overcome the economic difficulties consequence of their independence, followed by the lack of competitiveness in the global agricultural market and the falling prices of sugar, the island's main industry.

¹⁷ According to the Global Investor Immigration Council (GIIC), the demand for citizenship by investment programmes continued during the 1980s and 1990s. The CIP at Saint Kitts and Nevis was followed by Dominica in 1990 and Grenada in 1996. Although interests in CIPs seem to have cooled in the period between the late 1990s to mid-2000s, they then returned in force. (<http://www.giic.uk/investor-immigration/> (accessed 2017/04/15)).

automatically the bestowing of the EU citizenship,¹⁸ which is additional to and dependent on national citizenship.¹⁹ For these reasons —the lack of information on programmes established worldwide and the additional interest that the bestowing of the national citizenship of an EU member state has— in this essay I will focus on the current CIPs existing in the EU, in order to show that CIPs entail a stratification in access to citizenship *de jure*.

3. CIPS IN THE EUROPEAN UNION (EU)

By applying the above-mentioned definition to the legal scrutiny of EU national legislations previously done by the Global Citizenship Observatory's (GLOBALCIT)²⁰ one concludes that there are currently three CIPs established by EU member states, those are in Bulgaria, Cyprus, and Malta.²¹ In this section, I will present the conditions that the Cypriot, Maltese and Bulgarian CIPs require to prospective checkbook citizens and I will compare those requirements with the regular requisites imposed to non-élite or 'general naturalised citizens.'²² The aim is to show that the programmes entail an explicit stratification *de jure* in the access to the citizenship in these countries, privileging (ultra)wealthy candidates and using the policies to attract capital to the states.

¹⁸ EU citizenship was created by the Maastricht Treaty (1992). It is the core status of the EU and entitles an additional bundle of political and social rights across the Union. Some of these are freedom of movement and residence, voting rights in municipal and European Parliament elections, the right to non-discrimination on the grounds of nationality, etc.

¹⁹ According to article 20 of the Treaty on the Functioning of the European Union, TFEU.

²⁰ The Global Citizenship Observatory's (GLOBALCIT) collects individual data on legal provisions regulating IIPs in 28 member states of the EU, which can be accessed at the Global Database on Modes of Acquisition of Citizenship - Globalcit (accessed 01/02/2018).

²¹ This number is obtained by applying the above-mentioned definition, which requires a *significant reduction* of the requirements to fulfil by other naturalisation applicants. By applying different definitions, other scholars provide a different number. As an example, Džankić (2018) includes Romania to the list, a country I exclude because it still requires 4 years of ordinary residence to obtain the citizenship as well as other criteria such as the knowledge of the language, culture and constitution. Using the accurate distinction done by Džankić separating programmes that seek to attract one-off investment by wealthy élites who (probably) will not migrate to or become involved in the polity and programmes (substantially) facilitating naturalisation, checkbook citizens would belong to the first group. It is necessary to mention that in its *Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on Investor Citizenship and Residence Schemes in the European Union*, Brussels, 23.1.2019, [COM(2019) 12 final], the Commission has reached the same conclusion appointing Bulgaria, Cyprus, and Malta as the existing CIPs in the EU.

²² The category of 'general naturalised citizens' includes a broad range of circumstances that can differ from one general naturalised citizen to another. For instance, in some cases being married to a national or asylum seeker can short the required period of residence in the country. Were these provisions established, I would indicate it in the analysis of the legislation.

(a) Bulgarian CIP

The Bulgarian CIP was established in February 2013 by the SG amendment of Article 14 of Bulgaria's Citizenship Law, which introduced a new article (14a) waiving the conditions required for other general applicants. In order to understand what changes the new article and the amendment brought about and how they entailed stratification in the access to, I will start this section presenting the naturalisation routes established by the Bulgarian Citizenship Act.

(1) General applicants:

Article 12 of the Bulgarian Citizenship Act requires a residence period of at least 5 years with a long-term stay permit, command of the Bulgarian language and the renunciation of current citizenship for general applicants to obtain Bulgarian citizenship.²³

General requirements

Art. 12

(1) Become of age
(2) At least 5 years permit for long-term
(3) Criminal record
(4) Income or occupation
(5) Bulgarian language
(6) Renounce current citizenship

Articles 13 and 13a shorten the required residence period with long-term permit from 5 to 3 years for applicants who obtained the permit for permanent or long-term stay by either marriage,²⁴ being born in Bulgaria²⁵, or whose permanent permit or

²³ The exact requirements introduced by this article are: that the person who is not a Bulgarian citizen by the date of filing the application for naturalisation: (1) has become of age; (2) before no less than 5 years has been given permit for long-term stay in the Republic of Bulgaria; (3) has not been convicted for premeditated crime of general nature by a Bulgarian court and against him criminal prosecution has not been instituted for such crime, unless rehabilitated; (4) has income or occupation which enables his support in the Republic; (5) has control of the Bulgarian language which shall be ascertained according to an Ordinance by the Minister of Education, Youth and Science, and; (6) renounces his current citizenship or will renounce it by the moment of acquiring Bulgarian citizenship.

²⁴ Requiring a legally concluded marriage with a Bulgarian citizen for a period no less than 3 years (article 13 (1)).

²⁵ According to article 13 (3).

long-term stay permit was given before coming of age^{26, 27} or who obtained a refugee or protection status not later than three years by the date of filing the application for naturalisation²⁸ or has been granted humanitarian status before at least 5 years from the date of submission of the application for naturalisation.^{29, 30} Moreover, Article 14 establishes a shorter route to acquire Bulgarian citizenship for stateless if they meet the requirements (1) age, (3) criminal record, (4) income and (5) language and not later than 3 years by the date of filing the application for naturalisation has had a permit for permanent stay.

Reduced requirements

Article 13	Article 13a and 14
(1) Become of age	(1) Become of age
(2) 3 years permit for long-term stay	(2) 3 years permit for long-term stay
(3) Criminal record	(3) Criminal record
(4) Income or occupation	(4) Income or occupation
(5) Bulgarian language	(5) Bulgarian language
(6) Renounce current citizenship	-----

The previous articles established the conditions that general applicants need to meet in order to be granted citizenship. Although it may be that some of them are privileged by a shortened route (from 5 to 3 years since obtained permit for long-term) or by waiving some of the requirements (such as the obligation of renouncing current citizenship), in all cases a sufficient period of residence in the country and some management of the Bulgarian language is required. Residence and knowledge of the language are usually the most significant requirements to prove the integration of the applicant in the new state. As we will soon see, these two requirements are significantly reduced or entirely waived in the case of the new routes opened by the 2013 amendment attracting checkbook citizens.

²⁶ According to article 13 (4).

²⁷ Article 13 only shorten the residence period from 5 to 3 but keeps the rest of the requirements.

²⁸ According to article 13a (1).

²⁹ According to article 13a (2).

³⁰ Besides shortening the residence period from 5 to 3, these applicants also benefit from the fact that they are not required to renounce their current citizenship.

(2) Checkbook citizens:

As it was mentioned above, the Amendment SG16/13 introduced a new Article 14a facilitating acquisition of citizenship in exchange for investment. Yet, this was not the only article introduced by this amendment. Article 12a also introduced by the SG 16/13 amendment, opens a special door for those who apply to citizenship and obtained their permanent residence permit on grounds of Art. 25, para1, items 6³¹ and 8³², item 13³³ —in relation with Art. 25c, para 2 and 3; Art. 25, para1, item 16³⁴ of The Foreigners in the Republic of Bulgaria Act, which waives the requirement of commanding Bulgarian language and renouncing current citizenship to those who accessed to permanent residence permits through investments. The Foreigners in the Republic of Bulgaria Act does not mention any obligation to reside in the country, i.e., this route to citizenship by investment releases the applicant from the residence and language requirements and allows them to obtain the Bulgarian citizenship without renouncing their current citizenship.

Article 12a

(1) Become of age
(2) 5 years permit for long-term (does not require effective residence)
(3) Criminal record
(4) Income or occupation

³¹ This item requires an investment of 1,000,000 BGN (around €500.000) or increase their investment of this size through the acquisition of certain items. For more detail, check the Art. 25, para1, items 6 of The Foreigners in the Republic of Bulgaria Act.

³² This item requires an investment of an amount not less than 6,000,000 BGN (around 3 EUR millions) in the capital of a Bulgarian commercial company, whose shares are not traded on a regulated market, an amount not less than 6 000 000 BGN.

³³ This item requires to carry out activities that are certified under the Investment Promotion Act, which fact shall be certified by the Ministry of Economy, Energy and Tourism in accordance with Art. 25c. This article, in turn, establishes that (1) a long-term residence permit by virtue of Art. 25, Par. 1, item 13 may be granted to a foreign citizen that performs an activity for implementing and/or maintaining an investment, which has received certain certificates.

³⁴ This item requires to have made an investment in the country by contribution to the capital of a Bulgarian trade company of not less than 500,000 BGN (around €250.000), where the foreign citizen is an associate or shareholder with registered shares and owns not less than 50 percent of the company's capital, and as a result of the investment new long-term tangible and intangible assets have been acquired to the amount of not less than 500,000 BGN and at least 10 job positions for Bulgarian citizens have been opened and maintained during the residence period which fact shall be certified by the Ministry of Economy, Energy and Tourism.

Finally, Article 14a establishes a quick route to citizenship for those that (1) not less than one year ago were granted permanent residence permit in the Republic of Bulgaria on the grounds of Art. 25, Para 1, item 6³⁵ or 8³⁶ of the Foreigners in the Republic of Bulgaria Act and invested not less than BGN 1 million into the capital of a Bulgarian trade company; or (2) not less than 1 year ago he/she was granted a permanent residence in the Republic of Bulgaria permit on the grounds of Art. 25, Para 1, item 13³⁷ in relation with Art. 25c, item 1 of the Foreigners in the Republic of Bulgaria Act.³⁸

Article 14a

(1) Become of age
(2) 1 year permit for long-term (does not require effective residency)
(3) Criminal record
Investment

Considering that the acquisition of a permanent residence permit through the above-mentioned paths opened by the Foreigners in the Republic of Bulgaria Act does not require physical presence in the country to obtain the permit, it is obvious that the residency requirement is, at least, significantly reduced.³⁹ Other conditions such as knowledge of the Bulgarian language or renouncing current citizenship are completely waived for checkbook citizens. These requirements in the bestowing of citizenship to wealthy applicants established by the Bulgarian Citizenship Act represent a *de jure* stratification that place checkbook citizens in a privileged position.

Comparison of requirements

General naturalised citizens		
General conditions Art.12	Reduced conditions Art.13 Art.13a and 14	
(1) Become of age	(1) Become of age	(1) Become of age
(2) 5 years permit for long-term	(2) 3 y. permit for long-term	(2) 3 y. permit for long-term
(3) Criminal record	(3) Criminal record	(3) Criminal record

³⁵ This item requires an investment of 1,000,000 BGN, see supra note 29.

³⁶ This item requires an investment of an amount not less than 6,000,000 BGN, see supra note 30.

³⁷ See supra note 31.

³⁸ This article requires that the applicant meets the requirements 1 (become of age) and 3 (criminal record).

³⁹ According to Džankić (2018) the requirement is six months and one day physical presence in Bulgaria.

General naturalised citizens		
General conditions Art.12	Reduced conditions Art.13	Art.13a and 14
(4) Income or occupation	(4) Income or occupation	(4) Income or occupation
(5) Bulgarian language	(5) Bulgarian language	(5) Bulgarian language
(6) Renounce current citizenship	(6) Renounce current citizens.	-----

Checkbook citizen	
Art. 12a	Art. 14a
(1) Become of age	(1) Become of age
(2) 5 years permit for long-term (does not require effective residency)	(2) 1 year permit for long-term (does not require effective residency)
(3) Criminal record	(3) Criminal record
(4) Income or occupation	* Investment
* Investment	

(b) Cypriot CIP

The Cypriot CIP was established first by the decision of the Council of Ministers dated 24.5.2013⁴⁰ followed by the 19.3.2014 and the 13.9.2016 decisions. The Scheme for naturalisation of investors in Cyprus (or Cypriot CIP) facilitated the ultra-rich to obtain Cypriot citizenship in a very short time. Before presenting the CIP, I will explain what are the conditions required for general applicants, so a comparison between both categories will be possible later.

(1) General applicants:

Article 111 of the Civil Registry Law of 2002 establishes a way to obtain citizenship pursuant to naturalisation. This article refers to the Schedule Three, which provisions deploy the criteria for naturalisation needed to fulfil in order to the Minister to grant a certificate of naturalisation. Those criteria are: (a) Residence in the Republic for the whole duration of the immediately preceding 12 months from the date of application; (b) during the period of seven years, which immediately precedes the above-mentioned twelve-month period, either resided in the Republic, or served

⁴⁰ Which was enabled by the exception from subsection (2) of section 111A of the Civil Registry laws of 2002-2013.

in the public service of the Republic, or did partly the former and partly the later, for periods whose aggregate sum is no less than four years;⁴¹ (c) to be of good character; (d) has the intention, provided she is granted a certificate— (i) to remain in the Republic, (ii) to serve in a public service of the Republic.

Unlike the Bulgarian case, the general applicants to naturalise in Cyprus are not required to have any specific linguistic knowledge. The required residence period for those applicants is of at least four years in a time period of seven years.

Moreover, the point (2f) establishes a discretionary channel allowing the Council of Ministers to nationalise an applicant regardless of the period of stay.⁴² This is the discretionary channel upon which the CIP programme has been established.

General applicants' requirements:

Schedule III (section 111)

(1) Residency for the whole period of preceding 12 months
(2) Resided or served in Cyprus for periods whose aggregate sum is no less than 4 years in the 7 years preceding application
(3) Good character
(4) Provide she will remain in Cyprus/serve in a public service provided she is granted a certificate

(2) Checkbook citizens:

The Cypriot CIP was established in 2013 by a decision of the Council of Ministers. Initially, the CIP required either (A.1) mixed investments for a value of at least 2,5 EUR millions, (A.2) direct investment of at least 5 EUR millions,⁴³ (A.3) deposits in banks of at least 5 EUR millions, (A.4) a combination of mixed investments

⁴¹ The article continues: Provided that students, visitors and self-employed persons, as well as athletes, coaches, sports technicians, housekeepers, nurses and persons employed by Cypriot citizens or foreign employers or offshore companies, who reside in the Republic for the exclusive purpose of employment, including their spouses, children or other dependant persons, *must*, during the immediately preceding period of at least seven years, *have completed a total stay of at least seven years* in the Republic, of which one year immediately before the date of their application must be of continuous stay.

⁴² By indicating that 'the Council of Ministers may allow, in very exceptional cases of provision to the Republic of the highest-level services which are mentioned in the relevant decision, for reasons of public interest, the naturalisation of a foreigner, irrespective of the period of stay which is provided for in paragraph 1 of the present Table, provided that the House of Representatives has been informed in advance.'

⁴³ The Direct Investments may alternatively involve the following; Purchasing properties (a), business or companies based and active in the Republic of Cyprus (b), companies registered in the Republic of Cyprus (c), financial assets (d) and participation in a company/consortium of companies that has undertaken to carry out a public project (e).

and a donation to a state fund of at least 5 EUR millions, (A.5) business activities for over 3 years as amount for at least €500,000 per annum. Interestingly, (A.6) also granted Cypriot citizenship to those persons whose deposits with the Bank of Cyprus or Popular Bank have been impaired due to the measures implemented in both banks after 15/3/2013 amounting to a total of at least 3 EUR millions.

After establishing the pecuniary conditions, the 2013 decision established further requirements that the applicant had to i) have a clean criminal record; ii) be the owner of a privately-owned residence in Cyprus whose market value should be at least €500,000, plus V.A.T.

In 2014, a new decision of the Council of Ministers was released. The modifications introduced by the new decision were: (i) it required that the applicant should have concluded the necessary investments during the three-years preceding the date of the application and retain them for a period of at least three years since the date of the naturalisation; (ii) it changed the investment paths and the amounts, being now necessary to invest at least 5 EUR millions.⁴⁴ Yet, this amount had some exceptions in A.7 and A.8. A.7 kept the amount of 3 EUR millions to people whose deposits with the Bank of Cyprus or Popular Bank have been impaired due to the measures implemented in both banks after 15/3/2013; A.8 gave the right to the council of ministers to cut the required amount for A1-4 on special occasions up to 2 EUR millions.⁴⁵ It is worth noting that the 2014 decision did not add new requirements. Besides the investment, it only required a criminal record as well as a private-owned residence in the country.⁴⁶

The 2016 decision,⁴⁷ which is currently in force, introduced new changes, the most significant of which was the reduction of the investment from 5 to 2 EUR

⁴⁴ Either in (A.1) government bonds, (A.2) financial assets of Cypriot companies or Cypriot organizations, (A.3) real state, (A.4) purchasing or creating or participating in Cypriot business or companies, (A.5) deposits in Cypriot banks, (A.6) combination of the aforementioned criteria.

⁴⁵ (I) to 2,5 EUR millions for investors, who demonstrably participate in a special collective investment scheme, provided that the total value of the investment is at least 12,5 EUR millions; (II) to 2 EUR millions for investors who demonstrably participate in a special collective investment scheme, provided that the total value of the investment is more than 12,5 EUR millions.

⁴⁶ Although the 2014 decision allowed that members of the same family applying separately acquire collectively a residence, which value has to be €500,000 per each applicant.

⁴⁷ It needs to be mentioned that the three decisions include a final provision keeping the discretion capacity of the Council of Ministers in taking a (negative) Decision upon the bestowing of the citizenship to the applicant.

millions and the types of investments accepted.^{48, 49}. Interestingly, this decision admits that the Cypriot citizenship policy is being used to achieve economic aims by indicating that ‘one of the main objectives of the economic policy of the Republic of Cyprus is to further encourage Foreign Direct Investment and to attract high net individuals to settle and do business in Cyprus.’ Scrutinizing the decisions proves that what is granted is the outright exchange of Cypriot (and European) citizenship for money. Physical presence in the country is not a requirement, nor are, —as in the case of general applicants— civic or language tests required.

Checkbook citizens’ requirements:

2016 decision

(1) Investment of (at least) 2 EUR millions

Comparison of requirements

General naturalised citizens Schedule three (section 111)	Checkbook citizens (2016 decision)
(1) Residency for whole period of preceding 12 months	(1) Investment of (at least) 2 EUR millions
(2) Resided or served in Cyprus for periods whose aggregate sum is no less than 4 years in the 7 years preceding application	
(3) Good character	
(4) Provide she will remain in Cyprus/serve in a public service provided she is granted a certificate	

⁴⁸ The criteria in this decision are: (A.1) investment in real state, land development and infrastructure projects of at least 2 EUR millions, (A.2) purchase or establishment or participation in Cypriot companies or business of at least 2 EUR millions, (A.3) investment in alternative investment funds or financial assets of Cypriot companies or Cypriot organizations that are licensed by CySec of at least €2 EUR millions, (A.4) combination of the aforementioned investments of at least 2 millions, within this criterion the applicant may purchase special government bonds of the Republic of Cyprus up to €500,000.

⁴⁹ It is remarkable that the path opened in the decisions of 2013 and 2014 for people whose deposits with the Bank of Cyprus or Popular Bank have been impaired due to the measures implemented in both banks after 15/3/2013 is not included anymore in the 2016 decision. The 2012-13 financial crisis was one of the reasons why the CIP was established under the argument of repairing foreigner investors by granting them Cypriot (and European) citizenship. With the 2016 decision, the CIP continues but those who lost their deposits with the Bank of Cyprus or Popular Bank do not have any more a privileged path to citizenship.

As in the case of Bulgaria, the Cypriot CIP does not require physical presence for a specific amount of time. Moreover, the high amount of the necessary investment secures that in both cases only the ultra-rich will apply to the programme. Regarding the number of people naturalised following this path, neither Bulgaria nor Cyprus release information, what makes impossible to know the impact of the programme and the profile of the applicant. This is (partially) not the case with the last CIP in the EU, the Maltese one. Interestingly, this has also been the most controversial and criticized CIP established by EU member states.

(c) Maltese CIP

The Maltese CIP was initiated on September 30th 2013⁵⁰ and established in November 2013 after facing an enormous controversy not only in Malta⁵¹ but also at the European Parliament.⁵² The programme opened a route for rich people to gain

⁵⁰ On that day, the Minister for Home Affairs and National Security of Malta, Emanuel Mallia, presented the Motion 70 on Maltese Citizenship, which was debated in a plenary session (sitting n.55). Following three readings between September and November, on November 15th the Bill n.19 of the Maltese Parliament ordained to grant a certificate of naturalisation as a citizen of Malta to any person making an extraordinary contribution to the Republic of Malta under the CIP Individual Investor Programme. This suggestion was approved at the XV of 2013 – Maltese Citizenship (Amendment Act).

⁵¹ The Maltese programme was controversial from the very beginning, to the extent that 'the implementation of the law was postponed due to strong domestic and International critiques' (Bauböck, 2014). The journal *Malta Today* published a survey asking the question: "Do you agree with the scheme through which Maltese citizenship will be granted to foreigners who pay €650,000?", to which some 53% of the respondents were against. The opposition party also opposed to what was called 'the prostitution of Malta'.

Times of Malta, 9 October 2013: <https://www.maltatoday.com.mt/news/national/31325/opposition-proposes-change-of-name-to-individual-donor-programme-20131109#.W2STSdgzYuc>

https://www.maltatoday.com.mt/news/data_and_surveys/31360/maltatoday-survey-budget-citizenship-20131111#.W2STTtgzYuc (accessed 29/7/2018).

⁵² On January 15th 2014, a debate took place in the EU Parliament to discuss what was described as 'the selling of citizenship' by Malta, which also included 'the selling of EU citizenship.' The European Parliament adopted by 560 votes to 22 with 44 abstentions a resolution on EU citizenship for sale, in which it called on Malta to bring its current citizenship scheme into line with the EU's values. During the debate the main concerns expressed were that; (i) this way of obtaining EU's citizenship undermines the very concept of the European citizenship, (ii) it can entail discrimination, as only the richest can obtain citizenship by these means, (iii) that such outright sale of EU citizenship undermines the mutual trust upon the Union is built. It also pointed out some relevant legal aspects; (i) matters of residency and citizenship are the competence of the Member States, (ii) EU member states are committed and bound to each other by the principle of sincere cooperation (on this subject check the high-quality contribution of Sergio CARRERA in CARRERA NUÑEZ & GROOT, 2015), and (iii) a genuine link with the country/Union should be required when granting citizenship. As an effect of the debate in the EU parliament and the subsequent participation of the Commission, the Maltese Government amended its regulations under the Maltese Citizenship Act (L.N. 47 of 4 February 2014) ensuring that a residence of at least 12 months will be a pre-condition of naturalisation.

Maltese and European citizenship after a short residence period of 12 months⁵³ and it is the only programme that totally decouples the bestowing of citizenship from the discretion capacity of the government. Moreover, unlike the other CIPs, the Maltese programme establishes a limited number of successful main applicants.⁵⁴ A last difference between Cyprus and Bulgaria is that unlike those, Malta is not only a member of the EU but also a member of the Schengen Area.⁵⁵ Before detailing the legal grounds of the Maltese programme, I will present what the general provisions for naturalising in Malta are.

(1) General applicants:

The Maltese Citizenship Act (cap.118) establishes in Article 6 the conditions to acquire citizenship for those people married with a Maltese citizen. Interestingly, the article separates these prospect applicants from other sorts of naturalisation applicants, granting citizenship directly after 5 years of marriage (6.2.b) and an oath of allegiance, without requiring a period of residence in the country.⁵⁶

⁵³ Minimum physical presence is not regulated by law according to DŽANKIĆ, J. (2018). «Immigrant investor programmes in the European Union (EU)», *Journal of Contemporary European Studies*, 26(1), 64–80. <https://doi.org/10.1080/14782804.2018.1427559>

⁵⁴ According to the Article 12 of the Maltese Citizenship Act (CAP.188) (L.N. 47 of 4 February 2014) this shall not exceed one thousand and eight hundred for the whole duration of the programme.

⁵⁵ I suspect that these facts – the decoupling of the programme from the discretionary capacity of the state, the ensuring of a specific number of applicants that can obtain citizenship through the programme and especially the fact that Malta is not only a member of the EU but also of Schengen were the main factors that spurred the debate at the EU Parliament on the Maltese CIP, unlike the Bulgarian and the Cypriot CIPs.

⁵⁶ Article 6 indicates; (1) Any person who on or after the appointed day marries a person who is or becomes a citizen of Malta shall be entitled, upon making application in such manner as may be prescribed and upon taking the oath of allegiance, to be registered as a citizen of Malta; (2) No person shall be entitled to be registered as a citizen of Malta in virtue of this article unless; (a) the Minister is satisfied that the grant of citizenship to such person is not contrary to the public interest; and (b) on the date of the application such person was still married to a citizen of Malta or is the widow or widower of a person who was a citizen of Malta at the time of his or her death: Provided that no person shall be entitled to be so registered unless such person on the date of the application, is still married to that citizen of Malta and had been so married for at least five years and on that date had been living with that citizen or, if on that date had been *de jure* or *de facto* separated, had lived with such citizen of Malta for at least five years after the celebration of the marriage, or is the widow or widower of such citizen and at the time of his or her death had been married to that person for at least five years and was still living with him or her or who would, but for the death of that person, have been so married on the date of the application or, if on the date of death of such citizen had been *de jure* or *de facto* separated from such citizen, had lived with such citizen of Malta for at least five years after the celebration of the marriage.

Applicants married to a Maltese citizen:

Art. 6 of Maltese Citizenship Act

(1) 5 years of marriage and have lived together

(2) Oath of allegiance

Article 10 establishes the conditions for naturalisation of general applicants. This article requires in its point (1) that the prospective citizen must (a) have resided in Malta throughout twelve months immediately preceding the date of application; (b) have resided in Malta for periods amounting in the aggregate to not less than four years during the six years immediately preceding the said period of twelve months; (c) have an adequate knowledge of the Maltese or the English language; (d) be of good character; (e) that she would be a suitable citizen of Malta.⁵⁷ It is necessary to mention that the same Art. 10.1 indicates that the residence period may be shorted if the Minister thinks it fits in the special circumstances of any particular case, opening a path to discretion.⁵⁸

⁵⁷ No further indications on what are the characteristics of a 'suitable citizen of Malta' are provided.

⁵⁸ The points 2 to 6 mention certain situations that receive privileged treatment due to the circumstances relating the applicant with Malta. Those are the following. Point 2 allows naturalising to people born outside Malta if the parents became or qualified to become a citizen but died before, without expressing the need of meeting the requirements mentioned in point 1. Point 3 also grants naturalisation to those full of age and capacity Maltese citizens (a) by virtue of article 3(1) or article 5(1) who emigrated from Malta and ceased of being citizens and to those who (b) emigrates from Malta before 21/9/1964 but for his having ceased to be a citizen of the United Kingdom and Colonies before that day, would have become a citizen of Malta by virtue of article 3(1). Point 4 indicates that may naturalise people of full age and capacity who proves descent from a person born in Malta and who is a citizen of a country other than the country in which she resides, and whose access to the country of which she is a citizen is restricted. Point 5 requires an oath of allegiance to those naturalising following the former points (2-4). Last but not least, point 6 grants citizenship to those people who has been always stateless and (a) were born in Malta or (b) that her father was a citizen of Malta at the date of his birth by virtue of the provisions of article 3(2) or article 5(2) or that his mother was at that date a citizen of Malta. In the first case (a), according to article 10.7, she will need to prove that (a) she has not been ordinarily resident in Malta throughout the period of five years ending with the date of the application; or (b) that she has either been convicted in any country of an offence against the security of the State or has been sentenced in any country to a punishment restrictive of personal liberty for a term of not less than five years. In the second case (b), according to Article 10.7, they will need to prove that (a) they have not been ordinarily resident in Malta throughout the period of five years ending with the date of the application; or (b) that they have either been convicted in any country of an offence against the security of the State or has been sentenced in any country to a punishment restrictive of personal liberty for a term of not less than five years.

General applicant requirements:

Art. 10.1

(1) Residency in Malta throughout 12 mon. immediately preceding the date of app
(2) Resided in Malta for periods amounting in the aggregate to not less than 4 years during the 6 years immediately precedent the period of 12 months
(3) Maltese/English knowledge
(4) Good character
(5) Suitable citizen of Malta

(2) Checkbook citizens:

The same Article 10, in point (9) establishes two fast-tracked paths to wanted élite citizens. While points (9.a)⁵⁹ and (9.c)⁶⁰ grant citizenship to people rendering exceptional services to Malta and to their spouse, point (9.b) grants citizenship to any person who is an applicant, or is a spouse or an eligible dependant of such applicant, under the individual investor programme of The Republic of Malta, and satisfies the requirements as prescribed under the Act. The requirements for such applicants are

⁵⁹ Article 10.9 (a) grants citizenship 'to the spouse of any citizen of Malta when either the spouse or the said citizen has rendered exceptional services to The Republic of Malta or to humanity.'

⁶⁰ Article 10.9 (c) grants citizenship 'to an alien who has rendered exceptional services to The Republic of Malta or to humanity, or whose naturalisation is of exceptional interest to The Republic of Malta, and who satisfies the requirements prescribed under this Act. For the purposes of this paragraph "exceptional" means unusually excellent or manifestly superior at a local level, and refers primarily to contributions by scientists, researchers, athletes, sports people, artists and cultural performers.'

placed at the L.N 47 of 2014 'Individual Investor Programme of The Republic of Malta Regulations, 2014', Articles 4⁶¹ and 5.⁶²

Article 5 shows that in the case of the Maltese CIP, applicants are required to meet a number of extra personal conditions that are not requested to general applicants for naturalisation. The reason for adding these extra conditions is that one of the main arguments against the implementation of the Maltese CIP was that it could open the door for criminals, people whose fortune was not obtained legally, people interested in the programme for money laundering purposes, etc., as had already happened in the past with other IIPs and CIPs.⁶³

⁶¹ Article 4 establishes the following requirements; '(1) (a) at least eighteen years of age; (b) proposes to make a contribution as determined in the Schedule; (c) meets the application requirements; (d) commits herself to provide proof of residence in Malta, and to provide proof of title to residential property in Malta in accordance with these regulations; (e) commits herself to invest, amongst others, in stocks, bonds, debentures, special purpose vehicles or to make other investments as provided from time to time by Identity Malta by means of a notice in the Gazette.' The contributions required at the Schedule are: (1) (a) a minimum of €650,000 for the main applicant, (b) spouse: €25,000, (c) €25,000 for each and every child below 18 years of age, (d) for each and every unmarried child between 18 years of age and 26 years of age: €50,000, (e) for each and every dependant parent above 55 years of age €50,000. The regulations on the proof of residence and of title to residential property appear in article 7.5, which requires that once the application is approved of a written undertaking to either (i) acquire and hold a residential immovable property in Malta having a minimum value of €350,000 or; (ii) take on lease a residential immovable property in Malta for a minimum annual rent of €16,000. Last but not least, Art. 7.6 requires the applicant investing €150,000 in bonds, stocks, debentures, special purpose vehicles or other investment vehicles which shall be retained for at least a five-year period. Thus, the total investment amount in Malta is around a minimum of €1.15 million.

⁶² Article 5 establishes the following eligibility criteria for the applicant and his dependants; (a) proper background verification, (b) a police certificate issued by the Malta police as well as a police certificate issued by the competent authorities in the country of origin and in the country or countries of residence where the applicant has resided for a period of more than six months during the last ten years, (c) are not individuals indicted before an International Criminal Court or who appeared at any time before an International Criminal Court, whether such persons have been found guilty or otherwise by such Court, (d) shall not be persons listed with INTERPOL at the time of application, (e) are not, or may not be a potential threat to national security, public policy or public health, (f) shall not had pending charges related to crimes of terrorism, money laundering, funding of terrorism, crimes against humanity, war crimes, or crimes that infringe upon such Protection of Human Rights and Fundamental Freedoms as established by the European Convention on Human Rights, or who has been found guilty of any such crimes, (g) shall not been found guilty or has charges brought against them regarding any of the criminal offences that disturb the good order of the family, (h) shall not have been founded guilty, or, at the time of the application, are being interrogated and suspected, or have criminal charges brought against them for any criminal offence, other than an involuntary offence, punishable with more than one year imprisonment.

⁶³ There are several real examples of unwanted situations. An interesting one is the case of Francesco Corrallo. Corrallo was a businessman wanted by INTERPOL who paid for a passport with diplomatic status from Dominica and tried to claim diplomatic immunity under the argument that he was a permanent representative at the United Nations (SvD Näringsliv, page 10, 31/3/2018).

Checkbook citizens' requirements

L.N 47 of 2014

Art. 4 Qualification and general requirements	Art. 5 Eligibility criteria
(a) At least 18 years of age	(a) Background verification
(b) Contribution (€650,000 for main applicant)	(b) A police certificate
(c) Meets the application requirements	(c) Not indicted before an International Criminal Court
(d) Proof of residence in Malta (price at least €350,000 or renting €16,000/year)	(d) Not listed with INTERPOL
(e) Invest at least €150,000.	(e) Not a potential threat
Residency of at least 1 year (minimum physical presence, not regulated by law, (Džankić, 2018)).	(f) Not have pending charges
	(g) Not guilty of crimes disturbing good order of the family
	(h) No criminal charges punishable with more than one year imprisonment

As has been mentioned above, unlike the cases of Bulgaria and Cyprus, the Maltese CIP introduces extra requirements to checkbook applicants that are not required to other general applicants intending to naturalise. Most of them focus on the personal characteristics of the applicant and its introduction has the purpose to act as a filter limiting the naturalisation of legally dubious applicants. Despite the rise of personal requirements, the provisions also facilitate and speed up the bestowal of citizenship in exchange for money by, for instance, waiving language requirements or the effective residence period. Yet, as we have seen, under Maltese provisions, cutting the residency requirement is not an exclusive privilege for checkbook citizens. A comparison of the requirements is appropriate here.

Comparison of requirements

By marriage (Art. 6 of Maltese Citizenship Act)	General applicant requirements (Art. 10.1 of Maltese Citizenship Act)	Checkbook citizens' requirements L.N 47 of 2014 Art. 4	Checkbook citizens' requirements L.N 47 of 2014 Art.5
(1) 5 years of marriage and have lived together	(1) Residency in Malta throughout 12 months immediately preceding the date of app	(a) At least 18 years of age	(a) Background verification
(2) Oath of allegiance	(2) Resided in Malta for periods amounting in the aggregate to not less than 4 years during the 6 years imm. prece. the period of 12 mon.	(b) Contribution (€650,000 for main applicant)	(b) A police certificate
-----	(3) Maltese/English knowledge	(c) Meets the application requirements	(c) Not indicted before an International Criminal Court
-----	(4) Good character	(d) Proof of residence in Malta (price at least €350,000 or renting €16,000/year)	(d) Not listed with INTERPOL
-----	(5) Suitable citizen of Malta	(e) Invest at least €150,000.	(e) Not a potential threat
-----	-----	Residence of at least 1 year (minimum physical presence, not regulated by law, (Džankić, 2018)).	(f) Not have pending charges
-----	-----	-----	(g) Not guilty of crimes disturbing good order of the family
-----	-----	-----	(h) No criminal charges punishable with more than one year imprisonment

In this section, I have presented the current CIPs established by EU member states. Although the three existing CIPs have in common not only the facilitation of national (and European) citizenship in exchange for money but also the legal creation of a privileged type of naturalised citizen, the kind of stratification in the access of

naturalisation differs from one programme to another. In the case of Bulgaria, there is a dramatic reduction and waiving of the requirements established to general applicants (such as language knowledge, the renouncement of current citizenship and the drastic reduction of the presence in the territory) for the privileged checkbook applicants, whose obligation is merely investing in a specific and legally established manner in Bulgaria.

The case of Cyprus is particular in that the general requirements established for general applicants are not as strict as in the case of Bulgaria (for instance, no language knowledge or renouncement of current citizenship is required). Yet, Cyprus represents an extreme case of outright exchange of citizenship in exchange for money, since no further requirements besides the investment are demanded to the checkbook applicant. The provision allowing ministers to deny the bestowing of citizenship as a part of their discretion disguises the programme making it look as part of their discretionary prerogative. In practice, since no data is released either on the number or personal characteristics of naturalised checkbook citizens nor in the rejected checkbook applicants, it is impossible to know who has become a new citizen and who has been rejected and on what grounds.^{64, 65}

Malta has created the most detailed programme, establishing even a limit to the number of naturalised checkbook citizens. Although the programme also exchanges citizenship for money, it requires extra personal requisites to the applicants, in order to make clear that the applicant is a legally clean person. Yet, these additional personal requirements, that are not demanded from other general applicants, only prove the legal clearness of the applicants but do not prove any genuine link with the state (or the EU).⁶⁶ The introduction of a period of residence of 12 months does not satisfy this requirement if, as Džankić (2018) asserts, the minimum physical presence of the checkbook applicant is not regulated by law.⁶⁷

⁶⁴ In addition, we should keep in mind that what distinguishes discretion from arbitrariness is precisely the reasons motivating the decision. If these reasons are not indicated, the applicant could be a victim of arbitrariness, which is not a prerogative of ministers.

⁶⁵ The Maltese programme is the only one which releases some data. The office of the regulator releases a yearly report with some personal information of the applicants. The reports are available at: <https://oriip.gov.mt/en/Pages/Documents-and-Links.aspx> (accessed 10/08/2018).

⁶⁶ Since the *Nottebohm* case (*Liechtenstein v. Guatemala*, 1955), on the international plain, the grant of nationality is entitled to recognition by other states only if it represents a genuine connection between the individual and the state granting its nationality. This case has been interpreted by some scholars as the existence of a genuine link requirement between the naturalised person and the state when granting citizenship. More information is available on: <https://www.icj-cij.org/en/case/18> (accessed 01/08/2018).

⁶⁷ That said, one could wonder why there should be a problem omitting the requirement of residence for checkbook applicants if Malta does not require it to spouses of Maltese citizens. An easy reply is that, in the case of the spouses, the link to the country will develop through the relationship with the national, as it is supposed to be the case of citizens of second-generation obtaining citizenship through *ius sanguinis* being born in another country. Yet, this is not an uncontroversial issue and much literature has been written on it.

The purpose of presenting the CIPs in the EU and comparing the requirements demanded to checkbook applicants to those demanded from general applicants is to show to what extent CIPs entail a stratification in the access to citizenship that privileges wealthy candidates and which is done *de jure*, that is, by law. As we have seen in the introduction, checkbook citizens are not the only type of elite or wanted citizens. Talented citizens usually enjoy a fast-track to citizenship too. Now the question is if the stratification entailed by both groups is akin or if there are some features of any of the groups making it more questionable. In the coming section, I am going to investigate this question.

4. IS THE STRATIFICATION ENTAILED BY TALENTED AND CHECKBOOK CITIZENS AKIN?

I have previously presented talented citizens as those whose membership in the state is fast-tracked by usually discretionary decisions aiming to attract their particular and special talents to the state granting citizenship. The majority of these are elite sportspeople, scientists, scholars or artists. They constitute what Shachar has called 'Olympic citizenship' (2011), what according to her represents the rise of a more calculated approach to citizenship and entail the erosion of the basic idea that representatives of a country should be members of that society in some meaningful way (2011), especially in the case of elite sportspeople who often do not even set foot in the country. Checkbook citizens have become increasingly controversial, it being argued that the policies granting citizenship in exchange for economic transactions represent a corruption of democracy⁶⁸ and communal identity,⁶⁹ increase global inequality⁷⁰ and undermine the concept of citizenship.⁷¹ Despite the fact that both groups meet objections, I will prove that policies facilitating the status and creating stratification in the access to citizenship in exchange for money are more challenging.

⁶⁸ This claim has been made by BAUBÖCK, R. (2014). «What Is Wrong With Selling Citizenship? It Corrupts Democracy! In Should Citizenship Be For Sale?» *EUI Working Paper RSCAS*, 2014/1. and TANASOCA, A. (2016). «Citizenship for Sale», *European Journal of Sociology*, 57(01), 169–195. <https://doi.org/10.1017/S0003975616000059>

⁶⁹ This claim has been made by DŽANKIĆ, J. (2015). Investment-based citizenship and residence programmes in the EU. Retrieved from http://cadmus.eui.eu/bitstream/handle/1814/34484/RSCAS_2015_08.pdf

⁷⁰ This claim has been made by BOATCA, M. (2015). Commodification of citizenship. Global inequalities and the modern transmission of property. In *Overcoming global inequalities*. London; New York: Routledge, Taylor & Francis Group.

⁷¹ This claim has been made by SHACHAR, A. (2014). «Dangerous Liaisons: Money and Citizenship. In Should citizenship be for sale?» *EUI Working Paper RSCAS*, 2014/1. and SHACHAR, A., BAUBÖCK, R., BLOEMRAAD, I., & VINK, M. P. (Eds.). (2017). *The Oxford handbook of citizenship* (First edition). New York, NY: Oxford University Press

First, the bestowing of citizenship to talented citizens is done on the basis of their particular skills, particular capacities or unique defining features that distinguish that particular person from others.⁷² They are able to do some (relevant for the state) tasks in a special manner that cannot be reproduced by anyone else. The decision granting them citizenship is founded on this differential particularity that makes them special and unique in their class and that they will be beneficial to the state in a unique form. This decision is then based on the high quality of the personal skills of the particular wanted person when granting the status of citizen.

On the contrary, the appealing characteristic of the checkbook citizens is not a personal skill or a peculiar capacity intrinsic to that person, but a fungible⁷³ asset—money—. This fungible asset is not an indication of the personal capacities of the applicant and does not reflect even their ability to contribute to the society in a long-term. Policies granting citizenship to checkbook applicants are exchanging a long-term (personal) status for one-off contribution of a fungible asset, focusing on quantity rather than on quality, and focusing on a non-personal and non-representative feature of the applicant. Moreover, and what is worse, they implicitly make a total reduction of the meaning of ‘contribution’ to the society that (new) citizens are expected to do, as if it would merely entail ‘economic contribution’, leaving aside the enormous variety of ways to personally contribute to the ‘life of the state’. That is to say, they make an inadmissible reduction of the expression ‘contributing to the society (state)’ as if the only expected or the most important way to contribute would be economic.⁷⁴

Second, as it has been proved, the stratification in access to citizenship entailed by policies granting membership in exchange for money is *de jure*, that is to say, it is directly established by the law, and has the power to naturalise massively and discriminating only on the basis of the economic capacity (the investment made). In the case of the talented citizens, the introduced stratification is *indirectly de jure*, enabled by the discretion power of the government, that grants citizenship in an individual basis considering the features of the particular person. Despite being established in

⁷² My claim is not contradictory with Marshall’s (1950) conception of citizenship, which is, as in REIS (2000) words, ‘the common status that confers upon all, rich and poor, proprietors and non-proprietors, haves and haves-not, a peculiar equality and through which the economic differentiation-cum-stratification on the one side and formal equality vis-à-vis the state on the other became central tenets of modern democracies.’ There are two reasons for that. The first one is that my claim focus on the personal features regarding the access to citizenship, not on the status once obtained. The second one is because Marshall’s claim pointed out the equality power of citizenship among classes (rich and poor, haves and haves-not). He did not refer to personal skills or features but to property.

⁷³ Fungibility is the ability of a good or asset to be interchanged with other individual goods or assets of the same type. Assets that are fungible are exchangeable for each other.

<https://www.investopedia.com/terms/f/fungibility.asp> (accessed 4/8/2018).

⁷⁴ An additional danger of reducing the meaning of ‘contributing to the society’ to ‘economic contribution’ is that in a long-term it may promote the exclusion of those who are not able to economically contribute to the society.

different ways, something in common is that both, discretionary decisions from the executive power and legal measures from the legislative need to be reasonably motivated in order to avoid being arbitrary. Following Vivern (1992):

*'The activity (of the executive and legislative) can be considered arbitrary if the legal configuration is inconsequential, incoherent and whimsical.'*⁷⁵

In order to make a judgement on the coherence of the decisions and legal provisions, it is necessary to consider two things; (1) the exchanged object, that is, citizenship, and (2) its consideration in the particular legal system.

(1) Regardless the conception of citizenship that is adopted, the concept of citizenship entails (i) a (personal) status symbolizing (ii) a relation between an individual and a state, which grants some (iii) entitlements and, may impose some (iv) obligations to the person carrying the status. The fact that the relation is between a particular individual who is granted a personal status indicates that regardless the conception of citizenship having in mind, there are certain particular relational and personal characteristics of the person (and not of their patrimony) who is granted citizenship that are relevant. Traditional ways of obtaining citizenship, *ius solis*, *ius sanguinis* or naturalisation by marriage prove the importance of the particular relational characteristics of the prospective citizen, whose special link to the state will be estimated through her residence in the state or her personal or familial relation.

(2) The inspection of the particular legal systems of Malta, Cyprus and Bulgaria proves that these countries adopt these features in their conceptions of citizenship. As it has been proved above, they also require in all the other modes of acquisition a personal (or familiar) relation to (a member of) the state for granting the status.⁷⁶ Considering the impersonal characteristics of the fungible object —money— interchangeable for citizenship in the case of CIPs, it is evident that the introduction of the programmes break the coherence of the internal legal order of the above-mentioned states. Following Vivern's definition, the introduced incoherence by the CIPs would provide grounds for an argument against the programmes by introducing arbitrariness in the bestowing of citizenship. Under this argument, CIPs could be considered arbitrary and thus the *de jure* stratification entailed by CIPs favouring wealthy people on grounds on a non-personal characteristic would be more problematic and questionable than the bestowing to talented citizens.

⁷⁵ The translation is mine.

⁷⁶ Expressed through family relations in the case of marriage or *ius sanguinis*, and physical presence in the territory of the (body) of the person granted citizenship, in the case of *ius solis* or naturalisation by residence. In the case of talented citizens, although this relation has not been proved yet, the grounds of granting citizenship is the expectation of this happening. Although this may be controversial and questionable, it still keeps the personal element on granting citizenship, so in this sense does not entail incoherence, unlike the case of CIPs, which clearly does.

5. LAST REMARKS

In this paper, I have presented the phenomenon of programmes exchanging citizenship for economic transactions, named CIPs. Mainly, I have focused on the existing programmes established by EU member states and compared the requirements that both, general applicants and applicants following these programmes are demanded. The aim has been to demonstrate that by facilitating the bestowal of citizenship to rich applicants, the programmes create a *de jure* stratification in the access of citizenship, placing checkbook citizens in the top.

This upper-position is shared with a different kind of privileged-in-access citizen, the talented citizen. A comparison on the particularities of both groups has been done and it has proved that the criteria used to grant citizenship in the case of CIPs makes the establishment of these policies which use citizenship as the fishhook to attract capital to the country more objectionable. The article has argued that the personal-status-form of citizenship shaped in the legal orders does not allow for the bestowal in exchange for a fungible object like money without breaking the coherence of the particular legal system. Being this the case, an argument can be done against the arbitrariness of the provisions establishing CIPs.

BIBLIOGRAPHY

- BAUBÖCK, R. (2014). What is wrong with selling citizenship? It corrupts democracy! In *Should citizenship be for sale? EUI Working Paper RSCAS, 2014/1*.
- BOATCA, M. (2015). Commodification of citizenship. Global inequalities and the modern transmission of property. In *Overcoming global inequalities*. London; New York: Routledge, Taylor & Francis Group.
- CARRERA NUÑEZ, S., & GROOT, G.-R. de (Eds.). (2015). *European citizenship at the crossroads: the role of the European Union on loss and acquisition of nationality*. Oisterwijk, The Netherlands: Wolf Legal Publishers (WLP).
- CROWDER, K., SOUTH, S. J., & CHAVEZ, E. (2006). Wealth, Race, and Inter-Neighborhood Migration. *American Sociological Review*, Vol. 71, n.º1, pp.72–94. <https://doi.org/10.1177/000312240607100104>
- DŽANKIĆ, J. (2012). *The Pros and Cons of Ius Pecuniae: Investor citizenship in comparative perspective* (Working Paper). Retrieved from <http://cadmus.eui.eu/handle/1814/21476>
- DŽANKIĆ, J. (2015). Investment-based citizenship and residence programmes in the EU. Retrieved from http://cadmus.eui.eu/bitstream/handle/1814/34484/RSCAS_2015_08.pdf
- DŽANKIĆ, J. (2018). Immigrant investor programmes in the European Union (EU). *Journal of Contemporary European Studies*, Vol. 26, n.º1, pp. 64–80. <https://doi.org/10.1080/14782804.2018.1427559>

- GKOUVAS, T. (Ed.). (2013). *Wanted and welcome?: policies for highly skilled immigrants in*. Place of publication not identified: Springer.
- GLOBAL DATABASE ON MODES OF ACQUISITION OF CITIZENSHIP – GLOBALCIT. (N.D.). RETRIEVED FEBRUARY 8, 2018, from <http://globalcit.eu/acquisition-citizenship/>
- JASSO, G. (2011). Migration and stratification. *Social Science Research*, Vol. 40, n.º5, pp.1292–1336. <https://doi.org/10.1016/j.ssresearch.2011.03.007>
- KEITH, VERNA M., & HERRING, CEDRIC. (1991). Skin Tone and Stratification in the Black Community. *American Journal of Sociology*, Vol. 97, pp.760–778.
- KOFMAN, E. (2004). Gendered Global Migrations. *International Feminist Journal of Politics*, Vol. 6, n.º4, pp.643–665. <https://doi.org/10.1080/1461674042000283408>
- MALMUSI, D., BORRELL, C., & BENACH, J. (2010). Migration-related health inequalities: Showing the complex interactions between gender, social class and place of origin. *Social Science & Medicine*, Vol. 71, n.º9, pp.1610–1619. <https://doi.org/10.1016/j.socscimed.2010.07.043>
- MARSHALL, T. H. (1950). *Citizenship and Social Class*. Cambridge University Press.
- MURGUÍA, E., & SAENZ, R. (2002). An analysis of the Latin Americanization of race in the United States: a reconnaissance of color stratification among Mexicans. *Race and Society*, Vol. 5, n.º1, pp. 85–101. <https://doi.org/10.1016/j.racsoc.2003.12.006>
- PIPER, N. (ED.). (2008). *New perspectives on gender and migration: livelihood, rights and entitlements*. New York: Routledge.
- REIS, ELISA. P. (2000). Modernization, Citizenship, and Stratification: Historical Processes and Recent Changes in Brazil. *Daedalus*, Vol. 129, n.º2, pp. 171–194.
- SHACHAR, A. (2006). The Race for Talent: Highly Skilled Migrants and Competitive Immigration Regimes. *NYU Law Review*, 81.
- SHACHAR, A. (2011). Picking Winners: Olympic Citizenship and the Global Race for Talent. *The Yale Law Journal*, 120.
- SHACHAR, A. (2014). Dangerous Liaisons: Money and Citizenship. In *Should citizenship be for sale? EUI Working Paper RSCAS, 2014/1*.
- SHACHAR, A. (2016). Selecting By Merit. In S. Fine & L. Ypi (Eds.), *Migration in Political Theory* (pp. 175–202). Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199676606.003.0009>
- SHACHAR, A., BAUBÖCK, R., BLOEMRAAD, I., & VINK, M. P. (Eds.). (2017). *The Oxford handbook of citizenship* (First edition). New York, NY: Oxford University Press.
- SHACHAR, A., & HIRSCHL, R. (2013). Recruiting “Super Talent:” the New World of Selective Migration Regimes. *Indiana Journal of Global Legal Studies*, 20.
- TANASOCA, A. (2016). Citizenship for Sale. *European Journal of Sociology*, Vol. 57, n.º01, pp.169–195. <https://doi.org/10.1017/S0003975616000059>

VILLARREAL, A. (2010). Stratification by Skin Color in Contemporary Mexico. *American Sociological Review*, Vol 75, n.º5, pp.652–678. <https://doi.org/10.1177/0003122410378232>

VIVERN, C. (1992). Derecho y discrecionalidad. *Cuadernos de La Facultad de Derecho (UIB)*, 18.

Título:

Citizenship by investment programmes: naturalización exprés para billeteras pudientes. ¿Una estratificación arbitraria de jure?

Sumario:

1. Introducción. 2. CIPs: Una ruta rápida para adinerados. 3. CIPs en la Unión Europea (UE). (a) CIP Búlgaro. (b) CIP Chipriota. (c) CIP Maltés. 4. ¿Es similar la estratificación que beneficia a los ciudadanos talentosos y a los de chequera? 5. Comentarios finales.

Resumen:

Tradicionalmente, los estudios centrados en las relaciones entre migración y estratificación han prestado especial atención a la influencia de características tales como el origen, la etnia o el género a la hora de determinar la posición dentro de la estratificación migratoria, interesándose, a su vez, particularmente por los inmigrantes que se encontraban en la base de dicha estratificación. Sin embargo, estudios recientes (Shachar, 2011, 2016; Shachar & Hirschl, 2013) han cambiado esta tendencia virando su interés hacia aquellos migrantes situados en la cúspide de la estratificación, beneficiados por la apertura de una vía exprés para la obtención de la ciudadanía en razón de sus excepcionales talentos en ámbitos tan diversos como el deporte, la academia o la industria. Esta nueva forma de acceso a lo alto de la estratificación migratoria, en expansión, existe en todo el mundo y suele darse normalmente de forma particularizada y discrecional. Menos atención han obtenido otro tipo de programas que igualmente facilitan el acceso a lo más alto de la estratificación migratoria, esta vez basándose en la condición económica del postulante. Me refiero a los *citizenship by investment programs* (CIPs por sus siglas en inglés), los cuales acortan la ruta a la ciudadanía a cambio de inversiones económicas, que se dan de formas altamente diversas dependiendo del país y del programa a la sazón. A pesar de la citada diversidad, aquello que caracteriza a los CIPs es que para estos la capacidad económica del postulante se convierte en la llave que da

acceso a la ciudadanía del país que implanta el programa. Facilitando y acelerando la adquisición de la ciudadanía en razón de la capacidad económica, los CIPs conllevan así una estratificación en el acceso a la ciudadanía que es establecida *de jure* o por ley. Dicha estratificación en la naturalización requiere de una investigación ulterior y suscita diversas cuestiones de gran importancia: ¿es justo eliminar algunos requisitos, tales como los exámenes cívicos y de idioma, a los ciudadanos de chequera, mientras los mismos se mantienen para otros solicitantes de naturalización? ¿Debería la capacidad económica del postulante ser aceptada como el requisito principal a la hora de garantizar la ciudadanía? ¿Son dichas políticas arbitrarias? Este artículo tiene tres objetivos. En primer lugar, presentar el fenómeno de los CIPs, centrándose especialmente en aquellos programas establecidos entre los miembros de la Unión Europea. El interés principal de centrarse en dichos estados es que en su caso las decisiones unilaterales de otorgar la ciudadanía nacional a cambio de una inversión económica conllevan igualmente el otorgamiento de la ciudadanía europea, la cual garantiza derechos supranacionales e impone obligaciones a otros estados miembros. En segundo lugar, comparar los requisitos solicitados a los postulantes generales de naturalización y a aquellos que siguen la vía exprés abierta por los CIPs. Esto se hará a fin de probar que los CIPs comportan una severa estratificación, establecida y plasmada *de jure* en el acceso a la ciudadanía en favor de los solicitantes que siguen esta vía. Por último, ofrecer argumentos que despierten la sospecha sobre la posible arbitrariedad de dichas políticas de naturalización, arbitrariedad que no tiene cabida ni respaldo legal en el contexto del constitucionalismo contemporáneo.

Palabras clave:

Citizenship by investment programmes, ciudadanos de chequera, movilidad de élite, estratificación migratoria.

Title:

Citizenship by investment programmes: express naturalisation for bulky wallets. An arbitrary *de jure* stratification?

Summary:

1. Introduction. 2. CIPs: a fast route to bulky wallets. 3. CIPs in the European Union (EU). (a) Bulgarian CIP. (b) Cypriot CIP. (c) Maltese CIP. 4. Is the stratification entailed by talented and checkbook citizens akin? 5. Last remarks

Abstract:

Traditionally, the study of the relation between stratification and migration has been focusing on features such as origin, ethnicity or gender, paying special attention to migrants at the bottom of the stratification.

Recent studies (Shachar, 2011, 2016; Shachar & Hirschl, 2013) have shifted this lens by proving that there are worldwide ways to facilitate access to citizenship to applicants having exceptional talents—in sports, in academia or in industry—, most of them privileged by discretionary decisions. Much less attention has caught the relation between stratification and programmes fast-tracking the route to citizenship in exchange for economic transactions. These are usually called citizenship by investment programmes (CIPs) and come in different forms. Yet all of them have in common the factor that economic capacity of the applicant is the key to access citizenship. By facilitating and speeding up the acquisition of citizenship on grounds of economic capacity, CIPs entail stratification in accessing citizenship that is established *de jure* or by law. This stratification in naturalisation requires further investigation and raises several questions: Is it fair to remove some requirements, such as civic and language tests, for *checkbook citizens* while keeping them for other naturalisation applicants? Should money be accepted as the main requirement to grant citizenship? Are these policies arbitrary? This paper has three objectives. First, to present the phenomenon of CIPs, focusing on programmes established by EU member states. Second, to compare the requirements applied to general applicants and to applicants following CIPs in order to prove that the programmes entail a *de jure* stratification in the access to citizenship. Third, to argue that these practices may be considered arbitrary.

Keywords:

Citizenship by investment programmes, checkbook citizens, élite mobility, stratification.