

EXPLORING ATYPICAL CITIZENSHIP DEPRIVATION AND SPILLOVER EFFECTS IN THE CONTESTED TAIWANESE CITIZENSHIP

JING-HAN CHEN*

Taiwan, an island nation with an ambiguous international status, has one of the most contested citizenship regimes in the world. This paper explores the perspectives of Taiwanese people on their precarious citizenship: a topic previously underexplored. The central argument posits that mis-recognition of Taiwanese citizenship by foreign authorities amounts to a denial of citizenship: a form of atypical citizenship deprivation that lacks human rights safeguards. Two recent European Court of Human Rights ('ECtHR') cases illustrate these points: Liu and Others v Norway, and Liu v Poland. In exploring these cases, this paper discusses the spillover effect of how issues of citizenship and sovereignty become crucial in international legal disputes, even when not explicitly related to the primary legal issues of the case in question. These reflections on liminal Taiwanese citizenship illuminate broader concerns of contested citizenship in the contemporary international community.

TABLE OF CONTENTS

I	Introduction	102
II	Contestation of Taiwanese Statehood and Citizenship	104
	A Taiwan's Statehood: Context and Debates	104
	B Sovereignty's Influence on Citizenship	107
III	The Genuine Link Theory, Predominant Nationality, and Taiwanese Citizenship	109
IV	Taiwanese Citizenship in the International Setting: Right to Taiwanese Identity	113
	A Denial of Taiwanese Citizenship: An Analysis of Liu and Others v Norway	114
	1 Background of Liu and Others v Norway.....	115
	2 Liu and Others v Norway in the ECtHR.....	116
	3 Genuine link between Liu and Others v Norway and Atypical Citizenship Deprivation	119
	B From Citizenship to Other Rights: An Analysis of Liu v Poland	120
	1 Liu v Poland in the ECtHR.....	120
	2 Challenges to Sovereignty: The Role of Extradition.....	121
	3 Spillover Effects of Contestation on Taiwanese Sovereignty and Citizenship	122
	C Evaluating ECtHR decisions in Liu and Others v Norway and Liu v Poland	123
V	Conclusion.....	124

* Jing-Han Chen is a legal scholar and socio-legal researcher whose work examines how law structures precarity, belonging, and identity in contexts of contested sovereignty. She is a tutor at the University of Edinburgh, where she teaches International Law and International Private Law. She holds a PhD in Law from the University of Edinburgh, where her thesis, *Contested Citizenship and Statelessness in Question*, received the PhD Thesis Prize from the Taiwan Society of International Law in 2023. Contact: jchen13@ed.ac.uk

I INTRODUCTION

The Republic of China ('Taiwan'), an island nation with an ambiguous international status, has at present one of the most contested citizenship regimes in the world. The statehood of Taiwan has long been understood as a debatable issue in international law, particularly due to its lack of de jure recognition by the majority of the world's states and its complex relationship with the People's Republic of China ('China').¹ According to Gëzim Krasniqi's research comparing Kosovo and the Turkish Republic of Northern Cyprus, states with different degrees of international recognition and state-building find that sovereignty has an influence upon their citizenship regimes.² For instance, Kosovo passport holders have faced significant inconvenience when travelling abroad, as their passport is among the weakest globally. This reflects the dysfunctional and liminal nature of their citizenship as shaped by Kosovo's contested statehood.³ Indeed, these states can be understood as having a contested citizenship due to their contested sovereignty. This insight can also be applied to Taiwan. While the contestation of its statehood represents a challenge to full de jure sovereignty for Taiwan, the statehood's contained uncertainty also results in an ongoing contestation for Taiwanese citizenship.

Research hitherto has paid little attention to the perspectives of Taiwanese people on their contested citizenship.⁴ This article explains in more detail the complexities of Taiwanese's contested citizenship, situating Taiwan in its political and legal context. Focusing on international disputes, the paper explores the impact of government-level mis-recognitions, denials and non-recognition on Taiwanese citizenship. First, it addresses the formulation of this liminal citizenship as attributable to Taiwan's contested sovereignty. Second, it analyses the nature of Taiwanese citizenship by examining the genuine links between Taiwanese nationality and Taiwan. This article draws on Nancy Fraser's account of mis-recognition as a form of status subordination, where authorities impose a singular cultural identity on a group, thereby concealing the power struggles within.⁵ The paper argues that, when applied to the international legal domain, such mis-recognition serves the political interests of some foreign authorities, while ignoring the complexities of contested citizenship and the basic rights of affected individuals. The central argument is that the mis-recognition of Taiwanese citizenship by foreign authorities amounts to denial of Taiwanese citizenship, and thus to a form of atypical citizenship deprivation, without appropriate safeguards in the interests of human rights and personal freedom.

The distinctions between nationality and citizenship have long been discussed in various contexts. As Jo Shaw points out, although nationality may not

¹ Hsuan-Yu Shane Lin, Charles K S Wu and Yao-Yuan Yeh, 'The Statehood of Taiwan' in Sabella O Abidde (ed) *China and Taiwan in Africa* (Springer International Publishing 2022) 37–8.

² Gëzim Krasniqi, 'Contested States as Liminal Spaces of Citizenship [Comparing Kosovo and the Turkish Republic of Northern Cyprus]' (2019) 18(3) *Ethnopolitics* 298.

³ *ibid.*

⁴ Chen Jing-Han, 'Contested Citizenship and Statelessness in Question: An Analysis of Cases of Overseas Taiwanese People and Tibetan Exiles in Taiwan' (PhD Thesis, University of Edinburgh, 2023) 115–52.

⁵ Nancy Fraser, 'Rethinking Recognition' (2000) 3 (May/June) *New Left* 113.

necessarily equate to citizenship as seen in many countries, nationality is commonly used in international law scholarship to denote ‘the legal status of individuals and the connection between individuals and states’.⁶ That is, how international law scholars articulate nationality shapes how individuals’ rights and obligations vis-a-vis states are defined across various domains, such as diplomatic protection, armed conflict, state responsibility, jurisdiction, and extradition.⁷ This author uses ‘citizenship’ and ‘nationality’ interchangeably; however, when it concerns the relations between individuals and states, and the legal status on the international level, ‘nationality’ is used; and when it concerns rights in relation to other rights and the personal status encompassing civil, political and legal dimensions, ‘citizenship’ is used.

The statehood of Taiwan has been under debate for decades. There are doubts whether Taiwan should be considered as a state and the following section will explain further on this point. This article adopts the narrative that while being independent and self-governing as a democracy, Taiwan holds a contested sovereignty the same as many other contested sovereignties such as Kosovo. The lack of formal diplomatic relations denotes that the Taiwanese Government may not be able to resolve citizens’ problems via formal diplomatic measures. Since Taiwanese people cannot necessarily rely on diplomatic resolutions to remedy denials of identity, some of them eventually turn to administrative remedies and judicial reviews by foreign authorities to seek redress. This article uses two recent cases to illustrate these points. The first case, *Liu and Others v Norway* in 2021,⁸ which eventually reached the European Court of Human Rights (‘ECtHR’), discussed the legal discourse of overseas Taiwanese when raising the issue of Taiwanese identity in Norway. A second case, *Liu v Poland* in 2023,⁹ which also reached the ECtHR, focused on the arrest of Taiwanese individuals in Poland who were facing the risk of extradition to China. In *Liu and Others v Norway*, the ECtHR declared the application inadmissible; in *Liu v Poland*, the ECtHR ruled that extradition to China raised significant human rights concerns. The second case does not centre on Taiwanese citizenship, but its relevance emerges when the case is situated within the broader geopolitical context that shapes the contestation of Taiwanese sovereignty.

The article’s conclusion explains Taiwanese citizenship by reference to the concepts of atypical citizenship deprivation and spillover effect. The spillover effect is introduced to describe the scenario in *Liu v Poland*, where contestation over citizenship or sovereignty becomes a core problem in an international lawsuit, even when the prima facie issue of the legal matter does not concern either status. While the granting or the deprivation of nationality is done under a state’s authority and is therefore a domestic matter, citizenship has an international dimension requiring compliance with the 1961 *Convention on the Reduction of*

⁶ Jo Shaw, *The People in Question: Citizens and Constitutions in Uncertain Times* (Bristol University Press 2020) 20 (‘Shaw, *The People in Question*’).

⁷ Kristin Henrard, ‘The Shifting Parameters of Nationality’ (2018) 65 *Netherlands International Law Review* 269; Ivan Anthony Shearer, *Starke’s International Law* (Butterworths, 11th ed, 1994) 309.

⁸ *Liu and Others v Norway* (European Court of Human Rights (‘ECtHR’), Application No 24859/21, 15 July 2021) (‘*Liu and Others v Norway*’).

⁹ *Liu v Poland* (ECtHR, ECLI:CE:ECHR:2022:1006JUD003761018, 6 October 2022) (‘*Liu v Poland*’).

Statelessness ('1961 Convention').¹⁰ Reflections on liminal Taiwanese citizenship overseas, seen in the substance and rulings of these two cases, illuminates additional concerns of contested citizenship in today's international community.

This article proceeds as follows. First, it provides a brief overview of Taiwan's contested sovereignty and citizenship. Second, it introduces the genuine-link test and discusses its relevance to Taiwanese citizenship. Third, it examines the two ECtHR cases to analyse how Taiwanese citizenship is addressed in the international context, elaborating on two key concepts: atypical citizenship deprivation and the spillover effects of contested citizenship. Finally, the paper reflects on contested citizenship at the international platform and offers concluding remarks.

II CONTESTATION OF TAIWANESE STATEHOOD AND CITIZENSHIP

The issue of Taiwanese citizenship is a complex and multifaceted challenge in international law, rooted in the contested status of Taiwan. This complexity arises from Taiwan's ambiguous sovereignty, ongoing debates about its international personality, and long-term geopolitical challenges related to international recognition — challenges that have existed as long as Taiwan's relationship with China. The following section briefly examines the context of this statehood to convey how the contestation of statehood results in the contestation of citizenship in the case of Taiwan.

A Taiwan's Statehood: Context and Debates

A standard, though somewhat contested, view is that modern Taiwan's sovereignty conundrum followed the aftermath of the Second World War ('WWII'), when Japan ceded its rights over colonised lands without a clear resolution on who would gain Taiwan in turn.¹¹ The *Potsdam Declaration* in 1945 involving China, the United Kingdom ('UK'), the United States ('US') and Russia suggested Taiwan's transfer to China, but this *Declaration* lacked binding power within international law.¹² Consequently, Chinese forces took control of Taiwan when the Japanese left, with the island's legal status remaining uncertain. The situation became even more complicated by the Chinese Civil War, in which the Chinese Party [*Kuomintang*] retreated to Taiwan, forming the Republic of China ('ROC'), while the Chinese Communist Party established the People's Republic of China ('PRC') on the mainland. The 1951 *Treaty of Peace with Japan* excluded both the ROC and the PRC,¹³ leaving Taiwan's sovereignty in limbo. The Japanese Government signed another treaty with the ROC in the *Treaty of Peace between the Republic of China and Japan* ('1952 Treaty with Japan'),¹⁴ under

¹⁰ *Convention on the Reduction of Statelessness*, opened for signature 30 August 1961, 989 UNTS 175 (entered into force 13 December 1975) ('1961 Convention'). See also Iseult Honohan, 'Just what's wrong with losing citizenship? Examining revocation of citizenship from a non-domination perspective' (2020) 24(3) *Citizenship Studies* 355.

¹¹ See James R Crawford, *The Creation of States in International Law* (Oxford University Press 2006) 277.

¹² *Proclamation Defining the Terms for the Japanese Surrender* ('Potsdam Declaration'), issued 26 July 1945, art 8.

¹³ *Treaty of Peace with Japan*, opened for signature 8 September 1951, 136 UNTS 45 (entered into force 28 April 1952).

¹⁴ *Treaty of Peace between the Republic of China and Japan*, opened for signature 28 April 1952, 138 UNTS 3 (entered into force 5 August 1952).

which the ROC only governed Taiwan and the peripheral islands. From China's perspective, Taiwan remains a legacy issue of the Chinese Civil War, despite the absence of international legal authority for its claim — as reflected in Taiwan's omission from the 1951 *Treaty of Peace with Japan*. Over time, this has become a largely nominal sovereignty claim. In contrast, many Taiwanese argue that sovereignty should be determined by themselves, the inhabitants of Taiwan, free from external interference.¹⁵

Debates concerning Taiwan's international status also extend to academic circles. In the domain of international law, Taiwan's statehood is a contentious issue. While many legal scholars view Taiwan's status from the perspective of the unresolved Chinese Civil War — seeing the PRC and ROC as rival claimants to China's government —¹⁶ this framework often overlooks Taiwan's complex sovereign reality and evolving identity. This paper does not focus on Taiwan's statehood but re-examines Taiwan's sovereignty by asking: (1) Did China legally acquire sovereignty over Taiwan after WWII? (2) What was the legal effect of the 1952 *Treaty with Japan* — did it grant sovereignty to the PRC or ROC? (3) Has the ROC's decades-long governance, albeit authoritarian, created a de facto claim to sovereignty over Taiwan? And finally, who benefits from continuing to frame Taiwan's status through the lens of the Chinese Civil War? Looking back to WWII, given Taiwan's colonial past under Japan, should its people be entitled to self-determination?

Leading scholar James Crawford argues that Taiwan is not a state because it has not unequivocally declared independence from China and lacks widespread recognition.¹⁷ These claims touch on a core debate in international law: does recognition constitute or merely declare statehood? While the *Montevideo Convention on the Rights and Duties of States* ('*Montevideo Convention*')¹⁸ provides indicia for the creation of statehood based on factual elements — population, territory, government and capacity for international relations — recognition remains contested. Declaratory theory holds that recognition confirms statehood but does not create it. This is supported by academic and legal writing,¹⁹ including the 1991 Badinter Commission's opinions during the breakup of Yugoslavia.²⁰ Even though recognition is regarded as crucially declaratory, there are still some discussions on the constitutive element of recognition in

¹⁵ Concerning Taiwanese people's ideology on their identity, survey data have shown that since 2021, the prevailing opinion is that the status quo should be maintained. See Election Study Centre, National Chengchi University, 'Taiwanese / Chinese Identity (1992/06 ~ 2025/12)', (Dataset, 7 July 2025) <<https://esc.nccu.edu.tw/PageDoc/Detail?fid=7800&id=6961>>, archived at <perma.cc/AW3J-P9VX> ('Election Study Centre, "Taiwanese / Chinese Identity"'); Election Study Centre, National Chengchi University, 'Taiwan independence vs Unification with the Mainland (1994/12~2025/06)' (Dataset, 7 July 2025) <<https://esc.nccu.edu.tw/PageDoc/Detail?fid=7801&id=6963>>, archived at <perma.cc/4QWD-L2D7>.

¹⁶ Gleider I Hernández, *International Law* (Oxford University Press, 2nd ed, 2022) 128; Malcolm N Shaw, *International Law* (Cambridge University Press, 9th ed, 2021) 212; Crawford (n 11) 198–219.

¹⁷ Crawford (n 11), 210–9.

¹⁸ *Montevideo Convention on the Rights and Duties of States*, opened for signature 26 December 1933, 165 LNTS 19 (entered into force 26 December 1934) art 1 ('*Montevideo Convention*').

¹⁹ See, eg, Andrew Clapham, *Brierly's Law of Nations: An Introduction to the Role of International Law in International Relations* (Oxford Law Pro 2012) 125–9.

²⁰ *Declaration on Yugoslavia* (European Political Cooperation Extraordinary Ministerial Meeting, Brussels, 16 December 1991).

international law.²¹ Additionally, practice reveals ambiguity. Kosovo's 2008 *Declaration of Independence*²² was deemed to 'not violate the international law' by the International Court of Justice ('ICJ'),²³ and 118 states are claimed to recognise it.²⁴ Yet Kosovo's international legal status remains disputed.²⁵ If recognition is purely declaratory, why does Kosovo still lack full international legal personality? And if recognition is constitutive, how many states must recognise a new entity for it to be considered a state? These questions show that recognition — particularly by powerful states or those involved in sovereignty disputes — continue to shape the legal contours of statehood.

Another key challenge to Taiwan's statehood as noted by international law scholars is its lack of a formal declaration of independence.²⁶ In contrast, Brad Roth interprets Taiwan's lack of a formal declaration of independence as the most expedient strategy for both the Taiwanese population and the international community.²⁷ While the Taiwanese people seek to protect themselves from potential military aggression from the PRC and avoid provoking opposition from the international community regarding formal independence, this strategy helps preserve Taiwan's current international position — one that is not subject to the PRC's prerogatives, and allows for incremental progress toward statehood through tacit international cooperations and legal awareness.²⁸ A formal declaration remains difficult given both international reluctance to alter the status quo and the PRC's threat of force. Lung-chu Chen, adopting an 'evolutionary theory', argues that Taiwan's democratic development and distinct identity amount to statehood formed through collective self-determination.²⁹ However, scholars like Frank Chiang maintain that a formal declaration is essential to fully establish Taiwan's statehood.³⁰ These tensions — between declarative necessity, lack of recognition, and Taiwan's democratic achievements — highlight the complexity and fragility of its contested sovereignty.

Scholars in international law increasingly look beyond the *Montevideo Convention* as its four indicia cannot fully account for the complexities of contested sovereignty today.³¹ While this article acknowledges a deficit in Taiwan's formal statehood, it aligns with Roth's view that Taiwan's position —

²¹ Jure Vidmar, 'Explaining the Legal Effects of Recognition' (2012) 61(2) *International and Comparative Law Quarterly* 361.

²² *Kosovo Declaration of Independence* (Kosovo, 17 February 2008).

²³ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (Advisory Opinion) [2010] ICJ Rep 403.

²⁴ 'Lista e Njohjeve', *Ministria e Punëve të Jashtme dhe Diasporës, Republika e Kosovës* [Ministry of Foreign Affairs and Diaspora, Republic of Kosovo] (Web Page, 2025) <<https://mfa-ks.net/lista-e-njohjeve/>>, archived at <perma.cc/5C6N-53LT>.

²⁵ Serbian media has claimed that the Kosovo Government conflated the number of states recognising its statehood, asserting only 84 have done so: 'Kenija 84. a ne 118. zemlja koja je priznala Kosovo', *Blic* (online, 27 March 2025) <<https://www.blic.rs/vesti/politika/kenija-84-a-ne-118-zemlja-koja-je-priznala-kosovo/gdnw4nk>>, archived at <perma.cc/5U7M-4GMW>.

²⁶ See, eg, Crawford (n 11); Vidmar (n 21); Frank Chiang, *The One-China Policy State, Sovereignty, and Taiwan's International Legal Status* (Elsevier 2018).

²⁷ Brad R Roth, 'The Entity That Dare Not Speak Its Name: Unrecognized Taiwan as a Right-Bearer in the International Legal Order' (2009) 4(1) *East Asia Law Review* 91.

²⁸ *ibid.*

²⁹ Lung-chu Chen, 'The Evolution of Taiwan Statehood' in *The US-Taiwan-China Relationship in International Law and Policy* (Oxford University Press 2016) 83–4.

³⁰ Chiang (n 26).

³¹ *Montevideo Convention* (n 18).

between de facto and de jure recognition — supports its independent statehood.³² This author argues that this in-between status has shaped Taiwan's identity as a contested sovereign entity.

The statehood of Taiwan is contested externally and internally. Taiwan, having established a democratic system and self-governance over the years, still grapples with the legacy of being the seat of the former Chinese Government. This former status is still echoed in its official name, ROC, and its constitution,³³ which continues to claim sovereignty over all of China. The ROC's transition to a democratic system in the late 1980s led to the localisation or indigenisation of politics, which in turn caused the Government to cease asserting sovereignty over China's territory in the 1990s. The democratisation of Taiwan changed the landscape of the political regime, including its people's concept of their nation — which moved from being part of China to becoming an independent Taiwan.³⁴ Meanwhile, the constitutional amendments during the 1990s shifted the nationality of Taiwan's people from 'Chinese' to 'Taiwanese', signifying a new citizenship.³⁵ The constitution of the ROC preserved its main text, but amendments adapted it to the reality of Taiwan, creating a practical — yet controversial — structure for the continuation of the ROC legal regime. Although the content of Taiwanese citizenship and citizenship practices themselves have evolved within Taiwan, people attempting to travel on Taiwanese citizenship documents in international settings can experience difficulties.

B *Sovereignty's Influence on Citizenship*

Taiwan's ambiguous sovereignty has far-reaching implications for Taiwanese citizenship. After WWII, Taiwan's sovereignty entered a legal limbo. The ROC assumed governance while simultaneously asserting sovereignty over all of China. Over decades of de facto rule in Taiwan, the island's sovereignty and the ROC's authority have become inextricably linked. The connection between the ROC's governance and Taiwan's sovereignty has created a close association between the two in the eyes of other nations. This link often leads other states to view Taiwan's international status through the lens of the ROC's past, even though circumstances have greatly changed in the modern day. The ROC's historical pursuit of sovereignty over all China, and the modern fact of its governance over Taiwan, have contributed to this association, leaving Taiwan's legal status situational and open to interpretation. The ambiguity surrounding Taiwan's sovereignty directly affects Taiwanese citizens, rendering their citizenship status precarious in international contexts.

The Taiwanese Citizenship report of the Global Citizenship Observatory, an online academic database of citizenship law and policies as well as analysis of citizenship worldwide, points out that Taiwanese citizenship has continued to evolve during the democratisation of Taiwan, and currently exists as a functional

³² Roth (n 27).

³³ *Constitution of the Republic of China (Taiwan) 1947* (Taiwan).

³⁴ For changes in the population identifying as Taiwanese rather than Chinese, see Election Study Centre, 'Taiwanese / Chinese Identity' (n 15)

³⁵ Jiunn-rong Yeh, *The Constitution of Taiwan: A Contextual Analysis* (Hart Publishing 2016) 36.

citizenship within Taiwan.³⁶ In its 2020 report, the Variety of Democracy Institute ('V-Dem') pointed out that Taiwan was ranked 37th under the Liberal Democracy Index ('LDI') worldwide.³⁷ Ensuing V-Dem annual reports indicate that Taiwan has continued to progress as a liberal democracy, advancing from rank 33 to 31 on the LDI from 2021 to 2025.³⁸ As members of a fully-fledged democracy, Taiwanese citizens enjoy rights that allow them to participate in society and in the political system.

The experience of Taiwanese citizenship outside of Taiwan, however, is a different story. Taiwanese people confront different degrees of citizenship denial in the international community. Without *de jure* recognition, the establishment of diplomatic relations between Taiwan and other states has not been formalised. Taiwan's relationship to other states on an international level does not embody the sovereign equality of states in international law. With such contestation, Taiwan cannot fully participate in the international community, as it requires the full legal personhood that comes with recognition as a sovereign state for the state to be accorded many international rights and obligations. For example, according to the terms established by the 1963 *Vienna Convention on Consular Relations* ('*Vienna Convention*'), receiving states of citizens from sending states have the duty to inform sending states when their citizens are arrested.³⁹ Due to Taiwan's contested statehood, Taiwan is not a party to such a treaty. Even if the consular right for communication with arrested nationals is considered part of customary international law, as it is practised by most states who are parties to the treaty, Taiwan's irregular sovereignty and its absence of formal diplomatic relations with member states excludes Taiwan from such international law practices in many cases. The consular right often serves as a shield for nationals in foreign territories or states, but the Taiwanese Government cannot effectively assist its nationals in this way. Because of the lack of *de jure* recognition for statehood, Taiwanese citizenship contains within it an inherited vulnerability due to the lack of formal recognition by other states. This makes the Taiwanese citizenship status unstable when its citizens are not in Taiwan, as foreign states are not bound by the obligations of international law to negotiate with the Taiwanese Government for Taiwanese citizens' rights and welfare. For Taiwanese citizens, this uncertainty of citizenship is not only a matter of legal recognition, but also a factor that impacts their daily lives on the international stage.

³⁶ Jing-Han Chen and Yi-Chen Huang, 'Report on Citizenship Law: Taiwan' (RSC/GLOBALCIT-CR 2024/01, Global Citizenship Observatory ('GLOBALCIT') Robert Schumann Centre for Advanced Studies, March 2024).

³⁷ Anna Lührmann et al, 'Autocratisation Surges – Resistance Grows' (Democracy Report 2020, Varieties of Democracy Institute ('V-Dem'), 2020) 30.

³⁸ See, Nord et al, '25 Years of Autocratisation – Democracy Trumped?' (Democracy Report 2025, V-Dem, 2025) 62; Nord et al, 'Democracy Winning and Losing at the Ballot' (Democracy Report 2024, V-Dem, 2024) 62; Evie Papada et al, 'Defiance in the Face of Autocratisation' (Democracy Report 2023, V-Dem, 2023) 44; Vanessa A Boese et al, 'Autocratization Changing Nature?' (Democracy Report 2022, V-Dem, 2022) 32; Nazifa Alizada et al, 'Autocratisation Turns Viral' (Democracy Report 2021, V-Dem, 2021) 34.

³⁹ *Vienna Convention on Consular Relations*, opened for signature 24 April 1963, 596 UNTS 261 (entered into force 19 March 1967) art 36(1)(b) ('*Vienna Convention*') outlines the obligation of the receiving state to promptly inform the consular post of the sending state if one of its nationals is arrested, imprisoned, held in custody pending trial, or detained in any way within the consular district. Furthermore, any communication from the detained person to their consular post must be promptly forwarded by the receiving state authorities. The authorities are also required to promptly inform the detained individual of their rights under this provision.

To explore how citizenship is recognised internationally — and thereby assess the challenges facing Taiwanese citizenship — the next section introduces the genuine link theory and then examines its application to Taiwanese citizenship.

III THE GENUINE LINK THEORY, PREDOMINANT NATIONALITY, AND TAIWANESE CITIZENSHIP

In the realm of international law, recognition of an individual's nationality⁴⁰ by a state depends on the establishment of genuine connections between the person and the conferring state. This principle has been long debated for its role in the recognition of nationality, and continues to hold significance in determining nationality today. This principle dates to the 1955 *Nottebohm Case*,⁴¹ in which the ICJ ruled that Liechtenstein could not claim diplomatic protection on behalf of Friedrich Nottebohm as there was no genuine link (or connection) between Liechtenstein and Mr Nottebohm. Although this case concerned diplomatic protection, looking from the recognition of nationality, states are not obliged to acknowledge a nationality granted by another state, unless the individual whose nationality is in question has a legitimate and effective connection with the conferring state. However, the binding force of the *Nottebohm Case* has long been questioned, with limitations emerging in its application. Shortly after the ruling, for instance, the Italy-US Claims Commission restricted the genuine connection requirement primarily to dual nationality cases related to diplomatic protection.⁴² In 2006, the International Law Commission rejected the requirement of genuine connection for natural persons in the *Draft Articles on Diplomatic Protection* ('*Draft Articles*'),⁴³ citing difficulties in implementing such a rule in a globalised world marked by large-scale immigration and emigration.⁴⁴ The application of the genuine link theory in contemporary international law also faces criticism. Scholars like Martijn van den Brink argue that it may lead to 'unacceptable uncertainty' for today's mobile citizens, especially concerning European Union citizenship.⁴⁵ This critique calls for limiting the theory's application, allowing individuals without real and effective ties with the granting state to securely hold that nationality while residing in other states.

While the genuine link requirement may not universally apply as a rule for recognising 'real' nationality or acquiring nationality, discussions on the connection between individuals and states have expanded to include the concept of multiple nationalities. Article 7 of the *Draft Articles* introduces the predominant nationality test to assess an individual's multiple nationalities, and to determine which one holds greater significance and effectiveness when seeking diplomatic

⁴⁰ 'Nationality' and 'citizenship' are often treated as interchangeable terms in international law, although they may be interpreted differently in certain contexts, particularly at the domestic level. See Shaw, *The People in Question* (n 6) 19–23).

⁴¹ *Nottebohm Case (Liechtenstein v Guatemala)* (Second Phase) [1955] ICJ Reports 4 ('*Nottebohm Case*').

⁴² *Flegenheimer Case (Italy v United States of America)* (Decision) (1958) 24 RIAA 327.

⁴³ *Diplomatic protection: titles and texts of the draft Articles on Diplomatic Protection*, UN Doc A/CN.4/L.684 (19 May 2006) ('*Draft Articles*').

⁴⁴ *Report of the International Law Commission on the work of its fifty-eighth session, Official Records of the General Assembly, Sixty-first Session, Supplement No 10*, UN Doc A/61/10 (2006, adopted 21 September 2007) 22–100 ('*Draft Articles on Diplomatic Protection with commentaries*').

⁴⁵ Martijn van den Brink, 'Revising Citizenship within the European Union: Is a Genuine Link Requirement the Way Forward?' (2022) 23(1) *German Law Journal* 79, 96.

protection.⁴⁶ This test considers factors like habitual residence, time spent in each country of nationality, family ties, and employment, emphasising the actual and effective connection between individuals and their state of nationality.⁴⁷ As international law evolves, the relaxation of the genuine link requirement does not eliminate scrutiny of an individual's nationality. Instead, as observed in this article, the test now turns to determine the primary link between individuals and the specific state in cases involving multiple nationalities. Both the genuine link test and the predominant nationality test include similar evaluations such as social connections to the country. Therefore, examining the genuine link between states and individuals is the essential standard for predominant nationality, even though the focus of the test has shifted. In other words, the genuine link test declines to recognise the nationality if lacking genuine connection(s),⁴⁸ while the predominant nationality test allows the individual to hold multiple nationalities while determining which of these nationalities is dominant. In addition, the evolvment shows that even in a period where holding multiple nationality is becoming much more common in a globalising world, the evaluation of genuine links between an individual and the state has not expired but continues to serve as critical criteria for citizenship recognition.

The genuine link and predominant nationality tests may offer insight on the predicament of Taiwanese citizenship being interpreted as Chinese or PRC citizenship. As such tests determine the international community's recognition of a person's nationality by focusing on the connections between the state and the individual, they highlight the core of nationality. Therefore, by examining these connections, one can gauge not only the contents and practices of nationality but also the real ties between individuals and states. The predominant nationality test does not aim to deny any of the multiple nationalities a person may hold, but it does not address cases where nationality has been forcibly imposed. Consequently, the case of Taiwanese people holding ROC nationality but having PRC nationality conferred upon them en masse — and without their consent — may extend the discussion of both the predominant nationality test or the genuine link test to encompass nationality imposed by the PRC, and potentially by other states adopting a similar approach.

With Taiwan's limited international recognition, many states view Taiwanese people as Chinese citizens, even though their real and effective links exist with the

⁴⁶ *Draft Articles* (n 43) art 7.

⁴⁷ Francisco Orrego Vicuña, 'The Changing Law of Nationality of Claims' (Interim Report, International Law Association, Report of the 69th Conference, 2000) 646[11], cited in *Draft Articles on Diplomatic Protection with commentaries* (n 44) 43; *Draft Articles on Diplomatic Protection with commentaries* (n 44) 26 [5].

⁴⁸ There are concerns about whether such an approach may lead to statelessness, especially in the migratory context. However, scholars also argue that the genuine link principle may help resolve issues of statelessness in situ, where individuals lack legal status but have strong social connections. See Caia Vlieks, 'Contexts of Statelessness' in Tendayi Bloom, Katherine Tonkiss and Phillip Cole (eds), *Understanding Statelessness* (Routledge 2017).

government of Taiwan rather than that of China.⁴⁹ Other states attribute these links not to Taiwan but to the PRC. This raises the question of whether, after a traveller or immigrant demonstrates a genuine connection with a conferring state or political entity (such as Taiwan), the destination state can refuse to recognise their nationality (Taiwanese) based on their home country's disputed sovereignty. The situation parallels Russia strategically naturalising Crimeans and Ukrainians,⁵⁰ where Russia has used nationality as a geopolitical tool amidst conflicts between states and to stabilise their newly instituted regime.⁵¹ It is worth noting that individuals from unrecognised territories such as Abkhazia or South Ossetia may voluntarily apply for the citizenship of a state involved in sovereignty disputes, such as Russia.⁵² However, involuntary naturalisation can be seen as a tool for the state to argue for its representation and governance of the people, impairing the sovereignty of the original conferring state. In summary, shifting individuals' genuine links from a contested sovereignty, Taiwan, to another state, China, creates a false link between people and that other state, a link that does not align with the facts or principles of international law. This situation contradicts the aim of examining connections between nationals and states: to ensure genuine and effective ties between people and the conferring state when recognising a person's nationality.

Mis-recognising a person's nationality may result in violations of other rights. When a foreign authority mis-recognises nationality, it may treat the person concerned as a national of a different state rather than as someone of their actual nationality. The false nationality supersedes the original one, and the shift in citizenship recognition impacts not only citizenship rights but also other rights gained via citizenship. In terms of shifts in recognition of citizenship, the imposed nationality process has become an atypical deprivation of citizenship. Depriving or granting citizenship is the sovereign right of the state concerned, while the recognition of that citizenship by other states typically occurs through tertiary rules, such as diplomatic recognition and their own legal and political considerations. However, in cases of contested citizenship, foreign states may make arbitrary decisions on contested citizenship that not only reject the genuine

⁴⁹ Some people may consider the People's Republic of China ('PRC') citizenship as a 'dormant' nationality to the Taiwanese people. However, the Republic of China ('ROC') and PRC citizens do not easily obtain each other's citizenship by relocation to either territory. Furthermore, citizens of the ROC or the PRC can only hold one citizenship of either side, and they are requested to give up their full citizenship when they register themselves in the other citizenship system. Such a procedure could resemble the naturalisation procedure. Therefore, the PRC nationality is hardly a dormant nationality for citizens of the ROC. In addition, with dormant nationality, it should also be based on citizens' will to decide whether one person would like to reactivate the citizenship. See Ruth Donner, 'Dual Nationality in International Law' (2006) 47(1) *Acta Juridica Hungarica* [*Hungarian Journal of Legal Studies*] 15.

⁵⁰ United Nations Human Rights Council, 'Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)', UN Doc A/HRC/36/CRP.3 (25 September 2017); Sam Wrighton, 'Authoritarian regime stabilisation through legitimation, popular co-optation, and exclusion: Russian *pasportizatsiya* strategies in Crimea' 2018 15(2) *Globalisations* 283.

⁵¹ These include people in Crimea, Eastern Ukraine, Abkhazia and South Ossetia. See Ramesh Ganohariti, 'Politics of Passportisation and Territorial Conflicts' in *The Palgrave Encyclopedia of Peace and Conflict Studies* 1148. (Springer International Publishing 2022); Stefan Wolff, 'Georgia: Abkhazia and South Ossetia', *Encyclopedia Princetoniensis* (Web Page, 2025) <<https://pesd.princeton.edu/node/706>>, archived at <perma.cc/QPX8-JG35>.

⁵² Anne Peters, 'Extraterritorial Naturalisations: Between the Human Right to Nationality, State Sovereignty and Fair Principles of Jurisdiction' (2010) 53(1) *German Yearbook of International Law* 623.

connection between citizenship and its granting state, but also ignore international law orders: the genuine link test, or the compliance with customary international law such as the predominant nationality test seen in the *Draft Articles*.⁵³ The impact of these decisions on contested citizenship goes beyond a mere lack of recognition of citizenship and may lead to violations of other fundamental rights. In navigating this complex landscape, it is crucial to understand that the issue at hand is not just about citizenship and the right to identity. Rather, it represents a broader challenge — a unique form of citizenship deprivation imposed by foreign states within the international community.

The atypical deprivation of citizenship in an international setting can be examined within Taiwanese examples. The discussion of deprivation of citizenship also applies the genuine link test in citizenship studies. Scholars use the genuine link test as a criterion to determine the deprivation of citizenship, as the loss of ties denotes the absence of a relationship between individuals and the state, and therefore the interdependence and the dependence of the jurisdiction are not established.⁵⁴ Therefore, losing their ‘genuine link’ with the conferring state is seen as justifying the deprivation of citizenship from persons who do not maintain close connections with the state. However, the case of Taiwanese people is not that the native state deprives their citizenship. Instead, the predicament of Taiwanese individuals, wherein their genuine connections with Taiwan are consistently misattributed to China, presents a compelling case of what this paper calls ‘atypical deprivation of citizenship’. This situation not only challenges established principles of international law but also raises concerns about the arbitrary decisions made by foreign states in recognising contested citizenship.

Where Taiwanese individuals face atypical citizenship deprivation, they encounter insufficient safeguards regarding this deprivation, given its atypical nature. The typical safeguard against citizenship deprivation in international law can be seen in several United Nations (‘UN’) legal instruments, for example art 15 of the 1948 *Universal Declaration of Human Rights*.⁵⁵ The 1961 *Convention* is seen as the main establishment for individuals’ right to nationality to prevent the arbitrary deprivation of nationality by states.⁵⁶ Even though the case of Taiwan is different in practice as it is an atypical citizenship deprivation by foreign states, it also results in the consequences of citizenship deprivation. Such atypical deprivation was not addressed by the *Conventions* aimed at preventing arbitrary deprivation, as the atypical deprivation imposes a false nationality on Taiwanese individuals. In addition, the loss of citizenship may lead to a subsequent loss of other rights attached to citizenship, for instance the right to reside.⁵⁷ In the case of Taiwanese individuals, the residency requirements for ROC and PRC citizens often differ across various states. Some states tend to offer more relaxed

⁵³ *Draft Articles* (n 43).

⁵⁴ Rainer Baubock and Vesco Paskalev, ‘Cutting Genuine Links: A Normative Analysis of Citizenship Deprivation’ (2015) 30(1) *Georgetown Immigration Law Journal* 47; Honohan (n 10).

⁵⁵ *Universal Declaration of Human Rights*, GA Res 217A (III), UN Doc A/810 (10 December 1948). Article 15 states: ‘(1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.’

⁵⁶ *1961 Convention* (n 10) arts 5–7.

⁵⁷ See, eg, Shaw, *The People in Question* (n 6) 137, which discusses how the loss of Dutch citizenship has consequences on individuals’ rights to reside and work.

regulations for Taiwanese citizens in terms of visa, temporary stay and travel.⁵⁸ Therefore, mis-recognition may lead to difficulties in this regard. One of the most commonly mentioned impacts of citizenship deprivation is the possible deportation of a dual citizen to their second country if they lose citizenship in their country of residence,⁵⁹ which in the case of overseas Taiwanese, the loss of rights may result in deportation to China. In the next section, using the case of Taiwanese citizenship, this author explores the scenario of Taiwanese citizenship in foreign lands by examining the influences of two examples of the denial of Taiwanese citizenship within *Liu and Others v Norway*⁶⁰ and *Liu v Poland*.⁶¹ In the first case, the argument draws directly on the right to identity in relation to atypical citizenship deprivation, while the second case, which focuses on other rights associated with nationality recognition in the context of an extradition case, illustrates the spillover effects of sovereignty issues on contested citizenship.

IV TAIWANESE CITIZENSHIP IN THE INTERNATIONAL SETTING: RIGHT TO TAIWANESE IDENTITY

Statehood (or its lack of) can significantly impact the citizenship rights of a people, especially on the international stage. This affects Taiwanese citizens as they travel or relocate abroad, creating uncertainty surrounding their citizenship status. Some countries, such as Morocco and Georgia, do not recognise Taiwanese passports as valid travel documents, barring Taiwanese citizens from using such passports and requiring different travel documents. However, even in places where Taiwanese passports are accepted as legitimate or genuine travel documents, individuals are often labelled as ‘Chinese’, leading to identity conflicts for Taiwanese citizens. Cases illustrating this can be found in Germany, France, Iceland, and Norway.⁶²

Taiwan’s international relations further complicate the citizenship status of Taiwanese citizens in foreign countries. Only 12 states officially recognise the ROC as a sovereign nation as of 2025.⁶³ However, in practice, most states do not categorise Taiwanese citizens as Chinese, recognising that they are not under the governance of the Chinese Government. This partial recognition involves accepting Taiwanese passports while not formally acknowledging Taiwan as a sovereign state. Consequently, the citizenship status of Taiwanese citizens in these states is legally and politically ambiguous. For instance, the UK Government does

⁵⁸ See ‘The Henley Passport Index 2025 Global Ranking’, (Report, Henley & Partners, 2025). Holders of Taiwanese passports enjoy visa-free access to 136 destinations, compared to 82 for holders of Chinese passports.

⁵⁹ Matthew J Gibney, ‘Denationalisation and Discrimination’ (2020) 46(12) *Journal of Ethnic and Migration Studies* 2551.

⁶⁰ *Liu and Others v Norway* (n 8).

⁶¹ *Liu v Poland* (n 9).

⁶² The relevant discussions can be found in: Chen Jing-Han, ‘Contested Citizenship and Statelessness in Question: An Analysis of Cases of Overseas Taiwanese People and Tibetan Exiles in Taiwan’ (PhD Thesis, University of Edinburgh, 2023) ch 4.

⁶³ ‘Bang jiao guo’ [‘Diplomatic allies’], *Ministry of Foreign Affairs, Republic of China (Taiwan)* (Web Page, 12 February 2026) <<https://www.mofa.gov.tw/AlliesIndex.aspx?n=0757912EB2F1C601&sms=26470E539B6FA395>>, archived at <perma.cc/8HH2-3G8C>.

not recognise Taiwan as a sovereign state or see Taiwanese as a nationality.⁶⁴ In principle, the UK Government should apply para 9.15.2 of pt 9 of the 2025 *Immigration Rules* to refuse entry permission for Taiwanese passport holders.⁶⁵ However, the UK Government grants electronic travel authorisations, or travel permits for individuals who are eligible for visa-free travel to the UK, to holders of ordinary Taiwanese passports. Additionally, the British Government requires Taiwanese individuals using diplomatic passports or passports without a household registration and ID number (typically those with dormant Taiwanese citizenship who reside abroad and are not registered in the household system)⁶⁶ to apply for permission to enter under the form ‘IS 116’, which is meant for political entities not recognised by the British Government.⁶⁷ In general, the majority of Taiwanese people have no difficulty visiting the UK. Many states allow entry by Taiwanese passport holders even without the further checks they may require for citizens of other states. While they do not officially recognise these passports as documents of a recognised sovereign state, Taiwan is seen as an exception among other unrecognised states regarding international mobility.

A *Denial of Taiwanese Citizenship: An Analysis of Liu and Others v Norway*

The following section delves into the complex challenges faced by Taiwanese individuals residing in European countries, shedding light on their persistent struggle for recognition of their Taiwanese nationality and identity. These individuals find themselves at the crossroads of geopolitics and personal rights, as they grapple with discrepancies in how different countries label their nationality on residence permits.⁶⁸ The denial of Taiwanese citizenship in Norway demonstrates not only the vulnerability of Taiwanese citizenship due to its contested nature, but also the arbitrary nature of the Norwegian Government’s decision to ‘strip’ Mr Liu’s Taiwanese citizenship. The following discussion

⁶⁴ United Kingdom (‘UK’) Home Office, ‘Suitability: Refusal of Entry on Arrival in the United Kingdom and Cancellation of Extant Entry Clearance or Permission’ (Report, Version 4.0, 1 June 2023) 13:

Taiwan is not recognised as a state by the UK government, nor is Taiwanese recognised as a nationality. However, you can endorse ordinary Taiwanese passports as long as they contain an ID card number. Holders of these passports do not need entry clearance to enter the UK. Holders of Taiwanese passports which do not have an ID card number need a visa to visit the UK. You must not endorse official or diplomatic Taiwanese passports. In such cases, you must ask holders of these passports for their ordinary Taiwanese passports. However, you may grant permission to enter on an IS.116 as an alternative to endorsing official or diplomatic Taiwanese passports. Taiwanese officials based in the UK must have an entry clearance endorsed in their ordinary passport.

⁶⁵ According to the rule, ‘[p]ermission to enter may be refused if the person seeking entry produces a passport or other travel document which: (a) was issued by a territorial entity or authority which is not recognised by Her Majesty’s Government as a state, or is not dealt with as a government by them’: *Immigration Rules 2025* pt 9 s 3 [9.15.2] (United Kingdom). This provision allows for the refusal of entry to individuals holding passports issued by political entities that the UK does not formally recognise as states. Taiwan clearly falls into this category, and its citizens should, in principle, face uncertainty when seeking to enter the UK. However, in practice, Taiwanese nationals can travel to the UK without such restrictions.

⁶⁶ The household registration system works as a citizenship registration system in Taiwan especially for practice of citizenship; it also relates to the right to vote and the welfare system. See Chen and Huang (n 36).

⁶⁷ UK Home Office (n 64) 10, 12–3.

⁶⁸ One notable aspect is the varying approaches adopted by European nations. For instance, in most European countries, Taiwanese individuals who are international students or long-term residents receive a residence card that explicitly states their nationality as ‘Taiwanese’. This practice is observed in the UK, despite the UK Government’s official stance of not recognising Taiwan as a de jure nationality.

foregrounds the genuine link and predominant nationality tests as well as atypical citizenship deprivation by foreign states.

1 *Background of Liu and Others v Norway*

In Norway, Taiwanese residents face a distinct challenge concerning their nationality designation on residence permits. These permits label them as being from ‘*Kina*’, meaning ‘China’ in Norwegian. Joseph Liu (a pseudonym), an international law student, responded to this issue by founding the campaign, ‘My Name, My Right’, in 2015 to address this nationality issue.⁶⁹ Their primary goal was to legally challenge the Norwegian Government’s practice of labelling Taiwanese individuals as Chinese on residence permits. They argued that this violated their human rights, particularly the right to self-identify.⁷⁰ Liu highlighted practical challenges stemming from this designation, including potential complications during interactions with immigration officers and police within Europe, where residence permits also serve as travel documents.⁷¹

In 2017, the Taiwanese participants of the campaign filed an appeal against the Norwegian Directorate of Immigration (‘UDI’),⁷² contending that such designation violated fundamental human rights. Despite their persistence, the appeal faced delays and was eventually dismissed by the Norwegian Immigration Appeal Board (‘UNE’) in March 2018.⁷³ The UNE upheld the original decision, asserting that the Norwegian Government was obligated to adhere to the One-China policy of the EU and that this imposition did not infringe upon the rights or obligations of Taiwanese individuals.⁷⁴ On 29 August 2019, a formal lawsuit was filed in the Oslo District Court against the UDI, the UNE, and the Oslo Police District.⁷⁵ The plaintiffs argued that marking their nationality as Chinese on residence permits violated their privacy rights, citing various legal provisions from the *Constitution of the Kingdom of Norway* (‘*Constitution*’), the *European Convention on Human Rights* (‘*ECHR*’), and the *International Covenant on Civil and Political Rights* (‘*ICCPR*’).⁷⁶ They referenced arts 92

⁶⁹ *Taiwan: My Name, My Right* (‘*TWMNMR*’) (Web Page, 2025) <<https://twmnmr.com/>>, archived at <perma.cc/7FFR-LFCT> (‘*TWMNMR*’).

⁷⁰ *ibid.*

⁷¹ *ibid.*

⁷² Utlendingsdirektoratet (‘UDI’) [Norwegian Directorate of Immigration], *Klageoversendelse til Utlendingsnemnda* (2 November 2017) [tr *TWMNMR*, <https://twmnmr.com/2017.11.02_UDI%20appeal%20result%20_English.pdf>, archived at <perma.cc/2ECF-FLKY>].

⁷³ Utlendingsnemnda (‘UNE’) [Norwegian Immigration Appeals Board], *Søknad om fornyet oppholdstillatelse - student* (, 28 February 2018) [tr *TWMNMR*, *Appeal Decision*, <https://twmnmr.com/2018.02.28_UNE-appeal-result_English.pdf>, archived at <perma.cc/EKX4-EYUF>].

⁷⁴ *ibid.*

⁷⁵ *Joseph Liu v Staten v/Utlendingsnemnda* [*Joseph Liu v the State by the Norwegian Immigration Appeals Board*] (Stevning til Oslo Tingrett, (29 August 2019) [tr *TWMNMR*, *Submissions to the Oslo District Court*, <https://twmnmr.com/2019.08.29_Summons%20to%20the%20Oslo%20District%20Court_English.pdf>, archived at <perma.cc/QQN7-P4NZ>] (‘*Submissions to the Oslo District Court*’)

⁷⁶ *ibid.*, citing *The Constitution of the Kingdom of Norway* (17 May 1814) (‘*Norwegian Constitution*’); *Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953) (‘*ECHR*’); *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) (‘*ICCPR*’).

(protection of human rights) and 102 (privacy right) of the *Constitution*,⁷⁷ art 8 (privacy right) of the *ECHR*,⁷⁸ and art 17 (privacy right) of the *ICCPR*.⁷⁹ The plaintiffs also argued that the UDI's justification, based on the EU's One-China policy and diplomatic considerations, lacked substantial evidence of its impact on Norway's foreign affairs.⁸⁰ According to the principle of proportionality, the State should not infringe upon individuals' privacy rights without adequate justification in a democratic society like Norway.⁸¹ Privacy rights related to ethnic identity should take precedence over national interests. Nevertheless, in November 2020, the Supreme Court dismissed the case, ruling that the plaintiffs had no grounds for appeal.⁸²

2 Liu and Others v Norway in the ECtHR

Eventually, this case was brought before the ECtHR.⁸³ In presenting their arguments, the Taiwanese plaintiffs referenced key ECtHR cases to advocate for the protection of the private rights as outlined in art 8 of the *ECHR*.⁸⁴ Article 8 states:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.⁸⁵

Article 8 firstly safeguards individuals from arbitrary intrusions into their private and family life, home and correspondence.⁸⁶ Besides this negative obligation, member states also bear responsibility for guaranteeing the positive obligation of art 8 rights, even in interactions between private entities.⁸⁷ In situations involving a negative obligation (or a duty not to act), courts are required to evaluate whether the interference aligns with the stipulations of art 8(2).⁸⁸

⁷⁷ *Norwegian Constitution* (n 76) arts 92, 102.

⁷⁸ *ECHR* (n 76) art 8.

⁷⁹ *ICCPR* (n 76) art 17.

⁸⁰ Submissions to the Oslo District Court (n 75).

⁸¹ See *ibid*.

⁸² *Joseph Liu, XXX-XXX Hong and XXX-XXX Yin v the State by the Ministry of Justice and Emergency Management*, Sak nr 20-147873SIV-HRET (9 November 2020) (Norges Høyesteretts [Norwegian Supreme Court]) [tr TWMNMR, <https://twmnmr.com/2020.11.09_Judgment%20of%20the%20Supreme%20Court_English.pdf>, archived at <perma.cc/G6V5-WUMZ>.

⁸³ *Liu and Others v Norway* (n 8).

⁸⁴ 'Annex to the Application Pursuant to Article 34 of the European Convention of Human Rights', *Liu and Others v Norway* (ECtHR, Application No 24859/21, 4 May 2021), 3–14 ('Annex to *Liu and Others v Norway*'), citing *ECHR* (n 76) art 8.

⁸⁵ *ibid*.

⁸⁶ *Libert v France* (European Court of Human Rights, Fifth Section, Application No 588/13, 22 February 2018) [40]–[42]. See also ECtHR, Guide on Article 8 of the European Convention on Human Rights: Right to respect for private and family life, home and correspondence (updated 31 August 2025) 8 ('Guide on art 8 of the *ECHR*').

⁸⁷ *Bărbulescu v Romania* (ECtHR, Grand Chamber, Application No 61496/08, 5 September 2017) [108]–[111]. See Guide on art 8 of the *ECHR* (n 86) 8.

⁸⁸ Guide on art 8 of the *ECHR* (n 86) 8.

Specifically, it must determine if the interference was lawful, pursued a legitimate objective, and was necessary in a democratic society.⁸⁹ The Taiwanese plaintiffs argued that their case could be assessed from two angles under art 8: first, as an interference with their right to identity and private life due to the forced imposition of a national identity upon them; and second, as a positive obligation on the respondent state to recognise their existing nationality, which they had previously accepted and was used by the plaintiffs for travel and entry into the country.⁹⁰

To begin with, the plaintiffs contended that while art 8 of the *ECHR* does not explicitly confer the right to acquire a specific nationality, it remains indisputable that nationality constitutes a crucial aspect of an individual's identity, citing the precedent set by the case *Menesson v France*: 'Whilst [art] 8 of the *Convention* does not guarantee the right to acquire a particular nationality, the fact remains that nationality is an element of a person's identity'.⁹¹ Their application asserted that the national identity of Taiwanese people should fall under the protective umbrella of art 8 within its interpretation on the rights around ethnic identity.⁹² Cases such as *Ciubotaru v Moldova* underscored the importance of an individual's ethnic identity, emphasising its significance under art 8.⁹³ They also drew parallels with the case *Tasev v North Macedonia*,⁹⁴ linking self-identification to a person's ethnic identity, and the case *Dadouch v Malta*,⁹⁵ which argued the importance of recognising personal legal status, particularly in the context of marriage.

Therefore, the plaintiffs argued for their national identity with reference to art 8; in this, this author believes their arguments were with good reason. Firstly, with the cases mentioned above, the ECtHR confirmed that 'the concept of "private" life' is a broad term not susceptible to exhaustive definition... [art] 8 protects in addition a right to personal development, and the right to establish and develop relationships with other human beings and the outside world'.⁹⁶ In *Dadouch v Malta*, although the central issue was the recognition of marital status, the ECtHR affirmed that the Maltese State's acknowledgment of marriage formed part of an individual's personal and social identity, and thus fell within the scope of art 8 protections, particularly in relation to psychological integrity.⁹⁷

⁸⁹ *ibid.*

⁹⁰ TWMNMR (n 69); Annex to *Liu and Others v Norway* (n 84) 2,17.

⁹¹ *Genovese v Malta* (ECtHR, Fourth Section, Application No 53124/09, 11 October 2011) [33]. See also *Menesson v France* (ECtHR, Fourth Section, Application No 65192/11, 26 September 2014) [97] ('*Menesson v France*').

⁹² Annex to *Liu and Others v Norway* (n 84) 3–7.

⁹³ *Dadouch v Malta* (ECtHR, Fourth Section, Application No 38816/07, 20 July 2010) [47], cited in *ibid* 3–6 ('*Dadouch v Malta*').

⁹⁴ *Tasev v North Macedonia* (ECtHR, First Section, Application No 9825/13, 16 August 2019) [32]–[35], cited in Annex to *Liu and Others v Norway* (n 84) 6.

⁹⁵ *Dadouch v Malta* (n 93) [47]–[50], cited in Annex to *Liu and Others v Norway* (n 84) 6.

⁹⁶ *Dadouch v Malta* (n 93). See also *Menesson v France* (n 91); *Axel Springer AG v Germany* (ECtHR, Grand Chamber, Application No 39954/08, 7 February 2012) [83]; *Niemietz v Germany* (ECtHR, Application No 13710/88, 16 December 1992) [29]; *Pretty v the United Kingdom* (ECtHR, Fourth Section, Application No 2346/02, 29 April 2002) [61], [67]; *Oleksandr Volkov v Ukraine* (ECtHR, Fifth Section, Application No 21722/11, 9 January 2013) [165]–[167]; *El Masri v the former Yugoslav Republic of Macedonia* (ECtHR, Grand Chamber, Application No 39630/09, 13 December 2012) [248]–[250], which concerned the applicant's secret and extrajudicial abduction and arbitrary detention. See also Guide on art 8 of the *ECHR* (n 86) 48, 66.

⁹⁷ The ECtHR further affirmed the connection between the registration of marriage and the recognition of one's legal civil status, stating that 'which undoubtedly concerns both private and family life, comes within the scope of [art] 8 § 1': see *Dadouch v Malta* (n 93) [48].

By extension, the plaintiffs argued that ethnic identity, as a component of one's legal civil status and deeply connected to a person's sense of self and belonging, should also fall within the protective scope of art 8.⁹⁸ While marital status and ethnic identity are distinct, both relate to how individuals are recognised by the state in ways that significantly affect their private and social identity. Therefore, the protection of ethnic identity under art 8 is consistent with the ECtHR's recognition that legal status, where central to one's identity, is part of the private life safeguarded by the *ECHR*.

Building on this precedent in *Ciubotaru v Moldova*,⁹⁹ the ECtHR ruled that ethnic identity is protected under art 8. Combining these principles, the plaintiffs argued the registration of Taiwanese identity, as an ethnic identity, should be recognised as essential to safeguarding the psychological integrity and personal development of this ethnic group.¹⁰⁰ Given that the ECtHR has acknowledged ethnic identity and the registration of legal civil status as critical aspects of private life under art 8, protecting Taiwanese identity therefore aligned with its established jurisprudence.¹⁰¹ In addition, framing Taiwanese identity as an ethnic identity does not directly challenge the recognition of nationality or raise immediate questions about statehood. Rather, this approach reflects the complexity and sensitivity involved in asserting Taiwanese identity in the international arena as nationality may bring up more complexities. In this context, the plaintiffs relied on the precedent to claim protection for ethnic identity under international human rights law.¹⁰² While the right to ethnic identity may seem distinct from claims to nationality or citizenship, the two often overlap, particularly in cases of contested citizenship. In such situations, the denial of ethnic identity and the denial of citizenship may become interchangeable, as both reflect the underlying instability caused by unresolved questions of sovereignty, state recognition, and citizenship. On the other hand, *Dadouch v Malta* serves as a judicial example that while a passport may be valid proof of one's nationality, it is not always regarded as definitive evidence of nationality.¹⁰³ In this specific context, the Taiwanese passport might be regarded as proof of the passport holders' nationality. Nonetheless, the plaintiffs did not focus extensively on this point, instead framing their argument primarily around ethnic identity.

The *Liu and Others v Norway* case eventually reached the ECtHR in July 2021, but it was ruled inadmissible by the judge who declared it manifestly ill-founded: 'The Court finds, in light of all the material in its possession, that the matters complained of do not disclose any appearance of a violation of the rights and

⁹⁸ Annex to *Liu and Others v Norway* (n 84) 4, 6.

⁹⁹ *Ciubotaru v Moldova* (ECtHR, Fourth Chamber, Application No 27138/04, 27 April 2010) [49]–[59].

¹⁰⁰ Annex to *Liu and Others v Norway* (n 84) 4.

¹⁰¹ *Liu and Others v Norway* (n 8).

¹⁰² Annex to *Liu and Others v Norway* (n 84) 3–20.

¹⁰³ *Dadouch v Malta* (n 93). Usually, one is required to hold full citizenship before applying for a passport. However, there are cases that show passports cannot always be regarded as proof of nationality. See Kamal Makili-Aliyev, 'An Illegal Republic: The Formation and Continuity of the Collective Legal Identity of Karabakh Armenians' (2023) 27(7) *Citizenship Studies* 799, 808, 810; Eiki Berg and Martin Mölder, 'Who is Entitled to 'Earn sovereignty'? Legitimacy and Regime Support in Abkhazia and Nagorno-Karabakh' (2012) 18(3) *Nations and Nationalism* 527, 534; John Mitchell and Richard Wilson (eds), *Human Rights in Global Perspective: Anthropological Studies of Rights, Claims and Entitlements* (Taylor & Francis Group 2003) 103–7.

freedoms set out in the *Convention* or the *Protocols* thereto'.¹⁰⁴ Along with other campaign organisers, Schona Jolly KC (the lawyer representing the plaintiffs and chair of the Bar Human Rights Committee of England and Wales) contested this finding, suggesting that there were no substantive reasons for the case's inadmissibility and hinting at possible political motivations.¹⁰⁵ The campaigners decided not to take their case to the UN Human Rights Committee ('UNHRC') due to concerns that Norway had a reservation on the *Optional Protocol to the International Covenant on Civil and Political Rights* ('*Optional Protocol*'),¹⁰⁶ which had been reserved against art 5(2) when the protocol was ratified.¹⁰⁷ This reservation would prevent the UNHRC from considering cases that had previously undergone substantive examination by other international institutions. Based on precedent, cases deemed 'manifestly ill-founded' by the ECtHR were seen as having undergone substantive review. Therefore, the campaigners and their lawyer believed it was highly unlikely that the UNHRC would consider the case.

3 *Genuine link between Liu and Others v Norway and Atypical Citizenship Deprivation*

The *Liu and Others v Norway* case dealt with the right to national identity based on the private right in the international treaties and constitutional law of Norway, however the Norwegian Government refused to consider these aspects. The right to identity might not be seen as an absolute right, and the State may interfere if it is in the public interest (as art 8 of the *ECHR* has pointed out). However, this case also shows that Norway ignores the genuine link between the Taiwanese people and Taiwan; instead, it denies the Taiwanese citizenship while attaching Chinese citizenship to them. That is, the Norwegian Government not only does not consider the genuine connection but establishes a false connection between the Taiwanese people and the Chinese Government. Following the discussion in the previous sections, the lack of de jure recognition of Taiwanese citizenship has allowed each state to decide how to deal with the entry of people on their Taiwanese passports. Nevertheless, does such sovereign power extend to stripping a foreign citizen of citizenship by forcing a different citizenship on them? A state may have the power to recognise or not recognise another citizenship, but can it fully ignore a genuine link to that citizenship when there are conflicts?

¹⁰⁴ *Liu and Others v Norway* (n 8).

¹⁰⁵ Yiling Cheng, Betty Hu and Joseph Liu, 'NORWAY/TAIWAN: Taiwanese registered as Chinese citizens in Norway', *Human Rights Without Frontiers* (Web Page, 16 August 2021) <<https://hrwf.eu/norway-taiwan-the-european-court-of-human-rights-ruled-the-application-of-taiwanese-in-norway-inadmissible/>>, archived at <perma.cc/XKP5-SM44>; Yaoyu Chiang, 'Tai wan ren zhuang gao nuo wei zheng fuou zhou ren quan fa yuan bu shou li [Taiwanese filed a complaint to the European Court of Human Rights, the court ruled the application of Taiwanese in Norway inadmissible]' *Deutsche Welle* (online, 4 August 2021) <<https://www.dw.com/zh/a-58736739>>, archived at <perma.cc/W6BG-TYWS>.

¹⁰⁶ *Optional Protocol to the International Covenant on Civil and Political Rights*, opened for signature 19 December 1996, 999 UNTS 171 (entered into force 23 March 1976) ('*Optional Protocol to the ICCPR*').

¹⁰⁷ Norway had submitted the following reservation to art 5(2): 'The Committee shall not have competence to consider a communication from an individual if the same matter has already been examined under other procedures of international investigation or settlement.' See 'Optional Protocol to the International Covenant on Civil and Political Rights', *United Nations Treaty Collection* (online, 11 June 2025) <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-5&chapter=4&clang=_en>, archived at <perma.cc/3JUJ-6FQT>.

The Norwegian authorities dominate cases concerning the recognition of citizenship of Taiwanese people and refuse their input, making the recognition of Taiwanese citizenship a target for their foreign policy: the One-China policy. It should be seen as a mistreatment for the Norwegian Government not to consider the predominant test where there are multiple nationalities in conflict, and to instead consider its own diplomatic needs to manipulate an individual's right to their own nationality. By overlooking the Taiwanese people's close connection to the Taiwanese Government, the Norwegian authorities deprive foreign citizens of their citizenship(s) for its state politics. This case underscores the importance of aligning citizenship recognition with the concept of a genuine link to prevent arbitrary and atypical citizenship deprivation.

B *From Citizenship to Other Rights: An Analysis of Liu v Poland*

In another case, *Liu v Poland*,¹⁰⁸ the ECtHR intervened and advised Poland against extraditing a Taiwanese individual to China due to human rights concerns. While this case did not delve into the jurisdictional or citizenship regime differences, it highlights concerns related to the potential extradition to China and potential human rights abuses, such as torture and inhumane treatment.¹⁰⁹ Therefore, despite the applicant being Taiwanese, the case was examined primarily from the perspective of human rights abuses in China instead of the right to identity. This case not only underscores the difficulties faced by Taiwanese individuals in international settings as they risk being mistreated, but also points out the 'spillover effects' of sovereignty in the international regime. This is not the first ECtHR case concerning the extradition of a Taiwanese citizen to China. In 1999, a similar case arose in Macao, but the Court dismissed the case for lack of jurisdiction.¹¹⁰

1 *Liu v Poland in the ECtHR*

In the *Liu v Poland* case, the applicant was involved in an international telecommunications fraud syndicate and was arrested in Poland on 6 August 2017. The Chinese authorities requested his extradition on 1 September. The Polish national court ruled that the applicant's extradition to China would not compromise his right to a fair trial, while also complying with Polish law as there were insufficient grounds to believe he would face torture or other ill-treatment.¹¹¹ Subsequently, this case was brought to the ECtHR, where the applicant raised

¹⁰⁸ *Liu v Poland* (n 9).

¹⁰⁹ *ibid* 78–83.

¹¹⁰ See *Yonghong v Portugal* (ECtHR, Fourth Section, Application No 50887/99, 25 November 1999). The case reflected the complex sovereignty shifts between Portugal and China before the end of 1999. The Court found it had no jurisdiction *ratione loci* because Portugal had never made a declaration under art 56 of the *ECHR* (n 76) (or the equivalent in *Protocol No 6*) extending the *ECHR*'s application to Macao: *ECHR* (n 76), as amended by *Protocol No 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty*, opened for signature 28 April 1983, ETS No 114 (entered into force 1 March 1985). Without such a declaration, acts of Macanese authorities (or Portuguese policies toward Macao) fell outside the *ECHR*'s scope. The Governor's decision to allow extradition proceedings to continue was deemed only a preparatory step, not a final act by Portuguese judicial authorities. Moreover, Macao's courts had held exclusive judicial authority since June 1999, and no Portuguese court would review the case, leaving the ECtHR unable to examine the applicant's claims.

¹¹¹ *Liu v Poland* (n 9) [8]–[28].

concerns about his potential extradition, arguing that it would violate arts 3 and 6(1) of the *ECHR*,¹¹² being the prohibition of torture and right to a fair trial respectively. Specifically, he claimed that extradition to China could result in torture, inhumane and degrading treatment, and the absence of a fair trial.¹¹³ Additionally, he filed a complaint under art 5(1) (right to liberty and security), asserting that his pre-extradition detention was unreasonably prolonged and amounted to arbitrariness.¹¹⁴ The ECtHR determined that the applicant's detention did not meet the criteria of 'lawfulness' as defined in art 5(1)(f) of the *ECHR*,¹¹⁵ considering the purpose of extradition proceedings and unwarranted delays within the Polish legal proceedings.¹¹⁶

The arrest of a state's citizen invokes an international norm regarding consular rights. According to art 36(1)(b) of the *Vienna Convention*, the receiving state must promptly notify the sending state's consular post upon the arrest or detention of the sending state's national, forwarding their communications and informing them of their rights.¹¹⁷ However, as discussed, Taiwan's irregular sovereignty means its government faces difficulties in practicing these consular rights in foreign territories. In the case of extradition, the PRC may have the right to request the enforcement based on the agreements with different states, but this should not affect the ROC's consular right for communication with its nationals. The exclusion of a state and the mis-recognition of its citizenship, here for example with the ROC, results in mistreatment towards the Taiwanese people at the international level. Given Taiwan's diplomatic challenges internationally, Taiwanese individuals seeking protection in foreign lands often need to seek remedies at the individual level, such as resorting to domestic and international human rights laws. While consular rights are usually a matter of international public law between states, the *American Convention on Human Rights* has recognised them as human rights, particularly in relation to due process.¹¹⁸ By contrast, neither the *ECHR* nor the ECtHR have explicitly recognised consular rights for foreign nationals. This article does not propose extending such rights under the *ECHR*; rather, it underscores the predicaments faced by citizens of contested sovereignties who lack adequate diplomatic protection.

2 *Challenges to Sovereignty: The Role of Extradition*

This extradition case does not revolve around the statehood of Taiwan or the broader conflicts between Taiwan and China. However, in recent years, deportations and extraditions of Taiwanese individuals to China have been employed as a measure by the Chinese Government to weaken Taiwan's sovereignty. Between 2016 and 2019, the non-governmental organisation ('NGO') Safeguard Defenders recorded 600 cases of Taiwanese nationals abroad facing

¹¹² *ECHR* (n 76) arts 3, 6(1).

¹¹³ *Liu v Poland* (n 9) [1], [9], [10], [25].

¹¹⁴ *ibid* [1], [85]; *ECHR* (n 76) art 5(1).

¹¹⁵ *ECHR* (n 76) art 5(1)(f): 'The lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.'

¹¹⁶ *Liu v Poland* (n 9) [104].

¹¹⁷ See, eg, *LaGrand (Germany v United States of America) (Judgement)* [2001] ICJ Rep 466; *Vienna Convention* (n 39) art 36(1)(b).

¹¹⁸ *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law (Advisory Opinion)* (Inter-American Court of Human Rights, OC-16/99, 1 October 1999) [1], [66], [87], [117]–[124].

extradition or deportation to China, often without access to Taiwanese consular support or communication with Taiwanese officials or family members.¹¹⁹ This practice exposes these individuals to human rights abuses and contradicts China's obligations under international agreements, including the *Cross-Strait Agreement on Joint Crime-Fighting and Judicial Mutual Assistance Agreement* which was adopted by Taiwan and China in 2009.¹²⁰ While this agreement does not explicitly address jurisdiction or opposability to third states, it was framed as a mechanism to protect the interests of people on both sides of the Taiwan Strait.¹²¹ Until 2016, Taiwan and China had in practice largely returned their respective citizens in such cases, reflecting an unwritten tacit understanding on extradition and deportation.¹²² This changed after Taiwan elected a president supportive of independence, prompting Beijing to use such transfers to weaken Taiwan's sovereignty and extend its influence globally. Similar cases have been observed in Cambodia, Kenya, Spain, the Philippines, Armenia and more.¹²³ While the legal discourse of the *Liu v Poland* case does not directly concern Taiwanese sovereignty, the outcome significantly affects the practice of sovereignty and Taiwanese citizenship.

3 *Spillover Effects of Contestation on Taiwanese Sovereignty and Citizenship*

Taiwan's statehood has limited its ability to participate in formal diplomatic activities. In addition, its international status has influenced its citizenship practices, regardless of the Chinese Government's efforts to extend its influence over Taiwanese individuals. This contestation of Taiwan's status often surfaces in legal cases involving Taiwanese persons. The case of *Liu v Poland* illustrates the complex implications of contested sovereignty. While the case was ostensibly focused on a human rights issue, specifically concerning the applicant being tortured or otherwise ill-treated upon extradition,¹²⁴ it indirectly revealed deeper political and legal tensions. As discussed above, the use of extradition and deportation in this context can be viewed as a means of obstructing Taiwan's exercise of sovereign authority. The judgment confirms general human rights concerns regarding the PRC; it also unintentionally disrupts the strategic use of extradition to undermine Taiwanese sovereignty. This demonstrates how legal decisions, even when not explicitly about sovereignty, can shape how sovereignty and recognition are negotiated in practice. Therefore, this author characterises this as an instance of the spillover effects of contested sovereignty, where disputes over recognition permeate and influence seemingly unrelated legal matters.

¹¹⁹ 'China's Hunt For Taiwanese Overseas: The PRC's Use of Extradition and Deportation to Undermine Taiwanese Sovereignty' (Report, Safeguard Defender, 30 November 2021) .

¹²⁰ *Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement, ROC and PRC*, signed and entered into force 22 May 2009.

¹²¹ Jye-Ching Lee, 'Theory and Practice on Negotiation of Cross-Strait Criminal Jurisdiction and Transfer of Jurisdiction for Criminal Proceedings — Starting from Negotiation and Proceedings of Jurisdiction for Cross-Border Fraud Suspects in Third Countries' (2015) 94 *Taipei University Law Review* 163.

¹²² Chen Yanling and Liu Yiqi, 'Cross-Strait Interactions Have Slowed, Resulting in Limited Effectiveness in the Implementation of Certain Provisions under the "Agreement on Joint Crime-Fighting and Mutual Legal Assistance across the Taiwan Strait," Which Urgently Requires a Breakthrough' *Legislative Yuan, Republic of China (Taiwan)* (Web Page, 1 August 2021) <<https://www.ly.gov.tw/Pages/Detail.aspx?nodeid=45068&pid=210818>>, archived at <perma.cc/74W4-HJ6L>.

¹²³ Safeguard Defender (n 119) 7.

¹²⁴ *Liu v Poland* (n 9) [68]–[83], [98]–[104].

Cases involving Taiwanese individuals, whether natural or legal persons, become intertwined with the contestation of statehood and citizenship. *Liu v Poland* gives another example of the hidden citizenship argument behind the prima facie legal issues. The case stresses that recognition of nationality does not only have a nominal meaning in these cases; it can also serve as a bridge towards the violation of other human rights. Citizenship is considered a gateway to other rights. Problems with citizenship can also lead to the breach of other rights. The ECtHR may unintentionally break this cycle in the case of *Liu v Poland*, although the core issue of recognising Taiwanese citizenship remains unaddressed.

C *Evaluating ECtHR decisions in Liu and Others v Norway and Liu v Poland*

The ECtHR's decisions in these cases carry substantial implications for citizenship, even if the primary arguments do not surround it. The ECtHR may not want to address Taiwanese citizenship recognition, but it is challenging for the Court to avoid the contestation of Taiwanese citizenship. While *Liu v Poland* suggests that the Court may intervene when human rights concerns reach a threshold of torture or jeopardising a fair trial, or when they involve *jus cogens* norms in international law and fundamental principles of a legal system and severe human rights violations,¹²⁵ *Liu and Others v Norway*, a case focused on national identity recognition, was not even considered under the ECtHR.¹²⁶

The two ECtHR cases have drawn attention to the dispute over Taiwanese citizenship on the international stage. The unresolved nature of Taiwanese sovereignty directly impacts the practice of citizenship recognition. However, the dispute takes on a new dimension when foreign governments, like Norway, align with Chinese authorities and categorise Taiwanese individuals as Chinese. This kind of action forces the nominal claim of the Chinese Government by naturalising Taiwanese people en masse without their consent, consequently turning it into an international practice to categorise them as Chinese. In other words, while Taiwanese citizenship may have a contested nature, it remains unsettled due to the sovereignty of Taiwan but should not be casually regarded as another form of citizenship or another state's citizenship. This indefinite characterisation of contested citizenship (Taiwanese citizenship) runs counter to some international practices that conveniently classify Taiwanese people as Chinese.

The issue of Taiwanese citizenship at the international level might be seen as an extended form of citizenship deprivation. By consistently denying Taiwanese citizenship within the international community and ignoring Taiwanese people's claims in courts and on official platforms, these acts may be viewed as a unique form of citizenship deprivation. It is atypical because it is practiced by foreign authorities to undermine the citizenship of Taiwanese individuals. This does not necessarily result in passport revocation or denial of re-entry to Taiwan, but cases like *Liu v Poland* and other instances of forced deportation and extradition demonstrate that by deporting or extraditing Taiwanese individuals to China, Taiwanese sovereignty and the practice of Taiwanese citizenship are eroded. Such a deliberate misinterpretation of citizenship not only perpetuates a false understanding of one's legal identity and status, but also replaces Taiwanese citizenship with Chinese citizenship within foreign legal systems. In essence, it

¹²⁵ *ibid* [98]–[104].

¹²⁶ *Liu and Others v Norway* (n 8).

strips Taiwanese people of their citizenship and exposes them to new risks associated with Chinese citizenship.

As mentioned at the beginning of this article, while the conferral or withdrawal of nationality falls within the sovereign domain of the state, citizenship also carries an international dimension — particularly in ensuring compliance with international obligations such as those set out in various international law instruments. In addition, the issue of nationality recognition involves the international law as discussed earlier. The recognition of nationality by other states, which affects the practice of citizenship in foreign states, should also be consistent with the principles of international law values: examining genuine links between individuals and the conferring states, and avoiding the involuntary naturalisation. Nevertheless, in the case of Taiwanese people's citizenship, this is highly disregarded in the recognition of their nationality when foreign authorities mis-recognise citizenship of Taiwanese people as Chinese. Therefore, while the dispute over citizenship may not always render Taiwanese citizenship ineffective, it does have the potential to lead to other human rights violations due to the misinterpretation of Taiwanese citizenship.

The contested citizenship has another consequence when it is in an international domain; that is, the contestation of sovereignty and citizenship has its spillover effects. The spillover effect of the Taiwanese citizenship can be seen in *Liu v Poland* in that the principal issue of the legal dispute is the possible human rights abuse regarding the extradition,¹²⁷ but the sovereignty of Taiwan and the diplomatic difficulties due to the contestation of Taiwan's statehood deeply influenced the rights of the Taiwanese person who was arrested. Indeed, with the case of *Liu and Others v Norway*, the issue may be more relevant to the vulnerability of the contested citizenship.¹²⁸ Whereas the case of *Liu v Poland* reflects that the vulnerability can be part of the issue hidden under the main legal discourse.¹²⁹ Citizenship is a right leading to other rights, as it serves as a person's fundamental legal status; therefore, one's citizenship status is an essential basis of a person when there is a legal dispute, whether it concerns the personal status or not. When the citizenship does not have a completely solid status, like the Taiwanese nationality, the contestation of the citizenship can extend its influence onto international legal disputes concerning human rights.

V CONCLUSION

In examining the complexities surrounding Taiwanese citizenship within the international legal landscape, this article delves into the contested nature of Taiwanese citizenship through the lens of two ECtHR cases. Central to this discussion is the notion of atypical citizenship deprivation and the spillover effects stemming from the contentious status of Taiwanese sovereignty.

The case of *Liu and Others v Norway* underscores the struggles of Taiwanese individuals residing in European countries, emphasising their right to choose their national identity and challenging the imposition of Chinese nationality on their residence permits. This case has brought attention to the importance of safeguarding personal identity and addressing challenges related to nationality recognition through privacy rights on a broader scale. However, the case also

¹²⁷ *Liu v Poland* (n 9) [1].

¹²⁸ Annex to *Liu and Others v Norway* (n 84) 1–20.

¹²⁹ *Liu v Poland* (n 9) [1].

shows how the Norwegian Government should have applied the genuine link to determine the citizenship of Taiwanese people to avoid arbitrary decisions regarding the recognition of citizenship. Turning to the *Liu v Poland* case, the applicant, who was involved in an international telecommunications fraud syndicate, faced extradition to China. Despite the domestic court ruling in favour of extradition, the ECtHR expressed concerns about the human rights violations concerning torture and right to a fair trial. The case also touches upon consular rights and the challenges faced by Taiwan, which is not a party to the *Vienna Convention* due to its contested statehood; the denial of consular rights and recognition of Taiwanese citizenship on the international stage may subsequently result in mistreatment of Taiwanese people. Ultimately, the legal discourse of *Liu v Poland* may not address Taiwanese sovereignty, but the outcomes significantly impact Taiwanese sovereignty and citizenship, showcasing the intricate interplay of legal disputes, human rights and geopolitical considerations, as well as the spillover effects of the contested citizenship.

The cases of *Liu v Poland* and *Liu and Others v Norway* shed light on the complex and unresolved issue of Taiwanese citizenship in the international arena. The ambiguous nature of Taiwanese sovereignty directly impacts the recognition of Taiwanese citizenship. When foreign governments such as Norway categorise Taiwanese individuals as Chinese, it not only challenges the legitimacy of Taiwanese citizenship but also sets a troubling international precedent. This practice aligns with Chinese authorities' attempts to naturalise Taiwanese people as Chinese without their consent, eroding the distinctiveness of Taiwanese citizenship and classifying them incorrectly within foreign legal systems. This mis-recognition of citizenship carries serious consequences. Forced deportations and extraditions of Taiwanese individuals to China not only violate human rights but also undermine the sovereignty of Taiwan and the practice of Taiwanese citizenship. It replaces Taiwanese citizenship with Chinese citizenship within foreign legal frameworks, exposing Taiwanese people to new risks associated with Chinese citizenship. While the denial of Taiwanese citizenship on the international stage may not always render it ineffective in most cases, it has the potential to lead to severe human rights violations due to the misclassification of Taiwanese citizenship. The mis-recognition ignores the examination of genuine links between states and citizens, becoming an atypical deprivation of one's original citizenship by replacing it with a forced citizenship which is attributed to the political needs and ignorance of the foreign authorities. *Liu v Poland* also points out that even though the primary legal arguments in these cases revolve around human rights abuses and extradition, the status of Taiwanese citizenship plays a crucial role in the broader context and brings in spillover effects to the case. These cases highlight the need for international recognition of the unique status of Taiwanese citizenship and the importance of protecting the rights and identity of Taiwanese individuals in the face of diplomatic challenges. In summary, the cases of *Liu v Poland* and *Liu and Others v Norway* underscore the intertwined nature of contested citizenship and human rights concerns, highlighting that the recognition of citizenship is not just a nominal concept but also a gateway to other fundamental rights, while the mis-recognition of citizenship may result in scenarios similar to a faulty atypical citizenship deprivation.