



### Ireland - Damache v Minister for Justice

The applicant brought an appeal challenging the constitutionality of s.19 of the Irish Nationality and Citizenship Act 1956, which governs the procedure by which revocation of naturalisation is determined. The fact that the Minister initiated the revocation process, appointed the committee charged with conducting the inquiry and then reached the final decision, was unconstitutional according to the applicant, as it breached the right to fair procedures. The Court held that s.19 was unconstitutional because it did not provide the procedural safeguards required to meet the high threshold of natural justice applicable to a person facing such severe consequences, i.e. revocation of naturalisation.

**Case name (in original language) :** Ireland- Damache v Minister for Justice

**Case status:** Decided

**Case number:** [2020] IESC 63

**Citation:** Damache v Minister for Justice [2020] IESC 63

**Date of decision:** 14/10/2020

**State:** Ireland

**Court / UN Treaty Body:** Supreme Court

**Language(s) the decision is available in:** English

**Applicant's country of birth:** Algeria

**Applicant's country of residence:** Ireland {Republic}

**Legal instruments:** 1961 Statelessness Convention, European Convention on Human Rights (ECHR), European Union law, Universal Declaration of Human Rights (UDHR)

**Key aspects:** Acquisition of nationality, Deportation and removal, Deprivation of nationality, Procedural safeguards, Standard of proof, Statelessness determination

**Relevant Legislative Provisions:**

s. 15, 17, 19 of the Irish Nationality and Citizenship Act, 1956

Arts. 9, 37 of the Constitution

Arts. 6 and 13 of the ECHR

s. 1, s. 15 Extradition Act, 1965

s. 27 of the European Arrest Warrant Act 2012

s. 20 British Nationality Act 1948

Art. 15 of the Universal Declaration on Human Rights 1948

art. 41 of the EU Charter

s. 21(5) of the Refugee Act 1996

## **Facts**

The applicant was an Algerian national who married an Irish citizen and had been granted a certificate of naturalisation in Ireland. He subsequently pleaded guilty in the United States to a charge of materially assisting in an Islamist terrorist conspiracy. The Minister then issued a proposal to revoke the applicant's naturalisation on the basis that he had failed in his duty of loyalty and fidelity to the State. The applicant instituted judicial review proceedings challenging the procedure by which revocation of naturalisation is determined under the Irish Nationality and Citizenship Act 1956 (1956 Act). The applicant complained *inter alia* that the fact that the Minister initiated the revocation process, appointed the committee charged with conducting the inquiry and then reached the final decision, was unconstitutional, as it breached the right to fair procedures.

The High Court judge refused the relief sought but ordered a stay on the revocation. The applicant appealed to the Supreme Court.

## **Legal arguments by the applicant**

1. s. 19 of the 1956 Act is unconstitutional
2. Citizenship revocation has such far-reaching effects that it constitutionally must be done by a court, it cannot be an administrative power.
3. The revocation cannot be fairly 'adjudicated' upon by the Minister because he is not a disinterested party by virtue of the fact that he is seeking the revocation. The applicant argued that this violates the principle contained in the maxim *nemo iudex in causa sua*, i.e. the principle of natural justice that no person can

judge a case in which they have an interest.

4. This case raises issues of general public importance and an appeal would be in the interests of justice, and also that exceptional circumstances exist justifying the leapfrog appeal:
  - This case would provide clarity on the question of whether a particular power is an administrative, executive function or a judicial function.
  - Some conflicting authorities exist on this point and a number of other cases dealing with revocation of citizenship would stand to benefit from clarity from this Court

### **Legal arguments by the opposing party**

1. The appellant may be premature in seeking relief given that the Minister has not yet given a final decision in this matter, he only opposed the application in part
2. The defendant failed to exhaust all of his alternative remedies.
3. The revocation of the privilege of naturalisation is not a judicial power. The grant of naturalisation and the deprivation of it, particularly in the case of a naturalised citizen where citizenship is granted as a matter of privilege and not as of right, are executive powers formerly exercised at the prerogative of the Crown.
4. The power to control the entry and residence of non-nationals in the State is an aspect of the executive power of the State.

### **Decision & Reasoning**

Revocation of citizenship – executive or judicial power?

The argument that citizenship has such far-reaching effects that it constitutionally must be done by a court was rejected by the Supreme Court. Citizenship revocation does not satisfy all of the criteria for a ‘judicial’ function which must be vested in judges. Historically, it is part of the executive function of the State, as well as immigration powers. Therefore, provided the process is fair, there is nothing to prevent legislation giving the Minister the power to revoke citizenship.

Fair procedures argument – Minister initiating process and ultimately deciding on the matter

Section 19 of the Irish Nationality and Citizenship Act 1956 was unconstitutional because it did not provide the procedural safeguards required to meet the high standards of natural justice applicable to a person facing such severe consequences. (para. 129)

Given the importance of the status of citizenship to an individual, the process by which citizenship may be lost must be robust. At the very least, in accordance with Resolution 32/5 of the Human Rights Council (2016), adopted by the UN General Assembly in July 2016, the process must observe minimum procedural standards in order to comply with the State's human rights obligations. (para. 115) This includes an independent and impartial decision-maker.

The Court distinguished the present case from the case of *Habte v. Minister for Justice and Equality* [2019] IEHC 47 on the grounds that “while there was an argument made in *Habte* as to the validity of s. 19 by reference to complaints about the absence of fair procedures, the decision in that case did not address the question of fair procedures following the commencement of the inquiry process and therefore the conclusion in *Habte* that s. 19 was not invalid having regard to the provisions of the Constitution was not of assistance to this Court in considering the systemic challenge to the inquiry process under s. 19.” (para. 120)

“A citizen facing a proposal to revoke a certificate of naturalisation does not have the same level of procedural safeguards [as a refugee pursuant to the International Protection Act 2015. They are entitled to an examination of their application at first instance. In the event that they are unsuccessful, there is a right of appeal to a Tribunal.] Following the service of a notice of intention to revoke, the individual is entitled to know the reasons for the proposal and can seek an inquiry as to the reasons for the proposal to revoke. He can make representations, call evidence and challenge the evidence against him. What he does not have is an “impartial and independent decision-maker”. The person who starts the process is the Minister. Where there is a Committee of Inquiry, his representatives present the reasons for the proposed revocation and the evidence to support it. Although the Committee reports its findings to the Minister, the Minister has made it clear that the findings of the Committee are not binding on him. The same person who initiated the process, whose representatives make the case for revocation before the Committee of Inquiry (where it is sought) ultimately makes the decision to revoke.” (para.128)

The existence of the remedy of judicial review in respect of the decision of the Minister does not provide an effective remedy where the problem is not with the

manner in which the process is carried out but with the process itself. (para.130)

## **Decision documents**

[2020 IESC 63.pdf](#)

## **Outcome**

Appeal allowed.

## **Links to other relevant materials related to the case (blogs, analysis, articles, reports, etc.)**

Conor Casey, 'Citizenship stripping, fair procedures, and the separation of powers: A note on Damache v. Minister for Justice'

## **Caselaw cited**

Damache v D.P.P. [2014] IEHC 114 (Unreported, High Court, 31st January, 2014)

Damache v. D.P.P. [2011] IEHC 197 (Unreported, High Court, 13th May, 2011).

Damache v. D.P.P. [2012] IESC 11 [2012] 2 I.R. 266 [2012] 13 I.L.R.M. 153

AG. v. Damache (High Court, not circulated, ex tempore, 31st July, 2013)

Damache v. D.P.P. [2014] IEHC 139 (Unreported, High Court, 28th February, 2014)

Attorney General v. Damache [2015] IEHC 339 (Unreported, High Court, 21st May, 2015)). Damache v. D.P.P. [2018] IECA 130 (Unreported, Court of Appeal, 12th April, 2018)

Ramadan v. Malta (Application no. 76136/12, European Court of Human Rights, 21st June, 2016)

K2 v. the United Kingdom (Application no. 42387/13, European Court of Human Rights, 7th February, 2017)

Balc v. Minister for Justice and Equality [2018] IECA 76 (Unreported, Court of Appeal, 7th March, 2018)

Balc and Case C-89/17 Secretary of State for the Home Department v. Banger).

Case C-135/08 Rottmann v. Freistaat Bayern

Case C221/17 Tjebbes v. Minister van Buitenlandse Zaken.

Case C-556/17 Alekszj Torubarov v. Bevándorlási és Menekültügyi Hivatal,

Nz.N. v. Minister for Justice and Equality [2014] IEHC 31 (Unreported, High Court, 27th January, 2014)

The State (McFadden) v. Governor of Mountjoy Prison [1981] I.L.R.M. 113

P. v. Minister for Justice [2019] IESC 47

Habte v. Minister for Justice and Equality [2019] IEHC 47 [2019] 2 JIC 0405 (Unreported, High Court, 4th February, 2019) (judgment of the Court of Appeal, delivered on 5th February 2020, [2020] IECA 22.)

McDonald v. Bord na gCon [1965] I.R. 217

Ryanair Ltd. v. Flynn [2000] 3 I.R. 240

A.B. v. Minister for Justice and Equality [2016] IECA 48 (Unreported, Court of Appeal, 26th February, 2016)

Knauer v. United States, 328 US 654

Re Solicitors Act, 1954 [1960] I.R. 239

Akpekpe v. The Medical Council and Ors [2014] 3 I.R. 420

O'Connell v. The Turf Club [2017] 2 IR 43

Purcell v. Central Bank of Ireland [2016] IEHC 514

Keady v. Garda Commissioner [1992] 2 I.R. 197

Rogers v. Moore & Ors. [1931] I.R. 24

Laurentiu v. Minister for Justice [2016] 2 I.R. 403

R. v. Foreign Secretary, ex parte Everett [1989] 1 QB 811

Melton Enterprises Ltd. v. Censorship of Publications Boar [2003] 3 I.R. 623

Geoghegan v. Institute of Chartered Accountants in Ireland [1995] 3 I.R. 86

Bode v. Minister for Justice 2008 3 IR 663

Sivsvadze v. Minister for Justice and Equality [2015] IESC 53, [2016] 2 I.R. 403

Hassouna v. Minister for Citizenship [2017] FC 473

Bula Limited v. Tara Mines (No. 6) [2000] 4 I.R. 412

Heneghan v. Western Regional Fisheries Boar [1986] ILRM 225

O'Donoghue v. The Veterinary Council [1975] I.R. 398

Prendiville v. Medical Council [2008] 3 I.R. 122

Radio Limerick One Limited v. Independent Radio and Television Commission [1997] 2 I.R. 291

Flanagan v. University College Dublin [1988] I.R. 724

A.P. v. Minister for Justice and Equality [2019] IESC 47

Mallak v. Minister for Justice [2012] IESC 59, [2012] 3 I.R. 297

North Wall v. Dublin Dockland Development Authority [2008] I.E.H.C. 305

Dellway v. NAMA [2011] 4 I.R. 1

East Donegal Co-Operative Livestock Mart Ltd. v. Attorney General [1970] I.R. 317

Crayden Fishing Co. Ltd. V. Sea Fisheries Protection Authority 2017 IESC 74, 2017 3 IR 785

Mooney v. An Post 1994 ELR 103

### **Third party interventions**

[The Irish Human Rights and Equality Commission Amicus Curiae](#)