



# STATELESSNESS

## Case Law Database

### [CJEU - Rottmann, C-135/08](#)

An Austrian national by birth transferred his residence to Germany and naturalised as a German national. The naturalisation in Germany had the effect, in accordance with Austrian law, of causing him to lose his Austrian nationality. The German authorities later withdrew the naturalisation with retroactive effect, on the grounds that the applicant had not disclosed that he was the subject of a criminal investigation in Austria on account of suspected serious fraud, and that he had thus obtained German nationality by deception. The Court held that it is not contrary to EU law for a Member State to withdraw nationality obtained by deception, even if it results in losing EU citizenship, so long as the decision observes the principle of proportionality. Observance of the principle of proportionality requires the person concerned to be afforded a reasonable period of time in order to try to recover the nationality of their Member State of origin.

**Case name (in original language) :** Janko Rottmann v. Freistaat Bayern

**Case status:** Decided

**Case number:** C-135/08

**Citation:** Judgment of 2 March 2010, Rottmann, C-135/08, ECLI:EU:C:2010:104

**Date of decision:** 02/03/2010

**State:** Germany

**Court / UN Treaty Body:** Court of Justice of the European Union

**Language(s) the decision is available in:** Estonian, Finnish, Greek, Italian; Maltese, Latvian, Lithuanian, Polish, Slovenian, Turkish, Bulgarian, Czech, Danish, Dutch, English, French, German, Hungarian, Italian, Portuguese, Romanian, Slovak, Spanish, Swedish

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

**Applicant's country of residence:** Germany

**Legal instruments:** 1961 Statelessness Convention, 1997 European Convention on Nationality, European Union law, Other international law, Universal Declaration of Human Rights (UDHR)

**Key aspects:** Acquisition of nationality, Deprivation of nationality, Determination/confirmation of nationality, Stateless status and documentation, Statelessness determination, Voluntary renunciation of nationality

**Relevant Legislative Provisions:**

*International Law*

- Article 15, Universal Declaration of Human Rights
- Articles 7, 8 and 9 of the Convention on the Reduction of Statelessness
- Articles 3, 4, 7 and 9 of the European Convention on Nationality

*European Union Law*

- Declaration No. 2 on Nationality of a Member State, Treaty on European Union
- Article 17 of the Treaty establishing the European Community

*German Law*

- Paragraph 16(1) of the German Basic Law
- Paragraph 8 of the Law on Nationality
- Article 48(1) and (2) of the Code of Administrative Procedure of the Land of Bavaria

*Austrian Law*

- Paragraph 27(1) of the Law on Nationality
- Paragraphs 10 and 28(1)(1) of the StbG

**Facts**

The applicant, an Austrian national by birth, transferred his residence in 1995 to Germany after criminal proceedings in Austria concerning suspected serious occupational fraud. In 1997 the criminal court in Austria issued a national warrant for the applicant's arrest, after which he applied for German nationality in 1998. During the naturalisation process the applicant failed to mention the proceedings against him in Austria.

The applicant received German naturalisation in 1999, which under Austrian law caused him to lose his Austrian nationality. Subsequently, the city of Munich was informed by Austrian municipal authorities and the Austrian public prosecutor's

office of the investigation and warrant for the applicants arrest. After consulting with the applicant, the State of Bavaria withdrew his German naturalisation with retroactive effect on the basis that the German nationality had been obtained by deception.

The Administrative Court of the Land of Bavaria determined that the withdrawal of citizenship was compatible with German law even though the effect of that withdrawal rendered the applicant stateless, leading to the applicant's appeal. In considering this appeal, the Federal Administrative Court stayed the proceedings given that it was not sufficiently clear whether the status of being stateless and the loss of citizenship of the Union validly acquired, linked to the withdrawal of naturalisation, is compatible with European Union law, in particular with Article 17(1) EC.

Therefore, the Federal Administrative Court referred the following questions to the European Court of Justice ('the Court'):

(1) May a person be rendered stateless when one Member State (Germany) withdraws the persons nationality and another Member State (Austria) has precluded by law the recovery of the original nationality?

(2) If yes, is the Member State of the former nationality obliged, having due regard to Community law, to interpret and apply, or even adjust, its national law so as to avoid rendering the individual stateless?

### **Legal arguments by the applicant**

The applicant argues that it is contrary to European Union law, specifically Article 17 EC, for a Member State to withdraw from a citizen of the Union the nationality of the State acquired by naturalisation and obtained by deception when that withdrawal deprives the person concerned of the status of citizen of the Union and its corresponding rights by rendering him stateless.

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

The German Government and the Commission of the European Communities argue that the rules on the acquisition and loss of nationality fall within the competence of the Member States, with reference to Declaration No 2 on nationality of a Member State, annexed to the final act of the Treaty on European Union. Moreover, the German and Austrian Governments also argue that European Union law is not

applicable to the issue at bar because the situation is purely internal. As a result the petitioners claims that a situation concerning the right to freedom of movement before naturalisation does not by itself constitute a cross-border element capable of playing a part with regard to the withdrawal of that naturalisation.

## **Decision & Reasoning**

The Court began by defining the scope of its reviewing powers for issues implicating Union citizenship. According to “established case-law, it is for each Member State, having due regard to Community law, to lay down the condition for the acquisition and loss of nationality” (§39). However, when a situation falls within the scope of both Member States and European Union law, “the national rules concerned must have due regard to the latter” (§41). By virtue of the fundamental status of Union citizenship and the consequences of its deprivation, a situation where an individual may lose the status conferred by Article 17 EC and the rights attaching thereto is within the ambit of European Union Law. Consequently, decisions to withdraw naturalisation are “amenable to judicial review carried out in the light of European Union law” (§48).

### *1. Validity Under EU Law of Rendering an Individual Stateless*

From this posture the court found that decisions withdrawing naturalisation acquired by deception may align with the public interest, as it protects the “bedrock of the bond of nationality” (§51). This conclusion is in keeping with relevant provisions of the Convention on the Reduction of Statelessness, the European Convention on Nationality, and general principles of international law, which permit certain non-arbitrary withdrawals of citizenship.

Nevertheless, when the withdrawal of naturalisation on account of deception also results in the loss of citizenship of the Union, Member States must “observe the principle of proportionality so far as concerns the consequences” of the decision in light of European Union and national law (§55). Due to the importance which primary law attaches to being a citizen of the Union, a proportionality analysis must consider the consequences the decision will have on the person concerned and any relevant family members. In particular, “it is necessary to establish whether that loss [of Union citizenship] is justified in relation to the gravity of the offence committed... to the lapse of time between the naturalisation decision and the withdrawal decision, and to whether it is possible for that person to recover his original nationality” (§56).

So long as the withdrawal of nationality on account of deception observes the principle of proportionality, it is not contrary to European Union law.

## *2. Obligation of the Member States Whose Nationality the Individual Originally Possessed*

Since the applicant's withdrawal of citizenship in Germany had not become definitive, and no decision concerning his status had been taken by Austria, the court declined to consider whether Austria had an obligation to interpret, apply or adjust its national law so as to avoid depriving the applicant of Union citizenship.

### **Decision documents**

[CJEU Case C-135.08 Rottmann.pdf](#)

### **Outcome**

It is not contrary to European Law, in particular Article 17 EC, for a Member State to withdraw from a citizen of the Union the nationality of that State acquired by naturalisation, when that nationality was obtained by deception and the decision to withdraw observes the principle of proportionality.

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

Decision (in multiple languages): <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62008CJ0135>

EU Business Analysis: <https://www.eubusiness.com/topics/eulaw/Citizenship.01>

Steve Peers, EU Law Analysis, 'Citizens of Somewhere Else? EU citizenship and loss of Member State nationality': <http://eulawanalysis.blogspot.com/2019/03/citizens-of-somewhere-else-eu...>

### **Caselaw cited**

- Case C-369/90 Micheletti and Others [1992]
- Case C-179/98 Mesbah [1999]
- Case C-200/02 Zhu and Chen [2004]
- Case C-274/96 Bickel and Franz [1998]
- Case C-148/02 Garcia Avello [2003]
- Case C-403/03 Schempp [2005]
- Case C-145/04 Spain v. United Kingdom [2006]

- Case C-184/99 Grzelczyk [2001]
- Case C-413/99 Baumbast and R [2002]
- Case C-85/96 Martínez Sala [1998]
- Case C-192/99 Kaur [2001]