

## LOSS OF CITIZENSHIP

### Background

In general, national governments have the right to decide the process for gaining and losing the citizenship of their country. In the European Union however, this is complicated by the fact that each citizen of a member country also holds European Union citizenship.

It was this difference that led to Mr. Rottmann<sup>1</sup> bringing a case to the European Court of Justice, when he faced the possibility of losing his German citizenship.

### Case

Mr Rottmann was born in Austria as an Austrian citizen. In 1995 he moved to Munich, Germany, after the authorities in Austria began investigating him over allegations of fraud. Two years later they issued a warrant for his arrest.

Later that year Mr Rottmann applied for German citizenship, which he was granted in 1999. During the application procedure Mr Rottmann concealed the fact that there was an existing warrant for his arrest. Under Austrian Law, as soon as a person acquires another citizenship, they automatically lose Austrian nationality. Mr. Rottmann therefore became a German citizen and lost his Austrian citizenship.

The authorities in Bavaria, the regional government where Mr Rottmann lived, were then informed by the Austrian authorities about the proceedings in Austria against Mr. Rottmann. Due to the fact that he had concealed this information during his application for citizenship, the German authorities cancelled his citizenship and Mr. Rottmann became stateless - meaning he had no legal citizenship in any country.

At that point Mr Rottmann appealed the decision to the Administrative Court of Bavaria, which agreed in 2005 with the government. Mr. Rottmann then appealed to the German Federal Administrative Court, which referred the case to the Court of Justice of the EU.

### Process

Two main questions were asked by the German Court to the EU's Court of Justice:

1. Are EU member states restricted in any way from deciding on the gaining and loss of national citizenship, due to the fact that eventual statelessness would also imply a loss of EU citizenship? And if yes:

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<sup>1</sup> [ec.europa.eu/dgs/legal\\_service/arrets/08c135\\_en.pdf](http://ec.europa.eu/dgs/legal_service/arrets/08c135_en.pdf)

2. Should member states refrain partially, temporarily or totally from withdrawing citizenship, when it would also imply the loss of citizenship of the European Union?

### Decision

In March 2010, the Court of Justice stated the following<sup>2</sup>:

- It is not illegal under EU law for EU member states to withdraw citizenship from individuals where it was obtained through deception or hiding of relevant information, even though this may affect EU citizenship
- However, withdrawal of citizenship that leads to statelessness does fall within EU law, as the person loses their EU citizenship
- For that reason, EU law requires that when an EU citizen would become stateless as a result of a loss of citizenship, national governments must only do so if it is in the public interest and if the decision to do so is proportionate.
- In deciding whether it is proportionate to withdraw someone's citizenship, the national authorities must take into account the potential consequences in terms of the person's and their family's loss of EU rights, the gravity of the offence, the time between naturalisation and withdrawal of citizenship and whether it is possible for that person to recover their original citizenship.
- The case was then referred back to the German Federal Administrative Court to decide if the proportionality and public interest tests had been met. The full text of the judgement is available here<sup>3</sup>.

### Assessment

This judgement shows that the Court of Justice is increasingly willing to intervene in areas formerly thought of as core to the nation state – in this case that of deciding who does and does not qualify for citizenship. However, it also highlights the limits to which the Court is willing to go – leaving it open for the national authorities to still withdraw citizenship, if the public interest and proportionality tests are met.

It also shows that EU citizenship is more than just rhetoric. As the Court of Justice stated, it is a citizenship including rights and these rights must be taken into account before a national level citizenship is withdrawn.



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<sup>2</sup> [eudo-citizenship.eu/docs/Rottmann\\_case.pdf](http://eudo-citizenship.eu/docs/Rottmann_case.pdf)

<sup>3</sup> [curia.europa.eu/juris/document/document.jsf?text=&docid=75336&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=395939](http://curia.europa.eu/juris/document/document.jsf?text=&docid=75336&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=395939)