

Case C-135/08**Janko Rottman****v****Freistaat Bayern**

(Reference for a preliminary ruling from the Bundesverwaltungsgericht)

(Citizenship of the Union – Article 17 EC – Nationality of one Member State acquired by birth – Nationality of another Member State acquired by naturalisation – Loss of original nationality by reason of that naturalisation – Loss with retroactive effect of nationality acquired by naturalisation on account of deception practised in that acquisition – Statelessness leading to loss of the status of citizen of the Union)

Summary of the Judgment

1. *Citizens of the European Union – Provisions of the Treaty – Scope ratione personae*

(Art. 17 EC)

2. *Citizens of the European Union – Provisions of the Treaty – Nationality of a Member State*

(Art. 17 EC)

1. The situation of a citizen of the European Union who is faced with a decision withdrawing his naturalisation, adopted by the authorities of one Member State, and placing him, after he has lost the nationality of another Member State that he originally possessed, in a position capable of causing him to lose the status conferred by Article 17 EC and the rights attaching thereto falls, by reason of its nature and its consequences, within the ambit of European Union law.

(see para. 42)

2. It is not contrary to European Union law, in particular to 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, on condition that the decision to withdraw observes the principle of proportionality.

A decision withdrawing naturalisation because of deception corresponds to a reason relating to the public interest. In this regard, it is legitimate for a Member State to wish to protect the special relationship of solidarity and good faith between it and its nationals and also the reciprocity of rights and duties, which form the bedrock of the bond of nationality. That consideration on the legitimacy, in principle, of a decision withdrawing naturalisation on account of deception remains, in theory, valid when the consequence of that withdrawal is that the person in question loses, in addition to the nationality of the Member State of naturalisation, citizenship of the Union.

It is, however, for the national court to ascertain whether the withdrawal decision observes the principle of proportionality so far as concerns the consequences it entails for the situation of the person concerned in the light of European Union law, in addition, where appropriate, to examining the proportionality of the decision in the light of national law. Having regard to the importance which primary law attaches to the status of citizen of the European Union, when examining a decision withdrawing naturalisation it is necessary, therefore, to take into account the consequences that the decision entails for the person concerned and, if relevant, for the members of his family with regard to the

loss of the rights enjoyed by every citizen of the Union, and to establish, in particular, whether that loss is justified in relation to the gravity of the offence committed by that person, 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.

(see paras 51, 54-56, operative part)

JUDGMENT OF THE COURT (Grand Chamber)

2 March 2010 (*)

(Citizenship of the Union – Article 17 EC – Nationality of one Member State acquired by birth – Nationality of another Member State acquired by naturalisation – Loss of original nationality by reason of that naturalisation – Loss with retroactive effect of nationality acquired by naturalisation on account of deception practised in that acquisition – Statelessness leading to loss of the status of citizen of the Union)

In Case C-135/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Bundesverwaltungsgericht (Germany), made by decision of 18 February 2008, received at the Court on 3 April 2008, in the proceedings

Janko Rottmann

v

Freistaat Bayern,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, J.-C. Bonichot, E. Levits and P. Lindh, Presidents of Chambers, C.W.A. Timmermans, A. Rosas, E. Juhász, G. Arestis, A. Borg Barthet, M. Ilešič, A. Ó Caoimh (Rapporteur) and L. Bay Larsen, Judges,

Advocate General: M. Poiares Maduro,

Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 21 April 2009,

after considering the observations submitted on behalf of:

- Dr Rottmann, by W. Meng, Professor, and H. Heinhold, Rechtsanwalt,
- Freistaat Bayern, by J. Mehler and M. Niese, Oberlandesanwälte,
- the German Government, by M. Lumma, N. Graf Vitzthum and B. Klein, acting as Agents,
- the Belgian Government, by L. Van den Broeck, acting as Agent,

- the Czech Government, by M. Smolek, acting as Agent,
- the Estonian Government, by L. Uibo, acting as Agent,
- the Greek Government, by K. Georgiadis, S. Alexandridou and G. Papagianni, acting as Agents,
- the Latvian Government, by E. Eihmane, U. Dreimanis and K. Drēviņa, acting as Agents,
- the Austrian Government, by E. Riedl and T. Fülöp, acting as Agents, assisted by H. Eberwein, expert,
- the Polish Government, by M. Dowgiewiecz, acting as Agent,
- the Commission of the European Communities, by S. Grünheid and D. Maidani, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 September 2009,

gives the following

Judgment

- 1 The reference for a preliminary ruling concerns the interpretation of the provisions of the EC Treaty relating to citizenship of the European Union.
- 2 The reference was made in connection with proceedings between Dr Rottmann and the Freistaat Bayern, concerning the latter's withdrawal of the naturalisation of the applicant in the main proceedings.

Legal context

European Union law

- 3 Declaration No 2 on nationality of a Member State, annexed by the Member States to the final act of the Treaty on European Union (OJ 1992 C 191, p. 98), is worded as follows:

'The Conference declares that, wherever in the Treaty establishing the European Community reference is made to nationals of the Member States, the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned. ...'

- 4 According to a decision of the Heads of State and Government, meeting within the European Council at Edinburgh on 11 and 12 December 1992, concerning certain problems raised by Denmark on the Treaty of European Union (OJ 1992 C 348, p. 1, 'the Edinburgh decision'):

'The provisions of Part Two of the Treaty establishing the European Community relating to citizenship of the Union give nationals of the Member States additional rights and protection as specified in that Part. They do not in any way take the place of national citizenship. The question whether an individual possesses the nationality of a Member State will be settled solely by reference to the national law of the Member State concerned.'

The relevant provisions of national legislation

The relevant provisions of German law

5 Paragraph 16(1) of the German Basic Law provides:

'No German may be deprived of his citizenship. Citizenship may be lost only pursuant to a law, and against the will of the person affected only if he does not become stateless as a result.'

6 Paragraph 8 of the Law on Nationality (Reichs- und Staatsangehörigkeitsgesetz), in the text applicable until 31 December 1999, provided:

'An alien established in German territory may, at his request, be naturalised by the Land in whose territory he resides, provided that'

1. ...
2. he does not meet the conditions for expulsion laid down in Paragraphs 46(1) to (4) and 47(1) or (2) of the Law on aliens [(Ausländergesetz)],
3. he has found independent accommodation or work where he is established.

...'

7 According to the provisions of German law relating to nationality applicable to the case in the main proceedings, naturalisation of an alien depended, as a rule, on his giving up or losing his previous nationality.

8 Article 48(1) and (2) of the Code of administrative procedure of the Land of Bavaria (Bayerisches Verwaltungsverfahrensgesetz) is worded as follows:

'(1) Even when it is no longer open to challenge, an unlawful administrative act may be withdrawn in whole or in part, for the future or with retroactive effect. ...

(2) An unlawful administrative act granting a single or periodic benefit in cash or a divisible benefit in kind or one which is a condition for such a benefit, may not be withdrawn so long as the beneficiary relies on the continued existence of that administrative act and as his expectation, when weighed against the public interest in withdrawal, is judged worthy of protection. The beneficiary may not plead expectations ...

1. [if he] obtained the adoption of the administrative act by fraud, threats or bribery,
2. [if he] obtained the adoption of the administrative act by giving information that was in essence false or incomplete,
3. [if he] was aware that the administrative act was unlawful or if his ignorance of that fact amounted to serious negligence.

In [those] cases ..., the administrative act is as a rule withdrawn with retroactive effect.'

The relevant provisions of Austrian law

9 Paragraph 27(1) of the Law on nationality (Staatsbürgerschaftsgesetz, 'the StbG', BGBl. 311/1985) provides:

'Any person who acquires foreign nationality at his own request, or by reason of a declaration made by him or with his express consent, shall lose his Austrian nationality unless he has expressly been given the right to retain [it]'

10 Authorisation to retain Austrian nationality presupposes, pursuant to Paragraph 28(1)(1) of the StbG, that to retain it would be in the interest of the Republic of Austria because of services already performed by the person concerned or which that Member State may expect him to perform, or having regard to particular considerations which must be taken into account.

- 11 It is clear from the Austrian Government's observations that, under Austrian law, the loss of foreign nationality acquired by naturalisation, whether occurring *ex nunc* or *ex tunc* in the legal order of the State of naturalisation, does not automatically mean that the person who lost his Austrian nationality because he acquired that foreign nationality will retroactively recover his Austrian nationality.
- 12 Again according to the Austrian Government, in such a case, Austrian nationality may be regained only by administrative decision and only provided that the conditions laid down in that regard in paragraph 10 *et seq.* of the StbG have been satisfied.
- 13 Paragraph 10 of the StbG, in the version that entered into force on 23 March 2006, provides:
- '(1) Save as otherwise provided in this federal law, citizenship may be granted to an alien only
1. if he has resided lawfully and continuously in federal territory for at least 10 years and been established there for at least five years;
 2. if he has not, on conviction, received any definitive sentence of imprisonment imposed by a national or foreign court for one or more offences requiring *mens rea*, ...
 3. he has not received any definitive sentence of imprisonment imposed by a national court for a financial offence;
 4. if no criminal proceedings are pending against him in respect of an offence requiring *mens rea* or a financial offence punishable by a sentence of imprisonment;
- ...
- (2) Citizenship may not be granted to an alien
- ...
2. if he has more than once received a definitive sentence for a serious administrative offence of particular gravity ...
- ...
- (4) The condition laid down in Paragraph 10(1)(1) [and also] the obstacle to the grant referred to in Paragraph 10(2)(2) shall not apply
1. to an alien residing in foreign territory who has possessed citizenship continuously for at least 10 years and has lost it otherwise than by revocation ...;
- ...'

The relevant provisions of international law

The Universal Declaration of Human Rights

- 14 Article 15 of the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations on 10 December 1948, provides that:
- '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.'

The Convention on the Reduction of Statelessness

- 15 Article 7 of the Convention on the Reduction of Statelessness, done at New York on 30

August 1961, which entered into force on 13 December 1975, provides as follows:

'1.(a) If the law of a Contracting State permits renunciation of nationality, such renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality;

...

2. A national of a Contracting State who seeks naturalisation in a foreign country shall not lose his nationality unless he acquires or has been accorded assurance of acquiring the nationality of that foreign country.

3. Subject to the provisions of paragraphs 4 and 5 of this article, a national of a Contracting State shall not lose his nationality, so as to become stateless, on the ground of departure, residence abroad, failure to register or on any similar ground.

4. A naturalised person may lose his nationality on account of residence abroad for a period, not less than seven consecutive years, specified by the law of the Contracting State concerned if he fails to declare to the appropriate authority his intention to retain his nationality.

...

6. Except in the circumstances mentioned in this article, a person shall not lose the nationality of a Contracting State, if such loss would render him stateless, notwithstanding that such loss is not expressly prohibited by any other provision of this Convention.'

16 Article 8 of that convention provides:

'1. A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless.

2. Notwithstanding the provisions of paragraph 1 of this article, a person may be deprived of the nationality of a Contracting State:

(a) in the circumstances in which, under paragraphs 4 and 5 of article 7, it is permissible that a person should lose his nationality;

(b) where the nationality has been obtained by misrepresentation or fraud.

...

4. A Contracting State shall not exercise a power of deprivation permitted by paragraphs 2 or 3 of this article except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body.'

17 Article 9 of that convention provides that a Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.

The European Convention on Nationality

18 The European Convention on nationality of 6 November 1997 was adopted under the aegis of the Council of Europe and entered into force on 1 March 2000. It has been applicable in Austria since that date and was ratified by the Federal Republic of Germany on 11 May 2005. Article 3 of that convention provides:

'1. Each State shall determine under its own law who are its nationals.

2. This law shall be accepted by other States in so far as it is consistent with applicable international conventions, customary international law and the principles of law generally recognised with regard to nationality.'

19 In accordance with Article 4 of that convention:

‘The rules on nationality of each State Party shall be based on the following principles:

- a. everyone has the right to a nationality
- b. statelessness shall be avoided;
- c. no one shall be arbitrarily deprived of his or her nationality;

...’.

20 Article 7 of that convention is worded as follows:

‘1. A State Party may not provide in its internal law for the loss of its nationality ex lege or at the initiative of the State Party except in the following cases:

- (a) voluntary acquisition of another nationality;
- (b) acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant;

...

3. A State Party may not provide in its internal law for the loss of its nationality under paragraphs 1 and 2 of this article if the person concerned would thereby become stateless, with the exception of the cases mentioned in paragraph 1, subparagraph b, of this article.’

21 Article 9 of the European Convention on nationality provides that each State Party is to facilitate, in the cases and conditions provided for by its internal law, the recovery of its nationality by former nationals who are lawfully and habitually resident in its territory.

The case in the main proceedings and the questions referred for a preliminary ruling

22 The applicant in the main proceedings was born at Graz (Austria) and was originally, by birth, a national of the Republic of Austria.

23 In 1995 he transferred his residence to Munich (Germany), after being heard by the Landesgericht für Strafsachen Graz (criminal court of Graz) in an investigation concerning him opened on account of suspected serious fraud on an occupational basis in the exercise of his profession, which he denies.

24 In February 1997 the Landesgericht für Strafsachen Graz issued a national warrant for the arrest of the applicant in the main proceedings.

25 Dr Rottmann applied for German nationality in February 1998. During the naturalisation procedure he failed to mention the proceedings against him in Austria. The naturalisation document, dated 25 January 1999, was issued to him on 5 February 1999.

26 The naturalisation in Germany of the applicant in the main proceedings had the effect, in accordance with Austrian law, of causing him to lose his Austrian nationality.

27 In August 1999 the city of Munich was informed by the municipal authorities of Graz that a warrant for Dr Rottmann’s arrest had been issued in Graz. Furthermore, in September 1999 the Austrian public prosecutor’s office informed the city of Munich, inter alia, that the applicant in the main proceedings had already been questioned as an accused person before the Landesgericht für Strafsachen Graz in July 1995.

- 28 In the light of those circumstances, and after hearing the applicant, by decision of 4 July 2000 the Freistaat Bayern withdrew the naturalisation with retroactive effect, on the grounds that the applicant had not disclosed the fact that he was the subject of judicial investigation in Austria and that he had, in consequence, obtained German nationality by deception. The withdrawal of his naturalisation obtained in Germany has not yet become definitive, by reason of the action for annulment of that decision brought by the applicant in the main proceedings.
- 29 Sitting as the court of second instance, the Bayerischer Verwaltungsgerichtshof (administrative court of the Land of Bavaria) held, by judgment of 25 October 2005, that the withdrawal of the applicant's naturalisation on the basis of the first sentence of Article 48(1) of the Code of administrative procedure of the Land of Bavaria was compatible with German law, even though the effect of that withdrawal, once definitive, would be to render the person concerned stateless.
- 30 The applicant brought an appeal on a point of law ('Revision'), now pending before the Bundesverwaltungsgericht (federal administrative court), against that judgment of 25 October 2005.
- 31 The court making the reference points out that the naturalisation acquired by deception by the applicant in the main proceedings was unlawful *ab initio* and could therefore be withdrawn by the competent German authorities at their discretion. It states that, by virtue of the relevant provisions of Austrian law, that is to say, the StbG, the applicant in the main proceedings does not at present satisfy the conditions for immediate recovery of Austrian nationality.
- 32 In its judgment the Bayerischer Verwaltungsgerichtshof had noted that if, because naturalisation obtained by deception is withdrawn, a person becomes stateless, with the result that he loses the citizenship of the Union, it suffices, for the proviso formulated by the Court in Case C-369/90 *Micheletti and Others* [1992] ECR I-4239 – to the effect that Member States must exercise their powers in the sphere of nationality having due regard to European Union law – to be observed, that the importance of the rights conferred through that citizenship of the Union should be taken into consideration by the competent German authority when exercising its discretion. According to that court, the effect of assuming that there existed, in European Union law, an obligation to refrain from withdrawing naturalisation obtained by deception would be to strike at the heart of the sovereign power of the Member States, recognised by Article 17 (1) EC, to define the detailed rules for the application of their nationality law.
- 33 On the other hand, the national court considers that the significance and purport of the proviso in *Micheletti and Others* have not yet been clarified in the Court's decisions. The Court has merely deduced from that proviso the principle that one Member State may not restrict the effects of a grant of nationality by another Member State by imposing an additional condition for the recognition of that nationality for the purpose of the exercise of a fundamental freedom provided for by the Treaty. According to the national court, it is not sufficiently clear whether the status of being stateless and the loss of citizenship of the Union validly acquired previously, linked to the withdrawal of naturalisation, is compatible with European Union law, in particular, with Article 17(1) EC.
- 34 The national court considers that it is possible at least that the Republic of Austria, as the Member State of Dr Rottmann's original nationality, might be bound, by virtue of the duty to cooperate with the Union in good faith and having regard to the values enshrined in the Convention on the reduction of statelessness and in Article 7(1)(b) of the European Convention on nationality, to interpret and apply its national law or to adapt it so as to prevent the person concerned from becoming stateless when, as in the case in the main proceedings, that person has not been given the right to keep his nationality of origin following the acquisition of a foreign nationality.
- 35 Those were the circumstances in which the Bundesverwaltungsgericht decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- (1) Is it contrary to Community law for Union citizenship (and the rights and fundamental freedoms attaching thereto) to be lost as the legal consequence of the fact that the withdrawal in one Member State (the Federal Republic of Germany), lawful as such under national (German) law, of a naturalisation acquired by intentional deception, has the effect of causing the person concerned to become stateless because, as in the case of the applicant [in the main proceedings], he does not recover the nationality of another Member State (the Republic of Austria) which he originally possessed, by reason of the applicable provisions of the law of that other Member State?
- (2) [If so,] must the Member State ... which has naturalised a citizen of the Union and now intends to withdraw the naturalisation obtained by deception, having due regard to Community law, refrain altogether or temporarily from withdrawing the naturalisation if or so long as that withdrawal would have the legal consequence of loss of citizenship of the Union (and of the associated rights and fundamental freedoms) ..., or 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 that legal consequence?

Concerning the questions referred

The first question referred and the first part of the second question

- 36 By its first question and the first part of the second question, which may appropriately be examined together, the national court seeks in essence to ascertain whether it is contrary to European Union law, in particular to Article 17 EC, for a Member State to withdraw from a citizen of the Union the nationality of that State acquired by naturalisation and obtained by deception inasmuch as that withdrawal deprives the person concerned of the status of citizen of the Union and of the benefit of the rights attaching thereto by rendering him stateless, acquisition of that nationality having caused that person to lose the nationality of his Member State of origin.
- 37 All the governments that submitted observations to the Court, the Freistaat Bayern 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. Some of them conclude that a decision to withdraw naturalisation such as that at issue in the main proceedings cannot fall within the ambit of European Union law. In that connection, they make reference to Declaration No 2 on nationality of a Member State, annexed by the Member States to the final act of the Treaty on European Union.
- 38 The German and Austrian Governments also argue that when the decision withdrawing the naturalisation of the applicant in the main proceedings was adopted, the latter was a German national, living in Germany, to whom an administrative act by a German authority was addressed. According to those governments, supported by the Commission, this is, therefore, a purely internal situation not in any way concerning European Union law, the latter not being applicable simply because a Member State has adopted a measure in respect of one of its nationals. The fact that, in a situation such as that in the main proceedings, the person concerned exercised his right to freedom of movement before his naturalisation cannot of itself constitute a cross-border element capable of playing a part with regard to the withdrawal of that naturalisation.
- 39 It is to be borne in mind here that, according to established case-law, it is for each Member State, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality (*Micheletti and Others*, paragraph 10; Case C-179/98 *Mesbah* [1999] ECR I-7955, paragraph 29; and Case C-200/02 *Zhu and Chen* [2004] ECR I-9925, paragraph 37).
- 40 It is true that Declaration No 2 on nationality of a Member State, annexed by the Member States to the final act of the Treaty on European Union, and the decision of the Heads of State

and Government, meeting within the European Council at Edinburgh on 11 and 12 December 1992, concerning certain problems raised by Denmark on the Treaty of European Union, which were intended to clarify a question of particular importance to the Member States, namely, the definition of the ambit *ratione personae* of the provisions of European Union law referring to the concept of national, have to be taken into consideration as being instruments for the interpretation of the EC Treaty, especially for the purpose of determining the ambit *ratione personae* of that Treaty.

- 41 Nevertheless, the fact that a matter falls within the competence of the Member States does not alter the fact that, in situations covered by European Union law, the national rules concerned must have due regard to the latter (see, to that effect, Case C-274/96 *Bickel and Franz* [1998] ECR I-7637, paragraph 17 (as regards national provisions in the sphere of criminal legislation and the rules of criminal procedure); Case C-148/02 *Garcia Avello* [2003] ECR I-11613, paragraph 25 (as regards national rules governing a person's name); Case C-403/03 *Schempp* [2005] ECR I-6421, paragraph 19 (as regards national rules relating to direct taxation); Case C-145/04 *Spain v United Kingdom* [2006] ECR I-7917, paragraph 78 (as regards national rules determining the persons entitled to vote and to stand as candidates in elections to the European Parliament)).
- 42 It is clear that the situation of a citizen of the Union who, like the applicant in the main proceedings, is faced with a decision withdrawing his naturalisation, adopted by the authorities of one Member State, and placing him, after he has lost the nationality of another Member State that he originally possessed, in a position capable of causing him to lose the status conferred by Article 17 EC and the rights attaching thereto falls, by reason of its nature and its consequences, within the ambit of European Union law.
- 43 As the Court has several times stated, citizenship of the Union is intended to be the fundamental status of nationals of the Member States (Case C-184/99 *Grzelczyk* [2001] ECR I-6193, paragraph 31; Case C-413/99 *Baumbast and R* [2002] ECR I-7091, paragraph 82).
- 44 Article 17(2) EC attaches to that status the rights and duties laid down by the Treaty, including the right to rely on Article 12 EC in all situations falling within the scope *ratione materiae* of Union law (see Case C-85/96 *Martínez Sala* [1998] ECR I-2691, paragraph 62, and *Schempp*, paragraph 17).
- 45 Thus, the Member States must, when exercising their powers in the sphere of nationality, have due regard to European Union law (*Micheletti and Others*, paragraph 10; *Mesbah*, paragraph 29; Case C-192/99 *Kaur* [2001] ECR I-1237, paragraph 19; and *Zhu and Chen*, paragraph 37).
- 46 In those circumstances, it is for the Court to rule on the questions referred by the national court which concern the conditions in which a citizen of the Union may, because he loses his nationality, lose his status of citizen of the Union and thereby be deprived of the rights attaching to that status.
- 47 In this regard, the national court essentially raises the question of the proviso formulated in the Court's case-law cited in paragraph 45 above, to the effect that the Member States must, when exercising their powers in the sphere of nationality, have due regard to European Union law, and also the question of the consequences of that proviso in a situation such as that in the case in the main proceedings.
- 48 The proviso that due regard must be had to European Union law does not compromise the principle of international law previously recognised by the Court, and mentioned in paragraph 39 above, that the Member States have the power to lay down the conditions for the acquisition and loss of nationality, but rather enshrines the principle that, in respect of citizens of the

Union, the exercise of that power, in so far as it affects the rights conferred and protected by the legal order of the Union, as is in particular the case of a decision withdrawing naturalisation such as that at issue in the main proceedings, is amenable to judicial review carried out in the light of European Union law.

49 Unlike the applicant in the case giving rise to the judgment in *Kaur* who, not meeting the definition of a national of the United Kingdom of Great Britain and Northern Ireland, could not be deprived of the rights deriving from the status of citizen of the Union, Dr Rottmann has unquestionably held Austrian and then German nationality and has, in consequence, enjoyed that status and the rights attaching thereto.

50 Nevertheless, as several of the governments having submitted observations to the Court have argued, if a decision withdrawing naturalisation such as that at issue in the main proceedings is based on the deception practised by the person concerned in connection with the procedure for acquisition of the nationality in question, such a decision could be compatible with European Union law.

51 A decision withdrawing naturalisation because of deception corresponds to a reason relating to the public interest. In this regard, it is legitimate for a Member State to wish to protect the special relationship of solidarity and good faith between it and its nationals and also the reciprocity of rights and duties, which form the bedrock of the bond of nationality.

52 That conclusion relating to the legitimacy, in principle, of a decision withdrawing naturalisation adopted in circumstances such as those in the main proceedings is borne out by the relevant provisions of the Convention on the reduction of statelessness. Article 8(2) thereof provides that a person may be deprived of the nationality of a Contracting State if he has acquired that nationality by means of misrepresentation or by any other act of fraud. Likewise, Article 7(1) and (3) of the European Convention on nationality does not prohibit a State Party from depriving a person of his nationality, even if he thus becomes stateless, when that nationality was acquired by means of fraudulent conduct, false information or concealment of any relevant fact attributable to that person.

53 That conclusion is, moreover, in keeping with the general principle of international law that no one is arbitrarily to be deprived of his nationality, that principle being reproduced in Article 15 (2) of the Universal Declaration of Human Rights and in Article 4(c) of the European Convention on nationality. When a State deprives a person of his nationality because of his acts of deception, legally established, that deprivation cannot be considered to be an arbitrary act.

54 Those considerations on the legitimacy, in principle, of a decision withdrawing naturalisation on account of deception remain, in theory, valid when the consequence of that withdrawal is that the person in question loses, in addition to the nationality of the Member State of naturalisation, citizenship of the Union.

55 In such a case, it is, however, for the national court to ascertain whether the withdrawal decision at issue in the main proceedings observes the principle of proportionality so far as concerns the consequences it entails for the situation of the person concerned in the light of European Union law, in addition, where appropriate, to examination of the proportionality of the decision in the light of national law.

56 Having regard to the importance which primary law attaches to the status of citizen of the Union, when examining a decision withdrawing naturalisation it is necessary, therefore, to take into account the consequences that the decision entails for the person concerned and, if relevant, for the members of his family with regard to the loss of the rights enjoyed by every citizen of the Union. In this respect it is necessary to establish, in particular, whether that loss is justified in relation to the gravity of the offence committed by that person, 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.

- 57 With regard, in particular, to that last aspect, a Member State whose nationality has been acquired by deception cannot be considered bound, pursuant to Article 17 EC, to refrain from withdrawing naturalisation merely because the person concerned has not recovered the nationality of his Member State of origin.
- 58 It is, nevertheless, for the national court to determine whether, before such a decision withdrawing naturalisation takes effect, having regard to all the relevant circumstances, 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 his Member State of origin.
- 59 Having regard to the foregoing, the answer to the first question and to the first part of the second question must be that it is not contrary to European Union law, in particular to 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 has been obtained by deception, on condition that the decision to withdraw observes the principle of proportionality.

The second part of the second question

- 60 By the second part of the second question the national court asks, in essence, whether, when a citizen of the Union in a situation such as that of the applicant in the main proceedings is faced with a decision withdrawing naturalisation that threatens to lead to the loss of his status of citizen of the Union, European Union law, in particular Article 17 EC, must be interpreted as meaning that the Member State whose nationality he originally possessed is obliged to interpret its domestic legislation in such a way as to avoid that loss by allowing him to recover that nationality.
- 61 In this instance, it is to be noted that the withdrawal of the naturalisation acquired by the applicant in Germany has not become definitive, and that no decision concerning his status has been taken by the Member State whose nationality he originally possessed, namely, the Republic of Austria.
- 62 It is to be borne in mind, in these proceedings for a preliminary ruling, that the principles stemming from this judgment with regard to the powers of the Member States in the sphere of nationality, and also their duty to exercise those powers having due regard to European Union law, apply both to the Member State of naturalisation and to the Member State of the original nationality.
- 63 The Court cannot, however, rule on the question whether a decision not yet adopted is contrary to European Union law. As the Austrian Government maintained at the hearing, the Austrian authorities will possibly have to adopt a decision on the question whether the applicant in the main proceedings is to recover his nationality of origin and when that decision has been adopted the Austrian courts will, if necessary, have to determine whether it is valid in the light of the principles referred to in this judgment.
- 64 Having regard to the foregoing there is no need in these proceedings to give a ruling on the second part of the second question.

Costs

- 65 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

It is not contrary to European Union law, in particular to 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, on condition that the decision to withdraw observes the principle of proportionality.

[Signatures]

[*](#) Language of the case: German.