Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 1 July 2021 [1]

Case C-118/20

JY
intervener:
Wiener Landesregierung

(Request for a preliminary ruling from the Verwaltungsgerichtshof (Supreme Administrative Court, Austria))

(Reference for a preliminary ruling – Citizenship of the European Union – Articles 20 and 21 TFEU – Scope – Renunciation of the nationality of one Member State in order to obtain the nationality of another Member State in accordance with the assurance given by the latter to naturalise the person concerned – Revocation of that assurance on grounds of public policy – Statelessness – Criteria for acquisition of nationality – Proportionality)

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I. Introduction

1. The national legislation of a Member State allows it to revoke, on the ground of administrative offences related to road safety, an assurance as to the grant of nationality given to a national who, having the nationality of just one Member State, has renounced that nationality, and therefore his or her status as a citizen of the European Union, in order to obtain the nationality of another Member State, in accordance with the decision of the authorities of that latter State providing such an assurance; that therefore prevents that person from recovering the status of citizen of the Union.

2. In the present case, the Court is called upon to interpret Article 20 TFEU in the context of the case-law stemming from the judgments in *Rottmann*[2] and *Tjebbes and Others*[3] and to open the third phase of a relatively delicate chapter concerning the obligations of the Member States in the sphere of the acquisition and the loss of nationality in the light of EU law.

II. Legal context

A. International law

1. Convention on the Reduction of Statelessness

3. The Republic of Austria acceded to the United Nations Convention on the Reduction of Statelessness, which was adopted in New York on 30 August 1961 and entered into force on 13 December 1975 ('the Convention on the Reduction of Statelessness'), on 22 September 1972. Article 7(2), (3) and (6) of that convention provides:

'2. A national of a Contracting State who seeks naturalization 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.

…

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 provisions of this Convention.'

2 Judgment of 2 March 2010 (C-135/08, EU:C:2010:104; 'the judgment in *Rottmann*').

3 Judgment of 12 March 2019 (C-221/17, EU:C:2019:189; 'the judgment in *Tjebbes and Others*').

4. Article 8 of that convention provides, in paragraphs 1 and 3 thereof:

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

…

3. Notwithstanding the provisions of paragraph 1 of this Article, a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time:

(a) that, inconsistently with his duty of loyalty to the Contracting State, the person

…

(ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State;

…’

2. The Convention on the Reduction of Cases of Multiple Nationality

5. The Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality, which was signed in Strasbourg on 6 May 1963 and entered into force on 28 March 1968, has been applicable to the Republic of Austria since 1 September 1975.

6. Article 1 of that convention, which is entitled ‘Reduction of cases of multiple nationality’, provides, in paragraph 1 thereof, that ‘nationals of the Contracting Parties who are of full age and who acquire of their own free will, by means of naturalisation, option or recovery, the nationality of another Party shall lose their former nationality. They shall not be authorised to retain their former nationality’.

3. The European Convention on Nationality

7. The European Convention on Nationality, which was adopted on 6 November 1997 within the framework of the Council of Europe and entered into force on 1 March 2000 (‘the Convention on Nationality’), has been applicable to the Republic of Austria since 1 March 2000.

8. Article 4 of the Convention on Nationality, which is entitled ‘Principles’, provides that the rules on nationality of each State Party are to be based on, inter alia, the principles that everyone has the right to a nationality and that statelessness is to be avoided.

9. Article 6 of that convention, which is entitled ‘Acquisition of nationality’, provides, in paragraph 3 thereof, that ‘each State Party shall provide in its internal law for the possibility of naturalisation of persons lawfully and habitually resident on its territory. In establishing the conditions for naturalisation, it shall not provide for a period of residence exceeding ten years before the lodging of an application’.

10. Article 7 of the Convention, which is entitled 'Loss of nationality *ex lege* or at the initiative of a State Party', provides, in paragraphs 1and 3 thereof:

'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;

…

d. conduct seriously prejudicial to the vital interests of the State Party;

…

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, sub-paragraph b of this article.'

11. Article 8 of the same convention, which is entitled 'Loss of nationality at the initiative of the individual', provides, inter alia, that 'each State Party shall permit the renunciation of its nationality provided the persons concerned do not thereby become stateless'.

12. Under Article 10 of the Convention on Nationality, which is entitled 'Processing of applications', 'each State Party shall ensure that applications relating to the acquisition, retention, loss, recovery or certification of its nationality be processed within a reasonable time'.

13. Article 15 of that convention, which is entitled 'Other possible cases of multiple nationality', provides:

'The provisions of this Convention shall not limit the right of a State Party to determine in its internal law whether:

a. its nationals who acquire or possess the nationality of another State retain its nationality or lose it;

b. the acquisition or retention of its nationality is subject to the renunciation or loss of another nationality.'

14. Article 16 of that convention, which is entitled 'Conservation of previous nationality', states that 'a State Party shall not make the renunciation or loss of another nationality a condition for the acquisition or retention of its nationality where such renunciation or loss is not possible or cannot reasonably be required'.

B. EU law

15. Article 20(1) of the Treaty on the Functioning of the European Union establishes citizenship of the Union and provides that 'every person holding the nationality of a Member State' is to be a citizen of the Union. In accordance with Article 20(2)(a) TFEU, citizens of the Union are to have 'the right to move and reside freely within the territory of the Member States'.

C. Austrian law

16. Paragraph 10 of the Staatsbürgerschaftsgesetz 1985 (1985 Austrian Law on citizenship) of 30 July 1985 [4] ('the StbG'), which is entitled 'Grant', provides:

(1) Except as otherwise provided for in the present federal law, citizenship may be granted to an alien only if:

…

6. on the basis of his or her conduct hitherto, the alien guarantees that he or she has a positive attitude towards the Republic and neither represents a danger to law and order or public security nor endangers other public interests as referred to in Article 8(2) of the [European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950];

…

(2) An alien may not be granted citizenship

…

2. if he or she has been the subject of more than one enforceable conviction for a serious administrative offence of a particular degree of gravity …

…

(3) An alien possessing foreign nationality may not be granted citizenship if he or she

1. fails to take the necessary steps to relinquish his or her previous citizenship even though such steps are possible and reasonable for the alien …

…'

17. Paragraph 20 of the StbG provides, in subparagraphs 1 to 3 thereof:

'(1) An alien shall be given an assurance that citizenship will be granted to him or her in cases where, within two years, he or she provides proof of having relinquished the citizenship of his or her former State of origin, if

1. he or she is not stateless;

[4] BGBl. No 311/1985, in the version published in BGBl. I, No 136/2013.

2. neither Paragraph 10(6), Paragraph 16(2) nor Paragraph 17(4) applies; and

3. that assurance makes possible or could facilitate his or her relinquishing of the citizenship of his or her former State of origin.

(2) The assurance as to the grant of citizenship shall be revoked if the alien no longer fulfils any one of the requirements laid down for that grant, with the exception of point 7 of Paragraph 10(1).

(3) The citizenship the grant of which has been assured shall be granted as soon as the alien

1. relinquishes the citizenship of his or her former State of origin;

2. provides proof that he or she was unable or could not reasonably be expected to take the necessary steps to relinquish the citizenship of a State.'

III. The facts of the case in the main proceedings, the procedure before the Court and the questions referred for a preliminary ruling

18. By letter of 15 December 2008, JY, at the time an Estonian national, applied for the grant of Austrian nationality.

19. By decision of 11 March 2014, the Niederösterreichische Landesregierung (Government of the Province of Lower Austria, Austria), which was competent at the time given JY's place of residence, gave her the assurance, in accordance with point 2 of Paragraph 11a(4), read in conjunction with Paragraphs 20 and 39, of the StbG, that Austrian nationality would be granted to her if JY proved within two years that she had relinquished her citizenship of the Republic of Estonia.

20. JY established her primary residence in Vienna (Austria) and submitted, within the two-year period stipulated, confirmation from the Republic of Estonia that her citizenship of that Member State had been relinquished by decision of the government of that Member State of 27 August 2015. JY has been a stateless person since relinquishing that citizenship.

21. By decision of 6 July 2017, the Wiener Landesregierung (Government of the Province of Vienna, Austria), which had become competent to examine JY's application, revoked the decision of the Niederösterreichische Landesregierung (Government of the Province of Lower Austria) in accordance with Paragraph 20(2) of the StbG and rejected, pursuant to point 6 of Paragraph 10(1) of that law, JY's application to be granted Austrian nationality ('the contested decision').

22. The Wiener Landesregierung (Government of the Province of Vienna) justified that decision by stating that JY, first, had committed, since receiving the assurance that Austrian nationality would be granted to her, two serious administrative offences (failure to display a vehicle inspection disc and driving a motor vehicle while under the influence of alcohol) and, second, had been responsible for eight administrative offences, committed over the period from 2007 to 2013, before that assurance was given to her. That administrative authority therefore took the view that JY no longer satisfied the requirements laid down in point 6 of Paragraph 10(1) of the StbG. JY lodged an appeal against that decision.

23. By judgment of 23 January 2018, the Verwaltungsgericht Wien (Administrative Court, Vienna, Austria) dismissed the appeal, finding, in essence, that the assurance as to the grant of Austrian nationality had to be revoked, in accordance with Paragraph 20(2) of the StbG, where a ground for refusal arose after evidence of the relinquishment of the previous citizenship had been adduced, and that, in the present case, the requirement for the grant of nationality laid down in point 6 of Paragraph 10(1) of that law was not fulfilled. The two serious administrative offences concerned were likely to jeopardise, first, road safety and, second, the safety of other road users. According to that court, those two serious administrative offences, considered in conjunction with the eight administrative offences committed over the period from 2007 to 2013, led it to doubt that JY would conduct herself properly in the future, as required under the abovementioned provision; JY's long period of residence in Austria and her professional and personal integration were incapable of calling that conclusion into question.

24. Furthermore, that court took the view that the judgment in *Rottmann* did not apply because, on the date on which the contested decision was adopted, JY was already stateless, and therefore no longer a citizen of the Union. Furthermore, the fact that serious offences had been committed led it to find that the measures adopted under the contested decision were proportionate having regard to the Convention on the Reduction of Statelessness.

25. JY lodged an appeal in cassation (*Revision*) against that judgment before the Verwaltungsgerichtshof (Supreme Administrative Court, Austria).

26. In the present case, in view of the administrative offences committed by JY before and after receiving the assurance that she would be granted Austrian nationality, the referring court points out that, under Austrian law, neither the fact that the conditions for revocation of the assurance as to the grant of Austrian nationality have been fulfilled, within the meaning of Paragraph 20(2) of the StbG, nor the refusal of the application for the grant of that nationality, in accordance with point 6 of Paragraph 10(1) of that law, can be contested.

27. That said, the referring court states that, although the Verwaltungsgericht Wien (Administrative Court, Vienna) did examine the proportionality of such revocation having regard to JY's position as a stateless person in the light of the Convention on the Reduction of Statelessness and found it to be proportional, in view of the offences committed by JY, that court did not, however, review, from the perspective of EU law, the proportionality of the consequences of revoking the assurance of the grant of nationality on the situation of the person concerned and, as the case may be, on that of members of her family, since it found that the judgments in *Rottmann* and *Tjebbes and Others* did not apply in the present case.

28. Thus, as regards the first question, the referring court states at the outset that, having regard to JY's factual and legal circumstances on the date on which the contested was adopted, circumstances which are decisive for consideration of the merits of the judgment of the Verwaltungsgericht Wien (Administrative Court, Vienna), JY was not a citizen of the Union. Unlike the situation of the interested parties in the cases which gave rise to the judgments in *Rottmann* and *Tjebbes and Others*, the loss of the status of citizen of the Union is not, in the present case, the corollary of the contested decision. On the contrary, as a result of the revocation of the assurance as to the grant of nationality, combined with the refusal of her application to be granted Austrian nationality, JY lost the right, a right acquired on a conditional basis, to recover the citizenship of the Union which she herself had already given up.

29. The question thus arises as to whether such a situation, by reason of its nature and its consequences, falls within the scope of EU law and whether, in adopting the contested decision, the competent administrative authority was required to comply with EU law. In that regard, the referring court, like the Verwaltungsgericht Wien (Administrative Court, Vienna), takes the view that such a situation is not covered by EU law.

30. If the first question is answered in the affirmative, the referring court also asks whether the competent national authorities and the national courts having jurisdiction are required to review, in accordance with the case-law of the Court, whether the revocation of the assurance as to the grant of Austrian nationality, which prevents the person concerned from being able to recover her status as a citizen of the Union, is compatible with the principle of proportionality from the perspective of EU law. The referring court considers that such a review of proportionality must be required and asks, in that connection, whether the mere fact that JY has renounced her citizenship of the Union and relinquished the special relationship of solidarity and good faith between her Member State of origin and its nationals and also the reciprocity of rights and duties, which form the bedrock of the bond of nationality, [5] is decisive.

31. It is in those circumstances that by order of 13 February 2020, received at the Court on 3 March 2020, the Verwaltungsgerichtshof (Supreme Administrative Court) decided to stay the proceedings and to submit the following questions to the Court for a preliminary ruling:

‘(1) Does the situation of a natural person who, like the appellant in cassation in the main proceedings, has renounced her only nationality of a Member State, and thus her citizenship of the Union, in order to obtain the nationality of another Member State, having been given a guarantee by the other Member State of grant of the nationality applied for, and whose possibility of recovering citizenship of the Union is subsequently eliminated by revocation of that guarantee, fall, by reason of its nature and its consequences, within the scope of EU law, such that regard must be had to EU law when revoking the guarantee of grant of citizenship?

If the first question is answered in the affirmative:

(2) Is it for the competent national authorities, including any national courts, involved in the decision to revoke the guarantee of grant of nationality of the Member States, to establish whether the revocation of the guarantee that prevented the recovery of citizenship of the Union is compatible with the principle of proportionality from the point of view of EU law in terms of its consequences for the situation of the person concerned?’

32. Written observations were lodged by JY, the Austrian and French Governments and the European Commission. The same interested parties, together with the Estonian and Netherlands Governments, were represented at the hearing held on 1 March 2021.

[5] See the judgment in *Tjebbes and Others*, paragraph 33.

IV. Legal analysis

A. Preliminary remarks

33. Article 20(1) TFEU provides that 'every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship'. Article 20 TFEU therefore confers on every individual who is a national of a Member State citizenship of the Union, [6] which is destined to be the fundamental status of all nationals of the Member States. [7] This means that the nationality of a Member State is the prerequisite for enjoyment of EU citizenship, to which all the rights and duties provided for in the FEU Treaty are attached. [8] Citizenship of the Union is thus not only derived but also additional, in so far as it affords supplementary rights to citizens of the Union, such as the right to move and reside freely within the territory of the Member States or the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections. [9] Accordingly, Union citizenship confers on the nationals of the Member States a citizenship 'beyond the State'. [10]

34. The present case, which falls within that legal context, directly concerns the fundamental status of Union citizenship, and the questions submitted by the referring court follow on from the judgments in *Rottmann* and *Tjebbes and Others*, which are particularly relevant in the present case.

35. In this Opinion, I will consider, in the first place, whether the situation at issue in the main proceedings falls within the scope of EU law. In that regard, I will set out the case-law on the loss of Union citizenship before examining, in the light of that case-law, the consequences of the contested decision (first question). In the second place, after referring to the decision of the Estonian Government on the relinquishment of JY's citizenship, I will examine the proportionality of the contested decision (second question).

B. The first question referred for a preliminary ruling: does the situation at issue in the main proceedings fall within the scope of EU law?

36. By its first question, the referring court asks, in essence, whether the situation of a natural person who, having the nationality of just one Member State, renounces that nationality, and therefore his or her citizenship of the Union, in order to obtain the nationality of another Member State, in accordance with the decision of the authorities of the latter providing the assurance that that nationality will be granted to him or her, falls, by reason of its nature and its consequences, within the scope of EU law, where that decision is subsequently revoked and his or her application for the grant of the nationality is rejected.

6 Judgments of 11 July 2002, *D'Hoop* (C-224/98, EU:C:2002:432, paragraph 27), and, more recently, of 27 February 2020, *Subdelegación del Gobierno en Ciudad Real (Spouse of a Union citizen)* (C-836/18, EU:C:2020:119, paragraph 35).

7 See, inter alia, judgment of 20 September 2001, *Grzelczyk* (C-184/99, EU:C:2001:458, paragraph 31).

8 The first subparagraph of Article 20(2) TFEU provides, inter alia, that 'citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties'.

9 Points (a) to (b) of the first subparagraph of Article 20(2) TFEU. See also points (c) and (d) of the first subparagraph of Article 20(2) TFEU. In particular, it follows from point (c) of the first subparagraph of Article 20(2) TFEU that the status of citizen of the Union is not reserved for nationals of Member States who reside or are present in the territory of the European Union. See, in this regard, Opinion of Advocate General Mengozzi in *Tjebbes and Others* (C-221/17, EU:C:2018:572, point 38).

10 See Opinion of Advocate General Poiares Maduro in *Rottmann* (C-135/08, EU:C:2009:588, point 16).

37. With regard, in the first place, to the specific features of the present case, the referring court states that the situation at issue in the main proceedings is characterised by the fact that, on the date on which the contested decision was adopted, JY had already renounced her Estonian nationality and, therefore, her citizenship of the Union. Accordingly, unlike the circumstances which gave rise to the judgments in *Rottmann* and *Tjebbes and Others*, the loss of Union citizenship is not the corollary of the contested decision and JY's situation does not fall within the scope of EU law.

38. With regard, in the second place, to the written observations submitted by the parties, the Austrian Government concurs with the view of the referring court and states that JY renounced her Estonian nationality, and therefore her citizenship of the Union, voluntarily. However, JY states that she never intended to renounce her citizenship of the Union as her fundamental status. She merely wanted – and legitimately expected – to acquire the nationality of another Member State and, ultimately, involuntarily lost citizenship of the Union. JY submits that, in so far as the revocation of the assurance of the grant of Austrian nationality concerns her rights as a citizen of the Union, the Austrian authorities were obliged to comply with EU law in that regard.

39. The French Government and the Commission are of the view that the situation at issue in the main proceedings does fall, by reason of its nature and its consequences, within the scope of EU law.

40. In addition, the French Government considers that JY, having renounced her original Estonian nationality on account of the assurance given by a Member State that nationality of that State would be granted to her, is faced with a decision revoking that assurance which has the effect of keeping her stateless, as characterised by the loss of citizenship of the Union conferred by Article 20 TFEU and the rights attaching thereto. In such a situation, the Member States are required to comply with EU law in exercising their powers in the sphere of nationality.

41. For its part, the Commission accepts that the situation at the origin of the dispute in the main proceedings is different from those which gave rise to the judgments in *Rottmann* and *Tjebbes and Others*. It observes, however, that the fact that a citizen of the Union who wants to integrate better in the host Member State by applying for the nationality of that State behaves in a manner consistent with the law of that Member State and is prepared to agree to become temporarily stateless cannot prejudice him or her on the ground that the revocation of the assurance as to the grant of the nationality is not subject to judicial review in the light of EU law on account of the statelessness imposed by the system for acquiring Austrian nationality.

42. The Estonian and Netherlands Governments likewise argued at the hearing that JY's situation is covered by EU law.

43. I therefore intend to examine whether, in the light of the particular circumstances of the situation at issue in the main proceedings, such a situation does fall within the scope of EU law.

1. The relevant case-law of the Court on the loss of citizenship of the Union

44. The referring court makes reference to the judgments in *Rottmann* and *Tjebbes and Others*. However, it appears appropriate to me to begin my analysis of the relevant case-law by considering the judgment in *Micheletti and Others*.[11]

[11] Judgment of 7 July 1992 (C-369/90, EU:C:1992:295).

(a) The judgment in Micheletti and Others*: the competence of the Member States as regards the acquisition and the loss of nationality must be exercised having due regard to EU law*

45. In the judgment in *Micheletti and Others*,[12] the Court held that, 'under international law, it is for each Member State, having due regard to [EU] law, to lay down the conditions for the acquisition and loss of nationality'. The Court clarified that, where a Member State has, in accordance with EU law, granted its nationality to an individual, another Member State cannot 'restrict the effects … by imposing an additional condition for recognition of that nationality with a view to the exercise of the fundamental freedoms provided for in the Treaty'.[13]

46. I consider it important to note, at this stage, that the proviso formulated by the Court in that judgment, namely that due regard must be had to EU law, covers both the conditions for the acquisition and those for the loss of nationality. I will return to this point later.[14]

(b) The judgments in Rottmann *and* Tjebbes and Others*: confirmation and clarification of the principle established by the judgment in* Micheletti and Others

47. The principle established by the Court in the judgment in *Micheletti and Others*[15] was confirmed in the judgment in *Rottmann*.[16] In examining a decision to withdraw naturalisation adopted by the German authorities, the Court also clarified the scope of that principle.[17] Thus, after reiterating the competence of the Member States in the sphere of the acquisition and loss of nationality,[18] the Court made clear that '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'.[19] In that connection, it took as a basis settled case-law on the situations in which legislation adopted in a matter falling within the scope of national powers is assessed in the light of EU law.[20] Since such situations fall within the

12 Judgment of 7 July 1992 (C-369/90, EU:C:1992:295, paragraph 10). By way of reminder, the case which gave rise to this judgment concerned the situation of a citizen holding dual Italian and Argentine nationality. The individual wanted to settle in the host Member State (Spain), and so the authorities of that Member State, relying on their national law, had taken into account the nationality of that individual's habitual residence, namely that of the non-member country.

13 Judgment of 7 July 1992, *Micheletti and Others* (C-369/90, EU:C:1992:295, paragraph 10). The Court had already sketched out that idea in the judgments of 12 November 1981, *Airola* v *Commission* (72/80, EU:C:1981:267, paragraph 8 et seq.), and of 7 February 1979, *Auer* (136/78, EU:C:1979:34, paragraph 28). In the first judgment, the Court had refused to take into account, for the purpose of applying the Staff Regulations, the Italian naturalisation of an official of Belgian nationality on the ground that it had been imposed on her, by application of Italian law, without the possibility of renouncing it on account of her marriage to a citizen of Italian nationality, in breach of the principle of equal treatment between male and female officials. In the second, it had found that 'there is no provision of the Treaty which, within the field of application of the Treaty, makes it possible to treat nationals of a Member State differently according to the time at which or the manner in which they acquired the nationality of that State, as long as, at the time at which they rely on the benefit of the provisions of Community law, they possess the nationality of one of the Member States'.

14 See point 56 of this Opinion.

15 Judgment of 7 July 1992 (C-369/90, EU:C:1992:295, paragraph 10).

16 Paragraphs 39 and 45. By way of reminder, Mr Rottmann had fraudulently acquired German nationality by naturalisation.

17 See, inter alia, Lagarde, P., 'Retrait de la nationalité acquise frauduleusement par naturalisation', *Revue critique de droit international privé*, 2010, p. 540; Kostakopoulou, D., 'European Union citizenship and Member State nationality: updating or upgrading the link?', *Has the European Court of Justice Challenged Member State Sovereignty in Nationality Law*?, Shaw, J. (ed.), *EUI Working Papers*, RSCAS 2011/62, Robert Schuman Centre for Advanced Studies, EUDO Citizenship Observatory, pp. 21-26, and, in that same work, Kochenov, D., 'Two Sovereign States vs. a Human Being: CJEU as a Guardian of Arbitrariness in Citizenship Matters', pp. 11-16, as well as De Groot, G.R. and Seling, A., 'The consequences of the Rottmann judgment on Member State autonomy – The Courts avant gardism in nationality matters', pp. 27-31.

18 The judgment in *Rottmann*, paragraph 39 and the case-law cited.

19 The judgment in *Rottmann*, paragraph 41. See also Opinion of Advocate General Poiares Maduro in that case (C-135/08, EU:C:2009:588, point 20): 'The fact nevertheless remains that, if the situation comes within the scope of Community law, the exercise by the Member States of their retained powers cannot be discretionary. It is subject to the obligation to comply with the Community rules.'

20 The judgment in *Rottmann*, paragraph 41 and the case-law cited.

scope of EU law, they must therefore comply with EU law and are subject to review by the Court.[21] Citizenship of the Union cannot be rendered redundant and, therefore, the rights conferred by it cannot be infringed by the adoption of state measures.[22]

48. In the judgment in *Rottmann*,[23] the Court therefore held that, in view of the fundamental nature of the citizenship of the Union conferred by Article 20 TFEU, the situation of a citizen of the Union who is faced with a decision withdrawing his or her naturalisation adopted by the authorities of one Member State thus placing him or her, after he or she has lost the nationality of another Member State that he or she originally possessed, in a position capable of causing him or her to lose that status and the rights attaching thereto falls, by reason of its nature and its consequences, within the ambit of EU law.

49. That judgment thus opened the door to the possibility of subjecting to detailed examination, in the light of EU law, certain aspects of the Member States' laws on nationality related to the loss of citizenship of the Union.[24] Such an opportunity presented itself nine years later, with the case that gave rise to the judgment in *Tjebbes and Others*.[25]

50. In that judgment, it was a general condition for the loss of Netherlands nationality by operation of law, and therefore citizenship of the Union by the persons concerned, which was examined in the light of EU law.[26] The Court confirmed[27] the principle set out in the earlier case-law.[28] Referring to paragraphs 42 and 45 of the judgment in *Rottmann*, it held that the situation of citizens of the Union who are nationals of one Member State and who, by losing that nationality, are faced with losing the citizenship of the Union conferred by Article 20 TFEU and

[21] See, inter alia, for an analysis in legal literature of the case-law on this issue, Konstadinides, T., 'La fraternité européenne? The extent of national competence to condition the acquisition and loss of nationality from the perspective of EU citizenship', *European Law Review*, 2010, 35(3), pp. 401-414, and Pudzianowska, D., 'Warunki nabycia i utraty obywatelstwa Unii Europejskiej. Czy dochodzi do autonomizacji pojęcie obywatelstwa Unii?', *Ochrona praw obywatelek i obywateli Unii Europejskiej*, Baranowska, G., Bodnar, A. and Gliszczyńska-Grabias, A. (eds), Warsaw, 2015, pp. 141-154.

[22] See, in relation to that judgment, Mengozzi, P., 'Complémentarité et coopération entre la Cour de justice de l'Union européenne et les juges nationaux en matière de séjour dans l'Union des citoyens d'États tiers', *Il Diritto dell'Unione Europea*, 2013, No 1, pp. 29-48, in particular p. 34. See also Barbou Des Places, S., 'La nationalité des États membres et la citoyenneté de l'Union dans la jurisprudence communautaire: la nationalité sans frontières', *Revue des Affaires européennes*, Bruylant/Larcier, 2011, pp. 29-50, in particular p. 26: 'Ce n'est pas le retrait de la nationalité en tant que tel qui intéresse le droit de l'Union, mais le fait que ce retrait ait un effet sur la possession de la qualité de citoyen de l'Union.'

[23] Paragraph 42. As Advocate General Mengozzi observed in his Opinion in *Tjebbes and Others* (C-221/17, EU:C:2018:572, point 34): 'Similarly, in *Rottmann* …, the Court, in contrast to the approach taken by the Advocate General [see point 13 of the Opinion of Advocate General Poiares Maduro in *Rottmann* (C-135/08, EU:C:2009:588)], did not look for a connection between the withdrawal of Mr Janko Rottmann's naturalisation and the exercise of the right to move freely within the European Union.' See also judgment of 8 March 2011, *Ruiz Zambrano* (C-34/09, EU:C:2011:124), paragraph 42 of which is based on paragraph 42 of the judgment in *Rottmann*.

[24] See, in this regard, Shaw, J., 'Setting the scene: the Rottmann case introduced', *Has the European Court of Justice Challenged Member State Sovereignty in Nationality Law*?, op. cit., p. 4.

[25] By way of reminder, this judgment concerned Netherlands nationals holding the nationality of a non-member country who had brought proceedings before the Netherlands courts following the refusal by the Ministry of Foreign Affairs to examine their applications for renewal of their national passport. The ministry's refusal was based on the Netherlands law on nationality, which provided inter alia that an adult loses that nationality if he or she also holds a foreign nationality and if, after attaining his or her majority, he or she has had his or her principal residence for an uninterrupted period of 10 years outside the Netherlands and the European Union.

[26] And not an individual decision to withdraw nationality based on the conduct of the person concerned, as in the case which gave rise to the judgment in *Rottmann*.

[27] See points 45 to 50 of this Opinion.

[28] Judgment in *Tjebbes and Others*, paragraph 30 and the case-law cited. In his Opinion in *Tjebbes and Others* (C-221/17, EU:C:2018:572, point 28), Advocate General Mengozzi took the view that the applicants in the main proceedings had not definitively lost their citizenship of the Union as conferred by Article 20 TFEU, but that they had been placed in a 'position capable of causing them to lose that status', and concluded that the situations at issue in that case fell within the scope of EU law. However, in its judgment, the Court did not examine the applicability of EU law.

the rights attaching thereto falls, *by reason of its nature and its consequences*, within the ambit of EU law, and that, therefore, the Member States must, when exercising their powers in the sphere of nationality, have due regard to EU law. [29]

51. In the light of that case-law, [30] the question which arises in the present case is the following: does JY's situation fall within the scope of EU law?

52. For the reasons which I will set out below, I am convinced that that question must be answered in the affirmative.

2. The consequences of the contested decision in the light of EU law

(a) Application of the principles derived from the judgments in Rottmann *and* Tjebbes and Others *to the situation at issue in the main proceedings*

53. It is indeed true that, in the present case, on the date relevant for the purpose of examining the merits of the action brought in the main proceedings, namely that on which the contested decision was adopted, [31] JY had already become stateless and, as a result, had lost her citizenship of the Union. It is likewise true that the loss of that status is not a direct result of the contested decision. Indeed, JY relinquished her citizenship of the Republic of Estonia by means of a decision of the government of that Member State.

54. Moreover, it is clear that the loss of that status is not due to a condition governing the loss of nationality [32] but to a condition governing its acquisition laid down in Austrian law. [33] The Austrian authorities justified the measures taken by the contested decision by relying on the fact that JY no longer satisfied the conditions for acquiring Austrian nationality, as laid down in point 6 of Paragraph 10(1) of the StbG. [34]

55. As I have already indicated, [35] in view of these particular features, JY's situation differs from the situations that gave rise to the judgments in *Rottmann* and *Tjebbes and Others*. It is, however, my view that those circumstances are not such as to exclude JY's situation from the scope of EU law for the following reasons.

56. In the first place, although the decisions of the Estonian Government and of the Wiener Landesregierung (Government of the Province of Vienna) are admittedly based on the system of acquiring and losing nationality under two different national legal orders, [36] I however share the Commission's view that the revocation of the assurance as to the naturalisation of a person who

[29] The judgment in *Tjebbes and Others*, paragraph 32. I note that it is stated in this paragraph that not only do situations that are '*capable of causing [individuals] to lose* [that] status' fall, by reason of their nature and their consequences, within the scope of EU law (judgment in *Rottmann*, paragraph 42), but also those in which the individuals '*are faced with losing* the status conferred by Article 20 TFEU and the rights attaching thereto'. My emphasis. In my view, the description of that second type of situation is more direct since it refers to situations in which the persons concerned are *forced* to face up to the loss of citizenship of the Union.

[30] See points 45 to 50 of this Opinion.

[31] See point 21 of this Opinion.

[32] Whether a condition governing the withdrawal of nationality acquired by naturalisation, as in the judgment in *Rottmann*, or a condition governing the loss of nationality by operation of law, as in the judgment in *Tjebbes and Others*.

[33] See point 22 of this Opinion.

[34] See, in that regard, point 26 of this Opinion.

[35] See points 28 and 37 of this Opinion.

[36] The first decision concerns the Estonian *procedure governing the loss of nationality* whereas the contested decision concerns the Austrian *procedure governing the acquisition of nationality*.

is stateless on the date of such revocation must not be considered in isolation but take into account the fact that that person was a national of another Member State and therefore held citizenship of the Union.[37] Accordingly, at that stage, JY's loss of her citizenship of the Union should, in my view, be assessed by taking into account not only the decision of the Estonian authorities but also the Austrian procedure of naturalisation taken as a whole.[38]

57. In the second place, I would like to come back to the point raised previously, namely that the proviso formulated by the Court in the judgment in *Micheletti and Others*[39] encompasses both the conditions governing the acquisition of nationality and those governing its loss. The principle laid down in that judgment was confirmed in the judgments in *Rottmann*[40] and *Tjebbes and Others*.[41] That principle therefore applies in cases such as the present one, which concern the conditions governing the acquisition of nationality, *in so far as those conditions entail the loss of citizenship of the Union* by the person concerned. Thus, in the case of citizens of the Union, the exercise of powers in the sphere of the loss and acquisition of nationality, since it *affects all the rights conferred and protected by the EU legal order*, is amenable to a judicial review conducted in the light of EU law.

58. In the present case, it is apparent from the legal context as presented by the referring court that, under Paragraph 20(1) of the StbG, the assurance as to the grant of Austrian nationality is subject to the essential condition that the person concerned must, within two years, relinquish his or her citizenship of the Member State of origin. In other words, that person must agree not only to become stateless but to lose his or her citizenship of the Union.[42]

59. In that regard, I consider it important to examine, first, the voluntary or involuntary nature of the renunciation of the nationality of the Member State of origin and, second, the question of the legitimate expectations created by such an assurance.

60. With regard, first of all, to the nature of *the condition of renunciation*, according to the Austrian Government JY voluntarily renounced Estonian nationality and, therefore, citizenship of the Union. But can such a renunciation be categorised as 'voluntary'?

61. Contrary to what the Austrian Government essentially contends, the situation of a national of a Member State who, like JY, has renounced his or her original nationality with the *sole aim of satisfying the condition* to obtain the assurance of the grant of Austrian nationality imposed by the national legislation and, therefore, *for the sole purpose of recovering citizenship of the Union*, cannot be categorised as 'voluntary renunciation'. As the Commission points out, such a renunciation occurred where the Austrian authorities had given JY the assurance that, aside from relinquishing her former citizenship, all the other conditions for the grant of Austrian nationality were fulfilled. It is therefore clear, as is apparent from her observations, that JY wanted to retain her citizenship of the Union.

[37] The fact that JY held Estonian nationality before renouncing it in order to comply with the Austrian legislation distinguishes her situation from that at issue in the case which gave rise to the judgment of 20 February 2001, *Kaur* (C-192/99, EU:C:2001:106), in which Ms Kaur who, not meeting the definition of a national of the United Kingdom of Great Britain and Northern Ireland, could not have been deprived of rights deriving from the status of citizen of the Union, since she had never been in possession of such rights. See, in that regard, the judgment in *Rottmann*, paragraph 49.

[38] With regard to the decision of the Estonian authorities, see point 76 et seq. of this Opinion.

[39] Judgment of 7 July 1992, *Micheletti and Others* (C-369/90, EU:C:1992:295, paragraph 10). See points 46 and 57 of this Opinion.

[40] Paragraphs 39 and 45.

[41] Paragraphs 30 and 32.

[42] In reply to a question put by the Court at the hearing, the Austrian Government stated that, as far as concerns citizens of the Union, although the national legislation has not been amended, the Austrian authorities have, however, altered their practice to avoid individuals becoming stateless.

62. Since, in the context of the assurance of naturalisation, Austrian legislation requires, as an essential condition, the renunciation of the nationality of the State of origin, whilst however retaining the power to revoke that assurance, the exercise of such a revocation means that the citizen of the Union is *as a matter of course* faced with the loss of his or her citizenship of the Union and that that situation therefore falls within the scope of EU law.

63. Next, with regard to *legitimate expectations*, it is clear that, to the extent that the assurance as to the grant of Austrian nationality is conditional upon the renunciation and the loss of the original nationality, that assurance creates legitimate expectations on the part of the person concerned.[43] In particular, it seems clear to me that, in the present case, JY's legitimate expectation of recovering her citizenship of the Union falls within the protective scope of EU law.[44] Therefore, in adopting a decision providing an assurance of naturalisation, the Austrian authorities must ensure that a national, such as JY, is not deprived of the status of citizen of the Union – including where offences have been committed before or after the adoption of that decision – by facilitating his or her acquisition of the nationality applied for. As is clear from my proposed answer to the second question referred for a preliminary ruling, I take the view that, in exercising those powers, the Austrian authorities must also take into account the specific circumstances of each situation, applying the principle of proportionality.[45]

64. The statelessness imposed by the Austrian system of acquiring nationality means that a national of a Member State who wishes to obtain Austrian nationality, such as JY, is faced with the *temporary loss* of citizenship of the Union, as conferred by Article 20 TFEU. However, it can also mean that such a national is subsequently faced with the *permanent loss* of that status, where – as in the present case – the assurance as to naturalisation may be revoked by the Austrian authorities owing to the commission of an offence, thus depriving him or her of *all the rights attaching thereto*.

65. It follows, as the Commission has argued, that revocation of the assurance of naturalisation after citizenship of the Member State of origin has been relinquished, combined with the refusal of an application for naturalisation, is comparable, in view of its consequences, to a decision to withdraw naturalisation. In the present case, the result of such revocation is the loss of the status of citizen of the Union.

66. It is therefore my view that the situation of a person who, after renouncing his or her original nationality for the purpose of satisfying a condition for the grant of nationality imposed by the law of the host Member State, is faced with a decision revoking the assurance as to the grant of nationality taken by the authorities of that State, thus placing him or her in a position in which citizenship of the Union and the rights attaching thereto are permanently lost, falls, by reason of its nature and its consequences, within the scope of EU law.

[43] With regard to the mechanisms associated with the protection of legitimate expectations in the context of national legislation on nationality, see de Groot, G.R. and Wautelet, P., 'Reflections on Quasi-Loss of Nationality from Comparative, International and European Perspectives', *European Citizenship at the Crossroads. The Role of the European Union on Loss and Acquisition of Nationality*, Carrera Nuñez, S. and de Groot, G.R. (eds), Wolf Legal Publishers, Oisterwijk, pp. 117-156, in particular p. 138 et seq.

[44] As regards the contested decision, the principle of the protection of the legitimate expectation in the maintenance of the status of citizen of the Union could be invoked against it, as there was, in my view, an expectation meriting protection on the part of JY, who was required to renounce her original nationality. For the reasons why the principle of legitimate expectations was not applied to Mr Rottmann, see Opinion of Advocate General Poiares Maduro in *Rottmann* (C-135/08, EU:C:2009:588, point 31).

[45] See point 102 et seq. of this Opinion.

67. That conclusion is supported, in my view, not only by the judgment in *Tjebbes and Others*,[46] but also by the case-law stemming from the judgments in *Ruiz Zambrano*[47] and *Lounes*.[48]

(b) The case-law stemming from the judgment in Ruiz Zambrano*: deprivation of the genuine enjoyment of the substance of the rights conferred by citizenship of the Union*

68. Article 20 TFEU has been held by the Court to be applicable to the situation of nationals of a Member State who have not made use of their right of free movement and who, by virtue of a decision of that Member State, would be deprived of the genuine enjoyment of the substance of the rights attaching to the status of citizen of the Union, since the judgment in *Ruiz Zambrano*.[49]

69. If the Court held, in that judgment, that the situation at issue fell within the scope of EU law, I fail to see how the view could be taken that a situation such as that of JY, in which the contested decision meant that a national of a Member State was faced with the permanent loss of her citizenship of the Union and, therefore, not the loss of *the substance of the rights* conferred by Article 20 TFEU but that of *all of those rights*, is not covered by EU law, whereas, unlike Mr Ruiz Zambrano's children, JY has exercised her right of free movement by going to and lawfully residing in the territory of another Member State.

70. In the light of that latter fact, I will briefly consider the situation at issue in the main proceedings in the light of the logic of gradual integration set out in the judgment in *Lounes*.[50]

(c) The judgment in Lounes*: the logic of gradual integration*

71. I would point out from the outset that, in reply to a question put by the Court at the hearing, JY confirmed that she has resided in Austria since 1993.[51] It is therefore established that, since the accession of the Republic of Estonia to the Union in 2004, she has, as an Estonian national, resided and worked in Austria in her capacity as a citizen of the Union.

72. Accordingly, in addition to the fact that it is established that JY enjoys the rights conferred on a citizen of the Union by Article 20 TFEU, JY is also a beneficiary of the rights conferred by Article 21(1) TFEU, under which every citizen of the Union has the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.

[46] Paragraph 32. As I have stated in point 50 of this Opinion, the Court refers therein to 'losing the status conferred by Article 20 TFEU and the rights attaching thereto'.

[47] Judgment of 8 March 2011 (C-34/09, EU:C:2011:124). See, inter alia, judgments of 13 September 2016, *Rendón Marín* (C-165/14, EU:C:2016:675, paragraph 80), and of 8 May 2018, *K.A. and Others (Family reunification in Belgium)* (C-82/16, EU:C:2018:308, paragraph 49).

[48] Judgment of 14 November 2017 (C-165/16, EU:C:2017:862).

[49] Judgment of 8 March 2011 (C-34/09, EU:C:2011:124, paragraph 42). In that regard, the situation of Mr Ruiz Zambrano's children, which was 'liable to deprive them of the genuine enjoyment of the substance of the rights conferred by their status of citizens of the Union', and that of Mr Rottmann, which was 'liable to lead to the loss of the status conferred by Article 20 TFEU and the rights attaching thereto' (the judgment in *Rottmann*, paragraph 42) are comparable in that, in those two situations, citizenship of the Union had been rendered redundant. See, in that regard, my Opinion in *Rendón Marín and CS* (C-165/14 and C-304/14, EU:C:2016:75, points 114 and 115).

[50] Judgment of 14 November 2017 (C-165/16, EU:C:2017:862). By way of reminder, the case that gave rise to this judgment concerned a Spanish national who, having resided in the United Kingdom since 1996, acquired citizenship of the United Kingdom by means of naturalisation in the course of 2009, whilst retaining her Spanish nationality. In 2014, she had married a third-country national. The application for a residence card as the spouse of a citizen of the Union made by that national had been refused by the United Kingdom authorities on the ground that he had overstayed in that Member State in breach of immigration law.

[51] At the hearing, the Austrian Government stated that, prior to the accession of the Republic of Estonia to the European Union, JY held a certificate of establishment for third-country nationals.

73. In that connection, according to the Court, 'the rights conferred on a Union citizen by Article 21(1) TFEU, including the derived rights enjoyed by his family members, are intended, amongst other things, to promote the gradual integration of the Union citizen concerned in the society of the host Member State'.[52] In addition, a citizen of the Union such as JY who, after going to the territory of the host Member State, in this case Austria, in exercise of her freedom of movement, and living there for several years, pursuant to and in compliance with Article 7(1) or Article 16(1) of Directive 2004/38/EC,[53] wishes to acquire the nationality of that Member State intends to become permanently integrated in the society of the Member State.

74. Accordingly, as the Court has held, 'it would be contrary to the underlying logic of gradual integration that informs Article 21(1) TFEU to hold that such citizens, who have acquired rights under that provision as a result of having exercised their freedom of movement, must forego those rights … because they have sought, by becoming naturalised in that Member State, to become more deeply integrated in the society of that State'.[54]

75. On the basis of all of the foregoing considerations, I take the view, as I have already stated, that the situation at issue in the main proceedings falls, by reason of its nature and its consequences, within the scope of EU law.

3. The decision of the Republic of Estonia by which JY's citizenship was relinquished

76. Although it is apparent from my analysis of the first question referred for a preliminary ruling that the loss of JY's status as a citizen of the Union is the result of the Austrian naturalisation procedure, taken as a whole,[55] it nevertheless seems appropriate to me, at this stage, to explain briefly the reasons why in my view, contrary to the argument put forward by the French Government, that, *in the context of the reference for a preliminary ruling made in the present case*, the decision which must be examined in the light of EU law is not the decision of the Estonian authorities but the contested decision.

77. In its written observations, the French Government states that JY's loss of her citizenship of the Union is solely the result of the decision of the Estonian authorities which, without waiting for JY actually to acquire Austrian nationality, approved her application to renounce Estonian nationality. In its view, the approval of an application to renounce the nationality of a Member

[52] Judgment of 14 November 2017, *Lounes* (C-165/16, EU:C:2017:862, paragraph 56).

[53] Directive of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77). As far as concerns the situation at issue in the main proceedings, I cannot rule out that JY acquired a permanent right of residence in that Member State, in accordance with Article 16(1) of Directive 2004/38. In that connection, I would note that it is sufficient that the conditions under which a right of permanent residence may be granted, in accordance with EU law, are satisfied by the person concerned for that right to be accepted by the Member States. It should be noted that, under point 2 of Paragraph 11a(4) of the StbG, if the person concerned is a national of a State party to the Agreement on the European Economic Area (EEA agreement), Austrian nationality may be granted if he or she has resided lawfully and without interruption in the federal territory for at least six years.

[54] Judgment of 14 November 2017, *Lounes* (C-165/16, EU:C:2017:862, paragraph 58). See also Opinion of Advocate General Bot in *Lounes* (C-165/16, EU:C:2017:407, point 86).

[55] See point 56 of this Opinion.

State made by a citizen of the Union must be made subject to the actual acquisition of the nationality of another Member State or of a third country in order to prevent that citizen being rendered stateless, albeit temporarily. [56]

78. The Estonian Government, supported in this regard by the Netherlands Government and the Commission, made clear at the hearing that the Republic of Estonia was unable to refuse JY's application to relinquish her citizenship. Where an Estonian national applies to renounce his or her nationality and satisfies the conditions laid down in Estonian law, by submitting the supporting documents required, in particular the assurance of the grant of nationality issued by the Member State concerned certifying that that national will obtain the nationality of that State, it is impossible for it to refuse such an application.

79. I am sympathetic to that argument.

80. The Court observed in the judgment in *Rottmann* [57] 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', whilst stating that that finding concerned 'these proceedings for a preliminary ruling'.

81. It is true that a measure such as that provided for in the French Civil Code makes it possible to ensure that citizenship of the Union is retained and is therefore one of the means by which the authorities of a Member State can guarantee that, in a situation such as that at issue in the main proceedings, the person concerned does not lose that status.

82. However, in view of the particular features of the present case, the Estonian Government cannot be criticised for having approved JY's application to renounce the nationality of that Member State in so far as such renunciation is an essential condition imposed by the procedure for acquiring Austrian nationality in the context of the assurance provided by the Austrian authorities. As I have stated, [58] that assurance created not only legitimate expectations on JY's part but also confidence on the part of the Estonian authorities which is deserving of protection by the principle of mutual confidence. In that regard, according to the observations presented by the Estonian Government at the hearing, Paragraph 26 of the Estonian Law on nationality provides that that government has the power not to withdraw the nationality of an individual if such withdrawal results in that individual being rendered stateless. [59] Since the Austrian authorities had provided an assurance of naturalisation, the Estonian Government states that it was impossible for it to foresee that they would revoke it. [60] Thus, the Republic of Estonia relied on the assurance of the grant of nationality, considering that it could legitimately expect that the

[56] The French Government stated that point 1° of Article 23-9 of the French Civil Code provides that the loss of French nationality is to take effect on the date on which the foreign nationality is acquired, thus avoiding a person being rendered stateless. As for the Estonian Government, it confirmed, in reply to a question put by the Court, that Estonian legislation does not require the prior acquisition of the new nationality in order to approve the relinquishment of an Estonian national's citizenship, and that it is impossible to renounce Estonian nationality temporarily or on a conditional basis.

[57] Paragraph 62.

[58] See point 63 of this Opinion.

[59] In that connection, it should be borne in mind that the Republic of Estonia is not a Contracting Party to the European Convention on Nationality and is not therefore subject to the obligations laid down in Article 8 of that convention.

[60] Thus, a Member State finding itself in the same situation as the Republic of Estonia could be criticised for having allowed citizenship to be relinquished even though the statelessness of the individual concerned was foreseeable, which, in these proceedings, at the very least from the Estonian Government's perspective, was not the case. JY renounced her original nationality in order to be able to obtain Austrian nationality and recover the status of citizen of the Union. The Estonian Government also states that it assesses the proportionality of every decision in the sphere of nationality, inter alia having regard to the individual consequences for the person concerned.

Austrian authorities were going to follow through on the assurance as to the grant of nationality. In any case, the Republic of Estonia points out that, if it had not agreed to allow JY to relinquish her citizenship, she would have been unable to apply for the grant of Austrian nationality.

83. I am therefore of the view that, in the context of the present case, Estonian law, as applied here, is consistent with EU law.

84. Furthermore, it is indisputably the contested decision that led to JY's permanent loss of citizenship of the Union, and it is therefore the Austrian authorities which are obliged to ensure that a national such as JY does not lose citizenship of the Union, as conferred by Article 20 TFEU, depriving her of *all of the rights attaching thereto*, contrary to the principle of proportionality.

85. I will therefore consider the second question referred for a preliminary ruling on the basis that it is the contested decision that must have due regard to EU law and, consequently, to the principle of proportionality.

C. The second question referred for a preliminary ruling: the compliance of the contested decision with the principle of proportionality

86. It is clear that, since the principle of proportionality lies at the heart of EU law, if the Court were to reply, as I suggest, in the affirmative to the first question, the reply to the second question should therefore also be in the affirmative. In view of that plain fact, I consider that the referring court is asking the Court not only if it is required to determine whether the contested decision is compatible with the principle of proportionality but also if it is required to determine whether that decision is proportionate or not.

87. The second question referred should therefore be reworded as asking, in essence, whether the competent national authorities, including as the case may be the national courts, are required to examine the compatibility of the decision revoking the assurance as to the grant of the nationality of a Member State – and rejecting the application to obtain that nationality – with the principle of proportionality, having regard to the consequences that that decision has for the position of the person concerned in the light of EU law, namely the permanent loss of citizenship of the Union, and, accordingly, the compliance of that decision with that principle.

88. In order to answer that question, I will examine, in the first place, the public interest nature of the ground pursued by Paragraph 20(1) and (2) and point 6 of Paragraph 10(1) of the StbG, which formed the basis of the assurance as to the grant of nationality and of the decision to revoke that assurance, before turning, in the second place, to compliance with the principle of proportionality as regards the consequences that the contested decision entails for JY's situation and the disproportionate nature of a decision such as the contested decision.

1. The public-interest ground pursued by the legislation that formed the basis of the contested decision

89. The order for reference states that the purpose of the Austrian law on nationality is to prevent multiple nationalities, as is clear, in particular, from point 1 of Paragraph 10(3) of the StbG. The referring court states that the assurance referred to in Paragraph 20(1) of that law establishes a right to the grant of nationality that is conditional solely upon proof that foreign citizenship has

been relinquished. It explains that Paragraph 20(2) of that law, however, provides for the revocation of that assurance where the person concerned ceases to satisfy one of the conditions required for that grant, such as that laid down in point 6 of Paragraph 10(1) of that law.

90. In its observations, the Austrian Government explains that, in accordance with national legislation, Austrian nationality will be granted to the applicant for nationality only if that applicant provides proof, within the period specified to that end, that he or she has relinquished the citizenship of his or her Member State of origin and he or she continues to satisfy the other conditions to be granted that nationality.

91. I would note, first, that the Court has already held that 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. [61] In that regard, Paragraph 20(1) and (2) and point 6 of Paragraph 10(1) of the StbG, which formed the basis of the assurance as to the grant of nationality and of the decision to revoke that assurance, are part and parcel of the exercise by the Republic of Austria of the powers relating to the definition of the conditions for acquiring and losing Austrian nationality.

92. It is legitimate for a Member State to guarantee a right to the grant of nationality which, pursuant to national provisions, such as Paragraph 20(1) of the StbG, is conditional merely on proof that citizenship of another Member State or of a third country has been relinquished. [62] That is borne out, inter alia, by Article 1 of the Convention on the Reduction of Cases of Multiple Nationality [63] and by the wording of Article 7(2) of the Convention on the Reduction of Statelessness. [64]

93. As regards the revocation of the assurance as to the grant of nationality, which is based on Paragraph 20(2) and point 6 of Paragraph 10(1) of the StbG, I take the view that it pursues, in principle, a legitimate aim.

94. However, I would point out that, in exercising powers in the sphere of the acquisition and the loss of nationality, the Member States are required to have due regard to the obligations under EU law, as is clear from the case-law which I examined as part of my analysis of the first question referred for a preliminary ruling. In addition, those powers must be exercised in compliance not only with EU law but also with international law.

95. In that connection, with regard to Article 7(2) of the Convention on the Reduction of Statelessness, [65] I note that it is clear from the conclusions of the Expert Meeting on the interpretation of the Convention on the Reduction of Statelessness, published by the United Nations High Commissioner for Refugees ('the UNHCR'), on Article 7(2) of that convention that 'it is only acceptable to allow for loss of nationality *if the assurance is unconditional*'. [66] Indeed, in accordance with those conclusions, 'there is an implicit obligation under the 1961 Convention that *once issued, assurances may not be retracted on the grounds that conditions of naturalization*

[61] The judgments in *Rottmann*, paragraph 51, and *Tjebbes and Others*, paragraph 33.

[62] The Convention on Nationality provides, in Article 4 thereof, that 'the rules on nationality of each State Party shall be based on the … principles [inter alia that] everyone has the right to a nationality [and] statelessness shall be avoided'.

[63] See point 6 of this Opinion.

[64] See point 3 of this Opinion. See also Article 8(3)(a)(ii) of that convention.

[65] See point 3 of this Opinion. See also Article 8(3)(a)(ii) of that convention.

[66] Expert Meeting. Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality. Summary Conclusions, UNHCR, Tunis, Tunisia, 31 October – 1 November 2013, pp. 1-15, in particular p. 10, paragraph 44. These conclusions are available at the following address: https://www.refworld.org/pdfid/533a754b4.pdf. My emphasis.

are not met, thereby rending the person stateless'.[67] In addition, Article 8 of that same convention prohibits the Contracting States from depriving a person of his or her nationality 'if such deprivation would render [that person] stateless'. I therefore have doubts as to the legitimacy, in the light of international law, of legislation such as Paragraph 20(2) of the StbG, which allows that assurance to be revoked where the person concerned no longer satisfies just one of the conditions laid down for the grant of nationality, such as that provided for in point 6 of Paragraph 10(1) of that law, thus meaning that he or she faces becoming stateless.[68]

96. That being said, I also note that the conclusions and the guidelines relating to the Convention on the Reduction of Statelessness, published by the UNHCR, constitute 'soft law', such that they have some authority but are not binding. Be that as it may, it is clear that those conclusions contain useful guidance for the Member States. It is, however, for the referring court to consider such matters in the present case.

97. I will now turn to the examination of the proportionality of the consequences entailed by the contested decision for the situation at issue in the main proceedings.

2. Compliance with the principle of proportionality as regards the consequences entailed by the contested decision for JY's situation

98. It is clear from the order for reference that no review of the proportionality of the contested decision in the light of EU law has been conducted.

99. In that regard, I must point out that it is for the competent national authorities and the national courts to determine whether, *when it entails the permanent loss of citizenship of the Union and the rights attaching thereto*, the decision to revoke the assurance as to the grant of nationality and to reject the application to obtain that nationality has due regard to the principle of proportionality so far as concerns the consequences of that decision for the situation of the person concerned and, if relevant, for that of the members of his or her family, from the point of view of EU law.[69] Accordingly, in order for such a decision to be compatible with the principle of proportionality, the relevant national rules must permit an individual examination of the consequences of revoking the assurance from the point of view of EU law.[70]

100. The referring court asks whether the mere fact that JY renounced her citizenship of the Union and relinquished, voluntarily, her citizenship of the Republic of Estonia can be the decisive factor in the context of a review of proportionality.

101. As I have set out,[71] both JY's statelessness and her loss of the status of citizen of the Union are the result of the Austrian naturalisation procedure, taken as a whole. I am therefore of the view that the situation of a national of a Member State such as JY, who has renounced her original nationality with the sole aim of satisfying the condition for the assurance of the grant of Austrian

[67] Ibid., p. 10, paragraph 45.

[68] See Article 4 of the Convention on Nationality. See also Article 15(2) of the Universal Declaration of Human Rights, adopted on 10 December 1948 by the General Assembly of the United Nations, which provides that 'no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality'.

[69] See, to that effect, the judgment in *Tjebbes and Others*, paragraph 40 and the case-law cited.

[70] According to the Court, this likewise applies where nationality is lost, even if that nationality was obtained fraudulently. See, to that effect, the judgment in *Rottmann*, paragraph 59.

[71] See point 56 of this Opinion.

nationality laid down in national legislation [72] and, therefore, for the sole purpose of recovering citizenship of the Union is *immaterial* when it comes to determining whether the revocation of the assurance as to the grant of the nationality has due regard to the principle of proportionality. Accordingly, such a renunciation cannot be regarded as a relevant factor when examining the circumstances pertaining to the individual situation of the person concerned.

(a) The circumstances pertaining to the individual situation of the person concerned

102. I recall that it follows from the case-law established in the judgment in *Rottmann* [73] that the circumstances pertaining to the individual situation of the person concerned and, as the case may be, of the members of his or her family, which may be relevant for the purpose of the checks to be carried out by the competent authorities and the national courts, include the gravity of the offence committed by that person, the lapse of time between the decision giving the assurance and the decision revoking that assurance, and the possibility of that person recovering his or her nationality. [74]

(1) The nature of the offences

103. I have doubts as to whether the contested decision is justified in the light of the nature of the offences committed by JY.

104. JY is accused, first, of having committed, after being given the assurance that Austrian nationality would be granted to her, two serious administrative offences (failure to display a vehicle inspection disc and driving a motor vehicle while under the influence of alcohol) and, second, of being responsible for eight administrative offences committed between 2007 and 2013, before that assurance was given to her.

105. As regards the eight administrative offences, I agree with JY and the Commission that those offences were known on the date on which that assurance was given and did not prevent that assurance from being granted. Accordingly, those offences should not be taken into consideration to determine the gravity of the offences committed by JY.

106. Turning to the two serious administrative offences, the referring court explains that, according to national case-law, the first offence jeopardises road safety and the second specifically jeopardises the safety of other road users. The latter offence could, on its own, be decisive for the purpose of establishing that the conditions for the grant of nationality laid down in point 6 of Paragraph 10(1) of the StbG are not met.

107. In its observations, the Austrian Government argues that Paragraph 20(2), in conjunction with point 6 of Paragraph 10(1), of the StbG guarantees that the assurance as to the grant of Austrian nationality can be revoked only on a serious ground of public interest, namely that the person concerned does not present (or no longer presents) the guarantee, having regard to his or her previous conduct, that he or she does not represent a danger to law and order or public security or endanger other public interests as referred to in Article 8(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

[72] Account should be taken of the fact that this condition applies to all applicants for Austrian nationality.

[73] Paragraph 56.

[74] With regard to those circumstances, I note that that case-law does not establish a *numerus clausus*.

108. I do, of course, agree that such conduct is punishable. However, can a decision to revoke the assurance of nationality, which entails the permanent loss of citizenship of the Union by the person concerned, be based on administrative offences related to road safety?

109. I do not believe so.

110. In the first place, JY states in her observations that neither the first [75] nor the second [76] serious offence was such as to result in the withdrawal of her driving licence. In that regard, I am bound to note that it is apparent from the Austrian Government's reply to a question put by the Court at the hearing that Austrian law does not provide for the suspension of a driving licence in a case of driving with a blood alcohol level such as that recorded by JY.

111. In the second place, as I have explained in point 69 of this Opinion, the situation in which, as in the present case, a national of a Member State is faced with the permanent loss of his or her citizenship of the Union and, therefore, with the loss of *all of the rights conferred by Article 20 TFEU* is comparable to that in which the person concerned is faced with *the loss of the genuine enjoyment of the substance of the rights conferred by that article* in that, in both those situations, citizenship of the Union has been rendered redundant. [77]

112. I am therefore of the view that it is necessary in the present case to apply [78] the case-law by which, as regards the possibility of limiting a right of residence under Article 20 TFEU, that provision does not affect the possibility of Member States relying on an exception linked, in particular, to upholding the requirements of public policy and protecting public security. [79] In that regard, as the Court has likewise found, the concepts of 'public policy' and 'public security', as a justification for derogating from the right of residence of Union citizens or members of their families, must be interpreted strictly, so that their scope cannot be determined unilaterally by the Member States without being subject to control by the EU institutions. [80] The Court has thus held that the concept of 'public policy' presupposes, in any event, the existence, in addition to the disturbance of the social order which any infringement of the law involves, of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. As regards 'public security', it is apparent from that case-law that it covers both the internal security of a Member State and its external security and that, consequently, a threat to the functioning of institutions and essential public services and the survival of the population, as well as the risk of a serious disturbance to foreign relations or to peaceful coexistence of nations, or a risk to military interests, may affect public security. [81]

113. I therefore take the view that, in view of the administrative offences committed by JY, the revocation of the assurance as to the grant of nationality is not based on the existence of a genuine, present and sufficiently serious threat to public policy or public security.

75 JY stated that the fine amounted to EUR 112.

76 JY stated that the fine amounted to EUR 300.

77 See also footnote 65 of this Opinion.

78 I would draw attention to the fact that, in this case-law, the Court does not refer directly to Articles 27 and 28 of Directive 2004/38.

79 Judgment of 13 September 2016, *Rendón Marín* (C-165/14, EU:C:2016:675, paragraph 81).

80 Judgment of 13 September 2016, *Rendón Marín* (C-165/14, EU:C:2016:675, paragraph 82). See also judgments of 4 December 1974, *van Duyn* (41/74, EU:C:1974:133, paragraph 18); of 26 February 1975, *Bonsignore* (67/74, EU:C:1975:34, paragraph 6); of 28 October 1975, *Rutili* (36/75, EU:C:1975:137, paragraph 27); of 27 October 1977, *Bouchereau* (30/77, EU:C:1977:172, paragraph 33); of 19 January 1999, *Calfa* (C-348/96, EU:C:1999:6, paragraph 23); and of 29 April 2004, *Orfanopoulos and Oliveri* (C-482/01 and C-493/01, EU:C:2004:262, paragraphs 64 and 65).

81 Judgment of 13 September 2016, *Rendón Marín* (C-165/14, EU:C:2016:675, paragraph 83).

(2) The lapse of time between the date on which the assurance was given and that on which it was revoked

114. With regard to the account taken by the competent authorities and the national courts of the lapse of time between the date on which the assurance was given and that on which it was revoked, I would point out that the decision on the relinquishment of JY's citizenship of the Republic of Estonia was adopted on 27 August 2015 and the decision on the revocation of the assurance as to the grant of Austrian nationality is dated 6 July 2017.

115. The length of time between those two decisions appears excessive to me given, in particular, the consequences for the person concerned who, for almost two years after renouncing her original nationality, was stateless and, therefore, deprived of all the rights attaching to her status as a citizen of the Union, including her right to move and reside freely.

(3) The limitations on exercising the right to move and reside within the territory of the European Union as a whole

116. With regard to the limitations on exercising the right to move and reside within the territory of the European Union as a whole, the competent authorities and the national courts should also take account of the fact that, following the revocation of the assurance of nationality, the person concerned, as is the case with JY, would no longer be able to recover his or her citizenship of the Union and that the loss of that status will therefore become permanent.

117. As in the present case, that person would be confronted, inter alia, with the loss of her right to move and reside freely within the territory of the Member States and, as the case may be, with difficulties in travelling to other Member States, inter alia to Estonia, in order to maintain effective and regular contact there with members of her family, to carry on her professional activities there or to undertake the steps necessary to carry on such activities in Austria or in other Member States.

(4) The possibility for the person concerned to recover her original nationality

118. As for the possibility for the person concerned to recover her original nationality, it is clear from the Estonian Government's reply to a question put by the Court at the hearing that, under Estonian law, this is impossible once citizenship has been relinquished, since one of the conditions that must be satisfied in order to obtain that nationality is eight years' residence in that Member State. Such a situation cannot therefore be ignored by the Austrian authorities.

(5) The normal development of family and professional life

119. It is clear from the case-law of the Court that it is, in particular, for the competent national authorities and, where appropriate, for the national courts to ensure that the loss of the nationality of the Member State concerned is consistent with the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union ('the Charter'), the observance of which the Court ensures, and specifically the *right to respect for family life* as stated in Article 7 of the Charter. [82]

[82] The judgment in *Tjebbes and Others*, paragraph 45 and the case-law cited. I would recall that Article 1 of the Charter, which is entitled 'Human dignity', states that, 'human dignity is inviolable. It must be respected and protected'.

120. In the present case, it is clear from the observations presented by JY at the hearing that the agency for refugees and stateless persons examined JY's situation and concluded, by decision of 7 January 2020, that she was in Austria unlawfully. Accordingly, JY holds only a residence permit on humanitarian grounds, granted on the basis of Paragraph 55(2) of the Law on asylum, and is required to obtain a work permit from the employment agency before accessing the labour market.

121. In those circumstances, the competent authorities and the national courts must also take into account, in the examination of proportionality, the disproportionate consequences to which the person concerned will be exposed and *which affect the normal development of her family and professional life*.

122. The factors described in the preceding points must be taken into account by the national authorities and the national courts having jurisdiction as part of their assessment of compliance with the principle of proportionality.

(b) The consistency of the national rules and their ability to achieve the road-safety objective

123. With regard, first, to the consistency of the national legislation, I will simply pose the following question: is it consistent, for a national legal system, that offences related to road safety cannot be regarded as sufficiently serious to entail the withdrawal of a driving licence but can lead to the revocation of the assurance as to the grant of nationality from the person concerned and to the loss of citizenship of the Union and all the rights attaching thereto?

124. I cannot conceive of any reasoning that could support the conclusion that there is not a problem of consistency here.

125. Next, as regards the ability of that legislation to promote the objectives laid down in point 6 of Paragraph 10(1) of the StbG, I would point to the clear disparity between the gravity of the offences provided for in the national legislation and the consequences entailed for the situation of the person concerned.

126. Those considerations lead me to conclude that a decision to revoke the assurance as to the grant of nationality, such as the contested decision, which entails the permanent loss of citizenship of the Union by the person concerned, in a situation such as that at issue in the main proceedings, on the ground of administrative offences related to road safety, specifically offences which do not entail the withdrawal of the individual's driving licence, is not in compliance with the principle of proportionality under EU law.

127. To conclude my analysis, I consider it interesting to cite Advocate General Mengozzi who, in his Opinion in *Tjebbes and Others*,[83] took the view that 'in an extreme – and I hope purely hypothetical – case, where the legislation of a Member State provides for withdrawal of an individual's naturalisation entailing loss of citizenship of the Union as a result of a road traffic offence, the disproportionate nature of that measure would be clear because of the disparity between the low degree of gravity of the offence and the dramatic consequence of losing citizenship of the Union'.

[83] Opinion of Advocate General Mengozzi in *Tjebbes and Others* (C-221/17, EU:C:2018:572, point 88).

V. Conclusion

128. In the light of all of the foregoing considerations, I propose that the Court answer the questions referred by the Verwaltungsgerichtshof (Supreme Administrative Court, Austria) for a preliminary ruling as follows:

1. The situation of a natural person who, having the nationality of just one Member State, renounces that nationality and, therefore, his or her citizenship of the European Union in order to obtain the nationality of another Member State, in accordance with the decision of the authorities of the latter providing the assurance that that nationality will be granted to him or her, falls, by reason of its nature and its consequences, within the scope of EU law, where that decision is however subsequently revoked and his or her application for the grant of the nationality is rejected, therefore preventing that person from recovering the status of citizen of the Union.

2. Article 20 TFEU, read in the light of Article 7 of the Charter of Fundamental Rights of the European Union, does not preclude, in principle, legislation of a Member State, such as that at issue in the main proceedings, which allows that Member State, on public-interest grounds, to revoke the assurance as to the grant of its nationality, even where that revocation decision entails the permanent loss of citizenship of the Union for the person concerned and makes it impossible for that person to recover that status and the rights attaching thereto, provided that the competent national authorities, including, where appropriate, the national courts, examine whether that decision is compatible with the principle of proportionality having regard to the consequences which it entails for the situation of the person concerned in the light of EU law and, accordingly, whether that decision complies with that principle.

   As part of that examination, the referring court must determine, in particular, whether such a decision is justified in relation to the gravity of the offences committed by that person, the lapse of time between the date on which the assurance was given and the date of its revocation, the limitations on exercising his or her right of movement and of residence, the possibility of recovering his or her original nationality, and whether the person will be exposed to disproportionate consequences affecting the normal development of his or her family and professional life, from the point of view of EU law.

   Accordingly, a decision to revoke the assurance as to the grant of nationality, such as the decision of 6 July 2017 of the Wiener Landesregierung (Government of the Province of Vienna, Austria), which entails the permanent loss of citizenship of the Union by the person concerned in a situation such as that at issue in the main proceedings, on the ground of administrative offences related to road safety, specifically offences which do not entail the withdrawal of the individual's driving licence, is not in compliance with the principle of proportionality under EU law.