

## **Germany - Federal Administrative Court, judgment 5 C 32/07**

Germany's highest administrative court decides on a case in which stateless minors (the applicants) were granted German nationality. The applicants' parents applied for their nationality using false information, namely that the family would originate from Lebanon instead of Turkey. The Court held that the withdrawal of nationality is only valid if done promptly, i.e. within a maximum of five years after the nationality has been granted.

**Case name (in original language) :** BVerwG, Urteil vom 30. Juni 2008 – 5 C 32/07

**Case status:** Decided

**Case number:** 5 C 32/07

**Citation:** German Federal Administrative Court („BVerwG“), Decision of 30 June 2008 - 5 C 32/07

**Date of decision:** 30/06/2008

**State:** Germany

**Court / UN Treaty Body:** Federal Administrative Court

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

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

**Legal instruments:** 1961 Statelessness Convention, 1997 European Convention on Nationality

**Key aspects:** Childhood statelessness, Deprivation of nationality, Stateless status and documentation

**Relevant Legislative Provisions:**

Art. 7 para. 1 of the 1997 European Convention on Nationality

Art. 8 para. 2 of the 1961 Statelessness Convention

section 24 of the Act on Issues Regarding Citizenship (Gesetz zur Regelung von Fragen der Staatsangehörigkeit (StAngRegG))

section 35 of the Act on Citizenship (Staatsangehörigkeitsgesetz (StAG))

## **Facts**

The applicants' parents migrated to Germany in September 1989, where the applicants were born between 1989 and 1994. They applied for asylum under the name "R." and applied to be recognised as stateless persons from Lebanon. In November 1990 the applicants and their parents received temporary leave to remain, which continued to be valid as of 1991. When applying for an extension of the residence permits, the applicants' parents still alleged that their name was "R." and that they were individuals with unresolved nationality originally from Lebanon.

In 1999, the defendant (the authority with competency in nationality matters) issued travel documents according to the 1954 Statelessness Convention to the applicants' parents, and the applicants were naturalised as German nationals based on the Act for the Reduction of Statelessness. In 2004, the defendant received an excerpt of a registry, which identified the applicants and their parents as Turkish nationals with a different name. In May 2004 the applicants' parents declared that they and their children had in reality different identities than those alleged, that they were Turkish nationals and had never lived in Lebanon.

In July 2004, the defendant withdrew the applicants' German nationality due to fraudulent conduct with regard to the identity and alleged statelessness, with retroactive effect. The applicants' parents were expelled from German territory and the applicants' family was threatened with deportation to Turkey.

On 21 June 2006 the Administrative Court decided in favour of the applicants. Regarding the withdrawal of nationality, the administrative court argued that there would be no legal basis for such withdrawal. The applicants did not knowingly engage in fraudulent conduct, because they were only between 5 and 9 years old when they naturalised. As the withdrawal was invalid, the applicants were also not be obliged to return the naturalisation documents, as had been requested by the defendant.

The Appellate Administrative Court then decided in favour of the defendant and against the applicants. It considered that the withdrawal of nationality was valid in light of the decision of the Federal Constitutional Court of 24 May 2006 (- 2 BvR 669/04 - BVerfGE 116, 24). The defendant considered that the applicants were not involved in the fraudulent conduct which led to their naturalisation, due to their age at the time of their naturalisation in 1999. The time of around five years that elapsed until the withdrawal does result in a limited discretionary power of the defendant. The applicants, at the time of the withdrawal of nationality, were around 16, 13 and 10 years old. They were not of an age at which children usually would develop trust and belief in the validity of their naturalisation. They were still minors, subject to the care of their parents and would have had to migrate to Turkey, if their parents had so decided.

Since the facts of other cases are not comparable to this case, the Appellate Administrative Court did not analyse whether the withdrawal was timely. Without the withdrawal of the applicants' nationality, their parents and siblings would receive a right of residence in Germany in application of Art. 6 Basic Law (Grundgesetz, GG) and Art. 8 of the European Convention on Human Rights (ECHR), even if the parents knowingly and with intent deceived with regard to their identity.

### **Decision & Reasoning**

In brief, the Court decided that the naturalisation of a person that had been achieved by means of fraud may only be withdrawn within a period of five years as of the acquisition of nationality. It remained unanswered whether, for minors who did not engage in fraudulent conduct with regard to their own prerequisites for naturalisation, it would be possible to withdraw their nationality if less than five years had elapsed since their naturalisation.

Regarding the legal basis for withdrawal of nationality acquired through naturalisation: the Court concluded that the defendant had no legal basis for the withdrawal because it would not be timely, as more than five years had elapsed since the acquisition of nationality. "Public international law sets limits to national law with regard to the specific reasons of withdrawal and denial and therefore has to be considered when applying national law due to the requirement of interpretation in accordance with public international law. However, it is out of dispute here that withdrawal of nationality is possible in case of 'acquisition of the nationality of the State Party by means of fraudulent conduct' (European Convention on Nationality) or

‘where the nationality has been obtained by misrepresentation or fraud’ (Convention on the Reduction of Statelessness 1961).”

Regarding the “timely” requirement:

When the case was decided, statutory law did not set a time limit within which nationality could be withdrawn. In a different case, the German Constitutional Court held that nationality could only be withdrawn as long as the withdrawal was “timely” (Constitutional Court of 24 May 2006, 2 BvR 669/04, BVerfGE 116, 24). The deciding Court therefore held that “in any case, a period of five years applies if a citizenship is to be withdrawn which the naturalised person acquired him/herself by fraudulent means. Only then is the constitutionally protected expectation of a naturalised person to receive a sufficiently foreseeable administrative decision under the rule of law still fulfilled. Conversely, the withdrawal of a citizenship acquired by means of fraud or by any other illegal means, for which the naturalised person has him/herself committed fraudulent conduct, must be considered as (still) timely within five years [...]. The legal notion that over time the public interest in the reconstruction of a legitimate situation has to give way to other interests, is reflected in the period of time within which [...] naturalisation can be considered invalid [...]. [T]he period established in s. 24 para. 2 of the Act on Issues Regarding Citizenship underlines that the legislator attaches particular importance to the wish for stability in matters relating to citizenship and that this [importance] can over time outbalance a naturalisation acquired by illegitimate means. ”

Regarding the fact that the applicants, who were minors, did not engage in fraudulent conduct:

According to the facts established by the lower courts, the applicants did not participate in the fraudulent acts which led to naturalisation. As regards the maximum period within which their nationality may be withdrawn, they cannot be in a worse position than a naturalised person who has themselves engaged in fraudulent behaviour. According to the Federal Administrative Court, “the citizenship authority did not comply with the period of five years. The fact that this period is nevertheless exceeded by only a few days does not justify a different conclusion [...]. Whether a withdrawal is possible in the case of minors who have not committed any fraud with

regard to the naturalisation requirements, or whether the withdrawal period would in any case have to be shortened, can therefore remain unanswered.”

### **Decision documents**

[BVerwG, Urteil vom 30. Juni 2008 – 5 C 32/07](#)

### **Outcome**

The Court decided in favour of the applicants and appellants. They did not have to return their naturalisation documents.

The legislature amended section 35 of the Act on Citizenship to include a maximum period of five years for the revocation of nationality. By federal statute of 4 August 2019 (BGBl. I S. 1124) this period was amended to a maximum period of 10 years after the nationality has been granted.

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

Matthias Hartwig, ZaöRV 72, 603-656 (2012) (Essay)

Andreas Pfersich, ZAR 2008, 313-314 (Comment)

### **Caselaw cited**

BVerwG, 14 February 2008, 5 C 4/07

BVerfG, 24 May 2006, 2 BvR 669/04, BVerfGE 116, 24

BVerwG, 13 April 1989, 1 B 54.89

VGH Kassel, 18 May 1998, 12 UE 1542/98

VGH Mannheim, 9 August 2007, 13 S 2885/06