



## Germany - Federal Administrative Court, judgment 5 C 12.10 (Rottmann)

The case had been brought before the ECJ for a preliminary ruling, leading to its famous Rottman judgment (CJEU, C-135/08 Rottmann, judgment of 2 March 2010). The Federal Administrative Court rules on the case after the ECJ's judgment. The applicant lost his Austrian nationality when he naturalised in Germany, but his German naturalisation was later revoked as he committed fraud in the naturalisation procedure, rendering him stateless. The Federal Administrative Court upheld the administrative decision to withdraw the German nationality despite the uncertainty about the restoration of the Austrian nationality of the applicant.

**Case name (in original language) :** BVerwG 5 C 12.10

**Case status:** Decided

**Case number:** BVerwG 5 C 12.10

**Date of decision:** 11/11/2010

**State:** Germany

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

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

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

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

**Legal instruments:** European Union law

**Key aspects:** Deprivation of nationality, Residence permit, Voluntary renunciation of nationality

### **Facts**

The applicant was born in Graz (Austria) in 1956 and was an Austrian national until he was naturalized in Germany, whereupon he automatically lost his Austrian nationality. In June 1995 by the Graz Federal Police Directorate initiated an investigation into the applicant in a case of serious commercial fraud. Soon after he left Austria and took up residence in Munich, where he worked as an independent

management consultant. In February 1997 the Regional Court for Criminal Matters in Graz issued a national arrest warrant against the applicant. In February 1998 the plaintiff applied for his naturalization in Germany. Under the heading "Information about pending investigation proceedings" in his naturalisation application he noted "None". He was naturalised in February 1999. In August 1999 the German authorities learned that the applicant was wanted in Austria, and that he had already been questioned as a suspect by the Regional Court for Criminal Matters in Graz in July 1995. After interviewing the applicant, the German authorities decide to retroactively withdraw his naturalization by a decision dated July 4, 2000, on the basis that his naturalisation was fraudulent as he concealed relevant information about pending criminal investigations against him.

Numerous court proceedings followed, and finally in 2008 the German Federal Administrative Court submitted the proceedings to the Court of Justice of the European Union for a preliminary ruling, resulting in the famous ECJ Rottmann judgment of 2010 (C-135/08). On 11 November 2010 the authorities rejected the applicant's request to suspend the revocation of his German nationality until the Austrian authorities have decided on his application for the restoration of Austrian nationality.

### **Decision & Reasoning**

Concerning the applicant's statelessness that resulted from the withdrawal of German nationality, as well as the prospect of restoring his Austrian nationality, the Court reasoned as follows:

"The withdrawal of naturalisation is not - as the applicant believes - generally inadmissible due to higher law. The withdrawal of fraudulent naturalisations is not in conflict with either the prohibition on deprivation of the German citizenship contained in Article 16.1 paragraph 1 of the Constitution, or the protection against statelessness contained in Article 16.1 paragraph 2 of the Constitution."

"When weighing the public and private concerns that respectively speak for and against the withdrawal, the state authorities took into account all circumstances relevant to the applicant's situation [...] and weighed them reasonably. Even if the most unfavourable scenario occurs where withdrawal of German nationality leads to statelessness, it does not constitute an error of judgment to the detriment of the applicant - even considering that during the proceedings before the Court of Justice

of the European Union Austria stated that restoration of Austrian nationality cannot be ruled out. Allowing for the risk of statelessness in this case does not violate the principle of proportionality."

"In case of a negative outcome of the restoration process [for Austrian nationality] that has been initiated, the applicant would become stateless. This would have serious negative legal consequences for the applicant: in addition to the loss of freedom of movement in the EU, the political participation rights he derives from EU citizenship would be diminished, and would affect the applicant economically as an independent management consultant, after he is released from prison."

"On the other hand, the withdrawal does not have any adverse consequences for his wife or any other family members. Even as a stateless person, the applicant enjoys adequate protection of as a lawful resident under German law. Likewise, as the state authorities correctly stated, the applicant has a relatively secure residence status with the possibility of leaving and returning due to his marriage to a German national. As a result, this mitigates the negative consequences associated with the loss of EU nationality, which are ultimately the result of the applicant's own behaviour."

### **Decision documents**

[Federal Administrative Court, judgment 5 C 12.10 \(Rottmann\)](#)

[Federal Administrative Court, judgment 5 C 12.10 \(Rottmann\) EN](#)

### **Outcome**

The Court upheld the administrative decision to withdraw applicant's nationality.

### **Caselaw cited**

ECJ, Case C-135/08, Janko Rottmann v Freistaat Bayern, 2 March 2010:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62008CJ0135>