



Netherlands - East-Brabant Court, ECLI:NL:RBOBR:2016:2818

The applicant originates from Somalia and arrived to the Netherlands through Yemen as an unaccompanied minor. When testifying for his asylum application, he omitted to mention that he had lived in Yemen. He was granted a residence permit which later lead to his naturalisation, but the latter was withdrawn nearly 12 years later as the authorities found out about his history in Yemen. He argued that the denaturalisation is disproportionate in light of the CJEU Rottmann judgment, citing statelessness as one of the circumstances, and the court upheld his position.

Case name (in original language) : ECLI:NL:RBOBR:2016:2818

Case status: Decided

Case number: ECLI:NL:RBOBR:2016:2818

Citation:

<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBOBR:2016:2818>

Date of decision: 02/06/2016

State: Netherlands

Court / UN Treaty Body: East-Brabant Court

Language(s) the decision is available in: Dutch

Applicant's country of birth: Somalia

Applicant's country of residence: Netherlands

Legal instruments: European Union law

Key aspects: Acquisition of nationality, Childhood statelessness, Country of return, Deprivation of nationality, Statelessness and asylum

Facts

The applicant was born in 1984 in Somalia and has arrived to the Netherlands in 1996 as a 12 year old unaccompanied minor. He has been issued with an asylum residence permit for unaccompanied minors, which has been extended into a permanent residence permit. On 8 July 2002 he applied for naturalisation, which was granted in 2003. In 2014 the applicant was arrested, and during the has found

in possession of his mother's passport issued by Yemen, which had his name included in it. The applicant's sister was identified, and it became clear that in his application procedure the applicant concealed facts related to family's initial stay in Yemen before his arrival to the Netherlands.

Legal arguments by the applicant

The applicant relied, among other arguments, on the CJEU Rottmann judgment, where he claimed that the authorities have not sufficiently considered the EU proportionality when deciding to withdraw his Dutch nationality, and with it his EU citizenship. He submitted his statelessness, that would result from the withdrawal of his Dutch nationality, as an argument in favour of the disproportionality of the measure against him.

Decision & Reasoning

With regard to the EU law and statelessness argument, the Court reasoned as follows:

"The court does not follow the authorities position that the Rottmann judgment does not require a more far-reaching weighing of interests than was made in the contested decision. The European Court of Human Rights held in the Rottmann judgment, paragraphs 54-56, that, in the event of withdrawal of nationality of a Member State concerned that also results in the loss of EU citizenship, it is for the national court to verify whether the withdrawal decision complies with the principle of proportionality with regard the consequences for the situation of the affected person from the point of view of EU law, in addition, where appropriate, to the proportionality assessment of this decision in light of national law. Since the applicant also loses his citizenship of the Union and the rights attached to it with the withdrawal of his Dutch nationality, the respondent was incorrect in not assessing whether this withdrawal is in accordance with the principle of proportionality with regard to its consequences for the applicant's situation from the point of view of EU law. In that context, it must be assessed whether the loss of rights enjoyed by a Union citizen is justified in the light of the seriousness of the infringement committed and the time that lapsed between the naturalization decision and the withdrawal decision. It is important here that the applicant has argued that he would become stateless if he is deprived of his nationality and that the withdrawal decision was taken shortly before the period of twelve years after which it is no

longer possible to denaturalise. The court does not follow the authority's that the mere forthcoming expiry of that limitation period is not in itself a reason to decide not to withdraw nationality, as the legislator set that limit at twelve years; the point is precisely for the authority to give reasons why, considering fact that the limit has almost expired, in the light of all other circumstances, it is nevertheless desirable to proceed to denaturalisation."

"In view of the foregoing, the authority's decision is insufficiently motivated and is therefore not in compliance with Article 7:12 of the General Administrative Act."

"14. Because the authority has not yet taken a position on the EU law proportionality test, the court sees no possibilities for a final settlement of the dispute. A new decision must be taken, taking this judgment into account. The authority should consider whether the loss of the rights enjoyed by every citizen of the Union is justified in the light of seriousness of the infringement committed by the applicant, the time that passed between the naturalization and the withdrawal decision, and the possibility for the applicant to reacquire his former nationality."

Decision documents

[East-Brabant_2Jun2016.pdf](#)

Outcome

The Court upheld the applicant's claim that the decision has been insufficiently motivated, and ordered the authority to take a new decision on the matter taking into account all relevant circumstances, including the applicant's potential statelessness.

Caselaw cited

CJEU - Case C-135/08, Janko Rottman v Freistaat Bayern, Judgment of the Court (Grand Chamber) of 2 March 2010.