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CJEU - X v Udlændinge- og Integrationsministeriet

The case concerns the loss of Danish nationality by the applicant who was born outside Denmark to a Danish mother and had spent less than a year in Denmark prior to her 22nd birthday, in accordance with the Law of Danish Nationality. The Court held that Article 20 TFEU, read in conjunction with Article 7 of the Charter of Fundamental Rights of the European Union, did not preclude such legislation by Member States, provided that the persons concerned had the opportunity to lodge, within a reasonable period, an application for the retention or recovery of nationality, for the authorities to examine the proportionality of the consequences of the loss of nationality from the perspective of EU law, and allow the retention or recovery of nationality. However, the period must extend for a reasonable time beyond the date by which the person concerned reaches the age stated in the legislation, and cannot begin to run unless the authorities have informed the person of the loss of nationality, and the right to apply for the maintenance or recovery of nationality.

Case status: Decided
Case number: Case C-689/21
Citation: CJEU, X v Udlændinge- og Integrationsministeriet, C-689/21, ECLI:EU:C:2023:626, 5 September 2023
Date of decision: 05/09/2023
State: Denmark
Court / UN Treaty Body: Court of Justice of the European Union
Language(s) the decision is available in: Estonian, Finnish, Greek, Italian; Maltese, Latvian, Lithuanian, Polish, Bulgarian, Croatian, Czech, Danish, Dutch, English, French, German, Hungarian, Italian, Portuguese, Romanian, Slovak, Spanish, Swedish
Applicant's country of birth: United States
Applicant's country of residence: United States
Legal instruments: European Union law
Key aspects: Deprivation of nationality, Respect for private and family life

Relevant Legislative Provisions:

- Article 20 TFEU
- Article 7 of the Charter of Fundamental Rights of the European Union
- Paragraph 8(1) of the Law of Danish Nationality

Facts

The applicant was born in 1992 in the USA to a Danish mother and an American father and has held Danish and American nationality since birth. None of her family members live in Denmark. In 2014, after reaching 22 years old, she applied to the Ministry of Immigration and Integration in Denmark to retain her Danish nationality. According to the Law on Danish nationality, a person who had been born abroad and had never been resident in Denmark and had not spent time there in circumstances indicating a close attachment to Denmark would lose their Danish nationality upon reaching 22 years old. The Ministry found that the applicant had only spent a maximum period of 44 weeks in Denmark before her 22nd birthday. Therefore, by a 2017 decision, the Ministry informed the applicant that she had lost her Danish nationality upon reaching the age of 22. This was justified by the fact that she had never been resident in Denmark and had not spent time there in circumstances indicating a close attachment to the country.

In 2018, the applicant brought an action before the court in Denmark for an annulment of the 2017 decision, seeking a reconsideration of the case. The action was referred to the High Court, the present referring court. It first reviewed the Ministry’s administrative practice in relation to Danish law and the possibility of authorising the retention of Danish nationality. It also noted that per EU case law, when considering an application made before the age of 22 to retain Danish nationality, additional factors had to be considered to conduct an individual examination of the proportionality of the consequences, from the perspective of EU law, about the loss of nationality and thus citizenship of the EU. It therefore noted that there was doubt about the compatibility of the loss of Danish nationality, and in this case, citizenship of the EU, without exception at age 22 by operation of law, and the difficult access to the recovery of nationality by naturalisation, with Article 20 TFEU read with Article 7 of the Charter.

The referring court asks the Court whether Article 20 TFEU, read with Article 7 of the Charter, must be interpreted as precluding legislation of a Member State under the following circumstances: where the legislation states that nationals born outside its

territory, have never been resident there and have not spent time there in circumstances demonstrating a genuine link with that country, lose by operation of law the nationality of that State at age 22, and for persons who are also not nationals of another Member State, the loss of EU citizenship and the rights attached to it; where the legislation enables the competent authorities, where the applicant submits an application to retain nationality in the year before their 22nd birthday, to examine the proportionality of the consequences of the loss of nationality from the perspective of EU law, and allow the retention of that nationality.

Legal arguments by the applicant

The applicant argued that the automatic loss of Danish nationality without exception, per the Danish Law of Nationality, was not proportionate to the objective of maintaining a genuine link and safeguarding the special relationship of solidarity and good faith with the Member State in question. It was therefore contrary to Article 20 TFEU, read with Article 7 of the Charter of Fundamental Rights of the European Union. The rules on the loss of nationality could only be regarded as proportionate if national legislation permitted very simplified access to the recovery of nationality. There was no such access in Danish legislation, and nationality could not be recovered from the outset.

Legal arguments by the opposing party

The Ministry stated that the assessment of the lawfulness and proportionality of Danish law could only be made based on an overall assessment of the Danish rule of loss and recovery of Danish nationality. The Danish legislature considered that persons born abroad who had not lived in Denmark or resided there for a significant period of time would gradually lose their relationship of good faith, solidarity and their link with the country. It was therefore proportionate to distinguish between their legal situation before and after the age of 22.

Additionally, nationality could be retained on the basis of a case-by-case assessment, following an application to retain Danish nationality submitted on a date closest to the person’s 22nd birthday. Thus, the Ministry argued that the national rules on loss of Danish nationality were lawful and proportionate.

Decision & Reasoning

The Court first noted that Article 20 TFEU confers Union citizenship on every person holding the nationality of a Member State (paragraph 29). It then acknowledged 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 the reciprocity of rights and duties (paragraph 31). It is also legitimate for a Member State to view nationality as the expression of a genuine link with it, and thus prescribe that the absence or loss of such a link entails the loss of nationality (paragraph 32). EU law did not preclude a Member State from stipulating that the assessment of the existence or absence of a genuine link is based on the consideration of criteria (paragraph 35). Therefore, in principle, EU law did not preclude situations such as those in the provision of the Danish Law on Nationality in question (paragraph 37).

However, primary EU law attaches importance to the citizenship of the EU, which constitutes the fundamental status of nationals of the Member States. It is for the competent national authorities and national courts to determine whether the loss of nationality of the Member State concerned, when it entails the loss of EU citizenship and the rights attached to it, has due regard to the principle of proportionality, in terms of the consequences of that loss on the concerned person’s situation (paragraph 38). The loss of nationality of a Member State would be inconsistent with the principle of proportionality if the relevant national rules did not permit at any time an individual examination of the consequences of that loss for the persons concerned from the perspective of EU law (paragraph 39). Therefore, where the loss of nationality of a Member State entails the loss of EU citizenship, the competent national authorities and courts must be able to examine the consequences of the loss of that nationality, and where appropriate, enable the person to retain his or her nationality, or recover it from the outset (paragraph 40).

EU law does not impose a specific time limit for submitting an application for such an examination. Member States may require that an application for the maintenance or recovery of nationality be submitted to the competent authorities within a reasonable period. The relevant provision under Danish law provides for the possibility of applying for the retention of Danish nationality before the person concerned has reached the age of 22. Hence when the application is made between the applicant’s 21st and 22nd birthday, the Ministry has carried out an examination of the proportionality of the consequences of the loss of Danish nationality and EU citizenship (paragraphs 41-46).

Yet the period of the year between the applicant's 21st and 22nd birthday runs even if that person has not been duly informed of the fact that he or she is exposed to the imminent loss of Danish nationality, and that he or she is entitled to apply for the retention of nationality during that period. Therefore, national rules or practices that prevent the person exposed to loss of nationality from seeking an examination of the proportionality of the consequences of that loss from the perspective of EU law, on grounds where the time limit for requesting examination has expired or the person has not been informed of the time limit and right to request examination, cannot be regarded as compatible with the principle of effectiveness. (paragraphs 47-48)

Furthermore, the one-year period ends on the date of the applicant's 22nd birthday. For the examination on proportionality, the applicant can rely on all relevant matters which have arisen up till his or her 22nd birthday. Therefore, provision must be made for him or her to raise such matters after his or her 22nd birthday. In sum, the applicant must have a reasonable period to request the competent authorities for an examination of proportionality and the retention or recovery of that nationality, and that period must extend for a reasonable length of time beyond the date of which the person reaches 22 years old. Additionally, the reasonable period cannot run unless the competent authorities have informed the person concerned about the loss of nationality and their right to apply, for the retention or recovery of nationality. (paragraphs 49-53)

The examination must include an individual assessment of the concerned person's situation and that of his or her family, to determine whether the consequences of losing the Member State's nationality and EU citizenship would disproportionately affect the normal development of his or her family and professional life, from the perspective of EU law. It is for the national courts to ensure that the loss of nationality is consistent with the fundamental rights guaranteed by the Charter. (paragraphs 54-55)

Decision documents

Judgment

Outcome

Article 20 TFEU, read in light of Article 7 of the Charter, must not be interpreted to preclude legislation of a Member State which states that nationals born outside its territory, have never been resident there and have not spent time there in circumstances demonstrating a genuine link with that country, may by operation of

law lose the nationality of that State at age 22, and for persons who are not nationals of other EU Member States, citizenship of the EU and the rights attached to it. This is provided that the persons concerned have the opportunity to lodge, within a reasonable period, an application for the retention or recovery of the nationality, which will enable the competent authorities to examine the proportionality of the consequences of the loss of that nationality from the perspective of EU law, and allow the retention or recovery from the outset of that nationality. That period must extend for a reasonable length of time beyond the date by which the person concerned reaches the age stated in the legislation. It cannot begin to run unless the authorities have informed the person of the loss of his or her nationality, and the right to apply for the maintenance or recovery of that nationality.

Caselaw cited

- *Tjebbes and Others*, C-221/17, EU:C:2019:189, 12 March 2019
- *Rottmann*,C-135/08, EU:C:2010:104, 2 March 2010
- *JY v iener Landesregierung*, C-118/20, EU:C:2022:34, 18 January 2022
- *Rewe-Zentralfinanz and Rewe-Zentral*, 33/76, EU:C:1976:188, 16 December 1976
- *Impact*, C-268/06, EU:C:2008:223, 15 April 2008