



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 105/18

Luxembourg, 12 July 2018

Advocate General's Opinion in Case C-221/17
M.G. Tjebbes and Others v Minister van Buitenlandse Zaken

Advocate General Mengozzi proposes that the Court should rule that the automatic loss of Netherlands nationality, which leads to the loss of citizenship of the EU, for minors living outside the EU is incompatible with EU law

By contrast, that incompatibility with EU law does not arise in respect of adults

A number of Netherlands citizens possessing a second nationality of a non-EU country brought proceedings before courts in the Netherlands concerning the refusal of the Minister for Foreign Affairs to process their applications for renewal of their national passports. The Minister applied to them the Law on Netherlands nationality, which provides that an adult loses that nationality if he also possesses a foreign nationality and if, after attaining his majority, his principal residence for an uninterrupted period of ten years is outside the Netherlands and the EU. Furthermore, a minor loses his Netherlands nationality if his mother or father loses that nationality. However, that period of ten years is interrupted if the person concerned has his principal residence in the Netherlands or in the EU for a period of not less than one year. Similarly, that period is interrupted if the person concerned applies for the issue of a declaration regarding the possession of Netherlands nationality, a travel document (passport) or a Netherlands identity card. A new period of ten years starts to run as from the date of issue of one of those documents.

The Raad van State (Council of State, Netherlands), before which those disputes have been brought, is uncertain as to the scope that the Member States enjoy in laying down the conditions governing loss of nationality and has referred a question on that subject to the Court of Justice. It asks, in particular, whether the loss of Netherlands nationality by operation of law, which has the effect of also leading to the loss of citizenship of the EU, is compatible with EU law.

In today's Opinion, Advocate General Paolo Mengozzi considers first of all that **EU law is applicable to this matter** and that the Court has jurisdiction to reply to the question posed by the Netherlands court. He notes that the FEU Treaty¹ confers citizenship of the EU on any person holding the nationality of a Member State, the Court having made it clear on several occasions that this is a fundamental status of nationals of the Member States. The Advocate General also takes the view that the status of citizen of the EU is not restricted to nationals of the Member States who reside or are present in the territory of the EU. In his view, that is affirmed in unambiguous terms by the fact that all citizens of the EU enjoy the diplomatic and consular protection of any Member State when they are in a non-EU country in which the Member State of which they are a national is not represented. In those circumstances, the Advocate General points out that the rights guaranteed by the Charter of Fundamental Rights of the European Union, including those relating to the right to family life and the rights of children, are also applicable.²

Next, as regards the situation of adults, the Advocate General takes the view that the Netherlands law is compatible with EU law. First of all, the deprivation of nationality, provided for by the Netherlands law at issue, pursues a legitimate objective. The Advocate General considers that a Member State is entitled, in exercising its competence allowing it to lay down the conditions for the acquisition and loss of nationality, to start from the premiss that nationality represents the manifestation of a genuine link between that Member State and its nationals. It is

¹ Article 20(1) TFEU.

² Article 7 and Article 24 of the Charter respectively.

not unreasonable for a national legislature to choose, from among the various factors that may reflect the loss of such a genuine link, the habitual residence of its nationals in the territory of a non-EU country for a sufficiently long period. In that connection, the Advocate General notes that such a choice is accepted at an international level, especially given the fact that, in the present case, there is no risk of statelessness since the persons concerned have dual nationality. Moreover, there is nothing in the case file to show that the deprivation of the nationality at issue in the present case would constitute an arbitrary act.

The Advocate General then goes on to express the opinion that the Netherlands law does not infringe the principle of proportionality. In his view, the review of proportionality must be carried out *in abstracto* and, in any event, must be carried out irrespective of the consequences and individual circumstances, such as knowledge of the Dutch language, which would be capable of demonstrating, notwithstanding the fact that the conditions are satisfied for the application of the Law on Netherlands nationality which must lead to the loss of nationality, that a link with the Netherlands is maintained. In the Advocate General's view, requiring a national of a Member State whose passport or national identity card has expired to renew one or other of those documents seems to be far from unreasonable or disproportionate. Where a Netherlands national, within the periods laid down, applies for one of those documents to be issued, the Netherlands legislature presumes that that national wishes to retain a genuine link with the Netherlands. By contrast, where the person concerned fails to take such a step, the Netherlands legislature presumes that that link has been lost. According to the Advocate General, such presumptions do not appear to go further than what is necessary to achieve the objective pursued by the Netherlands legislature. Moreover, the Advocate General points out that the loss of Netherlands nationality is not irreversible.

By contrast, with regard to minors, the Advocate General takes the view that the Netherlands law is incompatible with EU law.

According to the Advocate General, the autonomy of the status of citizenship of the EU enjoyed by minors and the need to take into consideration the best interests of the child mean that, in the application of legislation of a Member State which entails, for nationals of that State who are minors, loss of nationality and loss of citizenship of the EU, such minors must be able to enjoy the same procedural and substantial rights as are granted to adults. Children who are citizens of the EU do not, however, have the possibility to avoid the loss of nationality by applying for the documents in question. Measures that would be less damaging to the best interests of the child and the status of minors as citizens of the EU are possible, such as, *inter alia*, a general clause enabling the national court to take into account those interests and that status in all cases in which the law in question applies and/or an option for Netherlands nationals to take steps to interrupt the ten-year period solely for their children of Netherlands nationality as citizens of the EU. What is more, the fact that, once he becomes an adult, a child may recover Netherlands nationality under certain conditions cannot, on its own, compensate for the fact that, while he was a minor, that person should never have lost the nationality in question if his best interests and his status as a citizen of the EU had been properly taken into consideration.

The Advocate General therefore proposes that the Court should rule that the Netherlands law is incompatible with EU law with regard to the situation of minors. Furthermore, he proposes that the Court should reject the request of the Netherlands Government seeking to limit the temporal effects of the Court's judgment in the present case.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the

dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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