

**Case C-85/21**

**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice**

**Date lodged:**

11 February 2021

**Referring court:**

Landesverwaltungsgericht Steiermark (Austria)

**Date of the decision to refer:**

3 February 2021

**Appellant:**

WY

**Respondent authority:**

Steiermärkische Landesregierung

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**Subject matter of the main proceedings**

Renunciation of Turkish nationality so as to acquire Austrian nationality – Resumption of Turkish nationality – Withdrawal of Austrian nationality and loss of citizenship of the Union – Consequences – Proportionality

**Subject matter and legal basis of the request**

Interpretation of EU law, Article 267 TFEU

**Question referred for a preliminary ruling**

Is Article 21 TFEU to be interpreted as meaning that, in the event of an *ex lege* loss of nationality provided for under national law, and the subsequent loss of citizenship of the Union, it is to be included in the examination of proportionality in each individual case in accordance with the principles of the judgment of the Court of Justice of the European Union in the *Tjebbes and Others* case and is capable of constituting an obstacle to the loss of nationality in the case where a

national has reacquired his or her previous nationality by means of a declaration of reacquisition, and the threatened loss of citizenship of the Union has a significant impact on his or her family life and professional life?

### **Provisions of EU law relied on**

Treaty on the Functioning of the European Union (TFEU), in particular Articles 20 and 21

Charter of Fundamental Rights of the European Union, in particular Article 7

### **Provisions of national law relied on**

Bundesgesetz über die österreichische Staatsbürgerschaft (Federal Law on Austrian nationality; ‘the StbG’), Paragraphs 27, 57

Gewerbeordnung 1994 (the 1994 Code governing the exercise of artisanal, commercial and industrial professions; ‘the GewO’), Paragraph 14

### **Succinct presentation of the facts and procedure in the main proceedings**

- 1 WY was granted Austrian nationality in 1992. He subsequently submitted a certificate of release issued by the Turkish State confirming that he no longer held Turkish nationality.
- 2 In 2017, the appellant’s name appeared on a Turkish ‘voter registration list’, as a result of which the respondent authority initiated a procedure to clarify the issue of WY’s nationality.
- 3 In the course of that procedure, the respondent authority concluded that the abovementioned list was presumably a list kept by a Turkish authority for the purpose of holding elections. Subsequently, on 27 June 2017, the appellant was asked, for the first time, to submit an extract from the Turkish register of civil status containing data on nationality. Likewise, the Turkish embassy in Vienna was asked to specify whether the appellant had reacquired Turkish nationality. No reply to that letter was received.
- 4 The appellant submitted that extracts from the register of civil status were not issued to persons who had lost their nationality. After further requests by the respondent authority and extensions of the time limit for the appellant, an extract from the Turkish register of civil status for the appellant’s daughter was submitted, which also contains statements pertaining to the appellant. That document shows that the appellant’s daughter lost her Turkish nationality because her mother or father became an Austrian national. Re-naturalisation as a national of the Turkish State is noted for 1994.

- 5 The appellant never applied for the retention of Austrian nationality. In the course of the procedure before the respondent authority, he filed an application pursuant to Paragraph 57 of the StbG (acquisition of nationality by notification), which, however, was not granted.
- 6 By administrative ruling of 7 May 2019, the referring court held that the appellant had reacquired Turkish nationality on 3 February 1994 and had thereby lost his Austrian nationality pursuant to Paragraph 27(1) of the StbG, and the referring court rejected the notification pursuant to Paragraph 57 of the StbG.
- 7 The Verwaltungsgerichtshof (Supreme Administrative Court, Austria), subsequently seised of the case, stated that, as it had been established that the conditions for the loss of Austrian nationality and the associated loss of citizenship of the Union were met, an examination of proportionality had to be carried out by the national authority and, where appropriate, the national court in accordance with the case-law of the Court of Justice in its judgment of 12 March 2019 in Case C-221/17, *Tjebbes and Others*. This was required under EU law. The Supreme Administrative Court takes the view that, as part of that examination of proportionality according to the criteria established by the Court of Justice in the *Tjebbes and Others* case, it is necessary, in any event, to carry out an overall assessment, taking into account the circumstances of each individual case. The circumstance that the appellant did not apply for the retention of Austrian nationality will be relevant in that context. Nevertheless, it is necessary to carry out an overall assessment as to whether, in this specific case, there are any circumstances on the basis of which the withdrawal of Austrian nationality would be disproportionate.
- 8 The appellant's legal representative points out that the loss of citizenship of the Union would have far-reaching consequences for the appellant's family life and professional life and would, in particular, lead to serious restrictions in his professional life.

**Succinct presentation of the reasoning in the request for a preliminary ruling**

- 9 In its judgment in the *Rottmann* case, the Court of Justice established the principle that a decision withdrawing the naturalisation of a national of a Member State is amenable to judicial review on the basis of EU law (judgment of 2 March 2010, C-135/08, EU:C:2010:104). It emphasised that it must be ascertained whether the decision withdrawing the naturalisation observes the principle of proportionality so far as concerns the consequences it entails for the situation of the person concerned in the light of European Union law, whereby it is necessary to take into account the consequences that the decision entails for the person concerned and, if relevant, for the members of his or her family with regard to the loss of the rights enjoyed by every citizen of the Union (CJEU, 2 March 2010, C-135/08, EU:C:2010:104, paragraph 55 et seq.).

- 10 According to the judgment of the Court of Justice in *Tjebbes and Others* (C-221/17, EU:C:2019:189), the situation of citizens of the Union who, by losing their nationality, are also faced with losing their citizenship of the Union falls, by reason of its nature and its consequences, within the ambit of EU law. Thus, in the sphere of nationality, Member States must have due regard to EU law.
- 11 With regard to the criteria for the examination of proportionality to be carried out by national courts, the Court of Justice stated the following in the *Tjebbes* case: ‘That examination requires an individual assessment of the situation of the person concerned and that of his or her family in order to determine whether the consequences of losing the nationality of the Member State concerned, when it entails the loss of his or her citizenship of the Union, might, with regard to the objective pursued by the national legislature, disproportionately affect the normal development of his or her family and professional life from the point of view of EU law’ (CJEU, 12 March 2019, C-221/17, EU:C:2019:189, paragraph 44).
- 12 In the *Tjebbes* judgment, the Court of Justice took the view that there was no need to answer the question referred for a preliminary ruling on the application of Article 21 TFEU, since the applicants had not exercised their right to freedom of movement. That issue is relevant in the present case, however. The appellant operates a sole proprietorship in Austria, for which he holds a trading licence. By losing his Austrian nationality, the appellant is also threatened with the loss of his trading licence. The appellant would then be categorised as a ‘foreign natural person’ within the meaning of Paragraph 14 of the GewO. Since the respondent authority granted only a ‘family member’ residence permit to the appellant under Paragraph 47 of the Niederlassungs- und Aufenthaltsgesetz (Law on establishment and residence), this leads to the application of Paragraph 14(3) of the GewO.
- 13 According to Paragraph 14(3) of the GewO, family members of citizens of the Union or a State party to the EEA who enjoy the right of residence or the right of permanent residence in a Member State of the EU or a State party to the EEA may exercise a business in the same way as nationals, irrespective of their nationality. In order to avoid reverse discrimination in breach of the principle of equality, however, the appellant would have to bring about an outcome in which Paragraph 14(3) of the GewO is also applicable to family members of Austrians through an interpretation in conformity with the constitution. However, this does not change the fact that the appellant would lose his status as a citizen of the Union and would therefore no longer be able to exercise his rights to free movement under Article 21 TFEU.
- 14 The referring court considers that the threatened loss of status as a citizen of the Union and thus the loss of the ability to lawfully exercise the right to free movement under Article 21 TFEU gives rise to tension with regard to the examination of proportionality to be carried out in the individual case. In light of those considerations, the proceedings are stayed and the question set out above is referred to the Court of Justice for a preliminary ruling.