**Case C-689/21**

**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:**

16 November 2021

**Referring court:**

Østre Landsret (Denmark)

**Date of the decision to refer:**

11 October 2021

**Applicant:**

X

**Defendant:**

Udlændinge- og Integrationsministeriet

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**Subject matter of the main proceedings**

Action for annulment of the decision of 31 January 2017 of the Udlændinge- og Integrationsministeriet (Ministry of Immigration and Integration, Denmark; 'the Ministry') declaring that the applicant, X, has lost her Danish nationality, and a request that the case be referred back for reconsideration. The Østre Landsret (High Court of Eastern Denmark) is hearing the case at first instance.

The request for a preliminary ruling concerns the question as to whether it is contrary to Article 20 TFEU that the applicant, X, lost her Danish nationality (citizenship) [1] by operation of law [2] when she reached the age of 22. When she lost her Danish nationality she also lost, at the same time, the status arising from Article 20 TFEU on citizenship of the Union, and it is therefore common ground in the main proceedings that EU law applies.

[1] Translator's note: the terms 'indfødsret' ('nationality') and 'statsborgerskab' ('citizenship') are used as synonyms in the Danish text.

[2] Translator's note: the Danish text uses the Latin term 'ex lege'.

## Subject matter and legal basis of the request

The request is made pursuant to the second paragraph of Article 267 TFEU and concerns the interpretation of Article 20 TFEU, in conjunction with Article 7 of the Charter of Fundamental Rights of the European Union ('the Charter'), as those provisions have been interpreted most recently by the judgment of the Court of Justice of 12 March 2019, *Tjebbes and Others* (C-221/17, EU:C:2019:189).

## Questions referred for a preliminary ruling

1. Does Article 20 TFEU, in conjunction with Article 7 [of the Charter], preclude legislation of a Member State, such as that at issue in the main proceedings, under which citizenship of that Member State is, in principle, lost by operation of law on reaching the age of 22 in the case of persons born outside that Member State who have never lived in that Member State and who have also not resided there in circumstances that indicate a close attachment to that Member State, with the result that persons who do not also have citizenship of another Member State are deprived of their status as Union citizens and of the rights attaching to that status, taking into account that it follows from the legislation at issue in the main proceedings that:

(a) a close attachment to the Member State is presumed to exist, in particular, after a total of one year's residence in that Member State,

(b) if an application to retain citizenship is submitted before the person reaches the age of 22, authorisation to retain citizenship of the Member State under less stringent conditions may be obtained and for that purpose the competent authorities must examine the consequences of loss of citizenship, and

(c) lost citizenship can be recovered after the person concerned reaches the age of 22 only by means of naturalisation, to which a number of requirements are attached, including that of uninterrupted residence in the Member State for a longer duration, although the period of residence may be somewhat shortened for former nationals of that Member State?

## Provisions of EU law and case-law cited

Article 20 TFEU

Article 7 of the Charter

Judgment of the Court of Justice of 12 March 2019, *Tjebbes and Others* (C-221/17, EU:C:2019:189), in particular paragraphs 41, 42 and 48, read in conjunction with paragraphs 9 and 22, and judgment of 2 March 2010, *Rottmann* (C-135/08, EU:C:2010:104)

**Provisions of international law cited**

The European Convention of 6 November 1997 on Nationality ('the Convention on Nationality'); Article 7(1)(e).

**Provisions of national law cited**

*Prior to the judgment in* Tjebbes

The Consolidated Law on Danish nationality (Consolidated Law No 422 of 7 June 2004; 'the Nationality Law'). The decision contested in the main proceedings was adopted on the basis of the rule, laid down in Paragraph 8 of the Nationality Law, on loss of Danish nationality by operation of law at the age of 22, which was worded, at the date of that decision, as follows:

'Paragraph 8: *A person born abroad who has never lived in the Kingdom of Denmark and who has not resided there in circumstances that suggest a close attachment to Denmark shall lose his or her Danish nationality on reaching the age of 22, unless he or she would thereby become stateless. The Minister for Refugees, Migrants and Integration, or the person whom he or she authorises to do so, may, however, upon application submitted before that date, allow nationality to be retained.'*

It follows from the wording of that provision that, on reaching the age of 22, Danish nationals with dual nationality who were born abroad, who have not lived in Denmark and have not resided in Denmark in circumstances that suggest a connection with the country, lose their Danish nationality when they reach the age of 22. However, before reaching the age of 22, such persons may make an application to the Ministry to retain their Danish nationality.

That provision was initially introduced by Law No 123 of 18 April 1925. That provision was designed to prevent Danish nationality from being transmitted, from generation to generation, to persons abroad who have no knowledge of, or affiliation with, Denmark.

The application to retain Danish nationality must be made between the ages of 21 and 22 years. As regards the time of application, the Ministry processes applications for a certificate of Danish nationality (so-called 'proof of Danish nationality') irrespective of when the application is submitted, and also irrespective of whether the application is submitted before the age of 21, between the ages of 21 and 22 or after the person has reached the age of 22. According to ministerial practice, the assessment as to whether nationality should be retained must be made as close to the age of 22 as possible, which is why, for instance, applications submitted before the age of 21 can constitute the basis only for a certificate of nationality with reservation. In order for it to be accepted, the application must, however, be made before the person concerned reaches the age of 22.

Circular on naturalisation (Circular No 10873 of 13 October 2015 on naturalisation, as amended by Circular No 9248 of 16 March 2016):

Under Paragraph 44(1) of the Grundlov (Basic Law or Constitution), a foreign national may obtain nationality only by way of statute (naturalisation). Former Danish citizens who have lost their Danish nationality under Paragraph 8(1) of the Nationality Law must, therefore, in principle, satisfy the general conditions for obtaining Danish citizenship by way of statute (naturalisation), namely, inter alia, the conditions relating to long-term residence, age, character, debts due to the public authorities, self-sufficiency, employment, knowledge of the Danish language and of Danish society, culture and history. However, the residence condition may be relaxed for former Danish citizens who have lost their Danish nationality under Paragraph 8(1) and, moreover, a residence permit will be granted, on application, to a foreign national who previously held Danish nationality, unless that right has been excluded on a separate ground. It is the Immigration Committee of the Folketing (Danish Parliament) which decides whether the general conditions of residence can be waived and whether citizenship can be recovered.

*Following the judgment in* Tjebbes

Following the judgment in *Tjebbes*, which was delivered on 12 March 2019 – that is to say, after the adoption of the decision of 31 January 2017 which is being contested in the main proceedings – the Ministry considered, in an information note of 11 October 2019, that it was necessary, as a result of that judgment, to amend the rules of the Nationality Law relating to the loss of Danish nationality.

In the light of the foregoing, Paragraph 8(1) of the Nationality Law was amended to its current wording by Law No L 63 of 28 January 2020 amending the Law on Danish Nationality; Paragraph 8, however, was drafted in the same terms as before, with the mere amendment of a single pronoun (som/der). By contrast, the ***travaux préparatoires*** relating to that legislative amendment of 2020 express a wish for clarification, as it is provided for therein that, when examining applications for a certificate attesting the retention of Danish nationality, the Ministry should take into consideration a number of additional factors for the purpose of carrying out an individual examination of the effects, in relation to EU law, of the loss of Danish nationality and hence of Union citizenship, in particular whether the effects are proportionate to the purpose of that loss (that is to say, the interest in ensuring that a genuine link is maintained between Danish citizens and Denmark). In practice, according to the Ministry, the judgment in *Tjebbes* implies that, in the examination of an applicant's application for a certificate attesting the retention of Danish nationality, factors connecting that applicant to other EU Member States must also be taken into consideration, for example whether the loss of Union citizenship would cause the person concerned to face difficulties in maintaining a family or occupational link in one (or more) Member State(s), already established through the Union citizen's exercise of the right to free movement within the European Union.

As regards the maintenance of the requirement, in Paragraph 8, that a person's application to retain Danish nationality must have been made before that person reaches the age of 22, even after the judgment in *Tjebbes*, it is clear from the draft amending law that the Ministry is of the opinion that the Danish system, which requires applications to be submitted before the age of 22, makes possible an individual examination, as demanded by the Court of Justice, and that that judgment does not appear to require that such an examination must be possible at any given point in time. The Ministry therefore takes the view that that judgment does not preclude the maintenance of a rule, such as that provided for in Paragraph 8(1) of the Nationality Law, which requires Danish citizens born abroad who have never lived in Denmark and who have never resided there in circumstances that suggest a connection with Denmark to submit an application before they reach the age of 22 in order to retain Danish nationality.

**National practice cited**

As regards the possibility of being allowed to retain nationality, it is apparent from administrative practice that, even if a person has never lived in Denmark, first, he or she will not lose Danish nationality if, before reaching the age of 22, he or she has resided in Denmark for at least one year. In such a case, the person concerned is deemed to have a close attachment to Denmark within the meaning of the first sentence of Paragraph 8(1). Second, periods of residence of less than one year may not lead to loss of Danish nationality if the residence is an expression of a 'particularly close attachment to Denmark'. According to the *travaux préparatoires*, this may include military service, attendance at a Danish folk high school, traineeships or recurrent holidays of some duration. Third, in circumstances where Danish nationality would normally be lost under the provision, the Ministry may, in accordance with the second sentence of Paragraph 8(1), grant a specific exemption allowing for the retention of nationality on application made before the age of 22, which will be decided on a case-by-case basis. That assessment will, in particular, attach particular weight to the person's knowledge of the Danish language, the extent of periods of holidays in Denmark and contact with Denmark in general, for example through correspondence with Danish relatives or contact with Danish circles abroad.

The administrative practice has not changed following the judgment in *Tjebbes*, although, following the legislative amendment made as a result of that judgment, an individual examination of the effects of loss of Danish nationality, and hence loss of Union citizenship, in relation to EU law is now also carried out in all cases provided that the application is made between the ages of 21 and 22.

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

1 X was born on 5 October 1992 in the United States to a Danish mother and an American father and has, since birth, held Danish and American nationality. X has

two siblings in the United States, one of whom has Danish citizenship, and no parents or siblings in Denmark.

2 On 17 November 2014, X, who has never lived in Denmark, applied to the Ministry, after she had reached the age of 22, to retain her Danish nationality (citizenship).

3 On the basis of the information in the application, the Ministry established that X had stayed in Denmark for a maximum of 44 weeks before reaching the age of 22. X had also declared that she had stayed in Denmark for five weeks after her 22nd birthday and that in 2015 she had been a member of the Danish women's national basketball team. X also pointed out that, in 2005, she had spent approximately three to four weeks in France. There is no indication that X has, in addition, resided elsewhere in the territory of the European Union.

4 By decision of 31 January 2017, the Ministry announced that X had lost her Danish nationality when she reached the age of 22, in accordance with the first sentence of Paragraph 8(1) of the Nationality Law, and that it was not possible to apply the derogation provided for in the second sentence of Article 8(1) of that law, since her application to retain that nationality had been made after she had reached the age of 22.

5 X has brought an action against the Ministry's decision in which she seeks annulment of that decision and referral of the case back for reconsideration.

6 Following the amendment to the Nationality Law on 28 January 2020 as a result of the delivery of the judgment in *Tjebbes*, the Ministry took the view that former Danish citizens who had reached the age of 22 on 1 November 1993 or later who had applied to retain their citizenship before the age of 22 and who had received a decision that they would lose their citizenship under (the then) Paragraph 8 of the Nationality Law, by which they also lost their Union citizenship, could apply for review of their application. However, X had not applied to retain her Danish nationality before reaching the age of 22 and could not, therefore, according to the Ministry of Immigration and Integration, secure reconsideration of her case and, therefore, of the contested decision of 31 January 2017.

**The essential arguments of the parties in the main proceedings**

7 X has argued that Paragraph 8(1) of the Nationality Law concerning the loss of Danish citizenship by operation of law is contrary to Article 20 TFEU, in conjunction with Article 7 of the Charter.

8 In support of that argument, X has submitted that the automatic loss, not subject to any exception, which is provided for by that provision is disproportionate, even though the provision pursues a legitimate and objective aim of maintaining a genuine connection and safeguarding the special relationship of solidarity and good faith between the Member State and its citizens.

9 Under that provision, Danish citizenship that has been lost when a person has reached the age of 22 can be recovered only under the general naturalisation scheme.

10 The legislation at issue does not provide for an easy way of interrupting or extending the period after which forfeiture may occur. However, it follows from the judgment in *Tjebbes* that the rules relating to loss of citizenship can be proportionate only if, as in that judgment, they are linked to very easy access to recovery of that citizenship, something which does not exist under the Danish legislation. Moreover, under Danish law, recovery does not happen *ex tunc*. The possibility of recovery provided for by Danish law does not, therefore, constitute such easy access to recovery of Danish nationality as to satisfy the proportionality requirement in EU law, as set out in the judgment in *Tjebbes*.

11 The Ministry contends that Paragraph 8(1) of the Nationality Law concerning the loss, by operation of law, of Danish citizenship on the ground of lack of connection to Denmark is not contrary to Article 20 TFEU, in conjunction with Article 7 of the Charter.

12 In support of that argument the Ministry claims that the Danish rules on loss of nationality when the person concerned reaches the age of 22 are based on legitimate grounds and are proportionate. In the assessment as to whether the Danish rules are lawful and proportionate, due account must be taken of the fact that the Member States must enjoy a broad margin of discretion when defining the conditions for the acquisition and loss of nationality.

13 The assessment of the lawfulness and proportionality of Paragraph 8(1) of the Nationality Law for persons, such as X, who had already reached the age of 22 at the time of the application must be based on an overall assessment of the Danish rules on loss and recovery of nationality. The Danish legislature has taken the view that persons born abroad who have not lived in Denmark or resided in Denmark to any significant extent gradually lose their ties of loyalty and solidarity and their connection to Denmark as they grow up, and that it is therefore particularly proportionate with regards to these persons to distinguish between their legal situation before and after the age of 22. The provision in Paragraph 8 thus sets a reasonable and proportionate time limit of 22 years of age before loss of nationality by operation of law with regard to persons who were born and brought up abroad and who have not otherwise resided in Denmark for any lengthy period before the age of 22. A person who was born in Denmark and acquired Danish nationality at birth will not be covered by Paragraph 8 of the Nationality Law. This means that such a person cannot lose his or her Danish nationality by operation of law, even if he or she leaves Denmark shortly after birth and thus has neither lived in the country nor resided there for at least one year. The proportionality of the loss of nationality by operation of law for persons who have reached the age of 22 must be assessed in the light of the rather relaxed rules on retention of citizenship until the age of 22.

14 Paragraph 8(1) of the Nationality Law ensures, overall, that persons with Danish nationality have a certain degree of solidarity and loyalty to Denmark and a sufficient link with the country. These are recognised in the judgments in *Tjebbes* and *Rottmann* as legitimate considerations which the Member States may take into account when assessing whether national citizenship should be lost, with the consequence that Union citizenship is also lost. The legitimacy of taking such factors into account when assessing whether a citizen should lose his or her citizenship is also supported by public international law (see Article 7(1)(e) of the Convention on Nationality). Furthermore, that legitimacy and proportionality are supported by the fact that the Minister for Immigration and Integration may, on the basis of a specific assessment, upon application submitted before the deadline referred to in the first sentence of Paragraph 8(1) of the Nationality Law, that is to say between the ages of 21 and 22, allow nationality to be retained nonetheless.

15 Moreover, Paragraph 8(1) of the Nationality Law, as drafted following the judgment in *Tjebbes*, provides for an individual examination of the consequences of the loss of Danish nationality, and hence loss of Union citizenship, in relation to EU law, for persons who are under 22 years of age at the time of application. Thus, when examining applications submitted before the age of 22, in accordance with the second sentence of Paragraph 8(1) of the Nationality Law in its current version, the Ministry must assess, in the light of EU law, whether the effects of the applicant's loss of nationality are proportionate in relation to the purpose of that loss. That assessment also takes into account factors connecting the applicant to other countries of the European Union. Those rules ensure, in particular, that the requirement laid down in paragraph 41 of the judgment in *Tjebbes* is met.

16 Furthermore, when assessing the proportionality of Paragraph 8(1) of the Nationality Law, it must be borne in mind that it is possible, for persons who have reached the age of 22 and who have lost their Danish nationality by operation of law, to recover it in the case where a number of conditions are met, including a requirement to have a permanent residence permit and residency requirements. When submitting the matter to the Danish Parliament's Immigration Committee for its opinion on whether it is possible to waive those requirements and whether recovery is possible, the consequences of the loss may be the subject of an individual assessment with regard to whether nationality should be recovered.

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

17 It follows from the first sentence of Paragraph 8(1) of the Nationality Law, in its earlier version and as currently in force, that a Danish citizen with dual nationality who was born abroad, who has not lived in Denmark and has not resided there in circumstances that suggest a close attachment to Denmark and who, before reaching the age of 22, has not applied for his or her Danish nationality to be maintained, loses that nationality on reaching the age of 22. If the person concerned is not a national of an EU Member State, he or she will hence also lose his or her Union citizenship.

18 After a person has reached the age of 22, nationality may be recovered only under the general naturalisation scheme.

19 In the view of the Østre Landsret, the meaning of the judgment in Case C-221/17, *Tjebbes*, in particular that of paragraphs 41, 42 and 48, in conjunction with paragraphs 9 and 22 of that judgment, is uncertain.

20 In that context and in the light of the content of the judgment in *Tjebbes*, the Østre Landsret also finds that there is such uncertainty as to the compatibility with Article 20 TFEU, in conjunction with Article 7 of the Charter, of the automatic loss, not subject to any exception, of national citizenship (and hence of Union citizenship) which, under the first sentence of Paragraph 8(1) of the Nationality Law, occurs when the person concerned reaches the age of 22, in conjunction with the difficulty of recovering Danish nationality by naturalisation after that person has reached the age of 22, that questions should be put to the Court of Justice on this matter.

21 As the court of first instance in the present case, the Østre Landsret finds, in the light of the foregoing, that it is necessary to refer questions to the Court of Justice of the European Union for a preliminary ruling.