OPINION OF ADVOCATE GENERAL POIARES MADURO delivered on 30 September 2009[1]

1. This reference for a preliminary ruling raises for the first time the question of the extent of the discretion available to the Member States to determine who their nationals are. In so far as citizenship of the European Union, which depends, admittedly, on enjoyment of the status of national of a Member State, is established by the Treaty, can the powers of the Member States to lay down the conditions for the acquisition and loss of nationality still be exercised without any right of supervision for Community law? That is, in essence, the point at issue in this case. This case therefore calls for clarification of the relationship between the concepts of nationality of a Member State and of citizenship of the Union, a question which, it need hardly be emphasised, to a large extent determines the nature of the European Union.

I — The case in the main proceedings and the questions referred for a preliminary ruling

2. The applicant in the main proceedings, Mr Rottmann, was born in Graz (Austria) in 1956 and acquired Austrian citizenship by virtue of his birth within the territory of that State. Through the effect of the accession of the Republic of Austria to the Union on 1 January 1995, he also became, as an Austrian national, a citizen of the Union.

3. Following an investigation concerning him carried out by the Federal Police in Graz on the ground of suspected serious fraud in the exercise of his profession, he was examined as the accused by the Landesgericht für Strafsachen (Regional Criminal Court) in Graz in July 1995. He then left Austria and took up residence in Munich (Germany). In February 1997, the Landesgericht für Strafsachen in Graz issued a national arrest warrant against him.

4. In February 1998, the claimant in the main proceedings applied to the City of Munich for naturalisation in Germany. In the form which

1 — Original language: French.

he was required to complete for that purpose, he concealed the fact that he was the subject of criminal proceedings in Austria. The certificate of naturalisation of 25 January 1999 was issued to the claimant on 5 February 1999. As a result of acquiring German nationality, Mr Rottmann lost his Austrian nationality in accordance with Austrian nationality law. [2]

5. In August 1999, the City of Munich was informed by the Austrian authorities that Mr Rottmann was the subject of an arrest warrant in their country and that he had already been examined as an accused person in July 1995 by the Landesgericht für Strafsachen in Graz. In the light of that information, the defendant in the main proceedings, the Freistaat Bayern, withdrew the naturalisation, by decision of 4 July 2000, on the ground that the applicant had concealed the fact that he was the subject of a judicial investigation in Austria and that he had therefore obtained German nationality fraudulently. In taking that withdrawal decision, the German authorities relied on Paragraph 48(1) of the Bavarian Verwaltungsverfahrensgesetz (Law on administrative procedure, the BayVwVfG), according to which 'an illegal administrative act may, even though it has become definitive, be withdrawn, in whole or in part, with effect for the future or retroactively. …'

2 — Paragraph 27(1) of the Austrian Federal Law on nationality (Staatsbürgerschaftsgesetz, BGBl. 1985, p. 311) states: 'Anyone who acquires, on the basis of a declaration or of his express consent, a foreign nationality shall lose Austrian nationality unless he has been expressly granted the right to keep his Austrian nationality'.

6. The applicant brought an action for annulment against that decision, arguing that withdrawal of his naturalisation would render him stateless, contrary to public international law, and that the status of a stateless person would also entail, in breach of Community law, loss of Union citizenship. His action having been dismissed at first instance and on appeal, Mr Rottmann brought an appeal on a point of law before the Bundesverwaltungsgericht (Federal Administrative Court).

7. Harbouring doubts as to the compatibility of the withdrawal decision at issue and the judgment under appeal with Community law and, in particular, with Article 17(1) EC, on account of the loss of European citizenship which as a rule accompanies the loss of German nationality and the statelessness which results from it, the Bundesverwaltungsgericht decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is it contrary to Community law for Union citizenship (and the rights and fundamental freedoms attaching thereto) to be lost as the legal consequence of the fact that the withdrawal in one Member State (the Federal Republic of Germany), lawful as such under national (German) law, of a naturalisation acquired by intentional deception, has the effect of

causing the person concerned to become stateless because, as in the case of the applicant [in the main proceedings], he does not recover the nationality of another Member State (the Republic of Austria) which he originally possessed, by reason of the applicable provisions of the law of that other Member State?

(2) If the first question is answered in the affirmative, must the Member State (Germany) which has naturalised a citizen of the Union and now intends to withdraw the naturalisation obtained by deception, having due regard to Community law, refrain altogether or temporarily from withdrawing the naturalisation if or so long as that withdrawal would have the legal consequence of loss of citizenship of the Union (and of the associated rights and fundamental freedoms) or is the Member State (Austria) of the former nationality obliged, having due regard to Community law, to interpret and apply, or even adjust, its national law so as to avoid that legal consequence?'

II — Admissibility of the reference for a preliminary ruling

8. Before attempting to answer the questions referred, it is necessary to dismiss the objection, raised by certain Member States and by the Commission of the European Communities, that the situation at issue, having only a purely internal dimension, falls outside the scope of Community law, with the result that the reference for a preliminary ruling is inadmissible.

9. It is true that Union citizenship, even if it constitutes 'the fundamental status of nationals of the Member States,' [3] is not intended to extend the scope ratione materiae of the Treaty to internal situations which have no link with Community law. [4] It cannot therefore be invoked in such situations.

10. It would, however, be manifestly wrong to consider that, as seems to emerge from the observations of certain Member States, that the situation in this case is a purely internal one, on the pretext that the subject-matter of the proceedings, in this instance the acquisition and loss of nationality, is

3 — Case C-184/99 *Grzelczyk* [2001] ECR I-6193, paragraph 31, and Case C-76/05 *Schwarz and Gootjes-Schwarz* [2007] ECR I-6849, paragraph 86.

4 — See Joined Cases C-64/96 and C 65/96 *Uecker and Jacquet* [1997] ECR I-3171, paragraph 23; Case C-148/02 *Garcia Avello* [2003] ECR I-11613, paragraph 26; Case C-403/03 *Schempp* [2005] ECR I-6421, paragraph 20; Case C-192/05 *Tas-Hagen and Tas* [2006] ECR I-10451, paragraph 23; Case C-212/06 *Government of the French Community and Walloon Government* [2008] ECR I-1683, paragraph 39; and Case C-499/06 *Nerkowska* [2008] ECR I-3993, paragraph 25.

regulated exclusively by national law. Suffice it to recall that it has been ruled that the fact that the rules governing a person's surname are matters coming within the competence of the Member States cannot necessarily exclude them from the scope of Community law. [5] Admittedly, if the scope of the Treaty is not to be widened, national provisions relating to the acquisition and loss of nationality cannot come within the scope of Community law solely on the ground that they may lead to the acquisition or loss of Union citizenship. However, even though a situation concerns a subject the regulation of which comes within the competence of the Member States, it falls within the scope ratione materiae of Community law if it involves a foreign element, that is, a cross-border dimension. Only a situation which is confined in all respects within a single Member State constitutes a purely internal situation. [6]

11. In that regard, the presence of a foreign element cannot legitimately be disputed on the ground that, German nationality once obtained, the legal relationship of the applicant in the main proceedings with the Federal Republic of Germany became that of a national of that State and that, in particular, withdrawal of the naturalisation is a German administrative act addressed to a German national residing in Germany. That would be to ignore the origins of Mr Rottmann's situation. It was by making use of the freedom of movement and residence associated with Union citizenship which he enjoyed as an Austrian national that Mr Rottmann went to Germany and established his residence there in 1995, in order to initiate a naturalisation procedure. Although it was in accordance with the conditions laid down by national law that he acquired the status of German national and lost that of Austrian national, it was therefore only after exercising a fundamental freedom [7] conferred on him by Community law. According to settled case-law, situations involving the exercise of the fundamental freedoms guaranteed by the Treaty, in particular those involving the freedom to move and reside within the territory of the Member States, as conferred by Article 18 EC, cannot be regarded as internal situations which have no factor linking them with Community law. [8]

12. The situation of a taxpayer resident in Germany who was unable, under German legislation, to deduct from his taxable income in that Member State the maintenance paid to his former spouse resident in Austria, even though he would have had the right to do so if she still resided in Germany, has thus been regarded as coming within the scope of Community law. The Court held this to be so, even

5 — See *Garcia Avello*, paragraphs 20 to 29.

6 — See Case C-134/95 *USSL n° 47 di Biella* [1997] ECR I-195, paragraph 23; Joined Cases C-95/99 to C-98/99 and C-180/99 *Khalil and Others* [2001] ECR I-7413, paragraph 69; and Case C-127/08 *Metock and Others* [2008] ECR I-6241, paragraph 77.

7 — As the Court has expressly described it (see Case C-224/98 *D'Hoop* [2002] ECR I-6191, paragraph 29.

8 — See *Garcia Avello*, paragraph 24; *Schwarz and Gootjes-Schwarz*, paragraph 87; Case C-209/03 *Bidar* [2005] ECR I-2119, paragraph 33; *Schempp*, paragraphs 17 and 18; and *Nerkowska*, paragraphs 26 to 29.

though the taxpayer had not himself made use of the right to freedom of movement, on the ground that the exercise by his former spouse of the right, which she held under Article 18 EC, to move and reside freely in another Member State had been such as to influence her former husband's capacity to deduct the maintenance payments made to her from his taxable income in Germany. [9] Similarly, the refusal by the Polish authorities to pay a disability pension for civilian victims of war to one of their nationals does not constitute a purely internal situation, for the reason for that refusal was the fact that she had taken up residence in Germany and, consequently, her exercise of her right of movement and residence associated with her Union citizenship had had an impact on the right to payment of that pension. [10]

13. It is true that, in this case, the link between the withdrawal of naturalisation at issue and the Community fundamental freedom is less direct: the reason for the withdrawal is not the exercise of that freedom but the deliberate deception on the part of the applicant in the main proceedings. The fact nevertheless remains that the exercise by Mr Rottmann of his right, as a citizen of the Union, to move and reside in another Member State had an impact on the change in his civil status: it was because he transferred his residence to Germany that he had been able to satisfy the conditions for acquiring German nationality, namely, lawful habitual residence within that country's territory. The existence of such a link is sufficient for acceptance of a link with Community law. This is borne out by a case in which a refusal to alter a patronymic surname was linked to Community law, even though that refusal had been made by the Belgian authorities in respect of children who were born and had always resided in Belgium and possessed Belgian nationality, on the ground that they were also Spanish nationals and could therefore, on that basis, be regarded as nationals of one Member State who were residing lawfully within the territory of another Member State. However, the refusal to change the patronymic surname was not related to the freedom of movement associated with Union citizenship, based as it was on the reason that, under Belgian law, children traditionally took only the patronymic surname of their father as their own surname. [11]

III — State regulation of questions of nationality 'with due regard to Community law'

14. The reference for a preliminary ruling concerns, in essence, the question whether Community law restricts the power of the

9 — See *Schempp*, paragraphs 13 to 25.

10 — See *Nerkowska*, paragraphs 20 to 29.

11 — See *Garcia Avello*, paragraphs 20 to 39.

State to regulate questions of nationality where a person who originally had the nationality of one Member State and lost it following the acquisition through naturalisation of the nationality of another Member State finds himself deprived of the latter nationality fraudulently obtained and, in consequence, becomes stateless and loses Union citizenship. If so, is it for the legal order of the original nationality or for that of the nationality withdrawn to ensure, in the light of Community law, that the legal consequence of statelessness is avoided?

15. The questions raised by the national court are based on the following considerations. Union citizenship is derived and complementary in character in relation to nationality, as is clear from the wording of Article 17(1) EC, according to which '[e]very person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.' [12] It follows from this that there is no autonomous way of acquiring and losing Union citizenship. The acquisition and loss of Union citizenship are dependent on the acquisition and loss of the nationality of a Member State; Union citizenship presupposes nationality of a Member State.

12 — The second sentence of Article 17 EC was added by the Treaty of Amsterdam.

16. That relationship between the two statuses (State nationality and citizenship of the Union) is explained by the very nature and significance of Union citizenship. Whereas citizenship was traditionally understood, in conjunction with nationality, as referring to the legal and political status enjoyed by the nationals of a State within their body politic, European citizenship refers to the legal and political status conferred on the nationals of a State beyond their State body politic. The derived character of Union citizenship in relation to nationality of a Member State flows from its being construed as an 'interstate citizenship' [13] which confers on nationals of a Member State rights in the other Member States, in essence the right of movement and residence and the right to equal treatment, [14] and also vis-à-vis the Union itself. It is therefore highly logical that it should be the nationality of a State which makes an individual a citizen both of that State and, simultaneously, of the European Union. It confers on the nationals of the Member States a citizenship beyond the State.

17. In that context, it is understood that the determination of conditions for the acquisition and loss of nationality, — and therefore

13 — See, in that regard, the analysis by Schönberger, C., 'European Citizenship as Federal Citizenship. Some Citizenship Lessons of Comparative Federalism', *REDP*, vol. 19, No 1, 2007, p. 61; by the same author, *Unionsbürger: Europas föderales Bürgerrecht in vergleichender Sicht*, Tübingen, 2005.

14 — See, in that regard, the synopsis by Iliopoulou, A., *Libre circulation et non-discrimination, éléments du statut de citoyen de l'Union européenne*, ed. Bruylant, 2008.

of Union citizenship —, falls within the exclusive competence of the Member States. It is well known that nationality can be defined as the legal relationship under public law between an individual and a given State, a relationship which gives rise to a body of rights and obligations for that individual. The characteristic feature of that nationality relationship is that it is founded on a special bond of allegiance to the State in question and on reciprocity of rights and duties. [15] With nationality, the State defines its people. What is at stake, through the nationality relationship, is the formation of a national body politic, and it goes without saying that a Member State is free to define the limits of that body politic by determining the persons whom it considers to be its nationals.

18. That, traditionally, is what international law provides in this regard. The Permanent International Court of Justice had already ruled that questions of nationality are in principle within the reserved domain of States. [16] The International Court of Justice subsequently confirmed that international law leaves it to each State to settle by its own legislation the rules relating to the acquisition of its nationality, and to confer that nationality by naturalisation granted by its own organs in accordance with that legislation. [17] Finally, more recently, the European Convention on Nationality, which was adopted by the Council of Europe on 6 November 1997 and entered into force on 1 March 2000, has reiterated, in Article 3(1), that each State is to determine under its own law who are its nationals.

19. The Union does not deviate from the solution adopted in international law which it considers to be a 'principle of customary international law'. [18] That was the intention of the Member States. It is made unequivocally clear in Declaration No 2 on nationality of a Member State, annexed by the Member States to the Final Act of the Treaty on European Union, [19] and it cannot legitimately be objected that the declarations annexed to the treaties, unlike the protocols, do not

15 — As the Court itself has made a point of emphasising (see Case 149/79 *Commission v Belgium* [1980] ECR 3881, paragraph 10), and as held earlier by the International Court of Justice (see the *Nottebohm* case (Second Phase), judgment of 6 April 1955, ICJ Reports 1955, p. 4, specifically p. 23: 'nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties').

16 — See Advisory Opinion of 7 February 1923 on Nationality Decrees Issued in Tunis and Morocco, Series B No 4 (1923), specifically p. 24.

17 — See *Nottebohm* case (Second Phase), specifically pp. 20 and 23.

18 — See Case C-192/99 *Kaur* [2001] ECR I-1237, paragraph 20.

19 — See text (OJ 1992 C 191, p. 45): 'The Conference declares that, wherever in the Treaty establishing the European Community reference is made to nationals of the Member States, the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned. Member States may declare, for information, who are to be considered their nationals for Community purposes by way of a declaration lodged with the Presidency and may amend any such declaration when necessary.'

share their legal status. Community case-law accords them at least interpretative force. [20] Suffice it, in particular, to recall that it has been ruled that a unilateral declaration by the United Kingdom of Great Britain and Northern Ireland, by which that State declared who were to be regarded as its nationals for the purposes of Community law, had to be taken into consideration for the purpose of interpreting the Treaty and, more particularly, for determining the scope ratione personae of the Treaty. [21] Similar force is conferred, a fortiori, on a declaration made by the community of Member States such as Declaration No 2 on nationality of a Member State. Moreover, no provision of primary legislation nor any act of secondary legislation regulates the procedure and conditions for the acquisition and loss of the nationality of a Member State or of Union citizenship. Finally and above all, settled case-law confirms that, as Community law currently stands, this question falls within the competence of the Member States. [22] In particular, the Court has inferred from this that the United Kingdom was entitled, in two successive declarations annexed to the Accession Treaty, to determine freely what categories of British citizens were to be regarded as nationals within the meaning of and for the purpose of applying Community law. [23]

20. The fact nevertheless remains that, if the situation comes within the scope of Community law, the exercise by the Member States of their retained powers cannot be discretionary. It is subject to the obligation to comply with the Community rules. The case-law to that effect is settled and well known. I shall confine myself to recalling, by way of illustration, that it has been ruled that questions concerning direct taxation, [24] patronymic surnames [25] and pensions for civilian victims of war, [26] although coming within the sphere of national competence, must be regulated by the Member States with due regard to Community law. It is perfectly logical that the solution should be no different as regards regulation of the conditions for the acquisition and loss of nationality. The Court has already had occasion to hold, in *Micheletti*, that 'it is for' Member States to lay down those conditions 'having due regard to Community law'. [27]

21. However, at the present time, the Court has not yet sufficiently clarified the scope of that proviso. It has merely inferred from it

20 — With regard to the legal scope of declarations, see my Opinion in Case C-64/05 P *Sweden v Commission* [2007] ECR I-11389, point 34.

21 — See *Kaur*, paragraph 24.

22 — See Case C-369/90 *Micheletti and Others* [1992] ECR I-4239, paragraph 10; Case C-179/98 *Mesbah* [1999] ECR I-7955, paragraph 29; and *Kaur*, paragraph 19.

23 — See *Kaur*.

24 — See Case C-446/03 *Marks & Spencer* [2005] ECR I-10837, paragraph 29.

25 — See *Garcia Avello*, paragraph 25.

26 — *See Tas-Hagen and Tas*, paragraphs 21 and 22, and *Nerkowska*, paragraph 23.

27 — *Micheletti and Others*, paragraph 10. To the same effect, *Mesbah*, paragraph 29, and *Kaur*, paragraph 19.

the principle that a Member State must not restrict the effects of the grant of the nationality of another Member State by laying down an additional condition for recognition of that nationality with a view to the exercise of a fundamental freedom provided for in the Treaty. [28]

22. What, however, is the extent of that obligation to have due regard to Community law in terms of the loss of European citizenship suffered by the applicant in the main proceedings, bearing in mind that the loss of that citizenship results from the withdrawal of his German naturalisation obtained by deception and from the fact that he is unable to regain his Austrian nationality which he had obtained legally through his birth? In other words, what is to be inferred from that obligation as regards a Member State's legislation which concerns only its own nationality and not that of another Member State, in particular when the application of that legislation entails the loss of the fundamental status of citizen of the Union legally acquired as a national of a first Member State?

23. Any attempt at an answer presupposes a sound understanding of the relationship between the nationality of a Member State and Union citizenship. Those are two concepts which are both inextricably linked and independent. [29] Union citizenship assumes nationality of a Member State but it is also a legal and political concept independent of that of nationality. Nationality of a Member State not only provides access to enjoyment of the rights conferred by Community law; it also makes us citizens of the Union. European citizenship is more than a body of rights which, in themselves, could be granted even to those who do not possess it. It presupposes the existence of a political relationship between European citizens, although it is not a relationship of belonging to a people. On the contrary, that political relationship unites the peoples of Europe. It is based on their mutual commitment to open their respective bodies politic to other European citizens and to

28 — See *Micheletti and Others*. It will be recalled that, in that case, the Kingdom of Spain withheld freedom of establishment from an Italian national who also possessed Argentine nationality, on the ground that the Spanish legislation deemed him to be a citizen of Argentina, the country where he had his habitual residence. See also *Garcia Avello*, paragraph 28, and Case C-200/02 *Zhu and Chen* [2004] ECR I-9925, paragraph 39.

29 — For an in-depth analysis of the connections and differences between nationality and citizenship, see Closa, C., 'Union citizenship and Nationality of the Member States', *CMLRev*, 1995, p. 487.

construct a new form of civic and political allegiance on a European scale. It does not require the existence of a people, but is founded on the existence of a European political area from which rights and duties emerge. In so far as it does not imply the existence of a European people, citizenship is conceptually the product of a decoupling from nationality. As one author has observed, the radically innovative character of the concept of European citizenship lies in the fact that 'the Union belongs to, is composed of, citizens who by definition do not share the same nationality'. [30] On the contrary, by making nationality of a Member State a condition for being a European citizen, the Member States intended to show that this new form of citizenship does not put in question our first allegiance to our national bodies politic. In that way, that relationship with the nationality of the individual Member States constitutes recognition of the fact that there can exist (in fact, does exist) a citizenship which is not determined by nationality. That is the miracle of Union citizenship: it strengthens the ties between us and our States (in so far as we are European citizens precisely because we are nationals of our States) and, at the same time, it emancipates us from them (in so far as we are now citizens beyond our States). Access to European citizenship is gained through nationality of a Member State, which is regulated by national law, but, like any form of citizenship, it forms the basis of a new political area from which rights and duties emerge, which are laid down by Community law and do not depend on the State. This, in turn, legitimises the autonomy and authority of the Community legal order. That is why, although it is true that nationality of a Member State is a precondition for access to Union citizenship, it is equally true that the body of rights and obligations associated with the latter cannot be limited in an unjustified manner by the former. In other words, it is not that the acquisition and loss of nationality (and, consequently, of Union citizenship) are in themselves governed by Community law, but the conditions for the acquisition and loss of nationality must be compatible with the Community rules and respect the rights of the European citizen.

24. However, it cannot reasonably be inferred from this that it is absolutely impossible to deprive a person of nationality, where such deprivation would entail the loss of Union citizenship. That would amount to excluding the competence of the Member States to regulate the conditions of nationality of their own State and would thus affect the fundamental nature of the Member States' autonomy in this sphere, in disregard of Article 17(1) EC. That would produce a paradoxical solution whereby the secondary would determine the primary: maintenance of Union citizenship would serve as a basis for demanding maintenance of the nationality of a Member State.

30 — Weiler, J., *The Constitution of Europe*, Cambridge University Press, 1999, p. 344.

25. Such a solution would also contravene the duty, imposed on the Union by Article 6(3)

EU, to respect the national identities of the Member States, of which the composition of the national body politic is clearly an essential element.

26. Conversely, it cannot reasonably be maintained, as certain Member States have done, that only the exercise of the rights arising from the Union citizenship conferred by possession of the nationality of a Member State falls under the jurisdiction of Community law, and not the conditions for the acquisition and loss of the nationality of a Member State as such. In so far as possession of the nationality of a Member State determines possession of Union citizenship and, hence, the enjoyment of the rights and freedoms which are expressly linked to it by the Treaty, and also the receipt of social benefits which it makes it possible to claim, [31] the obligation to have due regard to Community law in the exercise of the Member States' competence in the sphere of nationality cannot be denied some effect. That obligation is therefore bound to place some restriction on the State act of depriving a person of nationality, when such an act entails the loss of Union citizenship; otherwise the competence of the Union to determine the rights and duties of its citizens would be affected.

27. The literature takes that view. [32] There are already indications in the case-law to suggest that nationality must be regulated by the Member States with due regard to Community law. The Court has, in particular, refused to take account, for the purpose of applying the Staff Regulations of officials, of the Italian naturalisation of a female official of Belgian nationality, on the ground that it had been imposed on her under Italian law, and she was unable to renounce it, as a consequence of her marriage to an Italian, in breach of the Community principle of equality of treatment as between male and female officials. [33]

28. And it would also be wrong to assume that, owing to the specific characteristics of the law of nationality, only certain Community

31 — See, inter alia, *D'Hoop*; Case C-138/02 *Collins* [2004] ECR I-2703; Case C-456/02 *Trojani* [2004] ECR I-7573; *Bidar*; and Case C-158/07 *Förster* [2008] ECR I-8507.

32 — See to that effect, inter alia, Hall, S., "Loss of Union Citizenship in Breach of fundamental Rights', *ELR*, 1996, p. 129; Kotalakidis, N., *Von der nationalen Staatsangehörigkeit zur Unionsbürgerschaft: die Person und das Gemeinwesen*, Nomos Verlagsgesellschaft, Baden-Baden, 2000, specifically pp. 305 to 316.

33 — See Case 21/74 *Airola v Commission* [1975] ECR 221.

rules — essentially the general principles of law and the fundamental rights — are capable of being invoked against the exercise of State competence in this sphere. In theory, any rule of the Community legal order may be invoked if the conditions for the acquisition and loss of nationality laid down by a Member State are incompatible with it.

29. In particular, the Member States must undoubtedly abide by international law. The obligation for States adjudicating on questions of nationality to comply with international law constitutes a generally accepted rule, codified in Article 1 of the Hague Convention of 12 April 1930 on Certain Questions relating to the Conflict of Nationality Laws. [34] The rules of general international law and international custom constitute rules to which the European Community is subject and which form part of the Community legal order. [35] That is therefore the case of the rule which requires States adjudicating on questions of nationality to abide by international law. However, it is difficult to see what rule of international law the withdrawal of naturalisation at issue in this case has infringed. Admittedly, and even assuming that both documents can, in the absence of ratification by all the Member States of Union, be regarded as the embodiment of general rules of international law, both the Convention on the Reduction of Statelessness of 30 August 1961 and the European Convention on Nationality, adopted by the Council of Europe on 6 November 1997, seek to establish the principle that statelessness must be avoided. Nevertheless, they authorise States, by way of exception, to deprive an individual of his nationality even if that deprivation would render him stateless, when the nationality was acquired, as in the case at issue in the main proceedings, as a result of deception or of providing false information. [36]

30. Other rules capable of restricting the legislative power of the Member States in the sphere of nationality include the provisions of primary Community legislation and the general principles of Community law. Thus, mention has been made in academic

34 — That provision reads: 'It is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality' (League of Nations Treaty Series, vol. 179, p. 89).

35 — See, inter alia, Case C-286/90 *Poulsen and Diva Navigation* [1992] ECR I-6019, paragraphs 9 and 10, and Case C-162/96 *Racke* [1998] ECR I-3655, paragraphs 45 and 46.

36 — See, respectively, Article 8(2)(b) of the Convention on the Reduction of Statelessness and Article 7(1)(b) of the European Convention on Nationality.

writing [37] and by the Hellenic Republic in its observations, of the Community principle of sincere cooperation laid down by Article 10 EC, which could be affected if a Member State were to carry out, without consulting the Commission or its partners, an unjustified mass naturalisation of nationals of non-member States.

31. As regards the withdrawal of naturalisation at issue in this case, some might invoke against it the principle of the protection of legitimate expectations as to maintenance of the status of citizen of the Union. However, it is not clear in what respect that principle has been contravened, in the absence of any expectation meriting protection on the part of the person concerned who has provided false information or committed fraud and has thus obtained German nationality illegally. More especially because, as we have seen, international law authorises the loss of nationality in cases of fraud, and Union citizenship is linked to possession of the nationality of a Member State.

32. The withdrawal of naturalisation at issue could, in particular, also fall foul of the provisions of the Treaty relating to Union citizenship and of the rights and freedoms associated with it. State rules on nationality cannot restrict the enjoyment and exercise of the rights and freedoms constituting the status of Union citizenship without justification. The literature supports this view. [38] The case-law itself already seems to tend in that direction. Mention must be made, in particular, of the justification for the conclusion drawn, in *Micheletti and Others*, from the obligation to have due regard to Community law: the prohibition imposed on one Member State from laying down, with a view to the exercise of a fundamental freedom provided for by the Treaty, an additional condition for recognition of the nationality granted by another Member State was based not only on the concern to protect the competence of a Member State to determine the status of national, but also on the concern to avoid any variation in the personal scope of the Community fundamental freedoms from one Member State to another depending on the rules laid down by them in regard to nationality. [39] Thus, a State rule providing for loss of nationality in the event of a transfer of residence to another Member State would undoubtedly constitute an infringement of the right of movement and

37 — See de Groot, G. R., 'The relationship between nationality legislation of the Member States of the European Union and European citizenship,' in La Torre, M., (ed.), *European citizenship: an institutional challenge*, Kluwer Law International 1998, p. 115, specifically pp. 123 and 128 to 135; Zimmermann, A., 'Europaïsches Gemeinschaftsrecht und Staatsangehörigkeitsrecht der Mitgliedstaaten unter besonderer Berücksichtigung der Probleme mehrfacher Staatsangehörigkeit,' *EuR*, 1995, No ½, p. 54, specifically pp. 62-63.

38 — See de Groot, G.R., op. cit., specifically pp. 136 to 146.

39 — See *Micheletti and Others*, paragraphs 10 to 12.

residence conferred on citizens of the Union by Article 18 EC. [40]

33. In this case, deprivation of nationality is not linked to exercise of the rights and freedoms arising from the Treaty and the condition laid down by the Federal Republic of Germany, which resulted in the loss of nationality in this case, does not infringe any Community rule. On the contrary, it seems to me that for a State to withdraw its nationality obtained by fraud corresponds to a legitimate interest in satisfying itself as to the loyalty of its nationals. Indeed, to demonstrate loyalty towards the State of which he is a national is one of the duties constituting the status enjoyed by an individual as a national, and that duty commences from the time of acquisition of nationality. However, an individual who, during the process of obtaining nationality, deliberately provides false information cannot be considered loyal to the chosen State. That is, moreover, the reason why international law does not prohibit loss of nationality in such a case, even if that would lead to statelessness.

34. Finally, as regards the restoration of Austrian nationality, Community law does not impose any such obligation, even though, failing such restoration, the applicant in the main proceedings remains stateless and, therefore, deprived of Union citizenship. To decide otherwise would be to disregard the fact that the loss of Austrian citizenship is the consequence of the personal decision of the citizen of the Union deliberately to acquire another nationality [41] and that Community law also does not preclude the Austrian legislation under which an Austrian loses his citizenship when he acquires, at his request, a foreign nationality. [42] Admittedly, the view could be taken that, since the withdrawal of German naturalisation has retroactive effect, Mr Rottmann has never had German nationality, so that the event triggering the loss of Austrian nationality never took place. Consequently, he would have a right to automatic restoration of his Austrian nationality. However, it is for Austrian law to decide whether or not that reasoning should apply. No Community rule can impose it. The position would be otherwise only if Austrian law already provided for such a solution in similar cases, and, in that case, on the basis of the Community principle of equivalence.

40 — For further examples, see de Groot, G.R., loc. cit.

41 — To decide otherwise would also, in a way, amount to deeming the original bond of nationality not to have been entirely dissolved by the acquisition of German nationality. Otherwise it would be difficult to understand why, on the pretext of avoiding statelessness and the consequential loss of Union citizenship, the Republic of Austria should be the only Member State to be subject to obligations relating to recovery of the nationality of a Member State by the applicant in the main proceedings.

42 — It is conceivable that, in the future, the Member States could decide that acquisition of the nationality of a Member State should never result in the loss of the nationality of another Member State. However, in my opinion, that is not an obligation which can be inferred from the present treaties (see, for the reasons which would justify such an initiative by the Member States, Kochenov, D., *A Glance at State Nationality/EU Citizenship Interaction (Using the Requirement to Renounce One's Community Nationality upon Naturalising in the Member State of Residence as a Pretext)* talk at the 11th bi-annual EUSA Conference, April 2009, Los Angeles CA, not yet published).