Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 26 January 2023 [1]

Case C-689/21

X

v

Udlændinge- og Integrationsministeriet

(Request for a preliminary ruling from the Østre Landsret (High Court of Eastern Denmark, Denmark))

(Reference for a preliminary ruling – Citizenship of the European Union – Article 20 TFEU – Article 7 of the Charter of Fundamental Rights of the European Union – Nationality of a Member State and of a non-member State – Loss of the nationality of the Member State by operation of law upon reaching the age of 22 on the ground of lack of a genuine link where no application to retain nationality has been made before that date – Loss of citizenship of the European Union – Examination, based on the principle of proportionality, of the consequences of loss in the light of EU law)

I. Introduction

1. Under the domestic legislation of a Member State, nationals of that Member State lose their nationality by operation of law, subject to certain conditions, upon reaching the age of 22 on the ground of lack of a genuine link and where no application to retain nationality has been made before that date. This therefore results in the person concerned losing his or her citizenship of the European Union, without the national authorities carrying out any review of proportionality, in the light of EU law, of the consequences of that loss for that person's situation where the application is made after that age.

2. The referring court seeks clarification as to whether such domestic legislation is consistent with Article 20 TFEU, read in conjunction with Article 7 of the Charter of Fundamental Rights of the European Union ('the Charter').

3. The present case is the fourth in a line of cases relating to the obligations of Member States as regards the acquisition and loss of nationality in the light of EU law, which began with the case which gave rise to the judgment in *Rottmann*. [2] The case-law deriving from that judgment was confirmed by the Court in its judgments in *Tjebbes and Others* [3] and *Wiener Landesregierung*

[1] Original language: French.

[2] Judgment of 2 March 2010 (C-135/08, 'judgment in *Rottmann*', EU:C:2010:104).

[3] Judgment of 12 March 2019 (C-221/17, 'judgment in *Tjebbes and Others*', EU:C:2019:189).

(Revocation of an assurance of naturalisation).[4] This case gives the Court the opportunity to examine afresh the conditions for the loss of the nationality of a Member State by operation of law entailing the loss of citizenship of the European Union in the light of the requirements of EU law, as interpreted by the Court in *Tjebbes and Others*.

II. Legal context

A. European Union law

4. Article 20(1) TFEU establishes citizenship of the European Union and provides that 'every person holding the nationality of a Member State' is a citizen of the Union. Under Article 20(2)(a) TFEU, citizens of the Union have 'the right to move and reside freely within the territory of the Member States'.

5. According to Article 7 of the Charter, everyone has the right to respect for his or her private and family life, home and communications.

B. Danish law

6. Paragraph 8(1) of the Lov nr. 422 om dansk indfødsret, lovbekendtgørelse (Law on Danish nationality, Consolidating Decree No 422) of 7 June 2004, in the version applicable to the dispute in the main proceedings ('the Law on nationality'), provides:

'A person born abroad who has never lived in Denmark and who has also not resided there in circumstances indicating a close attachment to Denmark shall lose his or her Danish nationality upon 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 for that purpose, may, however, upon application submitted before that date, allow nationality to be retained.'

7. The cirkulæreskrivelse nr. 10873 om naturalisation (Circular on naturalisation No 10873) of 13 October 2015 was amended by Circular No 9248 of 16 March 2016 ('the Circular on naturalisation').

8. According to the Circular on naturalisation, former Danish nationals who have lost their Danish nationality pursuant to Paragraph 8(1) of the Law on nationality must, in principle, satisfy the general conditions for acquiring Danish nationality as required by the law. This means that persons who satisfy the conditions laid down in that circular relating to stays, age, good conduct, debts owed to the public authorities, self-sufficiency, employment, knowledge of the Danish language and of Danish society, culture and history are covered by the Danish Government's bill on the grant of nationality. In accordance with Paragraph 5(1) of the Circular on naturalisation, the applicant must be living in Denmark when the application for naturalisation is made. Paragraph 7 of that circular requires the applicant to have been resident for a continuous period of nine years.

[4] Judgment of 18 January 2022 (C-118/20, 'judgment in *Wiener Landesregierung*', EU:C:2022:34).

9. Under Paragraph 13 of the circular, read in conjunction with point 3 of Annex 1 thereto, the general residence requirements may be relaxed for persons who have previously held Danish nationality or who are of Danish origin.

III. The facts in the main proceedings, the question referred for a preliminary ruling and the procedure before the Court

10. The applicant in the main proceedings, who was born on 5 October 1992 in the United States of America, has held, since birth, Danish and American nationality and has never lived in Denmark. She has two siblings who live in the United States, one of whom is a Danish national, and has no parents or siblings in Denmark.

11. On 17 November 2014, the applicant in the main proceedings applied to the Udlændinge – og Integrationsministeriet (Ministry of Immigration and Integration) for a certificate of retention of her Danish nationality after the age of 22. Based on the information in that application, the ministry found that she had spent a maximum period of 44 weeks in Denmark before her 22nd birthday. Furthermore, the applicant in the main proceedings stated that she had spent 5 weeks in Denmark after her 22nd birthday and had been a member of the Danish women's national basketball team in 2015. She also submitted that she had stayed in France for approximately 3 to 4 weeks in 2005. There was, however, nothing to indicate that, in addition to that, she had stayed in any other Member State of the European Union.

12. By decision of 31 January 2017 ('the contested decision'), the Ministry of Immigration and Integration informed the applicant in the main proceedings that she had lost her Danish nationality upon reaching the age of 22, in accordance with the first sentence of Paragraph 8(1) of the Law on nationality, and that it was not possible to apply the derogation provided for in the second sentence of Paragraph 8(1) of that law, since her application to retain Danish nationality had been made after the age of 22. That decision stated, in particular, that the applicant in the main proceedings had lost her Danish nationality upon reaching the age of 22 because she had never lived in Denmark and had also not resided there in circumstances indicating a close attachment to that Member State, the total duration of all her stays in national territory, before the age of 22, being only 44 weeks at most.

13. On 9 February 2018, the applicant in the main proceedings brought an action before the Københavns byret (District Court, Copenhagen, Denmark) for annulment of the contested decision and for reconsideration of her case. By order of 3 April 2020, the action was referred to the Østre Landsret (High Court of Eastern Denmark, Denmark), which decided to examine the case at first instance.

14. It was in those circumstances that, by decision of 11 October 2021, received at the Court on 16 November 2021, the Østre Landsret (High Court of Eastern Denmark) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'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?'

15. Written observations were submitted by the applicant in the main proceedings, the Danish and French Governments and the European Commission. With the exception of the French Government, those parties were represented at the hearing held on 4 October 2022 and replied to the questions put to them by the Court for an oral answer.

IV. Legal analysis

16. By its question, the referring court asks, in essence, whether Article 20 TFEU, read in the light of Article 7 of the Charter, must be interpreted as precluding legislation of a Member State which provides, under certain conditions, for the loss of the nationality of that Member State by operation of law upon reaching the age of 22 on the ground of lack of a genuine link where no application to retain nationality has been made before that age, entailing, in the case of persons who are not also nationals of another Member State, the loss of their citizenship of the European Union and the rights attaching thereto, without there being an individual examination, based on the principle of proportionality, of the consequences of that loss for their situation in the light of EU law, where that application to retain nationality is made after the age of 22.

17. The referring court's doubts, which concern the compatibility with Article 20 TFEU, read in conjunction with Article 7 of the Charter, of the rules on loss of Danish nationality, laid down in Paragraph 8(1) of the Law on nationality, which is triggered upon reaching the age of 22, relate, first, to the fact that the loss of that nationality and, therefore, of citizenship of the European Union is automatic and that provision does not contain any exceptions and, second, to the difficulties in having that nationality restored by naturalisation after that age.

18. In my analysis, I will set out, first of all, the aspects of the dispute in the main proceedings which I consider to be relevant to the case before the Court (A). Next, I will consider the Ariadne's clew followed in the case-law of the Court on the loss of citizenship of the European Union and, in particular, its judgment in *Tjebbes and Others*, against the backdrop of which the referring court expressed its doubts as to the compatibility of the rules on loss of Danish nationality with EU law (B). Lastly, I will examine the question referred for a preliminary ruling by reference to that case-law, focusing, first, on the assessment of the validity of the public

interest objective pursued by the loss of Danish nationality provided for in the legislation at issue and, second, on the review of the proportionality of that loss, entailing the loss of citizenship of the European Union, in the light of EU law (C).

A. The aspects of the dispute in the main proceedings relevant to the case before the Court

1. The specific features of the Danish rules on loss of nationality at issue in the main proceedings

19. It is apparent from the legal framework described by the referring court that the rules on loss of Danish nationality by operation of law are laid down, first, in Paragraph 8(1) of the Law on nationality and the administrative practice of the Ministry of Immigration and Integration concerning the application of that provision [5] and, second, in the Circular on naturalisation, which establishes the requirements that former Danish nationals who have lost their Danish nationality pursuant to that provision must satisfy in order to have their nationality reinstated.

20. First, as regards the Law on nationality, I note that the first sentence of Paragraph 8(1) thereof provides for the loss of Danish nationality by operation of law upon reaching the age of 22 in the case of any Danish national 'born abroad who has never lived in Denmark and who has also not resided there in circumstances indicating a close attachment to Denmark … unless he or she would thereby become stateless'. [6] However, the second sentence of Paragraph 8(1) of that law lays down a derogation from that rule, namely that such nationals may, *before reaching the age of 22*, apply to the Ministry of Immigration and Integration to retain their Danish nationality.

21. Second, as regards the *administrative practice* of the Ministry of Immigration and Integration concerning the application of Paragraph 8(1) of the Law on nationality, the referring court provides the following information.

22. First of all, with respect to the rule laid down in the first sentence of Paragraph 8(1) of the Law on nationality, that court states, with reference to the residence criterion at issue in the present case, that a distinction is drawn depending on whether the length of residence in Denmark before the age of 22 was at least one year or less than one year. In the first case, the Ministry of Immigration and Integration recognises the existence of a 'sufficiently close attachment' to Denmark for the retention of Danish nationality. In the second case, however, the requirements relating to close attachment flowing from that administrative practice are more stringent. [7] The applicant must prove that stays of less than one year are nevertheless an expression of a 'specific

[5] It follows from the order for reference that the administrative practice of the Ministry of Immigration and Integration concerning the application of Paragraph 8(1) of the Law on nationality is based on the travaux préparatoires for that provision.

[6] Concerning the criterion relating to living in Denmark, which is not at issue in the present case, the referring court explains that, according to the administrative practice of the Ministry of Immigration and Integration, that criterion is met either where the person concerned has been *recorded as having lived* in Denmark in the central register of persons (CPR) for at least three months before the age of 22, or where that person can prove that he or she had an *address* in Denmark for at least three consecutive months before that age which was intended at the outset to be his or her address for at least three months. According to the referring court, a person who has lived, in particular, in Finland or Sweden for at least seven years is treated as having lived in Denmark.

[7] It follows from the order for reference that, in those circumstances, according to the administrative practice of the Ministry of Immigration and Integration, emphasis may be placed on, inter alia, whether the stays occurred shortly before the age of 22 or date back many years, or whether they reflect an intention on the part of the applicant to visit Denmark or are the result, for instance, of arrangements made by the applicant's parents or employer.

close attachment to Denmark'. In that regard, the referring court states that, according to the travaux préparatoires for the Law on nationality,[8] such stays may relate to periods of military service, higher education, training or recurring holidays lasting a certain length of time.

23. Second, with respect to the derogation provided for in the second sentence of Paragraph 8(1) of the Law on nationality, the referring court explains that, according to the administrative practice of the Ministry of Immigration and Integration, where the requirement to have lived or resided in Denmark is not met, and *if the application was made before reaching the age of 22*,[9] emphasis is placed on a number of other factors, such as the total length of the applicant's stay in Denmark, the number of stays in that Member State, whether the stays occurred shortly before the age of 22 or several years earlier, and whether the applicant is fluent in Danish and also has a link with that Member State.

24. Finally, with respect to applications to retain nationality, the information provided by the referring court shows that the Ministry of Immigration and Integration processes those applications in three different ways depending on whether the applicant is under the age of 21, between 21 and 22, or over 22 when the application is made. If the applicant is under the age of 21, the ministry simply issues a certificate of nationality to the applicant, subject to the loss of Danish nationality pursuant to Paragraph 8 of the Law on nationality, which, according to that court, means that the ministry takes a view not on whether the applicant retains Danish nationality, but only on whether he or she is in possession of that nationality. The referring court states that this is due to the fact that, under the ministry's practice, the retention of nationality must be assessed *as close as possible to the age of 22*.

25. The referring court also states that, although the Danish administrative practice in question continued to apply notwithstanding the judgment in *Tjebbes and Others*, delivered after the decision in the main proceedings, Paragraph 8(1) of the Law on nationality was in any case amended. It explains that, as a result of that amendment, the Ministry of Immigration and Integration is now required, in the case of an application to retain nationality made *before the age of 22*, to take a number of additional factors into account with a view to conducting an individual examination of the effects, in the light of EU law, of the loss of Danish nationality and, therefore, of citizenship of the European Union. In that regard, the ministry must assess whether those effects are proportionate to the objective of the legislation at issue in the main proceedings, namely the existence of a genuine link between Danish nationals and Denmark.

26. Third, as regards the *Circular on naturalisation*, the referring court states that former Danish nationals who have lost their Danish nationality pursuant to Paragraph 8(1) of the Law on nationality may apply for Danish nationality by naturalisation, in which case they must, in principle, satisfy a series of general conditions for acquiring Danish nationality laid down by that law.[10] However, those conditions may be relaxed for such nationals with respect to the length of the required nine years' continuous residence in Denmark.[11] Nevertheless, it is apparent from the

[8] The referring court points to section 2.2.2 of the explanatory memorandum to Bill No L 138 of 28 January 2004, concerning Paragraph 8 of the Law on nationality.

[9] It should be recalled that that condition follows from the second sentence of Paragraph 8(1) of the Law on nationality.

[10] On those general conditions, see point 8 of this Opinion. The referring court states that Paragraph 44(1) of the Constitution provides that a foreign national may obtain Danish nationality only pursuant to the law. Accordingly, naturalisation must be effected by means of a law expressly mentioning the name of each naturalised person.

[11] See, in that regard, point 9 of this Opinion.

information provided by the referring court that the relaxation of those conditions, first, has a very limited scope and, second, does not alter the fact that, under Paragraph 5(1) of that circular, the applicant must be living in Denmark when the application is made. [12]

2. The situation of the applicant in the main proceedings

27. Concerning the situation of the applicant in the main proceedings, the referring court sets out the following findings of fact: she has dual Danish and American nationality; she was born in the United States and has never lived in Denmark; she nevertheless spent 44 weeks in that Member State before the age of 22 and 5 weeks there after that age; she applied to the Ministry of Immigration and Integration to retain her nationality 43 days after reaching the age of 22; she was informed, by means of the contested decision, first, that she had lost her Danish nationality by operation of law upon reaching the age of 22 on the ground of lack of a genuine link in the absence of an application to retain nationality made before that date, under the first sentence of Paragraph 8(1) of the Law on nationality, and, second, that she did not qualify for the derogation provided for in the second sentence of Paragraph 8(1) of that law, as her application had been made *after* she had reached the age of 22.

B. The Ariadne's clew followed in the case-law of the Court on the loss of citizenship of the European Union

28. In this section, I will set out the Court's case-law on the loss of citizenship of the European Union and the aspects of its development which are important for the examination of the present case.

1. Judgment in Rottmann: establishment of the principle of judicial review carried out in the light of EU law

29. In its judgment in *Rottmann*, [13] which concerned the examination of a decision by the German authorities withdrawing naturalisation, the Court first of all confirmed the principle, established in the 1990s, [14] that the competence of the Member States as regards the acquisition and loss of nationality must be exercised *having due regard to EU law*. [15] It then clarified the scope of that principle, stating that 'the fact that a matter falls within the competence of the Member States does not alter the fact that, in situations covered by EU law, the national rules concerned must have due regard to the latter'. [16] It thus held that, in view of the fundamental nature of citizenship of the European Union conferred by Article 20 TFEU, the situation of a citizen of the European Union who is faced with a decision withdrawing his or her naturalisation adopted by the authorities of one Member State, and placing him or her, after he or she has lost the nationality

[12] On the administrative practice of the Ministry of Immigration and Integration concerning the criterion relating to living in Denmark, see footnote 10 of this Opinion.

[13] By way of reminder, Mr Rottmann had fraudulently acquired German nationality by naturalisation.

[14] See judgment of 7 July 1992, *Micheletti and Others* (C-369/90, EU:C:1992:295, paragraph 10): 'Under international law, it is for each Member State, *having due regard* to [EU] law, to lay down the conditions for the acquisition and loss of nationality'. Emphasis added. I recall that the Court had already sketched out that idea in the judgments of 7 February 1979, *Auer* (136/78, EU:C:1979:34, paragraph 28), and of 12 November 1981, *Airola* v *Commission* (72/80, EU:C:1981:267, paragraph 8 et seq.). It is a general principle of EU law applied in the sphere of citizenship of the European Union.

[15] Judgment in *Rottmann*, paragraphs 39 and 45 and the case-law cited).

[16] Judgment in *Rottmann*, paragraph 41 and the case-law cited. I should point out that, in paragraph 41 of that judgment, the Court took as a basis settled case-law on the situations in which legislation adopted in a matter falling within the scope of national powers is assessed in the light of EU law. See also Opinion of Advocate General Poiares Maduro in that case (C-135/08, EU:C:2009:588, point 20).

of another Member State that he or she originally possessed, in a position capable of causing him or her to lose that status and the rights attaching thereto, falls, by reason of its nature and its consequences, within the ambit of EU law. [17]

30. The Court has also established the principle that, in respect of citizens of the European Union, the exercise of that competence, in so far as it affects the rights conferred and protected by the EU legal order, as is in particular the case of a decision withdrawing naturalisation, is amenable to *judicial review carried out in the light of EU law*. [18] Thus, after concluding that a decision withdrawing naturalisation on account of deception was, in principle, legitimate, [19] the Court declared that such a decision should nonetheless be subject to an examination of proportionality in order 'to take into account *the consequences* that the decision entails for the person concerned and, if relevant, for the members of his family with regard to the loss of the rights enjoyed by every citizen of the Union'. [20]

31. Lastly, the Court held that it is not contrary to Article 20 TFEU for a Member State to withdraw from a citizen of the European Union the nationality of that State acquired by naturalisation when that nationality was obtained by deception, *on condition that* the decision to withdraw observes the principle of proportionality. [21]

32. That case-law was confirmed and supplemented on a number of points by two later judgments of the Court.

2. Judgment in Tjebbes and Others: the importance of an individual examination of the consequences of the loss of citizenship of the European Union in the context of the review of proportionality

33. In its judgment in *Tjebbes and Others*, which concerned the examination in the light of EU law of a general condition for the loss by operation of law of the Netherlands nationality [22] and, therefore, of the citizenship of the European Union of the persons concerned, [23] the starting point for the Court's reasoning was confirmation of the principle established in previous decisions. [24] Thus, on the basis of paragraphs 42 and 45 of its judgment in *Rottmann*, the Court held that the situation of citizens of the European Union who are nationals of *one Member State only* and who, by losing that nationality, *are faced with losing their citizenship of the European Union* conferred by Article 20 TFEU and the rights attaching thereto, falls, by reason of its nature and its consequences, within the ambit of EU law, and that, therefore, the Member States must, when exercising their powers in the sphere of nationality, have due regard to EU law. [25]

17 Judgment in *Rottmann*, paragraphs 42 and 43.

18 Judgment in *Rottmann*, paragraph 48.

19 Judgment in *Rottmann*, paragraph 54. See also paragraphs 51 to 53.

20 Judgment in *Rottmann*, paragraph 56. Emphasis added.

21 Judgment in *Rottmann*, paragraph 59 and the operative part.

22 That is, where a Netherlands national who also holds the nationality of another Member State resides outside the Netherlands and *outside the territories to which the EU Treaty applies* for an uninterrupted period of 10 years.

23 The case which gave rise to the judgment in *Rottmann* concerned an individual decision withdrawing nationality, based on the conduct of the person concerned.

24 Judgment in *Tjebbes and Others*, paragraph 30 and the case-law cited.

25 Judgment in *Tjebbes and Others*, paragraph 32.

34. More specifically, as a first step, recalling in particular that, when exercising its competence to lay down the conditions for acquisition and loss of nationality, it is legitimate for a Member State to take the view that nationality is the expression of a genuine link between it and its nationals, and therefore to prescribe that the absence, or the loss, of any such genuine link entails the loss of nationality, [26] the Court held that EU law does not preclude, in principle, that in situations such as those referred to in the relevant national legislation, a Member State prescribes for reasons of public interest the loss of its nationality, even if that loss will entail, for the person concerned, the loss of his or her citizenship of the European Union. [27]

35. However, as a second step, underlining just how important it is for the competent authorities and national courts to observe the principle of proportionality in those situations, the Court stated that the loss of the nationality of a Member State by operation of law would be inconsistent with that principle 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 point of view of EU law. [28]

36. It follows, according to the Court, that in a situation in which the loss of the nationality of a Member State arises by operation of law and entails the loss of citizenship of the European Union, the competent national authorities and courts must be in a position to examine, as an ancillary issue, *the consequences of the loss of that nationality* and, where appropriate, *to have the person concerned recover his or her nationality ex tunc* in the context of an application by that person for a travel document or any other document showing his or her nationality. [29] The Court went on to add that that examination of proportionality requires the national authorities and courts to ensure that the loss of nationality is consistent with the fundamental rights guaranteed by the Charter, the observance of which the Court ensures, and specifically the right to respect for family life as stated in Article 7 of the Charter. [30]

37. The line of authority devolving from the judgments in *Rottmann* and *Tjebbes and Others* was confirmed by the judgment in *Wiener Landesregierung*, in which the Court clearly found that the decision at issue in that case was not compatible with the principle of proportionality.

3. Judgment in Wiener Landesregierung: incompatibility of the contested decision in that case with the principle of proportionality

38. I refer back to the considerations set out in my Opinion in *Wiener Landesregierung* [31] and I will confine myself here, for the sake of clarity, to providing a brief overview of the aspects of the judgment in *Wiener Landesregierung* which are relevant to the analysis of the questions submitted by the referring court in the present case.

39. In that case, an Austrian court sought to ascertain whether the situation of a person who, having the nationality of one Member State only, renounces that nationality and loses, as a result, his or her citizenship of the European Union, with a view to obtaining Austrian nationality, following the assurance given by the Austrian authorities that he or she would be granted that nationality, falls, by reason of its nature and its consequences, within the scope of EU law where

[26] Judgment in *Tjebbes and Others*, paragraph 35. See also judgment in *Rottmann*, paragraph 51.

[27] Judgment in *Tjebbes and Others*, paragraph 39.

[28] Judgment in *Tjebbes and Others*, paragraphs 40 and 41.

[29] Judgment in *Tjebbes and Others*, paragraph 42 and the operative part.

[30] Judgment in *Tjebbes and Others*, paragraph 45 and the operative part.

[31] C-118/20, EU:C:2021:530. See paragraph 47 et seq.

that assurance is revoked with the effect of preventing that person from recovering his or her citizenship of the European Union. The Court answered that question in the affirmative, thereby confirming the applicability of EU law to such a situation. [32]

40. The Austrian court also enquired whether the competent authorities and, as the case may be, the national courts of the host Member State are required to ascertain whether the decision to revoke the assurance as to the grant of the nationality of that Member State, which makes the loss of citizenship of the European Union permanent for the person concerned, is compatible with the principle of proportionality in the light of the consequences it entails for that person's situation. The Court also answered that question in the affirmative, confirming that the national courts of the host Member State are under an obligation to check the compatibility of the national decision at issue with the principle of proportionality. [33]

41. I should like to draw attention to a number of aspects of that judgment.

42. In the first place, the Court emphasised the importance of the assessment of the individual situation of the person concerned and, if relevant, that of his or her family when examining whether the principle of proportionality enshrined in EU law has been observed. [34] In that regard, it restated, in particular, its settled case-law that it is for the competent authorities and, where appropriate, for the national courts to ensure that the national decision at issue is consistent with the fundamental rights guaranteed by the Charter and, specifically, the right to respect for family life as stated in Article 7 thereof. [35]

43. In the second place, after examining the grounds justifying the national decision entailing the loss of citizenship of the European Union put forward by the Austrian Government, [36] the Court found that, in the light of the significant consequences for the situation of the person concerned and, in particular, for the normal development of her family and professional life resulting from the decision to revoke the assurance as to the grant of Austrian nationality, which had the effect of making the loss of citizenship of the European Union permanent, that decision did not appear proportionate to the gravity of the offences committed by that person. [37] Consequently, the Court held that the 'requirement of compatibility with the principle of proportionality *is not satisfied* where such a decision is based on administrative traffic offences which, under the applicable provisions of national law, give rise to a mere pecuniary penalty'. In other words, for the first time in that line of cases, the Court emphatically held that such a national decision *is not consistent with the principle of proportionality* under EU law. [38]

[32] Judgment in *Wiener Landesregierung*, paragraph 44 and point 1 of the operative part.

[33] Judgment in *Wiener Landesregierung*, paragraph 58 and the case-law cited. It should be borne in mind that, in paragraph 49 of that judgment, in the examination of the second question referred for a preliminary ruling, the Court stated, with reference to paragraph 62 of the judgment in *Rottmann*, that the principles stemming from EU law with regard to the powers of the Member States in the sphere of nationality, and also their duty to exercise those powers having due regard to EU law, apply both to the host Member State and to the Member State of the original nationality.

[34] Judgment in *Wiener Landesregierung*, paragraph 59 and the case-law cited.

[35] Judgment in *Wiener Landesregierung*, paragraph 61 and the case-law cited.

[36] Judgment in *Wiener Landesregierung*, paragraphs 60 and 62 to 72.

[37] Judgment in *Wiener Landesregierung*, paragraph 73.

[38] Judgment in *Wiener Landesregierung*, paragraph 74 and point 2 of the operative part.

4. The case-law principles relating to the analysis of the conditions for the acquisition and loss of nationality in the light of EU law

44. The Ariadne's clew followed in the case-law of the Court on the loss of citizenship of the European Union is essentially composed of two case-law principles.

45. Under the first principle, the competence of the Member States as regards the acquisition and loss of nationality must be exercised *having due regard to EU law*. In order to understand the import of that principle, it is necessary to have a clear grasp of the distinction between that exclusive competence and its exercise having due regard to the EU legal order. In that connection, I should point out that the Court has never called that competence of the Member States into question. As Advocate General Poiares Maduro explained, 'it is not that the acquisition and loss of nationality (and, consequently, of Union citizenship) are in themselves governed by [EU] law, but the *conditions* for the acquisition and loss of nationality must be compatible with the [EU legal] rules and respect the rights of the European citizen'.[39] Accordingly, there is no question of inferring from that principle that it is absolutely impossible to deprive a person of nationality, where such deprivation would entail the loss of citizenship of the European Union, or of considering that the *conditions* for the acquisition and loss of nationality fall outside the jurisdiction of EU law.[40] Citizenship of the European Union cannot be rendered redundant and, therefore, the rights conferred by it cannot be infringed by the adoption of national legislation which does not comply with EU law and, in particular, does not observe the principles deriving from the case-law of the Court, set out above.[41]

46. Under the second principle, *judicial review must be carried out in the light of EU law* and, in particular, in the light of the principle of proportionality. In the context of observance of the principle of proportionality, several considerations should be borne in mind: first of all, the individual examination of the consequences of losing citizenship of the European Union for the person concerned and for his or her family members with regard to the loss of the rights enjoyed by every citizen of the European Union; next, the requirement that those consequences be consistent with the fundamental rights guaranteed by the Charter; and, last, where appropriate, the obligation to have the person concerned recover his or her nationality *ex tunc*. Those considerations are essential for the *judicial review carried out in the light of EU law*, and the examination of the proportionality of the loss of nationality entailing the loss of citizenship of the European Union required by the Court must be carried out comprehensively and scrupulously by the competent authorities and the national courts.

47. Consequently, there can be little doubt that it is by reference to those principles that the loss of nationality, entailing the loss of citizenship of the European Union, provided for by the legislation at issue in the main proceedings, must be examined.

[39] See Opinion of Advocate General Poiares Maduro in *Rottmann* (C-135/08, EU:C:2009:588, point 23). Emphasis added.

[40] See, to that effect, Opinion of Advocate General Poiares Maduro in *Rottmann* (C-135/08, EU:C:2009:588, point 23).

[41] See, in that regard, judgments in *Rottmann*, paragraphs 41 to 43, 45, 48, 56 and 59; in *Tjebbes and Others*, paragraphs 30, 32, 40 to 42 and 45; and of *Wiener Landesregierung*, paragraphs 44, 59, 61 and 73. Also see points 29 to 43 and, in particular, point 45 of this Opinion.

C. Application of the case-law principles to the present case

48. I recall at the outset that, in accordance with the first sentence of Paragraph 8(1) of the Law on nationality, the applicant in the main proceedings lost her Danish nationality by operation of law upon reaching the age of 22 on the ground of lack of a genuine link with Denmark. Since her application to retain Danish nationality was made after the age of 22, she did not qualify for the derogation provided for in the second sentence of Paragraph 8(1) of that law.

49. The applicant in the main proceedings is therefore faced with the loss of her citizenship of the European Union, which, according to settled case-law, is intended to be the fundamental status of nationals of the Member States. [42]

50. In the light of the case-law set out above [43] and, in particular, the judgment in *Tjebbes and Others*, it is clear that the situation of a citizen of the European Union who is a national of one Member State only and who is faced with losing the status conferred by Article 20 TFEU and the rights attaching thereto falls, by reason of its nature and its consequences, within the ambit of EU law. [44] It follows that, since the situation of the applicant in the main proceedings falls within the scope of EU law, the Kingdom of Denmark must, when exercising its powers in the sphere of nationality, have due regard to that law and that that situation must be subject to review in the light of that law. [45]

51. In view of that finding, the question arises as to whether the loss of nationality by operation of law, provided for in Paragraph 8(1) of the Law on Danish nationality, is compatible with EU law. I recall that, as is apparent from the case-law of the Court, in order for the loss of nationality provided for in national legislation to be compatible with EU law, it must correspond to a reason relating to the public interest, which means that the loss must be appropriate for attaining the objective pursued and that the deprivation of nationality entailed by that legislation must not be an arbitrary act. [46]

52. The applicant in the main proceedings argues that although the automatic loss of nationality without exception, provided for in Paragraph 8(1) of the Law on nationality, pursues a lawful aim and the objective of maintaining a genuine link and of safeguarding the special relationship of solidarity and good faith between the Member State and its citizens; it is not, however, appropriate for attaining that objective. She also claims that the automatic loss provided for in that provision is not proportionate and is therefore contrary to Article 20 TFEU, read in conjunction with Article 7 of the Charter.

[42] Judgments of 20 September 2001, *Grzelczyk* (C-184/99, EU:C:2001:458, paragraph 31), and in *Wiener Landesregierung* (paragraph 38 and the case-law cited).

[43] See points 29, 30 and 33 of this Opinion.

[44] See judgment in *Tjebbes and Others*, paragraph 32.

[45] See, in that regard, judgments in *Rottmann*, paragraphs 42 and 45, and in *Tjebbes and Others*, paragraph 32. The Danish Government submitted at the hearing that it is apparent from the decision of the Heads of State and Government, meeting within the European Council at Edinburgh on 11 and 12 December 1992, that the Kingdom of Denmark enjoys broad discretion when it comes to laying down the conditions for the acquisition and loss of nationality and has a special position as regards citizenship of the European Union. However, the Commission recalled that the relevant passages of that decision concerning citizenship of the European Union are worded in the same terms as 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. See, in that regard, judgment in *Rottmann*, paragraph 40. It also noted that it follows from the Court's settled case-law that the competence of the Member States as regards the acquisition and loss of nationality must be exercised having due regard to EU law. See, in particular, judgment in *Rottmann*, paragraph 41.

[46] See, to that effect, judgment in *Rottmann*, paragraphs 51 to 54.

53. On the other hand, the Danish Government contends, in its written observations, that the examination of the lawfulness and proportionality of Paragraph 8(1) of the Law on nationality in relation to persons who have reached the age of 22 when their application to retain nationality is made must be based on an overall assessment of the Danish rules on loss and recovery of nationality. The proportionality of the loss of Danish nationality by operation of law as regards persons who have reached the age of 22 should also be assessed in the light of the rules on conservation of nationality until that age, which are, as a whole, very flexible. The Danish Government also asserts that the lawfulness and proportionality of the rules on loss of Danish nationality are borne out by the fact that it may authorise, based on a case-by-case assessment, the retention of nationality where an application to that effect is made before the age of 22.

54. I will therefore examine, in the light of the case-law set out above, whether the national legislation at issue, providing for the loss of Danish nationality and entailing the loss of the citizenship of the European Union of the applicant in the main proceedings, pursues a legitimate aim and is appropriate for attaining the objective pursued, and whether the rules on loss of Danish nationality observe the principle of proportionality as regards the consequences of that loss for the situation of the applicant in the main proceedings.

1. Examination of whether the public interest aim pursued by the rules on loss of Danish nationality is legitimate

55. In the first place, I note that the Court has already held 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 also the reciprocity of rights and duties, which form the bedrock of the bond of nationality. [47] According to the Court, it is therefore legitimate for a Member State, when exercising its competence to lay down the conditions for acquisition and loss of nationality, to take the view that nationality is the expression of a genuine link between it and its nationals, and therefore to prescribe that the absence, or the loss, of any such genuine link entails the loss of nationality. [48]

56. In the second place, I also note that the Court previously had occasion to state, in the judgment in *Tjebbes and Others*, that a criterion based on the habitual residence of nationals of that Member State for a sufficiently long period 'outside th[e] Member State [concerned] and outside *the territories to which the EU Treaty applies*' may be regarded as an indication that there is no such genuine link. [49]

57. In the present case, it is clear from the order for reference that Paragraph 8(1) of the Law on nationality seeks to prevent Danish nationality being handed down generation after generation to persons who do not have or no longer have a genuine link with Denmark. According to the Danish

[47] Judgments in *Rottmann*, paragraph 51; in *Tjebbes and Others*, paragraph 32; and in *Wiener Landesregierung*, paragraph 52.

[48] Judgment in *Tjebbes and Others*, paragraph 35. See also Opinion of Advocate General Mengozzi in *Tjebbes and Others* (C-221/17, EU:C:2018:572, point 53).

[49] Judgment in *Tjebbes and Others*, paragraph 36. See, in that regard, Opinion of Advocate General Mengozzi in *Tjebbes and Others* (C-221/17, EU:C:2018:572, point 54). Emphasis added.

Government, the Danish legislature considered that persons born abroad *who have not lived in Denmark* or resided there for a significant period of time gradually lose their good faith, solidarity and link with that Member State as they grow up. [50]

58. In those circumstances, I am of the opinion that, as the Danish and French Governments and the Commission submit, it is, in principle, legitimate for a Member State to take the view that persons born abroad who have not lived or resided in that Member State in such a way as to demonstrate a genuine link with that Member State *may* gradually lose their relationship of good faith and solidarity and their link with that Member State. In that regard, I note that Article 7(1)(e) of the European Convention on Nationality provides that nationality *may* be lost *ex lege* where there is a lack of a genuine link between the State and a national habitually residing abroad. [51]

59. Consequently, it seems to me, in principle, to be legitimate for a Member State, first, to decide that criteria such as residence in its territory for periods whose (cumulative) duration is less than one year are not indicative of a genuine link with that Member State and, second, to be able to set an age, in this case the age of 22, for the examination of whether the conditions for loss of nationality are satisfied.

60. That said, I must make reference, for the sake of completeness, to an important issue raised by the Commission in its written observations and debated at the hearing in response to a question put by the Court, which goes beyond the matter before the referring court. That issue is whether a ground for the loss of nationality which is based on the fact that a Danish national lives outside Denmark and makes no distinction between living in the European Union and living in a non-member State may be regarded as a legitimate ground under EU law where that loss entails the loss of citizenship of the European Union. [52]

61. The application of such a residence criterion would mean, as the Commission rightly pointed out in its written and oral observations, that a Danish national in possession of the nationality of a non-member State and born in another Member State to a Danish father or mother having exercised his or her right of free movement under Article 21 TFEU would thereby lose his or her Danish nationality by operation of law and, therefore, his or her citizenship of the European Union if, upon reaching the age of 22, he or she fulfils the cumulative conditions laid down in the first sentence of Paragraph 8(1) of the Law on nationality and does not qualify for the derogation provided for in the second sentence of Paragraph 8(1) of that law. Put another way, the exercise of the rights attached to his or her parents' citizenship of the European Union would paradoxically result in that person losing all the rights attached to his or her citizenship of the

[50] I am unsure as to whether that gradual loss of a genuine link can be applied across the board to all persons falling within the scope of the provision at issue, but I agree that there *may*, *in principle*, be a risk of such a gradual loss of a genuine link *in some cases*. Furthermore, I think it is perfectly possible to take the view that some citizens of the European Union may have a genuine link with more than one Member State. To question that view would be to question the very essence of citizenship of the European Union. To my mind, it would be paradoxical not to accept the possible consequences for nationals of the exercise, in particular, of one of the fundamental freedoms of the European Union, namely the free movement of persons.

[51] The European Convention on Nationality, which was adopted on 6 November 1997 within the framework of the Council of Europe and entered into force on 1 March 2000, was ratified by the Kingdom of Denmark on 24 July 2002. The Explanatory Report to that convention states that that provision seeks to allow a State, which so wishes, to prevent its nationals who have lived abroad for a long time from retaining the nationality of that State where a link with the latter no longer exists or has been replaced by a link with another country, on the understanding that, as in the present case, these are persons with dual nationality and there is therefore no risk of statelessness. See paragraph 70 of that report.

[52] The lack of such a distinction was confirmed by the Danish Government in reply to a question put by the Court. As regards the distinction drawn by the Danish rules between living, in particular, in Finland or Sweden and living in another Member State, the Danish Government confirmed at the hearing that Paragraph 8(3) of the Law on nationality provides that a person who has lived in those two Member States for seven years is considered to have a genuine link with Denmark. In that regard, the Commission stated, in reply to a question put by the Court, that that rule amounts to discrimination based on the Member State of residence which may be regarded as inconsistent with the public interest aim pursued by the Danish rules. See also footnote 6 of this Opinion.

European Union.[53] Furthermore, that loss would also occur where that person, born in another Member State, exercises, between the age of 18 and 22, his or her right of free movement and residence, inter alia, to work or reside in another Member State.[54]

62. In that regard, although I share the Commission's doubts as to the legitimacy of such a criterion and its general impact on the free movement of citizens within the European Union, I do not think that, in the present case, there is any call for a specific and in-depth analysis focusing on that aspect in order to reply to the question submitted by the referring court. It is apparent from the order for reference that, apart from a stay of three or four weeks in France,[55] the applicant in the main proceedings has not resided in a Member State other than Denmark and has always lived in the United States. I will nevertheless make the following observations should the Court take a different view.

63. First of all, I should point out that the issues described in the preceding paragraphs were not present in the case which gave rise to the judgment in *Tjebbes and Others*, since the residence criterion established in the Netherlands legislation at issue in that case did not distinguish between residence in the Netherlands and residence in another Member State.[56] Thus, while it is true that, in that judgment, the Court regarded such a criterion as an indication of no genuine link, it was nevertheless careful to clarify that it concerned residence 'outside th[e] Member State [concerned] and outside *the territories to which the EU Treaty applies*'.[57]

64. Next, it should be borne in mind that, as regards citizens of the European Union who were born in the host Member State and have never made use of their right of freedom of movement, the Court has previously held that such citizens are entitled to rely on Article 21(1) TFEU and the measures adopted to give it effect.[58]

65. Finally, it seems clear to me that a criterion which does not distinguish, with regard to the loss of nationality upon reaching the age of 22 causing the person concerned to lose his or her citizenship of the European Union, between living or residing in a non-member State and living or residing in a Member State clearly amounts to a restriction on the right to move freely and reside in the territory of the Member States, which may deter Danish nationals from exercising that right.[59] I should point out, in that respect, that I do not see how such a restriction on the right of free movement and residence of citizens of the European Union could be regarded as proportionate. In my view, the fact that a citizen of the European Union may lose his or her nationality because he or she has taken up residence in a Member State other than his or her Member State of nationality disproportionately restricts that citizen's right of free movement and

[53] In reply to a question put by the Court, the Commission stated that it follows from the application of such a criterion that the exercise by the Danish national concerned of the right to move and reside entails the loss of that right.

[54] That would be the case, in my view, where a Danish national born in the Netherlands to a Danish father and an American mother exercises, at the age of 18, his or her right of free movement and residence to work or study in Italy and stays there until reaching the age of 22. It should also be noted that, as the Commission explained in reply to a question put by the Court, the situation in which such a national has dual Danish and Italian nationality also falls within the scope of EU law. In that case, the matter in issue would not be the loss of citizenship of the European Union, but a restriction on the right to move and reside freely within the European Union.

[55] The applicant in the main proceedings confirmed at the hearing that this was a holiday.

[56] Judgment in *Tjebbes and Others*, paragraph 10.

[57] Judgment in *Tjebbes and Others*, paragraph 36. See, in that regard, Opinion of Advocate General Mengozzi in *Tjebbes and Others* (C-221/17, EU:C:2018:572, point 54). Emphasis added.

[58] Judgments of 19 October 2004, *Zhu and Chen* (C-200/02, EU:C:2004:639, paragraph 26); of 13 September 2016, *Rendón Marín* (C-165/14, EU:C:2016:675, paragraphs 42 and 43); and of 2 October 2019, *Bajratari* (C-93/18, EU:C:2019:809, paragraph 26).

[59] See Opinion of Advocate General Poiares Maduro in *Rottmann* (C-135/08, EU:C:2009:588, point 32): '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 residence conferred on citizens of the European Union by Article [21 TFEU]'.

residence. As the Commission rightly pointed out at the hearing, living and residing in the territory of the European Union should not be regarded as a severing of the genuine link between a citizen of the European Union and his or her Member State of origin.

66. Against that background, and in view of my reservations concerning the effects on the free movement of citizens within the European Union of a residence criterion such as that laid down in the first sentence of Paragraph 8(1) of the Law on nationality, I consider that, in the circumstances of the case in the main proceedings, EU law does not preclude, in principle, that in situations such as those referred to in that provision, a Member State prescribes for reasons of public interest the loss of nationality, even if that loss will entail, for the person concerned, the loss of his or her citizenship of the European Union.

2. Review of the proportionality of the national legislation at issue having regard to the consequences it entails for the person concerned

67. In the light of the case-law of the Court and, in particular, paragraphs 40 to 42 of the judgment in *Tjebbes and Others*, [60] I have doubts as to whether the principle of proportionality is observed by the rules on loss of Danish nationality, which is triggered upon reaching the age of 22, as provided for in Paragraph 8(1) of the Law on nationality and applied, in administrative practice, by the Danish authorities. My doubts stem not from one particular aspect of the legislation at issue in the main proceedings but from several components of those rules relating, first, to the lack of an individual examination of the consequences of losing citizenship of the European Union in the light of EU law for any person who has submitted his or her application to retain nationality after the age of 22 and, second, to the fact that there can be no *ex tunc* recovery of the lost nationality.

(a) The systematic lack of an individual examination of the consequences of losing citizenship of the European Union in the light of EU law for any person who has submitted his or her application after the age of 22

68. I recall that the referring court's doubts derive from the fact that the loss of Danish nationality and, therefore, of citizenship of the European Union is automatic and that the Law on nationality does not contain any exceptions. As the Commission pointed out at the hearing, in the situation at issue in the main proceedings, the person affected by that loss has *never* had an individual examination carried out of her situation and, if relevant, that of her family. That seems to me to lie at the heart of the difficulties posed by the rules on the loss of nationality by operation of law at issue in the present case.

69. In the first place, I note that the *only option* open to Danish nationals to secure an *individual examination*, in the light of EU law, of the consequences of losing nationality entailing the loss of citizenship of the European Union is to submit an application to retain Danish nationality *before* reaching the age of 22 [61] and, more specifically, *between the age of 21 and 22*, [62] which, in my view, is

[60] See points 35 and 36 of this Opinion.

[61] On the amendment of Paragraph 8(1) of the Law on nationality following the judgment in *Tjebbes and Others*, see point 25 of this Opinion.

[62] I note that the referring court explains that, where an application to retain nationality is made *before the age of 21*, the Ministry of Immigration and Integration *does not take a view* on whether the applicant has conserved his or her Danish nationality and simply issues a certificate of Danish nationality *subject to* the loss of that nationality upon reaching the age of 22, pursuant to Paragraph 8 of the Law on nationality. I must admit that the argument that the retention of nationality must be assessed as closely as possible to the age of 22 in order for the Danish authorities to take a view on whether nationality is retained does not seem to me to be a persuasive one. See point 24 of this Opinion.

a very short period. If their application is made after that age, it will be examined only in order to determine whether the conditions laid down in the first sentence of Paragraph 8(1) of the Law on nationality are satisfied. If they are, the application will be automatically rejected [63] and the person concerned will not only lose his or her Danish nationality and, therefore, his or her citizenship of the European Union, but will also not be entitled, at any time, to an individual examination of the consequences of that loss in the light of EU law.

70. In the second place, I note that it is apparent from the explanations provided by the referring court that, following the judgment in *Tjebbes and Others*, the Ministry of Immigration and Integration decided that former Danish nationals who had reached the age of 22 on or after 1 November 1993, who had applied to retain their Danish nationality *before* reaching the age of 22 and who had been the subject of a decision to deprive them of their nationality pursuant to Paragraph 8 of the Law on nationality, entailing the loss of their citizenship of the European Union, could request a review of that decision. [64] Thus, while those nationals were entitled to such a review in the light of EU law, the applicant in the main proceedings, who reached the age of 22 after 1 November 1993, was not, as she submitted her application to retain nationality 43 days *after* reaching the age of 22.

(1) The objections raised by the Danish Government

71. As regards the reason for maintaining the requirement laid down in the first sentence of Paragraph 8(1) of the Law on nationality, to the effect that the application to retain Danish nationality must have been made *before* the age of 22, the referring court states that it follows from the travaux préparatoires for that provision that, when it was amended by the Danish legislature in order to comply with the judgment in *Tjebbes and Others*, the legislature took the view that 'that judgment does not seem to require such an [individual] examination to be systematically possible'.

72. In that regard, the Danish Government submitted, in its written and oral observations, that it does not follow from the judgment in *Tjebbes and Others* that an individual examination must be possible at any time, when the person concerned so wishes. It interprets that judgment as meaning that it is sufficient if such an individual examination may be carried out, which, in its view, is the case where the application to retain nationality is made before the age of 22.

73. If that interpretation were to be endorsed in the present case, the following questions would arise: must it be assumed, in certain situations, that a person may lose the nationality of a Member State, entailing the loss of citizenship of the European Union, without there being *at any time* an individual examination of that loss and its consequences for that person in the light of EU law? And must it be assumed, as the Danish Government suggests, that the Member States' obligation to carry out that individual examination, as established in the case-law of the Court, may be subject to a limitation period?

[63] At the hearing, the Danish Government stated, in reply to a question put by the Court, that although the Danish authorities *do not inform* Danish nationals systematically of the conditions under which nationality may be lost upon reaching the age of 22, the rule on loss of Danish nationality appears on page 2 of their passports. Furthermore, that government also made clear that the passport of a person affected by the loss of Danish nationality is no longer valid from the age of 22. In that respect, I am of the view that the reference to that rule on page 2 of the passport has no bearing on the issue around which this case revolves, namely the absolute impossibility for the applicant in the main proceedings to challenge the loss of her nationality, entailing the loss of her citizenship of the European Union, and, therefore, to have a review of proportionality carried out, in the light of EU law, of the consequences of that loss.

[64] In that regard, the referring court cites the document of the Ministry of Immigration and Integration entitled 'Orientering om behandlingen af ansøgninger om bevis for bevarelse af dansk indfødsret efter EU-Domstolens dom i sag C-221/17, Tjebbes' (Information on the processing of applications for a certificate of retention of Danish nationality following the judgment of the Court of Justice of the European Union in Case C-221/17, *Tjebbes*).

74. Those questions clearly lead me to conclude that the Danish legislature and the Danish Government's interpretation of the judgment in *Tjebbes and Others* cannot be accepted inasmuch as it is based on a misreading of that judgment.

75. In the first place, such an interpretation disregards, in my view, the obligation of the competent authorities and the national courts, first, to observe the principle of proportionality as regards the loss of citizenship of the European Union and, second, to carry out, in the context of observance of that principle, an individual examination of the consequences of such loss in the light of EU law.

76. In the second place, such an interpretation effectively allows the Member States to deprive Article 20 TFEU, as interpreted by the Court, of its effectiveness in situations such as that at issue in the main proceedings. I recall that, according to the Court's settled case-law, citizenship of the European Union is the fundamental status of nationals of the Member States. Such citizenship cannot therefore be rendered redundant and, thus, the rights conferred by it cannot be infringed by the adoption of national legislation which does not comply with EU law.

(2) The correct interpretation of the judgment in Tjebbes and Others

77. I should point out that it follows from the case-law of the Court that it cannot be inferred from the principle that the competence of the Member States as regards the acquisition and loss of nationality must be exercised having due regard to EU law that the conditions for loss of nationality, entailing the loss of citizenship of the European Union, fall outside the jurisdiction of EU law.[65] In that regard, the Court stated, in its judgment in *Tjebbes and Others*, that the loss of the nationality of a Member State by operation of law 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 point of view of EU law.[66]

78. By contrast with what the Court stated in paragraphs 41 and 42 of its judgment in *Tjebbes and Others*, in a situation such as that of the applicant in the main proceedings, where the loss of Danish nationality arises by operation of law and entails the loss of citizenship of the European Union, I note that the Danish authorities *are not in a position to examine*, as an ancillary issue, the consequences of that loss for *all* Danish nationals whose application to retain Danish nationality was made after the age of 22. Those nationals are not entitled *at any time* to an individual examination of the proportionality of the consequences which that loss entails for them in the light of EU law. The lack of such an examination is, in my view, not only automatic, as the referring court notes, but also *systematic*.

79. The correct interpretation of the judgment in *Tjebbes and Others* is that it must be possible for *all* situations involving the loss of nationality entailing the loss of citizenship of the European Union to be examined in the light of the principle of proportionality, as interpreted by the Court in its case-law on Article 20 TFEU, which gives rise to an obligation to carry out an individual examination *also* for persons in a situation such as that of the applicant in the main proceedings.

[65] See, to that effect, judgments in *Rottmann*, paragraphs 41 to 43, 45, 48, 56 and 59; in *Tjebbes and Others*, paragraphs 30, 32, 40 to 42 and 45; and in *Wiener Landesregierung*, paragraphs 44, 59, 61 and 73. Also see points 29 to 43 and, in particular, point 45 of this Opinion.

[66] Judgment in *Tjebbes and Others*, paragraph 41. I recall that, in the case which gave rise to that judgment, the Court was called upon to rule not on the competence to lay down a condition for the loss of nationality in national legislation (such as the residence of nationals of a Member State for an uninterrupted period of 10 years outside that Member State and outside the European Union), but on the incompatibility of that legislation with the principle of proportionality since it did not permit *at any time* the consequences of that loss to be examined in the light of EU law. On that distinction, see the considerations set out in point 45 of this Opinion.

Having regard to the legislation at issue in the main proceedings, some situations in which the loss of citizenship of the European Union has potentially disproportionate consequences can never be examined in the light of EU law, even though the persons concerned lose all the rights attaching to that status.

80. Is that acceptable? I think not.

81. I recall, in that regard, that the Court previously held in its judgment in *Wiener Landesregierung* that *any loss*, even temporary, of citizenship of the European Union means that the person concerned is deprived, for an indefinite period, of the opportunity to enjoy all the rights conferred by that status.[67] Consequently, in a situation such as that at issue in the main proceedings, in which a person has already lost his or her nationality by operation of law at the age of 22 and, therefore, his or her citizenship of the European Union without having had the opportunity to challenge that loss, having regard to the consequences it entails for him or her, in the light of EU law, the Member State concerned is under an obligation to ensure the effectiveness of Article 20 TFEU.

82. If, as here, the grounds for loss of nationality, entailing loss of citizenship of the European Union, are, in principle, legitimate grounds, that loss can occur only if the competent authorities and the national courts observe the principle of proportionality. The fact that national legislation may lay down a *rule* on loss of nationality by operation of law, since such a legislative choice falls within the exclusive competence of the Member States, is one thing. The fact that the *national procedure* established by that legislation does not allow the person concerned to challenge that loss in the context of a review of proportionality[68] and, therefore, to have an individual examination carried out of the consequences of that loss is, however, something else entirely. The legitimate ability of a Member State to provide for the loss of nationality by operation of law must therefore be distinguished from observance of the principle of proportionality of that loss in the light of EU law.

83. In those circumstances, it could be argued that such a complete and systematic lack of an individual examination for persons who have submitted their application after the age of 22 is not appropriate for attaining the objective pursued by the obligation to carry out an examination of proportionality, namely to enable those persons to retain the nationality of the Member State in question and, therefore, their citizenship of the European Union, and that the deprivation of nationality entailed by the provision at issue is arbitrary and inconsistent.

84. Let me illustrate with the example of two sisters with Danish nationality, AA and BB. AA was born in Denmark but moved to the United States with her parents a few months after she was born. BB, on the other hand, was born in the United States and is in the same situation as the applicant in the main proceedings. In those circumstances, the application of Paragraph 8(1) of the Law on nationality to those two sisters would result in AA retaining her Danish nationality by reason of her being born in Denmark while her sister, BB, who submitted an application to retain Danish nationality shortly after reaching the age of 22, loses her nationality automatically and therefore her citizenship of the European Union, *without being able to challenge that loss*.

85. In the present case, the applicant in the main proceedings stated, in reply to a question put by the Court at the hearing, that her siblings had been able to retain their Danish nationality and, consequently, their citizenship of the European Union because they had submitted their

[67] Paragraph 48 of that judgment.

[68] For example, in the course of a procedure for revoking a travel document or in connection with an application for a new passport.

applications in a timely manner. We are thus confronted with a situation in which, within her family, the applicant in the main proceedings is the only one to have lost her Danish nationality and, therefore, her citizenship of the European Union.

86. In that regard, it should be recalled that the individual examination of the situation of the person concerned requires, where relevant, an examination of the situation 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 European Union, will, 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.[69] Without such an examination of proportionality, the competent national authorities and, as the case may be, the national courts will not be in a position to ensure that the loss of nationality is consistent with the fundamental rights guaranteed by the Charter and, in particular, the right to respect for family life as stated in Article 7 of the Charter.[70]

87. I am therefore of the opinion that, irrespective of whether or not the national legislature legitimately chooses to set a deadline for the loss of nationality by operation of law, the competent authorities or, as the case may be, the national courts must be in a position to examine individually *every* loss of nationality, entailing loss of citizenship of the European Union, at the time the application to retain nationality is made. In those circumstances, the question arises as to what period should be taken into account in carrying out such an examination in the context of the review of proportionality. In that connection, the Commission rightly argued that that examination could be carried out having regard to the situation of the person concerned at the age of 22. Since an individual examination is also possible where the application to retain nationality has been submitted after the age of 22, such a limitation of the period taken into account for carrying out that examination would, in my view, observe both the principle of legal certainty and the principle of proportionality. In that respect, it should be added that, if that examination were to be carried out having regard to the situation of the person concerned at the age of 22, the possible existence of new facts in some cases could nevertheless require a fresh examination of those cases.

(b) No ex tunc recovery of nationality under the rules on loss of that nationality by operation of law with the possibility of its subsequent recovery in the context of a general naturalisation procedure

88. As I have already stated, the referring court also raises the question of the difficulties in recovering nationality by naturalisation after the age of 22. In that regard, the Danish Government submits that the examination of the proportionality of the loss of nationality provided for in Paragraph 8(1) of the Law on nationality in relation to persons who have reached the age of 22 when their application to retain nationality is made must be based on an overall assessment of the Danish rules on loss and recovery of nationality.

[69] Judgments in *Tjebbes and Others*, paragraph 44, and in *Wiener Landesregierung* paragraph 59.

[70] Judgments in *Tjebbes and Others*, paragraph 45, and in *Wiener Landesregierung* paragraph 61.

89. In that connection, as mentioned above, the rules on loss of nationality by operation of law afford former Danish nationals the possibility of recovering that nationality at a later stage in the context of the general naturalisation procedure, provided that they meet a number of requirements, including the requirement to be living in Denmark when the application for naturalisation is made and to have nine years' uninterrupted residence in Denmark. [71]

90. Is that possibility of recovering nationality sufficient for the rules on loss of Danish nationality by operation of law to be regarded as consistent with the requirements of EU law, as interpreted by the Court in its judgment in *Tjebbes and Others*?

91. I think not.

92. First, as explained above, the Court has established in its case-law the principle that the competence of the Member States as regards the acquisition and loss of nationality must be exercised having due regard to EU law. [72]

93. Second, as also mentioned above, the Court has already held that, in a situation in which the loss of the nationality of a Member State arises by operation of law and entails the loss of citizenship of the European Union, the competent national authorities and courts must be in a position not only to examine, as an ancillary issue, the consequences of the loss of that nationality, but also, where appropriate, to have the person concerned recover his or her nationality *ex tunc* in the context of an application by that person for a travel document or any other document showing his or her nationality. [73]

94. It must be noted that the rules on the loss of Danish nationality at issue in the main proceedings do not provide for that possibility, contrary to the Court's findings in *Tjebbes and Others*. Such a loss of nationality, even for a *limited* period of a few years, as in the present case, means that the person concerned is deprived, for that entire period, of the possibility of enjoying all the rights conferred by citizenship of the European Union. [74] I therefore take the view that that possibility of recovering nationality is not sufficient, even if the general residence requirements were to be relaxed, for the rules on loss of Danish nationality by operation of law to be regarded as consistent with the requirements flowing from the principle of proportionality under Article 20 TFEU.

95. In those circumstances, I am of the opinion that a review of proportionality, in the light of EU law, of the consequences of the loss of nationality entailing the loss of citizenship of the European Union, which is carried out only if requested before the person concerned has reached the age of 22 and without it being possible for the person concerned to recover his or her nationality *ex tunc*, is not sufficient to satisfy the requirements of EU law, as interpreted by the Court in *Tjebbes and Others*.

[71] See points 8 and 26 of this Opinion.

[72] See judgments of 7 July 1992, *Micheletti and Others* (C-369/90, EU:C:1992:295, paragraph 10); in *Rottmann* (paragraphs 39 and 41); in *Tjebbes and Others* (paragraph 30); of 14 December 2021, *Stolichna obshtina, rayon 'Pancharevo'* (C-490/20, EU:C:2021:1008, paragraph 38); and in *Wiener Landesregierung* (paragraph 37).

[73] Judgment in *Tjebbes and Others*, paragraph 42 and the operative part.

[74] See, to that effect, judgment in *Wiener Landesregierung*, paragraph 48.

V. Conclusion

96. Having regard to all the foregoing considerations, I propose that the Court should answer the question referred for a preliminary ruling by the Østre Landsret (High Court of Eastern Denmark, Denmark) as follows:

Article 20 TFEU, read in the light of Article 7 of the Charter of Fundamental Rights of the European Union,

must be interpreted as precluding legislation of a Member State which provides, under certain conditions, for the loss of the nationality of that Member State by operation of law upon reaching the age of 22 on the ground of lack of a genuine link where no application to retain the nationality has been made before that age, entailing, in the case of persons who are not also nationals of another Member State, the loss of their citizenship of the European Union and the rights attaching thereto, without there being, where that application to retain nationality is made after the age of 22, an individual examination, based on the principle of proportionality, of the consequences of that loss for their situation in the light of EU law, coupled with the possibility of having the persons concerned recover their nationality *ex tunc* when they apply for a travel document or any other document showing their nationality.