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The case of *Wiener Landesregierung*: the pitfalls of reckless driving on the winding roads of nationality

Abstract: Nationality is not only a most sensitive issue for States, it is also the very status underpinning Union citizenship. On the basis of this intricate relationship, the Court of Justice of the Europe Union has developed a line of reasoning that Member States are subject to the obligation to observe EU law also in nationality matters. The case of *Wiener Landesregierung* is not just the latest piece in this strand of cases, but also the very first instance where the Court has spelled out that the obligation to observe EU law also relates to the process of awarding nationality. In spite of the rather odd circumstances of the case, the judgment, thus, underscores the ever-growing importance of EU law in the (supposedly reserved) domain of nationality. The analysis, to this end, not only provides further insights into what the observance of EU law in this field amounts to, but also highlights that the required proportionality assessment supports an understanding of nationality as a status that hinges on a genuine link on the international plane. Despite the complicated process of internalizing the obligation to observe EU law in some Member States – and Austria in particular – EU law thereby strengthens the individual's right to have rights. The analysis, moreover, also addresses the issue of mutual trust and the wider implications of the judgement in *Wiener Landesregierung* that contrast with the hitherto unwavering dictum of *Micheletti* that Member States must not question the nationality decisions of other Member States.

Abstract: Fragen der Staatsangehörigkeit sind für die meisten Staaten ein äußerst sensibles Thema. In der Europäischen Union ist die Staatsangehörigkeit zugleich auch der Ausgangspunkt für die Unionsbürgerschaft. Auf der Grundlage dieser Verknüpfung von Staatsangehörigkeit und Unionsbürgerschaft hat der Gerichtshof der Europäischen Union eine umfassende Verpflichtung der Mitgliedstaaten abgeleitet, auch in Staatsangehörigkeitsfragen das Unionsrecht zu beachten. Das

Urteil in der Rechtssache *Wiener Landesregierung* ist in diesem Zusammenhang nicht nur die jüngste Entscheidung dieser Rechtsprechungslinie, sondern auch der erste Fall, in dem der Gerichtshof klargestellt hat, dass sich die Verpflichtung zur Einhaltung des Unionsrechts auch auf das Verfahren zur Verleihung der Staatsangehörigkeit erstreckt. Das Urteil unterstreicht in diesem Sinn die ständig wachsende Bedeutung des Unionsrechts in einem Bereich, der auch im Unionsrecht vielfach noch immer der souveränen Verfügungsgewalt (*domaine réservé*) der Staaten zugerechnet wird. Die vorliegende Analyse des Urteils setzt sich vor diesem Hintergrund mit der Reichweite der Verpflichtungen aus dem Unionsrecht auseinander; und mehr noch legt dar, dass das Unionsrecht insgesamt an einem auf einem genuine link aufbauenden Verständnis der Staatsangehörigkeit als völkerrechtlich bedeutsamer Status aufbaut. Trotz des in der Praxis durchaus schwierigen Prozesses, die unionsrechtlichen Verpflichtungen in die bestehenden nationalen Staatsangehörigkeitsregime einzuflechten, stärkt das Unionsrecht damit insgesamt das in der Staatsangehörigkeit angelegte Recht, Rechte zu haben. Darüber hinaus beleuchtet die Analyse auch die Frage, ob sich angesichts des vorliegenden Urteils das Diktum aus dem Urteil *Micheletti*, wonach die Mitgliedstaaten Staatsangehörigkeitsentscheidungen eines anderen Mitgliedstaates nicht in Frage stellen dürfen, in dieser unumstößlichen Form tatsächlich noch aufrechterhalten lässt.

Keywords: Union citizenship; nationality; mutual trust; recognition of nationality decisions; proportionality; genuine link

1. Introduction

The issue of nationality is a sensitive matter. The paradigm that it is for every state to decide who its nationals are is a well-rehearsed truism in international law. In European legal circles, however, this catch-phrase has lost some of its veracity lately.

On a first look, the case of *Wiener Landesregierung*[1] may seem like just another case in the collection of Court of Justice of the European Union (CJEU) case-law that will be remembered for the oddity of the facts and the frivolity of the national legal regime, which inevitably was bound to fail any legal assessment that goes beyond a pure laissez-faire approach. The judgment thereby not only consolidates previously established findings that Member States must observe EU law also in the domain of nationality but upon closer inspection also adds some nuances to the existing case-law. As such, the judgment might not seem like a landmark case in its own right. Against the backdrop of the all the bespoke nuances, however, it offers a most intriguing point of reference for future cases to come and in this sense joins the ranks of *Rottmann*[2] and *Tjebbes*[3], as well as *Zambrano*[4] and *Lounes*[5] under the header: nationality is not what it seemingly used to be.

The following sections to this end take a closer look at the facts of the case, the Opinion of Advocate General *Szpunar* and the judgment of the Court before finally turning to three central aspects of the case. The comments on these aspects provide some reflections on the symbiotic relationship of Union citizenship and the status of nationality under public international law, the struggles of some Member States – and Austria in particular – to come to terms with the evolving case-law and the influence of EU law in the hitherto untouched domain of nationality and last but not least the

[1] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.
[2] Case C-135/08, *Janko Rottman v. Freistaat Bayern*, ECLI:EU:C:2010:104 (Mar. 2, 2010), https://curia.europa.eu/juris/document/document.jsf?text=&docid=75336&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.
[3] Case C-221/17, *M.G. Tjebbes v. Minister van Buitenlandse Zaken*, ECLI:EU:C:2019:189 (Mar. 12, 2019), https://curia.europa.eu/juris/document/document.jsf?text=&docid=211561&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.
[4] Case C-34/09, *Gerardo Ruiz Zambrano v. Office national de l'emploi*, ECLI:EU:C:2011:124 (Mar. 8, 2011), https://curia.europa.eu/juris/document/document.jsf?text=&docid=80236&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.
[5] Case C-165/16, *Toufik Lounes v. Sec'y of State for the Home Dep't*, ECLI:EU:C:2017:862 (Nov. 14, 2017), https://curia.europa.eu/juris/document/document.jsf?text=&docid=196641&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

implications of the judgment in *Wiener Landesregierung* with regard to the issue mutual trust in nationality decisions of other Member States.

2. Facts of the case

JY was an Estonian national who moved to Austria before Estonia joined the European Union in 2004. In 2008, she applied for Austrian nationality and in 2014 received a decision by the then competent Government of the Province of Lower Austria with an assurance that she would be granted Austrian nationality if – within a period of two years – she provided evidence that she had relinquished her Estonian nationality.[6] This process was necessary because the Austrian citizenship law (*Staatsbürgerschaftsgesetz*) in principle does not allow for dual or multiple nationalities, requiring applicants to relinquish their other nationalities before they can become Austrian nationals.[7] Consequently, JY gave up her Estonian nationality and received a respective confirmation in August 2015.[8] The Government of the Province of Vienna, which in the meantime had become the competent authority as JY had moved to Vienna, however, revoked the prior decision of the Province of Lower Austria and rejected JY's application to be granted Austrian nationality.

This decision was based on two grounds: First, the Government of the Province of Vienna stated that JY, since receiving the assurance to be granted Austrian nationality, had committed two serious administrative offences by failing to display a vehicle inspection disc and by driving a motor vehicle while under the influence of alcohol. Second, JY had also been responsible for eight administrative offences committed before the assurance was given. In line with the Austrian citizenship law[9] and the respective case-law of the Supreme Administrative Court of Austria (*Verwaltungsgerichtshof*), JY had therefore committed "more than one enforceable

[6] See Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶14 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.
[7] See Bundesgesetz über die österreichische Staatsbürgerschaft [StbG] Bundesgesetzblatt [BGBl] No. 311/1985, as amended, §10 para. 3 No. 1 and §20 para. 1, https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10005579.
[8] See Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶15 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.
[9] See § 20 para. 2 No. 2 StbG.

conviction for a serious administrative offence of a particular degree of gravity" and, hence, could not be granted Austrian nationality.[10]

JY challenged the decision of the Government of the Province of Vienna before the Administrative Court for Vienna (*Verwaltungsgericht Wien*). The Administrative Court upheld the decision, setting out that in accordance with the Austrian citizenship law a decision providing JY with the assurance had to be revoked since the requirement for the grant of nationality was not fulfilled.[11] By failing to display a vehicle inspection disc and by driving a motor vehicle while under the influence of alcohol, JY jeopardized road safety. Taken together with her eight prior administrative offences, the Administrative Court for Vienna doubted that JY would, despite her long residence and her professional and personal integration in Austria, conduct herself properly in the future, as is required under Austrian citizenship law. According to the Administrative Court for Vienna, this conclusion could also not be called into question in light of the CJEU's *Rottmann* judgment, as the decision to revoke the assurance on granting the Austrian nationality was rendered *after* JY had relinquished her Estonian nationality and thus related to a situation in which JY was stateless and hence not a Union citizen.[12]

The Supreme Administrative Court of Austria, which had been seized of the matter through an appeal in cassation, reviewed the judgment of the Administrative Court and in principle established that the decision to revoke the assurance was not only in line with the respective provisions of the Austrian citizenship law and its own case-law but was also proportional in light of the Convention on the Reduction of Statelessness. Furthermore, the Supreme Administrative Court very much shared the view of the Administrative Court for Vienna that the situation at hand did not fall within the scope of EU law because JY voluntarily gave up her Estonian nationality and hence had lost her status as a Union citizen of her own free will. Accordingly, the nexus between her decision to relinquish her Estonian nationality and the assurance to

[10] See Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶17 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.

[11] See § 10 para. 1 No. 6 StbG; and Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶18 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.

[12] See Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶¶18 f. (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.

grant her Austrian nationality was insufficient to change this assessment, as the decision on the assurance provided only a conditional right.[13]

Despite this initial assessment, suggesting that the decision to revoke the assurance to be granted the Austrian nationality did not fall within the ambit of EU law, the Supreme Administrative Court – a court of last instance[14] – felt compelled to refer the following questions to the CJEU:

> *(1) Does the situation of a natural person who, like the appellant in cassation in the main proceedings, has renounced her only nationality of a Member State of the European Union, and thus her citizenship of the Union, in order to obtain the nationality of another Member State, having been given a guarantee by the other Member State of grant of the nationality applied for, and whose possibility of recovering citizenship of the Union is subsequently eliminated by revocation of that guarantee, fall, by reason of its nature and its consequences, within the scope of EU law, such that regard must be had to EU law when revoking the guarantee of grant of citizenship?*
>
> *If the first question is answered in the affirmative,*
>
> *(2) Is it for the competent national authorities, including any national courts, involved in the decision to revoke the guarantee of grant of nationality of the Member States, to establish whether the revocation of the guarantee that prevented the recovery of citizenship of the Union is compatible with the principle of proportionality from the point of view of EU law in terms of its consequences for the situation of the person concerned?*

The referral of the Supreme Administrative Court, thus, highlights that the issue of what the observance EU law in matters of nationality amounts to is far from clear. In this context it also worth noting that the CJEU decided to address these questions in the Grand Chamber, indicating the importance of the case.[15]

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[13] See Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶¶20 ff. (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272; and *Request for a preliminary ruling*, 2020 O.J. (C 209) 13, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62020CN0118&from=DE.

[14] See *Request for a preliminary ruling,* 2020 O.J. (C 209) 13, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62020CN0118&from=DE.

[15] See Rules of procedure of the court of justice, Art. 60 para. 1, 2012 O.J. (L 265) 1.

3. Opinion of Advocate General *Szpunar*

Advocate General *Szpunar* delivered his Opinion on 1 July 2021. The quite substantial Opinion is straightforward insofar as the Advocate General ultimately answered both questions in the affirmative and concluded in no uncertain terms that EU law stands against the revocation of the assurance to be granted Austrian nationality in question. And while the Opinion and the judgment largely correlate in their outcome, it seems appropriate to highlight some aspects that are of particular interest.

In line with the existing case-law, the Advocate General started his Opinion with the ostentatious reference that the issue of nationality according to international law falls within the exclusive competence of Member States and that EU law does not call this into question this well-established exclusive competence of Member States.[16] The Treaties after all do not provide for a competence to determine or harmonize the criteria for the acquisition or loss of Member State nationality.

Against this backdrop, the obligation to observe EU law in this very field rather stems from the intertwined nature of Union citizenship and Member State nationality. With the former being depended on the latter, the loss as well as the acquisition of a Member State's nationality has serious consequences for the fundamental status of the individual under EU law and all the rights attached to it.[17] Quite pointedly, the Advocate General observed that a situation, "which concern[s] the conditions governing the acquisition of nationality, *in so far as those conditions entail the loss of citizenship of the Union* by the person concerned" falls within the ambit of EU law and "is amenable to a judicial review conducted in the light of EU law" [18]. The fact that JY renounced here Estonian nationality and hence by extension also her Union citizenship could not be regarded as "voluntary" as it constituted a necessary requirement for the acquisition of Austrian nationality.[19]

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[16] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶45 (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[17] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶48 (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[18] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶57 (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[19] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶¶58 ff. (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mo

This line of reasoning is further supported by a reference to *Zambrano* and more importantly by also taking into account the seminal logic of the pivotal *Lounes* case.[20] The Opinion to this end highlighted that according to *Lounes*, the freedom of movement of Union citizenship is intended "to promote the gradual integration of the Union citizen concerned in the society of the host Member State"[21]. The right to the freedom of movement, as a – or rather *the* – central feature attached to the status of Union citizenship thus also encompasses the opportunity "to become permanently integrated in the society of the [host] Member State"[22]. The naturalisation of Union citizens, who have integrated in the society of the host Member State on the basis of Art. 21 para. 1 TFEU consequently falls within the ambit of EU law. As JY had established her links to and within Austria on the basis of Art. 21 TFEU, also the process of naturalisation in Austria falls within the ambit of EU law[23] – although neither Art. 20 nor Art. 21 TFEU provide for a right to naturalisation.

Despite answering the first question whether the revocation of the assurance on naturalisation fell within the ambit of EU law in the affirmative, the Advocate General did not stop his analysis here. Rather, he went on to address an issue raised in the written observations by France. The French Government made the point that JY's loss of her Union citizenship resulted from the fact that Estonia withdrew her nationality "without waiting for JY actually to acquire Austrian nationality"[24]. Arguably, by making

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de=lst&dir=&occ=first&part=1&cid=3337858; As the Advocate General has pointed out this argument is furthermore supported by the fact "that the revocation of the assurance as to the naturalisation of a person who is stateless on the date of such revocation must not be considered in isolation but take into account the fact that that person was a national of another Member State and therefore held citizenship of the Union"; see AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶56 (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[20] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶¶68 ff. (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[21] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶73. (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858; quoting Case C-165/16, *Toufik Lounes v. Sec'y of State for the Home Dep't*, ECLI:EU:C:2017:862, ¶56 (Nov. 14, 2017), https://curia.europa.eu/juris/document/document.jsf?text=&docid=196641&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[22] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶73 (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[23] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶¶73 ff. (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[24] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶77 (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

"the approval of an application to renounce the nationality of a Member State … [not] subject to the actual acquisition of the nationality of another Member State or of a third country in order to prevent that citizen being rendered stateless"[25] Estonia failed to observe EU law.

The way the Advocate General addressed this point is not only very interesting but also stands in sharp contrast with the judgement. According to the Advocate General, Austria's "assurance created not only legitimate expectations on JY's part but also confidence on the part of the Estonian authorities which is deserving of protection by the principle of mutual confidence."[26] In line with the spirit of the *Micheletti*[27], the principle of mutual confidence (*sic*!)[28] hence not only obliged Estonia – and indeed any other Member State – to recognize and accept Austria's decision on its nationality but also warranted a legitimate expectation that Austria would stick to its assurance. Although a better coordination between Austria and Estonia could have prevented the (temporary) loss of Union citizenship, the Advocate General buttressed this line of reasoning by pointing to the fact that a conditional acceptance of the renunciation on the part of Estonia would have not sufficed to meet the criteria of the Austrian citizenship law, requiring an unequivocal revocation.[29] Since "it is indisputably the contested decision that led to JY's permanent loss of citizenship of the Union," it is "the Austrian authorities which are obliged to ensure that a national such as JY does not lose citizenship of the Union[…], depriving her of *all of the rights attaching thereto*, […]."[30] Despite the fact that the CJEU ultimately diverted form this assessment, the

[25] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶77. (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[26] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶82. (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858

[27] See Case C-369/90, *Mario Vicente Micheletti v. Delegacion del Gobierno en Cantabria*, ECLI:EU:C:1992:295, ¶10 (Jul. 7, 1992), https://curia.europa.eu/juris/showPdf.jsf?text=&docid=97581&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[28] It is noteworthy that the Advocate General uses the notion of "mutual confidence" rather than "mutual trust". For the purpose of this article mutual confidence and mutual trust will, nevertheless, be used interchangeably. It is, however, unclear whether this linguistic deviation that can also be found in some other judgments of the Court, but is not apparent in the German or French version bears any significance in the sense that there is conceptual difference between mutual confidence and mutual trust; see on this aspect Iris Canor, *My brothers keeper? Horizontal Solange: An ever closer distrust amongst the peoples of Europe*, 50 C.M.L.Rev. 383, 399 ff. (2013).

[29] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶82 (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[30] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶84 (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

reference to the principle of mutual confidence is still notable as it highlights that Member States are not only competent to decide on the very terms of their nationality, but underscores that mutual recognition of these decisions for the purpose of EU law is built on the accompanying obligation to observe EU law .

In this context the Advocate General also pointed out that Member States must exercise their powers in this domain "in compliance not only with EU law but also with international law."[31] Accordingly, Member States have to take note[32] of Art. 7 para. 2 of the Convention on the Reduction of Statelessness,[33] which according to the Expert Meeting on the interpretation of this very convention must be read to mean that it "is only acceptable to allow for loss of nationality if the assurance is unconditional"[34]. And although the Advocate General left it to the referring court to "consider such matters in the present case"[35], it is evident that this understanding has repercussions within realm of EU law.

On the substance of the first question the Advocate General thus took the view that the "revocation of the assurance of naturalisation after citizenship of the Member State of origin has been relinquished, combined with the refusal of an application for naturalisation, is comparable, in view of its consequences, to a decision to withdraw naturalisation"[36] – and hence falls within the ambit of EU law.

This then led the Advocate General to the second question and the issue of whether or not the decision to revoke the assurance on naturalisation was compatible with EU law. As has been clear ever since *Rottmann* and *Tjebbes*, this in principle warrants a proportionality assessment in light of the implications under EU law. And although the Advocate General proceeded with a lengthy analysis that *inter alia* addressed the

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[31] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶94 (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[32] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶95 (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[33] U.N. Convention on the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S. 175, https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf.

[34] UNHCR Expert Meeting, *Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality, Summary Conclusions*, ¶44 (Oct. 31 – Nov. 1, 2013), https://www.unhcr.org/protection/statelessness/5465e2cb9/interpreting-1961-statelessness-convention-avoiding-statelessness-resulting.html.

[35] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶96 (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[36] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶65 (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

legitimate public interest[37] and the nature of the offence[38] as well as the consequences for JY with regard to various aspects such as, the right to move and reside within the territory of the EU as a whole,[39] the possibility to recover the original nationality[40] and the normal development of a family and personal life,[41] it is the last operative paragraph of the Opinion that encapsulates the very essence of his considerations:

> *To conclude my analysis, I consider it interesting to cite Advocate General Mengozzi who, in his Opinion in Tjebbes and Others, took the view that 'in an extreme – and I hope purely hypothetical – case, where the legislation of a Member State provides for withdrawal of an individual's naturalisation entailing loss of citizenship of the Union as a result of a road traffic offence, the disproportionate nature of that measure would be clear because of the disparity between the low degree of gravity of the offence and the dramatic consequence of losing citizenship of the Union'.*[42]

Against this backdrop, Advocate General *Szpunar* held that Austria in principle could make the argument that it wished to protect the special relationship of solidarity and good faith between it and its nationals and thus could require a person wanting to become an Austrian national to relinquish his or her other nationality.[43] And while the provisions regarding the possibility of revoking the assurance on naturalisation "are

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[37] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶¶91 ff. (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[38] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶¶103 ff. (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[39] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶¶116 f. (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[40] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶118 (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[41] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶¶119 ff. (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[42] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶127 (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858; quoting AG Opinion in Case C-221/17, *M.G. Tjebbes v. Minister van Buitenlandse Zaken*, ECLI:EU:C:2019:189, ¶88 (July 12, 2018), https://curia.europa.eu/juris/document/document.jsf?text=&docid=203972&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3685134.

[43] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶¶91, 93 (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

part and parcel of the exercise by the Republic of Austria of the powers relating to the definition of the conditions for acquiring and losing Austrian nationality" it is also clear that the road offences committed by JY constituted only minor offences that did not provide sufficient grounds for the suspension of a driving licence according to Austrian law.[44] The revocation of the assurance thus could not be said to be based "on the existence of a genuine, present and sufficiently serious threat to public policy or public security."[45]

Additionally, the Advocate General pointed to the effects of the revocation, which left JY stateless and thus severely interfered with her ability "to maintain effective and regular contact [...] with members of her family [and] to carry on her professional activities [...] or to undertake the steps necessary to carry on such activities"[46] in Austria, Estonia or in any other Member State.

All these arguments culminated in the above-quoted paragraph and the point that it was simply inconsistent "that offences related to road safety [that are not] regarded as sufficiently serious to entail the withdrawal of a driving licence [...] lead to the revocation of the assurance as to the grant of nationality from the person concerned and to the loss of citizenship of the Union and all the rights attaching thereto" [47].

And while the Opinion of Advocate General *Szpunar* is very clear in its outcome, it is quite telling that it warranted such a lengthy and laden assessment. In this sense the whole outline of the Opinion is just another reminder that issues of a nationality are from the perspective of Member State sovereignty still most sensitive.

[44] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶110 (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.
[45] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶113 (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.
[46] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶117 (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.
[47] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶¶123 f. (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

4. Judgment of the Court

It should come as little surprise that also the judgment handed down by the Grand Chamber entailed a rather lengthy assessment, speaking to the significance rather than the legal complexity of the case. And although the judgment and the Opinion of Advocate General *Szpunar* do not deviate in their outcome, there are some marked differences.

A first interesting point in this regard is the differentiation between the temporary and the permanent loss of Union citizenship. While the case at hand principally concerns the permanent loss, the Court also addressed the temporary loss of the Union citizenship as a consequence of the obligation under the Austrian citizenship law to relinquish the nationality of one's Member State of origin. In this sense, neither the renunciation of the Estonian nationality as required by the Austrian citizenship law could be deemed to be voluntarily act[48] nor did Estonia's acceptance of the revocation of its nationality, without taking due regard of the fact JY would at least temporarily lose her status as a Union citizenship escape the ambit of EU law.[49] Accordingly, the Member State of origin – in observing its obligations under EU law – "should not adopt, on the basis of an assurance given by [another] Member State that the person concerned will be granted the nationality of that State, a final decision concerning the deprivation of nationality without ensuring that that decision enters into force only once the new nationality has actually been acquired." Rather than relying on the principle of mutual confidence and the underlying logic of an unfettered Member State competence, EU law – so it seems – warrants a stronger coordination between Member States.

A second point that requires attention is the fact that the Court, in line with the Advocate General, held that the assurance on the naturalisation and measure in question falls within the ambit of EU law. The Court thereby underscored the importance of the dictum in *Lounes*:

> *[T]he underlying logic of gradual integration that informs [Art, 21 TFEU] requires that the situation of citizens of the Union, who acquired rights under that provision as a result of having exercised their right to free*

[48] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶¶35 ff. (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.

[49] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶¶47 f. (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.

> *movement within the European Union and are liable to lose not only entitlement to those rights but also the very status of citizen of the Union, even though they have sought, by becoming naturalised in the host Member State, to become more deeply integrated in the society of that Member State, falls within the scope of the Treaty provisions relating to citizenship of the Union.*[50]

It follows that the Court thereby, and for the first time, confirmed that not only the loss of a Member State's nationality but also the naturalisation of a Union citizen who seeks to become permanently integrated in the society of his or her host Member State falls within the ambit of EU law. The affirmative answer to the first question, of whether a situation as the one at hand falls within the scope EU law, therefore, rests on a twofold argumentation, underscoring that not only the loss but also awarding of Union citizenship – as consequence of the right to free movement of Union citizens – bears momentum under EU law. Notably, the Court thereby not only rejected the formalistic interpretation of the Austrian authorities and the referring court, but considerably "widened" the ambit of EU law to effectively cover all measures that affect the substance of Union citizenship as the fundamental status under EU law.

This, as the Court in answering the second question set out also holds true for the Member State of origin. And although "the obligation to ensure the effectiveness of Article 20 TFEU falls primarily"[51] on the other Member State who has given the assurance on naturalisation, the Court, by holding that also the Member State of origin must make sure that a request to relinquish said nationality does not lead to a loss of Union citizenship, emphasized a wider obligation to observe EU law. In this *obiter dictum* the Court, however, left it open what the consequences of a failure to uphold this obligation for the Member State of origin amounts to. One possible conclusion could be that the Member State of origin is under certain circumstances under an obligation to provide a means for the reacquisition of its nationality – which seems particularly persuasive if the revocation of the assurance to be granted the nationality of another Member State turns out to be compatible with EU law.

With regard to Austria and the core element of the second preliminary question the Court held – or rather reiterated – that the revocation on the assurance of

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[50] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶43 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.

[51] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶51 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.

naturalisation could only be deemed to be compatible with EU law if the measure is proportional "in the light of the consequences it entails for that person's situation."[52]

This in the first place means that any measure must pursue a legitimate aim.[53] Interestingly, the Court to this end pointed to the fact that the purpose of § 10 para 3 Austrian citizenship law is, *inter alia*, to avoid one person having multiple nationalities"[54] and that "it is legitimate for a Member State, such as the Republic of Austria, to take the view that the undesirable consequences of one person having multiple nationalities should be avoided"[55]. Only after having backed up this argument by reference to Art 15 lit b of the European Convention on Nationality[56] and a vague reference to the Opinion of the Advocate General and Art. 7 para. 2 of the Convention on the Reduction of Statelessness[57],[58] did the Court turn to the actual issue of a potential aim for the revocation of the assurance on naturalisation. But instead of providing a similarly straightforward line of reasoning the Court made reference to a rather unspecified ground of public interest relating to "a positive attitude towards the Member State of which he or she wishes to acquire the nationality and that his or her conduct [must not be] liable to represent a danger to public order and security of that Member State"[59].

What follows from this outline is first, that preventing dual or multiple nationalities is considered a legitimate aim under EU law. It is submitted that the Court while accurately referencing Art. 15 lit. b of the European Convention on Nationality, did neither take into account that instances of dual or multiple nationalities have been

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[52] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶45 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.

[53] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶51 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.

[54] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶53 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.

[55] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶54 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.

[56] European Convention on Nationality, Nov. 6, 1997, 166 E.T.S., https://rm.coe.int/168007f2c8.

[57] U.N. Convention on the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S. 175, https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf.

[58] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶55 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.

[59] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶57 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.

accepted by ever more Member States[60] nor did the Court make a point in spelling out what "the undesirable consequences of one person having multiple nationalities"[61] actually are. Rather than engaging with the actual nature of the legitimate public interest, the Court sticked with well-rehearsed commonplaces.

Second, and indeed more importantly for the case at hand, the public interest relating to a positive attitude towards the Member State and the danger to public order and security, as can be deduced from the later observations of the Court, boils down to an assessment of whether the measure concerned is directed against "a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society or a threat to public security"[62]. But instead of following through on this line of reasoning – and establishing that "the concepts of 'public policy' and 'public security' must be interpreted strictly,"[63]– the Court wandered off: Rather than simply establishing that minor traffic offences, "punishable by mere administrative fines, cannot be regarded as capable of demonstrating that the person responsible for those offences is a threat to public policy and public security"[64], the Court emphasized the principle of proportionality. The required individual assessment thereby needs to take account of the consequences for the "normal development of his or her family and professional life from the point of view of EU law"[65], "the gravity of the offence committed"[66], and ensure the is consistency "with the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union"[67]. And while it is undoubtedly true that all these aspects ought, in one or the other way, be considered

[60] See e.g. Yossi Harpaz & Pablo Mateos, *Strategic citizenship: negotiating membership in the age of dual nationality*, 45 J.E.M.S. 843, 846 f. (2019).
[61] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶54 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.
[62] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶70 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.
[63] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶68 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.
[64] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶71 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.
[65] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶59 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.
[66] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶60 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.
[67] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶61 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.

within a proportionality assessment, this set up, both from a doctrinal and a pragmatic point of view, seems rather confusing. Given that the main argument of the judgment ultimately relates to the fact that the offences in question constituted only minor offences and therefore could not be categorized as threats to public policy or public security, it would have seemed most logical to simply establish that the revocation of the assurance on naturalisation was factually lacking a legitimate aim. But even if one falls for the argument that the revocation of the assurance pursued a legitimate aim in the abstract, it was all but obvious that the revocation was neither suitable to further that aim nor coherent. That, in the words of the Court, is to say that the "offences […] did not deprive JY of the right to continue to drive a motor vehicle on the public highway"[68] and that also the revocation of the assurance on naturalisation did nothing to alter this. Moreover, the Court rightly observed that if the naturalisation had been granted "such offences would not, in themselves, lead to withdrawal of naturalisation."[69]

As a consequence, and in light of all the additional considerations provided for by the Court, it can indeed be argued that the whole issue of proportionality ought to be viewed from a different angle. The insistence that the individual impediments, in particular with regard to the personal and professional life[70] – also reflected the right to a private and family life under Art. 7 CFR – infer that the very basis of nationality are the lasting and effective individual links that substantiate the permanent integration in the society of a Member State. To be proportionate any measure that interferes with the status of nationality and Union citizenship by extension, hence, must effectively render this permanent integration nugatory. The grounds for a revocation of the assurance on naturalisation – and equally the grounds for a deprivation of nationality – therefore are relative in the sense that they must severe these links. It is indeed most intriguing that the Court in this context not only mentioned the "positive attitude"[71] towards a Member State but also referred to Art. 8 para. 2 ECHR and the public interests mentioned therein, providing legitimate reasons for an interference

[68] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶71 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.
[69] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶72 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.
[70] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶¶58, 61 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.
[71] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶¶56 f. (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.

with the right to a private and family life.[72] Taken together, all these additional points of reference imply that the issue addressed under the heading of proportionality essentially revolves around the lasting and effective relationships of the individual within a society. And this, indeed, underscores a rather specific understanding of nationality (and Union citizenship) as fundamental status of the individual. With regard to the case at hand there was, nevertheless, no doubt that the revocation of the assurance on naturalisation has had "significant consequences for JY's situation, as regards, in particular, the normal development of her family and professional life"[73]. These additional considerations, thus, were of little relevance for the outcome of the case at hand, but point towards a deeper conceptual framework sustaining the understanding of the status of nationality within the realm of EU law.

As mentioned above, the judgment forms part of an ever-widening line of cases that have gradually subjected actions in the field of nationality to scrutiny under EU law. The axiomatic – sometimes also referred to as "parasitic"[74] – relationship between nationality and Union citizenship to this end has led to a steady erosion of the presumably unfettered sovereignty of Member States in the field of nationality.

In this light, the judgment in *Wiener Landesregierung* not only shows that the obligation to observe EU law indeed also relates to the process of naturalisation but also the willingness of the Court to confront entrenched nationality policies that have little regard for the individual. The reference to EU law thereby provides the individual with an "externalized" means to challenge such entrenched practices and more generally puts pressure on the arbitrary instrumentalisation of nationality – and Union citizenship.

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[72] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶56 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272; This is all the more interesting as the ECtHR addresses issues that relate to a loss and acquisition of nationality on the basis of Art 8 ECHR, albeit the ECtHR asses measures interfering with the status of nationality on the basis of a more lenient standard of an arbitrariness-test; see on this e.g. *Johansen v. Denmark*, App. No. 27801/19, ¶¶46 ff (Feb. 1, 2022), https://hudoc.echr.coe.int/eng?i=001-216316; as well as *K2 v. The United Kingdom*, App. No. 42387/13, ¶61 (Feb. 7, 2017), https://hudoc.echr.coe.int/eng?i=001-172143.

[73] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶73 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.

[74] Compare Karolina Rostek and Gareth Davies, *The impact of Union citizenship on national citizenship policies*, 10 EIoP 1, 1 (2006) as well as Richard Bellamy, *'An Ever Closer Union Among the Peoples of Europe': Union Citizenship, Democracy, Rights and the Enfranchisement of Second Country Nationals, in* Debating European Citizenship 47, 49 (Rainer Bauböck ed., 2019).

5. Comments

In light of the rather paradoxical character of the judgment, while predictable in its outcome still heavily laden with the paradigm that nationality is a most sensitive domain for Member States, there are at least three wider points that warrant further attention: First, the relationship between Union law and nationality under public international law; second, the apparent difficulties of some Member State's courts, and Austria in particular, to internalize the obligation to observe EU law in nationality matters; and third, the issue of mutual trust in nationality decisions of other Member States.

A. From parasitic to symbiotic: The confluence of Union citizenship and nationality under international law

Reading the introductory paragraphs of the judgment, the Opinion of the Advocate General as well as indeed all other relevant judgments in this field,[75] it is most evident that issues relating to the domain of nationality are still treated on the basis that it is for each State to determine the criteria for the loss and acquisition of their nationality.[76] The very meaning of this kind of sovereignty under international law is, however, quickly put into context as Member State nationality means Union citizenship and hence all measures that affect the status of nationality also fall within the ambit of EU law. The obligation to observe EU law – as the judgement underscores – does not only relate to the loss of a Member State's nationality but also covers measures that relate to the acquisition of a Member State's nationality. The reference to the *Lounes* judgment and the seminal logic of Union citizenship as a status intended to ultimately allow for the permanent integration of Union citizens

[75] See Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶37 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272; AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶47 (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858; as well as Case C-221/17, *M.G. Tjebbes v. Minister van Buitenlandse Zaken*, ECLI:EU:C:2019:189, ¶30 (Mar. 12, 2019), https://curia.europa.eu/juris/document/document.jsf?text=&docid=211561&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858 and Case C-135/08, *Janko Rottman v. Freistaat Bayern*, ECLI:EU:C:2010:104, ¶39 (Mar. 2, 2010), https://curia.europa.eu/juris/document/document.jsf?text=&docid=75336&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[76] See Convention on Certain Questions relating to the Conflict of Nationality Laws, Apr. 12, 1930, Art. 1, 179 L.N.T.S. 89 and European Convention on Nationality, Nov. 6, 1997, Art. 3, 166 E.T.S., https://rm.coe.int/168007f2c8.

into the society of another Member State[77] may thus be seen as argumentative precursors for coming judgments that *inter alia* relate to controversial issues such as the acquisition of a Member State's nationality by investment.[78] That is to say that if the observance of EU law is understood to concern the protection of the personal and professional relationships[79] that underpin nationality and Union citizenship by extension substantial integrational links into the society of a Member State form an implicit *conditio sine qua non*. After all, what is there to protect if nationality is void of any such substantial integrational links into the society of a Member State. Relying on this rationale the question to be answered in future cases, thus, is not whether or not Member States are free to award their nationality, but what kind of personal and/or professional links the individual must possess to be regarded as a national and Union citizen under EU law.

As the very meaning of nationality under EU law is thereby built on a conception that nationality reflects the individual's embeddedness within the society of a Member State, it is indeed unsurprising that also the required proportionality assessment refers back to these genuine relationships that underpin the bond of nationality.[80] In and for the context of EU law nationality, although assessed as a legal construct under international law, is thus laden with an understanding that hinges on effective and genuine societal links.

And while Member States remain sovereign to determine the very contours of these links, there are limits to this sovereignty in EU and international law alike. Albeit the Court stayed away from making explicit statements on whether the criteria set out by Member States are compatible with international law, the Court has repeatedly made reference to international instruments such as the Convention on the Reduction of Statelessness or the European Convention on Nationality and the respective provisions therein relating to the loss – and the acquisition – of nationality. In this light, the Court has ever since *Rottmann* referred to these international instruments to

[77] Case C-165/16, *Toufik Lounes v. Sec'y of State for the Home Dep't*, ECLI:EU:C:2017:862, ¶56 (Nov. 14, 2017), https://curia.europa.eu/juris/document/document.jsf?text=&docid=196641&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[78] See European Commission Press Release IP/22/5422, Investor citizenship scheme: Commission refers MALTA to the Court of Justice (Sep. 29, 2022).

[79] Compare Case C-165/16, *Toufik Lounes v. Sec'y of State for the Home Dep't*, ECLI:EU:C:2017:862, ¶46 (Nov. 14, 2017), https://curia.europa.eu/juris/document/document.jsf?text=&docid=196641&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[80] See Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶59 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.

establish whether a Member State pursues a legitimate aim under EU law.[81] As is also evident from the case at hand, the observance of EU law in the domain of nationality in the first place, hence, implies the observance of international law.[82] It is indeed quite intriguing that the outcome in *Wiener Landesregierung*, namely that the revocation of the assurance is contrary to obligations set out under EU law, concours very much with the obligations set out in Art 7 para 2 Convention on the Reduction of Statelessness.[83] And moreover, the same can be said for the judgements in *Rottmann* and *Tjebbes*, where the assessment of the Court very much inhibits the spirit of the European Convention on Nationality.[84]

Seen from the perspective of international law, the judgment and its preceding case-law thus point to a symbiotic relationship of Union law and international law in the sphere of nationality. That is to say that while Union citizenship is dependent on the status of nationality and in this sense may be described as parasitic, the understanding and assessment of nationality as a constitutive status under EU law has repercussions for that very status under international law. In this context, it is instructive to point out that the consequences of the judgment at hand meant that JY

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[81] See Case C-135/08, *Janko Rottman v. Freistaat Bayern*, ECLI:EU:C:2010:104, ¶52 (Mar. 2, 2010), https://curia.europa.eu/juris/document/document.jsf?text=&docid=75336&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858; Case C-221/17, *M.G. Tjebbes v. Minister van Buitenlandse Zaken*, ECLI:EU:C:2019:189, ¶37 (Mar. 12, 2019), https://curia.europa.eu/juris/document/document.jsf?text=&docid=211561&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858; Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶55 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.

[82] Compare AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶94 (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.
AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶95 (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858; see also David A.J.G. de Groot, *CJEU asked to rule on acquisition of nationality in light of EU citizenship: The fundamental status on the horizon? (C-118/20 JY v Wiener Landesregierung)*, EU Law Analysis (June 15, 2020), https://eulawanalysis.blogspot.com/2020/06/cjeu-asked-to-rule-on-acquisition-of.html.

[84] See Case C-135/08, *Janko Rottman v. Freistaat Bayern*, ECLI:EU:C:2010:104, ¶52 (Mar. 2, 2010), https://curia.europa.eu/juris/document/document.jsf?text=&docid=75336&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858; Case C-221/17, *M.G. Tjebbes v. Minister van Buitenlandse Zaken*, ECLI:EU:C:2019:189, ¶37 (Mar. 12, 2019), https://curia.europa.eu/juris/document/document.jsf?text=&docid=211561&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.
Compare in this respect to *Tjebbes* also the annotations of *G.-R. de Groot,* who argued long before *Tjebbes* that the relevant provision of the Dutch law was not in line with the ECN: Gerard-René de Groot, *The European Convention on Nationality: A Step toward a Ius Commune in the Field of Nationality Law*, 7 M.J. 117, 143 (2000).

has become an Austrian national after all.[85] Hence, the observance of EU law does not only infer consequences under EU law but has reflexive effects under international law – as such JY did not only regain her status as Union citizen but has become an Austrian national under international law as well. EU law, thereby, is turning into an instrumental force in shaping the contours of the Member States' – and in this case Austria's – nationality on the international plane.

Furthermore, it stands to argue that the assessment of this intricate relationship between nationality and Union citizenship does not only produce effects but ultimately also affects the very understanding of nationality on the international plane.[86] The fact that the Court assesses nationality as a bond construed on the basis of a "relationship of solidarity and good faith between it and its nationals and also the reciprocity of rights and duties"[87] implies nothing more and nothing less than that nationality as a status under international law requires a *genuine link*. To the dismay of some commentators[88] this understanding of the Court and the assessment of the effective and lasting private and professional ties breaths life into the (in)famous *Nottebohm* judgment of the International Court of Justice[89] and adds momentum to the understanding that sovereignty over nationality does not allow for a freewheeling instrumentalisation of nationality.

In this sense, EU law does not only provide for an "externalized" forum of scrutiny but indeed supports an individual conception of nationality as a status that infers a *right to have rights*. To this end, the judgment in *Wiener Landesregierung* underscores that

[85] In line with the judgment of the CJEU the Austrian Supreme Administrative Court has held that the revocation of assurance on the naturalisation of JY was contrary to EU law and therefore quashed the judgment of the Administrative Court upholding the revocation; Verwaltungsgerichtshof [VwGH] [Administrative Court of Justice] Feb. 25, 2022, Ra 2018/01/0159, https://www.ris.bka.gv.at/Dokumente/Vwgh/JWT_2018010159_20220225L00/JWT_2018010159_20220225L00.pdf.

[86] In this respect it also worth pointing out that in the literature the case law of the CJEU has been relied upon as interpretative source to establish the limits of the States in the domain of nationality, compare Oliver Dörr, *Prohibition of Use of Force*, ¶¶10, 36 (2019), MPEPIL.

[87] Case C-118/20, *JY v. Wiener Landesregierung,* ECLI:EU:C:2022:34, ¶52 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.

[88] See in particular Dimitry Kochenov, *The Tjebbes Fail*, 4 European Papers 319, 332 (2019), https://www.europeanpapers.eu/en/system/files/pdf_version/EP_EF_2019_I_009_Dimitry_Kochenov_00293.pdf; and *Kälin and Kochenov's Quality of Nationality Index* 13 f. (Dimitry Kochenov & Justin Lindeboom eds., 1st ed. 2020); as well as for a more nuanced approach Martijn van den Brink, *Revising Citizenship within the European Union: Is a Genuine Link Requirement the Way Forward?*, 23 German Law Journal 79, 95 (2022), https://www.cambridge.org/core/journals/german-law-journal/article/revising-citizenship-within-the-european-union-is-a-genuine-link-requirement-the-way-forward/4B703C30336EAEE064810793B81D289C.

[89] Nottebohm (*Liechtenstein v. Guatemala*), 1955 I.C.J. 4 (Apr. 6), https://www.icj-cij.org/sites/default/files/case-related/18/018-19550406-JUD-01-00-EN.pdf.

the ostensible parasitic character of Union citizenship in fact is better understood as a symbiotic relationship that strengthens the subjective dimension of nationality as a legal construct under international law.

B. Coming to terms with the CJEU's case-law and the simmering issue of dual nationality in Austria

Besides its implications for the conception of nationality as a status under international law and EU law alike, the judgment also provides insights into the difficulties of (some) Member States in embracing the influence of EU law in nationality matters. This does not only relate to Austria, which as the case at hand and the following observations indicate seems particularly troubled to come to terms with the ever-expanding influence of EU law but also relates to other Member States. Indeed, provisions of the nationality laws in Denmark[90] and Germany[91], are currently the subject of pending cases before the CJEU. And although these cases relate to the loss of nationality, and thus pertain to different settings than the judgment in *Wiener Landesregierung*, they show that the full influence and impact of EU law on the nationality laws and practices of Member States is yet to be mapped out.

The difficulties of taking account and internalizing" the evolving obligation to observe EU law are, however, is probably best highlighted e by taking a closer look at the Austrian practice and the hitherto unimpeded doctrine of avoiding cases of dual or multiple nationality.

As such it is worth pointing out that the referring Supreme Administrative Court of Austria – which as the highest administrative court is the court of last instance with regard to issues of nationality – has indeed ever since *Rottmann* adopted a very reserved attitude towards the influence of EU law in nationality matters. When *Rottmann* was handed down, the Supreme Administrative Court ruled that the observance of EU law, requiring an individual assessment under the heading of proportionality, was only warranted in analogous cases where the loss of nationality and thus Union citizenship stemmed from an individual decision with regard to the

[90] See 2022 O.J. (C 64) 27, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62021CN0689&qid=1680253926771&from=EN; as well as the AG Opinion in Case C-689/21, *Udlændinge- og Integrationsministeriet*, ECLI:EU:C:2023:53 (Jan. 26, 2023), https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62021CC0689&from=DE.

[91] See 2023 O.J. (C 24) 39, 40, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62022CN0685&qid=1680254689950&from=DE.

fraudulent conduct of the person concerned.[92] By this most narrow reading, the Supreme Administrative Court avoided to address the thorny issue of dual nationality and the *ex lege* loss of the Austrian nationality for persons acquiring a second nationality, as provided for by § 27 of the Austrian citizenship law. Rather than subjecting this *ex lege* loss to an assessment of proportionality, the Supreme Administrative Court and indeed the administrative practice in general stuck with the mantra that an assessment in light of the loss of Union citizenship and the individual consequences was not required.[93] And even though ever since *Tjebbes* it is clear that this position was untenable,[94] the referring Supreme Administrative Court and the administrative and judicial practice have adopted a very schematic proportionality assessment, relying on the principal argument that the *ex lege* loss of Austrian nationality can in principle not be deemed disproportionate if the person concerned did not apply for a waiver.[95] The waiver to remain an Austrian national, despite acquiring a second nationality was and still is restricted to exceptional circumstances.[96] The obligation of a proportionality assessment in light of the specific individual circumstances is thereby relegated to a trivial and mostly futile exercise.

And while it is certainly true that the root cause of all this is the restrictive legal framework of the Austrian citizenship law, which according to the common understanding is (*inter alia*) guided by the doctrine of avoiding cases of dual or

[92] See Verwaltungsgerichtshof [VwGH] [Administrative Court of Justice] Oct. 13, 2015, Ra 2015/01/0192, https://rdb.manz.at/document/ris.vwght.JWT_2015010192_20151013L00/formats/ris.vwght.JWT_2015010192_20151013L00.pdf; Verwaltungsgerichtshof [VwGH] [Administrative Court of Justice] Sep. 19, 2012, 2009/01/0003, https://rdb.manz.at/document/ris.vwght.JWT_2009010003_20120919X00/formats/ris.vwght.JWT_2009010003_20120919X00.pdf.

[93] See on this as well Lorin-Johannes Wagner, *Paradigmenwechsel und schwankender Untergrund: die europarechtliche Einhegung der Staatsangehörigkeit und ihre Einwirkungen auf das österreichische Staatsbürgerschaftsrecht*, 76 ZöR 951, 979 (2021).

[94] It is indeed quite intriguing that the currently pending cases of *Stadt Duisburg* (C-684/22) and *Stadt Wuppertal* (C-685/22) relate to a rather similar provision under German nationality law; according to which German nationality is lost (*ex lege*) in case of voluntarily taking over the national of another State, and irrespective of the individual circumstances can only be maintained if he or she has prior to acquiring the other nationality applied for a waiver.

[95] See Verwaltungsgerichtshof [VwGH] [Administrative Court of Justice] Feb. 18, 2020, Ra 2020/01/0022, https://rdb.manz.at/document/ris.vwght.JWT_2020010022_20200218L00/formats/ris.vwght.JWT_2020010022_20200218L00.pdf; Verfassungsgerichtshof [VfGH] [Constitutional Court], June 17, 2019, E 1302/2019, https://rdb.manz.at/document/ris.vfght.JFT_20190617_19E01302_00/formats/ris.vfght.JFT_20190617_19E01302_00.pdf.

[96] According to the wording of § 28 para 1 Austrian citizenship law and the relevant case law a waiver can only be granted if either the person in question is a born Austrian national and there are particular grounds relating to family and private life or if the extension of the Austrian nationality is the interest of Austria; see further on this also Lorin-Johannes Wagner, *Paradigmenwechsel und schwankender Untergrund: die europarechtliche Einhegung der Staatsangehörigkeit und ihre Einwirkungen auf das österreichische Staatsbürgerschaftsrecht*, 76 ZöR 951, 979 (2021).

multiple nationality,[97] it is submitted that the observance of EU law cannot and must not be subjected to well-rehearsed interpretative imperatives of national law.[98] That is all the more so, as upon closer inspection the doctrine of avoiding cases of dual or multiple nationality does not form part a of the Austrian Constitution or indeed any other constitutional principle that stands in the way of a more lenient, EU law-friendly interpretation through Austrian courts.

That being said, it is notable that the CJEU in the case of *Wiener Landesregierung*, in an unwarranted sidestep, also addressed the issue of avoidance of dual and multiple nationality. The Court held that "it is legitimate for a Member State, such as the Republic of Austria, to take the view that the undesirable consequences of one person having multiple nationalities should be avoided".[99] In principle the loss of nationality and Union citizenship due to acquiring another nationality is thus compatible with EU law. There is, however, a not too small caveat to reckon with, as the Court has recurringly held that any loss of nationality and thus Union citizenship must be subject to an assessment of proportionality. And in this light, the assessment as outlined in the case at hand,[100] but also in *Tjebbes,*[101] does not bode well for the Austrian practice. It should indeed be born in mind that the case in *Wiener Landesregierung* essentially revolves around the issue of whether a "decision is justified in relation to the gravity of the offence committed by that person"[102]. In the case of minor traffic offences it is all too clear that the revocation of the assurance on the grant of nationality was – if one deems it necessary at all - disproportionate. For the context of the prohibition of dual and multiple nationality, this assessment implies that the prescribed loss of Austria's nationality and with it the loss of Union citizenship can only be deemed proportionate if the negative societal effects of acquiring another nationality outweigh the individual impediments.

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[97] See Rudolf Thienel, *Österreichische Staatsbürgerschaft*: Band II 124 (1990).
[98] See on the overarching obligation to interpret national law in conformity with EU law e.g. Allan Rosas & Lorna Armati, *EU Constitutional Law* 68 ff. (3rd ed. 2018).
[99] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶54 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.
[100] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶58 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.
[101] See Case C-221/17, *M.G. Tjebbes v. Minister van Buitenlandse Zaken*, ECLI:EU:C:2019:189, ¶46 (Mar. 12, 2019), https://curia.europa.eu/juris/document/document.jsf?text=&docid=211561&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.
[102] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶60 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.

This, of course, requires in the first place a clear understanding of what the negative consequences actually are. And here things start to get tricky. The nuisance that an individual through his or her multiple nationalities is subject to two or more legal orders and that possibly more than one State can lay claim to be entitled to offer diplomatic protection on behalf of that person, are not only overblown but seem to be of little relevance in practice. As elaborated by *Hailbronner*, the issues of dual nationality in the context of public international and international private law are largely resolvable. To this end *Hailbronner* has not only pointed towards a rule under international law, according to which no home State can claim diplomatic protection against another home State,[103] but has also emphasized the ongoing harmonization efforts in international private law, placing ever less importance on the connecting factor of nationality and ever more importance on the factor of habitual residence.[104] The real issue according to *Hailbronner* thus are the political implications: Dual and multiple nationality to this end infer the import of foreign political discourses, conflicts of loyalty, and ultimately may also entail the political instrumentalisation of dual nationals.[105] And while *Hailbronner* is certainly correct in underscoring that the naturalisation of foreigners comes with certain external political influences, it seems quite provocative to assume that these influences are always negative and that there are no other, lesser means to conquer such negative influences. As Member States remain sovereign to determine the criteria for the acquisition and loss of their nationality, Member States cannot only set integration requirements that take into account these potential conflicts, but can also lay down rules that in line with Art. 7 para. 1 lit. b of the European Convention on Nationality allow for the withdrawal of the nationality if the conduct of a national is "seriously prejudicial to the vital interests of the State Party". Moreover, since Union citizenship is based upon *nationality* and not (political) citizenship[106] – which is conceived as the fundamental status of the

[103] It is, however, worth noting that this rule has been challenged as has been argued that in some cases the home State with the closer connection can also lay claim to diplomatic protection also against another home-State; see e.g. Art 7 Draft Articles on Diplomatic Protection and the Commentary thereto, [2006] II part two Y.B. Int'l L. Comm'n 26, 34 ff., U.N. Doc. A/CN.4/SER.A/2006/Add.1 (Part 2).

[104] Kay Hailbronner, *Optionsregelung und doppelte Staatsangehörigkeit*, 33 ZAR 357, 364 f. (2013).

[105] Kay Hailbronner, *Optionsregelung und doppelte Staatsangehörigkeit*, 33 ZAR 357, 364 f. (2013).

[106] As has been spelled out in another article, the reference to the notion of "nationality" as the constitutive status for Union citizenship must – despite the rhetorical overtures in the Treaties – not be confused with the notion of citizenship. In the current state of the European Union the status of Union citizenship, thus, is not dependent on being politically enfranchised and having equal rights as a citizen in one's own home Member State, but is, as can be derived from the case-law of the Court, purely dependent on being a national of said Member State under public international law. This understanding is also underscored by the fact that EU law does not only "not replace national citizenship" but does also not interfere with questions of political rights of Union citizens on the national plane in their home Member State or the issue of equal treatment of citizens in a purely internal context. See further on this distinction between status of nationality and citizenship for

individual under domestic law, guaranteeing equal treatment and political enfranchisement within a State – Member States are in no way hindered from laying down rules that restrict the political participation rights in the domestic arena.[107]

Taken together, it therefore seems quite persuasive that any assessment under the heading of proportionality that essentially relies on bureaucratic formalisms – such as the fact that the individual concerned did not apply for waiver to remain an Austrian national in order to establish that the loss of nationality and hence Union citizenship ought to be deemed proportional – fail to live up to the spirit of this very test. The judgment in the case of *Wiener Landesregierung* is thus another case in point that EU law stands in the way of formulaic and etatistic approaches to nationality that fail to take due account of the individual implications. The influence of EU law, hence, not only strengthens the individual right to have rights, but notably also increases the gravitas of Union citizenship as a supposedly "additional" status.[108] The foreseeable consequences of this approach thus are an accentuation of the individual dimension of nationality and an ever-increasing pressure on Member States to justify restrictive nationality practices. And while this does not imply an outright alignment of nationality regimes of the Member States, it does support the formulation of a common understanding of a "European nationality".

C. Mutual trust and the recognition of nationality decisions – the end of Micheletti?

The third and last issue that seems to require particular attention is the implication of the judgment of *Wiener Landesregierung* for the recognition of nationality decisions within the realm of EU law. The paradigmatic position in European and public international law alike has been that nationality decisions of another Member State are not to be questioned. For the context of EU law this has been established

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the context of EU law Lorin-Johannes Wagner, *Member State nationality under EU law – To be or not to be a Union Citizen?*, 28 M.J. 304, 306 ff. (2021).

[107] In line with the existing practice of some Member States, one could for example imagine that nationals, habitually resident in another country could be disenfranchised in national elections. Whether or not any such approach is permissible for Union citizens moving to another Member State – and hence relying on their right free movement – is disputed; it is, however, quite possible that the associated impediment for the right to free movement could be justified in order to secure that the process of democratic representation encompasses only those citizens that are actually affected by the respective political decisions.

[108] Hans U. Jessurun d'Oliveira in this respect has quite pointedly remarked, "that the tables are being turned and the laws on nationality have to conform with the exigencies of Union law and principles"; Hans U. Jessurun d'Olivera, *Union Citizenship and Beyond, in* European Citizenship under Stress 28, 42 (Nathan Cambien, Dimitry Kochenov & Elise Muir, eds., 2020).

in *Micheletti.*[109] And although the judgment at hand has certainly not overturned *Micheletti*, it provides a gentle reminder that also in the field of recognition of nationality decisions mutual trust must not be equated with blind trust.[110]

Relying on the spirit of *Micheletti*, the Advocate General in his Opinion highlighted that the principle of mutual confidence – or trust – was underpinning and thus validating Estonia's decision to withdraw JY's nationality. In light of the assurance of naturalisation provided for by the Austrian authorities, Estonia "could legitimately expect that the Austrian authorities were going to follow through on the assurance as to the grant of nationality."[111] But while the Advocate General thereby held that Estonia was fully warranted in its decision to recognize Austria's assurance without further questioning its legal quality and its implications, the Court took an opposing view. Rather than relying on the principle of mutual confidence the Court highlighted the obligation of the Member State of origin, i.e. Estonia, to ensure the observance of EU law. In the words of the Court, "the Member State of origin should not adopt, on the basis of an assurance given by that other Member State that the person concerned will be granted the nationality of that State, a final decision concerning the deprivation of nationality without ensuring that that decision enters into force only once the new nationality has actually been acquired."[112] And although the Court went on to state that the obligation to ensure that the status as a Union citizen has not been lost falls primarily on the Member State, requiring the relinquishing of the original nationality, there can be little doubt that Estonia's actions and indeed its whole legislation, not allowing for a provisional decision to relinquish its nationality,[113]

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[109] See Case C-369/90, *Mario Vicente Micheletti v. Delegacion del Gobierno en Cantabria*, ECLI:EU:C:1992:295, ¶10 (Jul. 7, 1992), https://curia.europa.eu/juris/showPdf.jsf?text=&docid=97581&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858; It is certainly true that *Micheletti* is different form the case at hand, in the sense that it concerned the recognition of an existing nationality and not the recognition of a decision to award nationality. Mere logic, however, dictates that if one assumes that Member States are prohibited from questioning an existing nationality and thereby the underlying legal framework and decisions that underpin the status of nationality this must *mutatis mutandis* also be valid for other legal provision and decisions that relate to existence and non-existence of that very status.

[110] See Koen Lenaerts, *La vie après l'avis: exploring the principle of mutual (yet not blind) trust*, 54 C.M.L.Rev. 805 (2017).

[111] AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶82 (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[112] Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶50 (Jan. 18, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=252341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3337272.

[113] See on this AG Opinion in Case C-118/20, *JY v. Wiener Landesregierung*, ECLI:EU:C:2022:34, ¶78 (July 1, 2021), https://curia.europa.eu/juris/document/document.jsf?text=&docid=243668&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

is contrary to EU law. The judgment hence not only implies that Estonia needs to amend its nationality law, but on a more general note infers that no Member State must simply recognize the decisions of another Member State if their own actions may lead to the (temporary) loss of the fundamental status under EU law and the enjoyment of the rights conferred by this very status.

This, to be clear, has severe implications as the observance of EU law not only obliges Member States to coordinate their actions, but arguably brings about a horizontal mechanism of scrutiny in the sphere of nationality. As is well known, the issue of horizontal scrutiny is particularly thorny in EU law, as the very functioning of the EU is predicated on the mutual trust of Member States that they observe and adhere to their obligations under EU law.[114] On the basis of this understanding the Court in recent years has thus ruled that European Arrest Warrants[115] as well as decisions in the context of the so called Dublin Regulation[116] are only to be scrutinized by another Member State if there is substantiated evidence of systemic or generalized deficiencies with regard to the observance of EU law and fundamental rights in particular as well as sufficient grounds to believe that there is a real risk that the individual concerned will subsequently be subject to a violation of his or her (fundamental) rights.

The scrutiny and ultimately non-recognition of a decision of another Member State in these cases, however, was and has been embedded within secondary EU law that was specifically set up to proliferate the mutual recognition of decisions. The question of whether or not a Member State is allowed not to recognize a decision of another Member State, as the Court for example only most recently observed in the case of *Openbaar Ministerie,* has repercussions for the validity of the relevant secondary act.[117]

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[114]Opinion 2/13 of the Court of Justice, ECLI:EU:C:2014:2454, ¶191 (Dec. 18, 2014), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62013CV0002&qid=1680256418281&from=DE.

[115] See Joined Cases C-404/15 & C-659/15 PPU, *Pál Aranyosi, Robert Căldăraru,* ECLI:EU:C:2016:198 (Apr. 5, 2016), https://curia.europa.eu/juris/document/document.jsf?text=&docid=175547&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858; Case C-216/18 PPU, ECLI:EU:C:2018:586 (Jul. 25, 2018), https://curia.europa.eu/juris/document/document.jsf?text=&docid=204384&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858; Case C-562/21 PPU, ECLI:EU:C:2022:100 (Feb. 22, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=254385&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[116] See e.g. Case C-411/10, *N.S. v. Sec'y of State for the Home Dep't*, EU:ECLI:C:2011:865 (Dec. 21, 2011), https://curia.europa.eu/juris/document/document.jsf?text=&docid=117187&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[117] Case C-562/21 PPU, ECLI:EU:C:2022:100, ¶64 (Feb. 22, 2022), https://curia.europa.eu/juris/document/document.jsf?text=&docid=254385&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

The scrutiny and possible non-recognition of a decision of another Member State in the field of nationality on the other hand is not subject to a system of mutual recognition established on the basis of secondary legislation. It is submitted that a non-recognition of any such decision therefor does not imply a derogation of an act of secondary legislation and thus – at least from this perspective – must not be subjected to a two-tiered test along the same restrictive lines.

Nonetheless, it is evident that "limitations on the principle of mutual trust must be interpreted strictly"[118]. The focus of any assessment with regard to nationality decisions, hence, must take into account that it is primarily for the home Member State to provide the legal safeguards, ensuring the observance of EU law. Only where there is substantiated evidence that there are no adequate procedural safeguards or that they have – manifestly – not been employed in accordance with EU law does it seem warranted that another Member State provides means to address this lack of safeguards to secure the fundamental status under EU law and ultimately substitutes the decision of another Member State with its own assessment. As a consequence, there is not only a principal – and arguably reinforced – obligation for the respective home Member State to provide effective procedural safeguards to address the loss of the fundamental status under EU law[119] but also a principal obligation for the individual concerned to bring the case before the authorities of his or her home Member State.

However, if all this fails, the non-recognition of a nationality decisions by another Member State, while quite unlikely, remains a possibility. In this *ultima ratio* scenario an individual would be treated as a national of a Member State and hence Union citizen by all other EU Member States while in fact being disregarded as such at home. This to be sure, does not imply a separation of the axiomatic relationship of nationality and Union citizenship but highlights that nationality (for the purpose of EU law) and Union citizenship is not simply what any Member State makes of it.

[118] Case C-34/17, *Eamonn Donnellan v. The Revenue Comm'rs*, EU:ECLI:C:2018:282, ¶50 (Apr. 26, 2018), https://curia.europa.eu/juris/document/document.jsf?text=&docid=201492&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3337858.

[119] That said it is submitted that the ambit of the right to fair trial under Art 47 CFR – differently from Art. 6 ECHR (see *Borisov v. Lithuania*, App. No. 9958/04, ¶16 (June 14, 2011), https://hudoc.echr.coe.int/eng?i=001-105149) – also covers decision on nationality matters.

6. Concluding remarks

Taking a final look at *Wiener Landesregierung* one cannot escape the impression that the case is somewhat odd. At first glance, what is blatantly obvious is the absurdity of the Austrian practice and the fact that the Court and the Advocate General have little regard for the argument that minor traffic offences should have anything to do with the acquisition of nationality and/or the loss of Union citizenship by extension. The judgment in this sense could be read as a somewhat lengthy individual case decision, leaving little room for manoeuvre for the referring Austrian Supreme Administrative Court but to quash the decision on the revocation of the assurance to naturalize JY.

On a second, more general reflection the judgment weaves together different threads of existing case-law in the field of nationality and underscores the ever-growing influence of EU law in this most sensitive sphere of national sovereignty.

In this vein, and as has been pointed out, the judgment also accentuates the turn towards a symbiotic relationship between Union citizenship and nationality. The case of *Wiener Landesregierung*, in line with the judgments in *Rottmann* and *Tjebbes*, to this end not only underscores and strengthens the significance of international treaties in the domain of nationality such as the European Convention on Nationality and the Convention on the Reduction of Statelessness in particular but, moreover, also (re-)invigorates a conceptual understanding of nationality as a fundamental status under international law that is built upon a genuine link. The evolving case-law of the CJEU, consequently, not only buttresses the protection of the status nationality but implies an ever-stronger interference of EU law with Member States' nationality laws and practices that in many cases show little regard for the individual consequences.

The judgment in *Wiener Landesregierung*, furthermore, is indeed the first practical case where the influence of EU law does not only go against measures that affect Union citizenship by withdrawing the "underlying" status of nationality but shows that the influence of EU law also extends to the issue of awarding nationality. In connection with the conceptual understanding of nationality as status build on a genuine link the judgment in *Wiener Landesregierung* may, thus, also be looked upon as a precursor for other cases to come.

The judgment in *Wiener Landesregierung*, finally, also shines a light on the issue of mutual trust. Against the supposedly common wisdom that ever since *Micheletti* Member States are not to question the decisions of another Member State in the very field of nationality, the Court in *Wiener Landesregierung* has held, that Estonia could not simply trust Austria's decision to award JY Austrian nationality. And although this

dictum could be attributed to the idiosyncratic nature of the case, in the grander scheme of things it seems more apt to understand this dictum as a necessary caveat to the dogmatic absolutism of *Micheletti*. The judgment of *Wiener Landesregierung* in this sense thus serve as reminder that there is no room for an absolute reserved domain under EU law and that the ever-growing influence of EU law is not necessarily bound to be felt vertically only, but may also advance in a horizontal dimension.

Albeit, the judgement in *Wiener Landesregierung* may in and of itself, hence, not be perceived to be a groundbreaking verdict, it is, ultimately, a case that adds many little nuances to the existing case law and in doing so might eventually serve as an indicative point of reference, foreshadowing an ever more substantive influence EU law in the field of nationality.