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REVOCATION OF NATURALISATION ASSURANCE THROUGH THE CJEU'S LENS – THE CASE OF JY v WIENER LANDESREGIERUNG

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Abstract: The paper analyses the CJEU's decision in *JY v. Wiener Landesregierung*, where the Court addressed the revocation of a conditional assurance of Austrian naturalization that left the applicant stateless after relinquishing Estonian citizenship. The CJEU ruled that such situations fall within the scope of EU law and emphasized the need for proportionality, especially given the minor nature of JY's offences. While the Court advanced the legal protection of EU citizenship, it stopped short of condemning the conditional assurance system altogether. The paper analyses this cautious stance, highlights inconsistencies in Austrian case law, and suggests reforms to prevent similar future outcomes, including unconditional assurances and proportionality safeguards.

Keywords: Assurance of Naturalisation; Nationality; CJEU; EU Law; Proportionality.

Resumo: O presente artigo analisa a decisão do TJUE no processo *JY contra Wiener Landesregierung*, em que o Tribunal se pronunciou sobre a revogação de uma garantia condicional de naturalização austríaca que deixou o requerente apátrida após ter renunciado à cidadania estónia. O TJUE determinou que tais situações se enquadram no âmbito do direito da UE e enfatizou a necessidade de proporcionalidade, especialmente dada a natureza menor das infrações cometidas por JY. Embora o Tribunal tenha reforçado a proteção jurídica da cidadania da UE, não chegou a condenar na sua totalidade o sistema de garantia condicional. O artigo analisa esta posição cautelosa, realça as inconsistências na jurisprudência austríaca e sugere reformas para evitar resultados semelhantes no futuro, incluindo garantias incondicionais e mecanismos de salvaguarda da proporcionalidade.

Palvras-chave: Garantia de Naturalização; Nacionalidade; TJUE; Legislação da UE; Proporcionalidade.

1 . Introduction

There is a proverb in the Serbian language which holds that no prudent person ever places faith in promises [*obećanje ludom radovanje*]. In his opinion in the landmark Tjebbes case,[1] Advocate General Megnozzi

1. The case concerned the refusal of Dutch authorities to examine the applications of Dutch nationals, with dual nationality of a non-EU country, for renewal of their Dutch passports. The CJEU found that Member States may lay down rules regulating the loss

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illustrated a hypothetical situation related to the withdrawal of an individual's naturalization, leading to the loss of Union citizenship due to a road traffic offense. He emphasized the disproportionate nature of such a measure, considering the relatively minor severity of the offense and the dramatic consequences of losing Union citizenship.[2] Unfortunately, JY, a former Estonian citizen, experienced this hypothetically conceived scenario in reality, and came to appreciate the truth behind the aforementioned Serbian proverb. The case ultimately reached the Court of Justice of the European Union (CJEU), where it was addressed in connection with prior judgments such as Tjebbes and Rottman case[3] which concerned the obligations of Member States in cases involving the *de jure* loss of EU citizenship. It was also linked to a broader line of case law pertaining to the right to free movement within the Union (Lounes case).[4]

The aim of this article is to analyse the aforementioned decision, its causes, shortcomings, and the consequences it has produced in terms of potential legislative changes in Austrian nationality law. Naturally, in order to properly understand the context in which the Austrian authorities decided to withdraw the assurance of naturalization, it is also necessary to examine the relevant case law of the Austrian Administrative and Constitutional Courts. The starting assumption—following the reasoning of the CJEU—is that the decision to withdraw an assurance, which also leads to the rejecting the naturalization, must be proportionate in each individual case. This is particularly important in view of the potential consequences, such as statelessness and the loss of EU citizenship, which may result from such a decision.

1.1. Factual background

In 2008 JY, Estonian national, applied for Austrian nationality. By decision of 11 March 2014, Austrian authorities assured JY that she would be granted

of their nationality and, as a result, the loss of EU citizenship, where the genuine link between the person and that State is durably interrupted. Nevertheless, the loss of nationality must respect the principle of proportionality, which requires an individual assessment of the consequences of that loss for the person from the point of view of EU law. CJEU Judgment of 12.07.2018. Delivered in Case C-221/17, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62017CJ0221

2. Opinion of Advocate General in CJEU Judgment of 12.07.2018. Delivered in Case C-221/17, paragraph 88.

3. The former case concerned the retroactive withdrawal of the naturalization of a German national, who had failed to indicate that proceedings were underway against him in Austria, and consequently lost his Austrian citizenship ex lege. As a result, he also lost his EU citizenship. CJEU Judgment of 02.03.2010. Delivered in Case C-135/08, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62008CJ0135.

4. In this case, CJEU has held that an EEA national who exercises free movement in another member state, and who later naturalises in that country and retains their original nationality, continues to enjoy the rights afforded under the Treaty of the Functioning of the European Union (TFEU). CJEU Judgment of 30.05.2017. Delivered in Case C-165/16, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016CC0165. See also Hyltén-Cavallius, 2022: 560.

Austrian nationality if she could prove, within two years, that she had relinquished her citizenship of the Republic of Estonia. This was done on the basis of article 20 of the Federal Law Concerning the Austrian Nationality (ANA), which stipulates that nationality shall be guaranteed to an alien in cases where within two years he or she gives proof of having relinquished the nationality of his or her previous home country. On 27 August 2015, JY provided such evidence, thus becoming a stateless person and *eo ipso* ceased to be a citizen of the European Union.

However, in July 2017, the Austrian authorities revoked the assurance of naturalization granted in 2014 pursuant to Article 20(2) of the ANA, which provides that such an assurance shall be revoked if the applicant no longer fulfils any of the stipulated conditions, with the exception of the requirement concerning sufficient means of subsistence. Consequently, JY's application for Austrian citizenship was rejected. The justification for this decision was based on the fact that, after the assurance of naturalization had been given, JY had committed two serious administrative offences—namely, failing to display a vehicle inspection disc and operating a motor vehicle under the influence of alcohol. In addition, she had committed eight administrative offences between 2007 and 2013, prior to receiving the assurance. On these grounds, the Austrian authorities concluded that the requirement regarding the demonstration of a positive attitude toward the Republic, and the condition that the applicant neither poses a threat to law and order and public safety nor endangers other public interests—as set forth in Article 10(1), point 6 of the ANA and reflected in Article 8(2) of the European Convention on Human Rights—had not been fulfilled.

The Administrative Court in Vienna concurred with the assessment of the Austrian authorities and emphasized that the two serious administrative offences committed by JY were likely to jeopardize road safety and to endanger the safety of other road users in particular. Accordingly, the court held that, in light of these two serious offences, combined with the eight administrative offences committed between 2007 and 2013, a favourable prognosis concerning JY's future conduct could no longer be made. Moreover, the Administrative Court found that the contested decision was proportionate in relation to the Convention on the Reduction of Statelessness[5] and held that the case at issue did not fall within the scope of EU law.

After a Revision appeal was lodged, the Supreme Administrative Court upheld the same conclusion—namely, that the conditions for revoking the assurance of naturalization had been met, and that the situation described did not fall within the scope of EU law. This was based on the fact that, on the date on which the revocation decision at issue in the main proceedings was adopted—which is the decisive date for assessing the merits of the judgment of the Verwaltungsgericht Wien (Administrative Court, Vienna)—JY no longer held the status of a citizen of the Union.[6]

5. UN Convention on the Reduction of Statelessness, Entered into force on 13 December 1975. United Nations, Treaty Series, vol. 989, p. 175.

6. CJEU Judgment of 18 January 2022. Delivered in Case C-118/20, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62020CJ0118, paragraph 24-26.

Consequently, in contrast to the situations considered in the CJEU judgments of 2 March 2010 in Rottmann (C-135/08, EU:C:2010:104) and of 12 March 2019 in Tjebbes and Others (C-221/17, EU:C:2019:189), the loss of Union citizenship was not a direct consequence of that decision. Rather, JY lost a conditionally acquired right—the chance to regain Union citizenship, which she had previously given up voluntarily—because the assurance that she would be granted Austrian nationality was revoked, and her subsequent application for that nationality was rejected.

Nonetheless, considering that the revocation of the assurance in the present case effectively prevents the reacquisition of Union citizenship, the Supreme Administrative Court referred the matter for a preliminary ruling by the Court of Justice, submitting the following questions: " a) 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,

b) 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?'[7]

With respect to the first question, the Court of Justice of the European Union (CJEU) considered that the situation described falls within the scope of EU law. As for the second question, the Court emphasized that Article 20 of the Treaty on the Functioning of the European Union (TFEU) must be interpreted in light of the principle of proportionality, taking into account the consequences that such a decision entails for the individual concerned. In the present case, compatibility with the principle of proportionality is not satisfied where such a decision is based on administrative traffic offences which, under the relevant provisions of national law, are punishable only by pecuniary penalties.[8]

However, before engaging in a more detailed analysis of the CJEU's decision, it will be beneficial to take a step back and examine the inconsistencies in Austrian administrative and court case law regarding the interpretation of the conditions for revoking an assurance of naturalization in the preceding period. This is all the more important considering Austria's persistently rigid stance on dual citizenship and, in terms of acquisition of nationality, its position—together with Bulgaria—at the very bottom among European

7. *Ibid*., paragraph 28.

8. *Ibid*., paragraph 74.

countries, according to the 2020 Migrant Integration Policy Index (Call, 2025).

2. Assurance for granting nationality in Austrian Administrative and Constitutional Court case law

The Austrian General Administrative Procedure Act (*Allgemeines Verwaltungsverfahrensgesetz – AVG*), unlike its German counterpart or the administrative procedure laws of several Balkan states (such as Serbia, Croatia, and Montenegro) (Milkov & Radošević, 2022: 4) does not recognize the legal instrument of a guarantee act (*Zusicherung* in German). The guarantee act is a legal act by which the competent authority undertakes to issue—or refrain from issuing—a specific administrative act at a later date, provided that the factual circumstances and normative framework remain unchanged.

Nevertheless, it is possible for such an instrument of assurance to be established through sector-specific legislation in particular administrative domains. One such domain is nationality law, where instruments like the assurance provided for under Article 20 of the ANA are especially prevalent. The primary purpose of this legal construct is to prevent statelessness—particularly in legal systems that are generally reluctant to tolerate dual citizenship.

This conditional grant of nationality under Article 20 of the (ANA), whereby citizenship is conferred as soon as the foreign national demonstrates either release from their previous nationality or that such release is impossible or could not reasonably have been expected, constitutes a form of intermediate step in the naturalization process (Esztegar, 2022: 312). However, since it is also required that, at the moment of the conferral of nationality, there exist no grounds for the revocation of the assurance—particularly in cases involving individuals who also hold the nationality of another EU Member State—significant legal complications may arise.

For example, one of the conditions that, pursuant to Article 10 of the ANA, must be satisfied at the time of the actual acquisition of nationality, in addition to the release from previous citizenship, is the requirement of lawful residence in Austria for a period of ten years. Nationals of an EU Member States, by virtue of their Union citizenship under Article 20 TFEU, enjoy the right to freedom of movement and are, as such, deemed to have lawful residence in Austria without the need to undergo the formal procedures stipulated by the Austrian Settlement and Residence Act. However, a legal dilemma emerges in situations where, during the course of the assurance procedure, the individual ceases to be a national of an EU Member State but has not yet acquired Austrian citizenship. Under Austrian law, such an individual cannot be granted nationality, as the release from their previous nationality simultaneously results in the loss of their legal basis for residence in Austria. This, in turn, activates one of the grounds for revoking the assurance of naturalization (Esztegar, 2022: 312). This is because, according to the case law of the Administrative Court, naturalization is necessarily a single, unified procedure. Consequently, the revocation of the assurance of naturalization necessarily entails the rejection of the application for the acquisition of nationality (Esztegar, 2022: 312).

Such an unfortunate situation—which leaves the applicant not only without EU citizenship, but also, due to the interruption of lawful residence, jeopardizes their future possibility of acquiring Austrian nationality *ex novo*—was appropriately resolved by the Administrative Court in Vienna. Namely, the Court held that situation of national of an EU Member State who resides in Austria without following the procedures established by the Austrian Settlement and Residence Act, represent one of the possible scenarios in which it would be unreasonable to expect the individual to obtain release from their previous nationality.[9] The position outlined above constitutes an example of the so-called restrictive approach[10] to the interpretation of the conditions that serve as grounds for the revocation of an assurance of naturalization.

A particularly prominent role in narrowing the interpretation of the conditions that may serve as grounds for revoking an assurance of naturalization was played by the Austrian Constitutional Court. This is illustrated by a 2011 case in which the Constitutional Court reviewed a complaint filed under Article 144 of the Federal Constitutional Law (BV-G) against a decision of the Administrative Court concerning the revocation of an assurance previously granted to a former Serbian national. The assurance had been revoked on the grounds that the individual no longer fulfilled the requirement of having sufficient means of subsistence, after the pizzeria in which she was employed went bankrupt, resulting in her becoming a recipient of social welfare. As a consequence, she was deemed to no longer satisfy the condition set out in Article 10(1)(7) of the ANA. The Constitutional Court initially affirmed that the legislature, as part of its legal policy discretion, is entitled to grant Austrian citizenship only to those foreign nationals who have sufficiently secured their livelihood through adequate income. The fact that the applicant was not at fault due to her financial situation—given that it resulted from her employer's insolvency—was considered irrelevant, as the legislative exception for such cases had been removed from the statutory text. Namely, amendments to the ANA in 2006 abolished the prior exception under which the lack of sufficient means of subsistence would not constitute a ground for revocation if the applicant was not personally responsible for the deterioration of their financial situation.

However, the Constitutional Court ultimately held that Article 20(2) of the ANA, which governs the possibility of revoking an assurance of naturalization, was unconstitutional. The Court found that the provision failed to distinguish among the various grounds for revocation, thereby violating Article 1(1) of the Federal Act Implementing the International Convention on the Elimination of All Forms of Racial Discrimination. As a result, Article 20(2) was declared unconstitutional and annulled completely.[11] The Constitutional Court emphasized that the legislature "treats serious

9. Ruling of the Vienna Administrative Court of 19/07/2021. Delivered in Case no. VGW-152/022/14393/2020.

10. I*bid*.

11. Ruling of the Austrian Constitutional Court of 29/09/2011. Delivered in Case no. VfSlg 19.516/2011.

criminal offences in the same manner as extraordinary circumstances for which an individual bears no responsibility, when revoking a statutory right to be granted citizenship that was conditionally acquired through a decision granting naturalization.[12] In this way, the concept of assurance in Austrian law became rigidified: the only remaining condition for acquiring Austrian nationality was the one that originally justified the introduction of the assurance mechanism—namely, release from the nationality of another state—while the assessment of all other conditions under Article 10 of the ANA was to be made at the time the assurance was granted.

Nevertheless, the Constitutional Court noted in its judgment that the legislature still retains the discretion to provide for the revocation of assurance in cases where serious grounds exist. The Austrian legislature promptly responded to this observation by reintroducing in 2013 an identical provision into the statutory text, with the exception that the lack of sufficient means of subsistence was no longer included as a ground for revoking assurance.

In this ongoing dynamic of institutional tension between the Constitutional Court and the legislature, the Constitutional Court adopted a somewhat more restrained approach in its 2019 decision. In this case, an assurance of future acquisition of Austrian nationality was once again granted to a Serbian national in July 2015, with full awareness that the applicant had committed three administrative offences under the Motor Vehicles Act between 2010 and 2014. However, the competent authority had assessed that these offences did not constitute an obstacle to the issuance of the assurance. In August 2016, the applicant obtained release from Serbian citizenship, but in January 2018, the assurance was revoked and the application for Austrian nationality was rejected due to the frequency of administrative traffic offences committed between 2010 and 2018. Despite the minor financial penalties imposed, the authority—followed by the regional administrative court—took the view that the repeated nature of the infractions (12 new offences following the issuance of the assurance) indicated that the conditions for the granting of assurance under Article 10(1)(6) of the ANA were no longer fulfilled.

On this occasion, the Constitutional Court upheld the statutory provision in question, but found that the regional administrative court had violated the applicant's right to equality and the prohibition of discrimination. Importantly, the Court reaffirmed its position from 2011, holding that the grounds for revoking assurance must be serious in nature and that any circumstances arising after the issuance of assurance which may call into question compliance with the requirements under Article 10(1)(6) of the ANA must be "particularly significant."[13]

Subsequent administrative judicial practice, however, has not been entirely coherent with respect to the question of which circumstances may be deemed sufficiently significant to constitute serious grounds for the revocation of an assurance. In this regard, it is worth highlighting a decision

12. *Ibid*., paragraph 2.4.

13. Ruling of the Austrian Constitutional Court. Delivered in Case no. VfSlg 20.322/2019.

of the administrative court rendered in a case involving a former citizen of Kosovo. In that case, the assurance previously granted to the applicant was revoked, and his application for Austrian nationality was subsequently rejected, on the grounds that, following the issuance of the assurance, he had committed two traffic offences involving speeding violations and one offence related to his refusal to show his driving license. The Administrative court upheld the applicant's claim, finding that while conclusions about an individual's character—relevant to the requirement set out in Article 10(1)(6) of the ANA—may indeed be drawn from legal infractions, such conclusions cannot be reduced to a mere reference to the existence of certain administrative offences. The court therefore concluded that the three administrative offences committed after the issuance of the assurance could not be considered serious grounds for its revocation.[14] Invoking the principle of the "necessary unity" of the procedure for granting assurance and, subsequently, granting the Austrian citizenship, the Administrative Court annulled both the decision of revoking the assurance and the decision rejecting the application for naturalisation. In the case at hand, the court ruled in full jurisdiction, finding that the conditions for applying the exception to full jurisdiction proceedings—provided under Article 28 of the Administrative Court Procedure Act, which would require the case to be remitted to the competent administrative authority—were not met.[15]

On the other hand, the Salzburg Regional Administrative Court, in a similar case involving a former citizen of Kosovo who committed several traffic offenses after the issuance of assurance, further noted that during the administrative court proceedings, the appellant was twice fined for violations related to non-compliance with measures prescribed during the COVID-19 pandemic (specifically, the inability to present the "3G proof" required by the COVID-19 Protective Measures Ordinance). The Salzburg Regional Administrative Court concluded that these administrative offenses demonstrated "a lack of consideration and indifference towards the legal

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14. Ruling of the Lower Austria Administrative Court of 05/08/2020. Delivered in Case no. LVwG-AV-974/001-2019. In: ZVG Zeitschrift der Verwaltungsgerichtsbarkeit. Vol. 7. 6/2020, pp. 528-536.

15. *Ibid.*, p. 535. In cases where the court does not exercise full jurisdiction, the annulment of the unlawful revocation of the assurance obliges the competent authority to resume the naturalization procedure and to assess whether the conditions for the granting of Austrian citizenship are fulfilled. In this context, according to administrative jurisprudence, the revocation of the assurance is permissible only if a legal requirement for the acquisition of citizenship ceased to be fulfilled *after* the issuance of the assurance, and not if it *had already not been fulfilled* at the time the assurance was granted. In the latter case, there would be grounds for reopening the administrative proceedings, provided that the relevant fact was unknown to the authority that issued the assurance. See Ruling of the Vienna Administrative Court of 03/09/2020. Delivered in Case no. VGW-152/062/9422/2020. In: ZVG Zeitschrift der Verwaltungsgerichtsbarkeit. Vol. 8. 1/2021, pp. 76–81. In this context, the revocation of the assurance in the case of JY must also be viewed as particularly questionable, given that 8 out of the 10 traffic offences were committed prior to the issuance of the assurance, and that this fact was known to the competent authority at the time the assurance was granted. Indeed, this was also pointed out by the Court of Justice of the European Union (CJEU), thereby reminding Austria of a basic rule of law principle. Kochenov, Groot, 2022a: 703. For more on the procedural challenges regarding the "necessary unity" between the decision to revoke the assurance and the simultaneous rejection of the citizenship application see Esztegar, 2022: 311-316. and for more on full jurisdiction in Austrian administrative law see Cucić, 2015: 217-218.

provisions aimed at containing the Corona pandemic," thereby determining that "a prognosis decision can only be made to the effect" that the complainant is likely to persist in disregarding the legal provisions enacted to safeguard the public interests set out in Section 10, Paragraph 1, Item 6 of the ANA.

What qualitatively distinguishes this case is that, in addition to traffic violations, the appellant failed to comply with regulations concerning public health interests. Nevertheless, upon appeal, the Constitutional Court did not concur with the reasoning of the Salzburg Regional Administrative Court, emphasizing that "even a member of society who respects and upholds the fundamental interests of society protected by Section 10 Paragraph 1 Item 6 of the ANA may violate these regulations here or there." The Constitutional Court reiterated that "a negative risk assessment justifying the revocation of the assurance of citizenship, and consequently the revision of an already granted state decision, must be grounded on particularly significant, newly arisen circumstances that establish an actual, present, and substantial danger posed by the complainant to a fundamental societal interest." Such circumstances may include the severity of the new legal violation attributable to the acquisition of nationality applicant in relation to the public interests outlined in Section 10(1)(6) of the ANA, as well as the emergence of a notable accumulation of even less serious violations compared to the situation assessed by the competent authority at the time of granting the assurance.[16]

The examples presented illustrate, on one hand, the frequency with which traffic offenses serve as grounds for the revocation of assurance regarding the granting of Austrian citizenship, with the case of JY being no exception—except perhaps due to the far-reaching consequences and the outcome before the CJEU. On the other hand, there is a noticeable highly restrictive approach consistently upheld by both the Austrian administrative courts and, especially, the Constitutional Court concerning the constitutional and even international law legitimacy of the reasons for revoking an assurance. In the JY case, the CJEU, by requiring that the revocation procedure be compatible with the principle of proportionality—one of the fundamental principles of EU administrative law—has gone a step further in shaping this restrictive approach.

3. One step forward, not two? Assessing the limits of the CJEU's advancement

In its case law, the CJEU has defined EU citizenship as a fundamental status of nationals of the Member States, thereby emphasizing the derivative nature of European Union citizenship, as it depends on the citizenship of a Member State. The extent of the EU law intervention in the area so jealously guarded as the reserve domain of the Member States thus remain a highly sensitive issue. Legal theory is divided between those who hold that the CJEU has no say in matters that fall within the exclusive competence of

16. Ruling of the Austrian Constitutional Court of 22/09/2022. Delivered in Case no. VfSlg E 1245/2022-12. In: ZVG Zeitschrift der Verwaltungsgerichtsbarkeit. Vol. 10. 1/2023, pp. 48-50.

Member States and those who argue that the CJEU does not go far enough in its case law to protect the rights stemming from Article 20 TFEU (Gambardella, 2022: 402).

What applies generally to the CJEU's approach to interpreting Article 20 TFEU applies *mutatis mutandis* to the judgment rendered in the JY case. In this sense, the CJEU's decision in JY represented certain advancements compared to previous nationality case law, yet it also faced academic criticism that the Court did not go far enough.

Firstly, the position that a naturalization process during which a Member State national is at risk of losing EU citizenship itself, by its nature and consequences (Kochenov, de Groot, 2022a: 702), falls under the scope of EU law, and its resolution solely on the basis of Article 20 TFEU, which governs EU citizenship, instead of Article 21(1) TFEU, which regulates the right to free movement, is—compared to the Court's earlier case law—at the very least unexpected. According to the previous jurisprudence of the CJEU, residence rights were to be governed primarily by EU free movement law, not by Article 20 TFEU, which protects EU citizenship as such. This inversion—where the status of EU citizenship is prioritized over the free movement rights—is a significant development. It reflects a shift from a purely functional approach based on territorial movement to one focused on the deeper constitutional meaning of EU citizenship as a fundamental status. By framing the issue around Article 20 TFEU, the Court underscores the symbolic and substantive importance of Union citizenship even outside the context of cross-border movement (Hyltén-Cavallius, 2022: 564-565), which may prove particularly relevant in addressing a recurring issue in Austrian administrative and administrative-judicial practice, namely, the inability to meet residence requirements faced by EU citizens who have lost the nationality of a Member State during the naturalization process and were granted only an assurance of Austrian citizenship, but not citizenship yet.

Furthermore, the fact that JY lost her Estonian citizenship—and with it, her EU citizenship—did not prevent the CJEU from examining the case within the scope of EU law, effectively treating JY as a *stateless Union citizen* on the basis of her legitimate expectation of acquiring Austrian, and thus EU, citizenship. This reasoning logically extends to third-country nationals who have also been misled with the promise of acquiring, for the first time, EU citizenship. In this way, the judgment may have far-reaching implications, marking a new phase in the influence of Union citizenship on the nationality laws of the Member States.

Regarding the second question referred by the Austrian administrative court—namely, the compatibility of the revocation of assurance with the principle of proportionality—the CJEU, contrary to its former practice, also highlighted the responsibility of Estonia, as the home Member State, in safeguarding against the loss of EU citizenship by JY. Specifically, Estonia should not have finalized the withdrawal of nationality before the acquisition of Austrian citizenship had been completed. Nevertheless, the *primary* legal responsibility to ensure the effectiveness of Article 20 TFEU, according to

the Court, lies with the host Member State—Austria—and its procedures.[17] Also relevant to the proportionality assessment is the fact that it would be practically impossible for JY to reacquire Estonian citizenship, given Estonia's legal requirement of eight years of residence for re-naturalisation following voluntary renunciation. In addition, the eight administrative infractions committed prior to the granting of the assurance—known to the Austrian authorities at the time—were not taken into account, while the two violations committed *after* the assurance were not of a nature or gravity to constitute a present and sufficiently serious threat to Austria's public security (Hyltén-Cavallius, 2022: 563).

This aspect of the CJEU's reasoning reflects yet another step forward. Namely, unlike in previous cases, in *JY* the Court, for the first time, carried out the proportionality assessment *itself*, rather than merely reminding the national authorities of their obligation to conduct such an assessment in line with its established case law (Gambardella, 2022: 406). However, at the same time, a dark shadow of inconsistency and partiality looms over the CJEU's assessment, casting doubt on the coherence of its reasoning. What is at stake here? The position of the Court is that the *revocation of an assurance of naturalisation by the Member State of residence after the loss of the home Member State's nationality* is no longer tolerable under EU law without a proportionality assessment. This, *a contrario,* implies that such a revocation is not incompatible with EU law *per se* (Kochenov, de Groot, 2022a: 705-707). In other words, according to sharp critics of this position, assessing the compatibility of the revocation of an assurance *in abstracto* with international legal standards may provide relief to a narrow group of individuals who, like JY, find themselves in similar circumstances in the future — but it fails to address the underlying systemic issue (Kochenov, de Groot, 2022b).

The core issue lies in the persistence of an outdated conceptual framework surrounding dual nationality, which continues to be approached with suspicion or resistance in many legal systems—despite evolving international standards. In contemporary legal and human rights discourse, however, dual nationality is increasingly viewed as a human right, or at the very least as a legitimate expression of individual identity and transnational belonging (Spiro, 2010: 111-130). Consequently, the persistence of the renunciation requirement is often justified by the argument that it is in accordance with international law. The CJEU, in the *JY* case, considered both the renunciation requirement and the issuance of an assurance of future naturalization — intended to enable a person to renounce their existing nationality — as legitimate under Article 15(b) of the 1997 Council of Europe European Convention on Nationality (ECN). However, this provision remains a relic of Chapter I of the earlier 1963 Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality, which required automatic loss of nationality in cases of voluntary acquisition of another nationality. That convention conceptualized dual nationality as an inherent problem — even an evi*l per se*. In light of contemporary views on citizenship and identity, the relevance of this convention has come under increasing scrutiny, especially considering that

17. CJEU Judgment of 18/01/2022. Delivered in Case n.º C-118/20, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62020CJ0118, para. 51.

only Austria and the Netherlands remain parties to the controversial Chapter I (Kochenov, de Groot, 2022a: 704-705). In the given context, the CJEU's stance that it is legitimate for the host Member State to require the relinquishment of another nationality prior to naturalization, as well as to impose conditions related to the public interest—specifically that the applicant does not pose a threat to public order and security—is a contested and problematic interpretation (Hyltén-Cavallius, 2022: 563).

A subsequent argument concerns the reconsideration *ex nunc* rather than *ex tunc* of the fulfilment of the conditions under Article 10 of the ANA after the issuance of the assurance, which raises serious questions from the standpoint of international law. This is because a conditional assurance, in the sense that it requires a renewed verification of the factual situation—i.e., fulfilment of the naturalization requirements except for the condition of having sufficient means of subsistence—does not meet the criteria set out in Article 7 of the 1961 Convention on the Reduction of Statelessness. Namely, this article provides that "a national of a Contracting State who seeks naturalization in a foreign country shall not lose his nationality unless he acquires or has been accorded assurance of acquiring the nationality of that foreign country." Moreover, the 2013 Tunis Declaration of the UNHCR, interpreting the 1961 Convention, states that loss of the previous nationality should in principle only occur upon acquisition of the other nationality. An exception is provided where an assurance for future acquisition is given. However, the Declaration clearly states that such an assurance for the grant of nationality may not be "retracted on grounds that conditions for naturalization are not met." It also provides that the state of previous nationality may only permit loss of its nationality if the guarantee provided is "unconditional and does not leave any discretion to the authorities of the country."

Based on this interpretation, it can be concluded that both, host and country of origin involved in the JY case have violated international law. Austria has done so by prescribing a conditional assurance procedure in its legislation, while Estonia, as the country of origin, violated international law by allowing renunciation of its nationality despite the fact that the naturalization procedure in Austria did not include an unconditional assurance, i.e., without a new, *ex novo* reassessment of the fulfilment of naturalization requirements (De Groot, 2020). Furthermore, it is paradoxical that Austria, if it were in Estonia's position in this case, would not accept the same type of assurance that it itself provides as a basis for renouncing Austrian nationality. This is because Austria requires its own citizens to already hold another nationality before they are allowed to give up their Austrian citizenship (!) (Bauböck & Valchars, 2021: 224).

What is further criticized in the CJEU's approach is the fact that it did not take into account that the assurance created not only legitimate expectations on JY's part but also confidence on the part of the Estonian authorities, which deserves protection under the principle of mutual confidence from Article 4(3) TEU. The CJEU failed to consider this. According to authors with a critical stance, this contributed to distrust between Member States when, instead of taking Article 4(3) TEU into account, the Court criticized the Estonian authorities. Since the principle of mutual trust applies in areas where there is no harmonization but where sincere cooperation between national legal systems is needed (e.g.,

nationality matters), the omission to consider this aspect resulted in the CJEU refraining from declaring the revoking of an assurance as to the granting of nationality incompatible with EU law, as such (Bellenghi, 2023: 92-93).

Instead, the CJEU opted for a middle ground position. This middle ground in the present case can be summarized as follows: a broader approach in defining its own jurisdiction, while pointing out the responsibility of both Estonia and Austria, but placing a mild emphasis on the responsibility of the latter; and determining that the revocation of the assurance was concretely disproportionate. At the same time, however, the Court failed to take a more categorical stance regarding the very procedure of revocation the assurance, especially in the context of international standards concerning the reduction of statelessness, the principle of mutual trust, as well as the potential obsolescence of the renunciation requirement in light of recent trends towards the acceptance of dual citizenship. Although this approach, as already noted, leaves future cases without adequate and predictable protection, the efforts of certain Member States to maintain single nationality is questionable from the perspective of European integration (Gatta, 2024: 134). One should not be overly strict towards the CJEU, bearing in mind its role as the guardian of rights derived from EU law and its recognition of the autonomy of national legislatures (Gatta, 2024: 134). This balance is understandably particularly important and sensitive in the field of nationality, even though it has become evident that EU law exerts increasing influence over the national laws of Member States whenever the loss, deprivation, or acquisition of nationality leads to the loss or acquisition of rights under EU law (Vileks, 2022: 207), which JY was actually about.

4. Instead conclusion - *De lege ferenda* proposals as a lesson learned from JY case

The JY case has once again brought to the forefront issues such as the reduction of statelessness (particularly when it becomes permanent), the interpretation of EU citizenship, and the tolerance and promotion of dual nationality. The questions that the CJEU addressed in this case, and perhaps even more so those it left unanswered, have opened the door for certain practical *de lege ferenda* proposals aimed at amending Austrian nationality law to ensure effective safeguards against statelessness. The consideration of the advantages and disadvantages of each of the three regulatory proposals will also be of significance in a comparative law perspective for countries on the path to EU membership, such as the Republic of Serbia, which likewise employ so-called conditional assurance mechanisms.[18] Three amendment proposals have emerged in legal theory as a consequence of the CJEU's ruling in the *JY* case:

a) making the assurance of the grant of Austrian nationality unconditional;

b) including an exception from the duty to relinquish all former nationalities as far as nationals of another EU Member State are concerned;

18. See Article 15 of the Law on Citizenship of the Republic of Serbia. See also Radošević, Milkov, 2022: 15.

c) introducing the duty to conduct a proportionality test in all cases of the deprivation of nationality in the Austrian nationality law. (De Groot, 2020)

Regarding the first proposal, its advantage lies in the clear alignment with already mentioned international standards aimed at reducing statelessness. The *JY* case has demonstrated that sometimes the revocation of an assurance can produce the opposite effect from the one intended by the introduction of the assurance mechanism in the first place—i.e., increasing rather than reducing statelessness. However, a question arises as to whether, for the purpose of reducing statelessness, it is sufficient that the revocation of assurance be proportional, rather than requiring the assurance itself to be unconditional.

The shortcoming of this legislative proposal is that it does not take into account the administrative nature of the act of assurance. Assurance in administrative proceedings is, by its nature, conditional, and its realization—through a subsequent administrative act such as naturalization—depends on a substantially unchanged factual situation and/or legal basis. [19] If the opposite were true—meaning that the issuance of an assurance would rigidly petrify the legal situation to the extent that neither a substantive normative change nor a significantly altered factual situation could affect the execution of the assurance—this would open the door to various abuses.[20] Similar to the already mentioned concerns expressed by the Advocate General Megnozzi, let us imagine a hypothetical situation in which, following the issuance of an assurance, the factual circumstances indeed change—not through, from the perspective of public interest, trivial traffic offenses, but rather in a way that the person undergoing naturalization truly begins to pose a serious threat to one of the legitimate public interests. Or, in the words of the Austrian Constitutional Court, "particularly serious reasons" arise that would justify the revocation of the assurance.[21] In such a situation—whose interpretation should be approached with particular restraint but also without disregarding its possibility—an unconditional assurance would indeed achieve the purpose of reducing statelessness, but would severely limit the state's elbow room to conduct an autonomous citizenship policy. Legal certainty and the individual's situation would be guaranteed, but the uninterrupted functioning of public order could come into question.

In this context, from the perspective of respecting EU citizenship rights, the second and third proposals seem much more feasible. Namely, including an

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19. See e.g. Article 38 (3) of the German Administrative Procedures Act (VwVfG) which stipulates that an assurance has been given the basic facts or legal situation of the case change to such an extent that, had the authority known of the subsequent change, it would not have given the assurance or could not have done so for legal reasons, the authority is no longer bound by its assurance.

20. With regard to the requirement of an unchanged legal basis for the execution of a guarantee act, Serbian administrative law adopts a somewhat more flexible approach. Namely, under the General Administrative Procedure Act, it is not stipulated that the authority is relieved of the obligation to issue an administrative act merely because the legal basis has changed in general. Rather, the authority is exempt from this obligation only if the change in the legal basis is of such a nature that it now necessitates the annulment, revocation, or amendment of administrative acts in the matter at hand (Article 19 of GAPA).

21. Ruling of the Austrian Constitutional Court. Delivered in Case no. VfSlg 20.322/2019.

exception from the duty to relinquish all former nationalities insofar as nationals of another EU Member State are concerned would primarily mitigate Austria's otherwise strict insistence on a single nationality regulatory policy. Moreover, from the standpoint of the principle of mutual trust, such a practice is not unknown among EU Member States. For example, Bulgaria and Latvia provide exceptions from the mandatory renunciation requirement for nationals of other EU Member States (Latvia extends this exception also to NATO members, Australia, Brazil, and New Zealand, while Bulgaria extends it to Switzerland as well), whereas Spain provides similar exceptions for nationals of Iberian countries (Portugal and Andorra), certain South American states, as well as the Philippines and Equatorial Guinea (with which it has concluded international agreements).

The advantage of this approach, widespread within the EU, can also be numerically expressed, given that in 2018, out of approximately 150,000 naturalization applicants within the EU, 92.4% of those requests were fully covered by a non-restrictive citizenship legal framework, in terms of the absence of a renunciation requirement (Van der Baaren, 2020: 8).

Such a legislative amendment would, therefore, in the future exclude the possibility of the emergence of "stateless Union citizens" in the naturalization process in Austria. On the other hand, this approach may be criticized for unequal treatment, especially considering the large number of third-country nationals who have legally resided in Austria for years (from Turkey, Bosnia and Herzegovina, Serbia) and who, in the absence of a similar exception prescribed at the legislative level or through inter-state agreements with these countries, would be deprived of the possibility to acquire EU citizenship while retaining their previous nationality.

Finally, the scope of introducing a legal obligation to take proportionality into account when withdrawing an assurance to grant nationality should also be considered. It is well recognized that the process of generalization and intensification of proportionality scrutiny has been prompted under the strong influence of EU law (Marketou, 2021: 80). In this regard, under the influence of EU law and the CJEU case law, the introduction of an obligation to ensure that the withdrawal of assurance in the future is not disproportionate — whether concerning stateless Union citizens or former nationals of third countries — would reduce the occurrence of undesirable outcomes similar to those in the *JY* case. Importantly, without engaging in further value assessments, Austria's single nationality policy would not be significantly affected.

Ultimately, the obligation to avoid disproportionate revocation of assurance in future Austrian administrative practice is grounded in the repeatedly established position in Austrian administrative and constitutional case law that such revocation, given the gravity of its consequences, must be based on serious grounds.

The *JY* case thus remains step forward towards better legislative solution and judicial practice, but, at the same time, has opened numerous dilemmas, especially regarding the status of EU citizenship, the possibility of dual citizenship, and the sovereign discretion of Member States in this area. At the same time, it is an indicative example of the Europeanisation of national administrative law, particularly in emphasizing the application of the

proportionality principle. While not a panacea, further codification and consistent application of this principle could help ensure that the CJEU ruling becomes more than a remedy for a single patient suffering from statelessness caused by inconsistent and, at times, arbitrary administrative practices of Member States.

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