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FROM ROTTMANN TO TJEBBES AND OTHERS: REFLECTION ON THE CASE-LAW OF THE COURT OF JUSTICE CONCERNING EUROPEAN CITIZENSHIP

The *Tjebbes and Others*, judgment of 12 March 2019 made in the context of a reference for a preliminary ruling raised by the Council of State of the Netherlands, provides an opportunity for some reflection on European citizenship and, in particular, in the event that such citizenship is lost as a result of the loss of nationality of a Member State.

In order to highlight the most interesting aspects of this ruling, the article recalls the previous *Rottmann* judgment, to which Advocate General Mengozzi referred extensively, not without some critical remarks, in the Opinion rendered in the *Tjebbes and Others* case. In this regard, the article also examines the case-law of some Member States following the *Rottmann* judgment, as well as another ruling made by the Court in 2015, in the *Delvigne* case. As will be shown, the *Rottmann* and *Tjebbes and others* judgments present elements of continuity in relation to the proportionality test requested by the Court of Justice to the courts and authorities of the Member States, if the loss of the citizenship of a Member State also causes the loss of European citizenship. In both judgments, the Court of Justice ruled that the proportionality of a national legislation must be done *in concreto*. That means that when examining a decision withdrawing citizenship national authorities have to take into account the consequences the decision entails for the person concerned and, if relevant, for the members of his family with regard to the loss of the rights enjoyed by every citizen of the Union. On the contrary, in the *Delvigne* judgment, although in the context of a different issue, namely the loss of the right to vote, the Court of Justice applied the proportionality test *in abstracto*. It ruled that the limitation to the right of vote established by the national legislation was proportionate to EU law, and in particular, to article 39 of the Charter of Fundamental Rights. Thus, from this judgment one can infer: first, that the Court of Justice itself can do the examination concerning the proportionality of the national legislation without requesting the national authorities to do so and, second, that the proportionality of national legislation does not need to be examined in the light of individual circumstances in each case which would make it possible to disapply the limitation provided for by that legislation.

The article proposes that the proportionality test *in abstracto* applied by the Court of Justice in the *Delvigne* case and by AG Mengozzi in his Opinion, should also have been applied in the *Tjebbes and Others* judgment. On the one hand, the proportionality test *in concreto* applied

by the Court, which makes the loss of a Member State's citizenship conditional on an assessment of all the possible consequences for an individual in relation to his status as a citizen of the Union, essentially changes the paradigm of Article 20 TFEU, transforming the scope and value of regional citizenship into the legal order of the Union. Indeed, given that Article 20 TFEU states the citizenship of the Union is additional to and does not replace national citizenship, the application of the proportionality test *in concreto* could produce a paradoxical solution whereby the former would determine the latter: maintenance of Union citizenship would serve as a basis for demanding maintenance of the nationality of a Member State. On the other hand, the proportionality test *in abstracto* would have represented a more satisfactory balance between the powers conferred on the Member States in matters of citizenship and European Union law.

Furthermore, the *Tjebbes and Others* judgment provides an opportunity to reflect on the possible application of its principles to the situation of the British citizens because of *Brexit*.