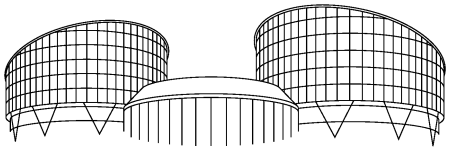

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF RAMADAN v. MALTA

(Application no. 76136/12)

JUDGMENT

STRASBOURG

21 June 2016

FINAL

17/10/2016

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ramadan v. Malta,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

András Sajó, *President,*
Boštjan M. Zupančič,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Egidijus Kūris,
Gabriele Kucsko-Stadlmayer, *judges,*
David Scicluna, ad hoc *judge,*

and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 24 May 2016,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 76136/12) against the Republic of Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Louay Ramadan ("the applicant"), on 21 November 2012. Currently the applicant appears to be stateless. He was originally an Egyptian citizen. He obtained authorisation to renounce his Egyptian citizenship after acquiring Maltese citizenship following his marriage to a Maltese citizen.

2. The applicant was represented by Prof. I. Refalo and Dr S. Grech, lawyers practising in Valletta. The Maltese Government ("the Government") were represented by their Agent, Dr P. Grech, Attorney General.

3. The applicant alleged that the order depriving him of his Maltese citizenship amounted to a breach of his Article 8 rights.

4. On 6 November 2014 the complaint concerning Article 8 was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

5. Mr Vincent A. De Gaetano, the judge elected in respect of Malta, was unable to sit in the case (Rule 28). Accordingly, the President decided to appoint Mr David Scicluna to sit as an *ad hoc* judge (Rule 29 § 1(b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1964 in Egypt and currently lives in Hamrun, Malta.

A. Background to the case

7. The applicant had a Maltese tourist visa, which had been issued in 1991 and had been valid for three months. Having overstayed this visa, he remained in Malta illegally.

8. In 1993, when the applicant was twenty-nine years of age and still living in Malta illegally, he met MP, a Maltese citizen, who at the time was seventeen years of age. Three months later, on 13 October 1993, they married in a civil ceremony. On 26 February 1994 they also married in accordance with the Catholic rite.

9. On 18 November 1993 the applicant enquired about his "exempt person status" (see paragraph 34 below) and on 23 November 1993 started the process to obtain Maltese citizenship on the basis of his marriage to a Maltese national.

10. The applicant's exempt person status was confirmed on 2 March 1994. On 19 April 1994, following the processing of his application and consequent to the marriage, he was registered as a Maltese citizen. On 12 September 1994, he therefore lodged an application to renounce his Egyptian nationality (a copy of the relevant application form has not been submitted to the Court). It transpires from a letter issued by the Consul of the Embassy of the Arab Republic of Egypt in Malta that on 29 September 1994 the applicant's request was approved and his Egyptian passport withdrawn. At the relevant time, dual nationality was not possible under either Egyptian or Maltese law.

11. According to the Government, in 1994 the applicant and MP had various marital problems, which led the applicant to leave the matrimonial home on two occasions. The applicant had behaved aggressively, and specifically on 5 June 1994 he had physically assaulted his pregnant wife, causing her a permanent disability. MP left the matrimonial home thereafter.

12. The applicant was charged, remanded in custody, and eventually tried and found guilty in respect of the act of assault. He was given a suspended sentence.

13. In the meantime, on 13 December 1994 a child, LR, was born of the marriage. LR is a Maltese citizen. The various family disputes continued between the couple.

14. On 8 February 1995 MP instituted court proceedings to annul the marriage. Following adversarial proceedings where both parties were

represented by a lawyer, the applicant's marriage was annulled by a judgment of 19 January 1998. The court delivering the judgment was satisfied (to the degree necessary in civil proceedings, namely on a balance of probabilities) that the applicant's only reason for marrying had been to remain in Malta and acquire citizenship; thus he was positively excluding marriage itself, and there had been a simulation of marriage. Since no appeal was lodged against the judgment, it became final.

15. The applicant did not inform the authorities of the judgment concerning the annulment of his marriage and he remained resident in Malta and retained his Maltese citizenship.

16. On 30 June 2003 the applicant married VA, a Russian citizen, four months after their first encounter. The applicant enquired about the exempt person status of his Russian wife and was asked to produce a copy of the judgment of annulment. On 4 July 2003 the applicant produced a copy of the judgment and it was only at that time that the authorities became aware of the reason for the annulment of his first marriage.

17. Following an application to that effect, on 27 September 2004, VA was granted exempt person status and thus had full freedom of movement (see "Relevant domestic law" below). According to the Government, although this was contested by the applicant, attention was drawn to the fact that the benefit of such status would cease if the applicant lost his citizenship. Two sons were born of this marriage, VR and VL, in 2004 and 2005 respectively. They are both Maltese citizens.

18. On 8 May 2006 the applicant was informed that an order was to be made to deprive him of his Maltese citizenship (under Article 14(1) of the Citizenship Act ("the Act") – see "Relevant domestic law" below), which, according to the judgment of 19 January 1998, appeared to have been obtained by fraud. He was informed of his right to an inquiry.

19. The applicant challenged that decision, claiming that it was not true that he had obtained his marriage by fraud and stressing that he had three Maltese children.

20. In consequence, proceedings were instituted to investigate the applicant's situation and if necessary divest him of his Maltese citizenship. A committee was set up for this purpose in accordance with Article 14(4) of the Act. A number of hearings were held before the committee where the applicant was assisted by a lawyer. He was allowed to make oral and written submissions and submit evidence, including witness testimony. It appears from the documents available that the applicant contested the basis of the annulment decision and claimed that he had not been aware that he could have appealed against it. He also contested the findings of a court of criminal jurisdiction that had found him guilty of injuring his wife and causing her a permanent disability.

21. The applicant's ex-wife, a citizenship department official and a priest also gave testimony.

22. The committee's final recommendation to the Minister of Justice and Internal Affairs was not made available to the applicant. Requests by the applicant's lawyer for a copy of the acts of those proceedings remained unsatisfied.

23. On 31 July 2007 the Minister ordered that the applicant be deprived of his citizenship with immediate effect, in accordance with Article 14(1) of the Act.

24. By a letter dated 2 August 2007 from the Director of the Department of Citizenship and Expatriate Affairs, the applicant was informed that the Minister of Justice and Internal Affairs had concluded that the applicant had obtained citizenship by fraudulent means and that therefore on 31 July 2007, in accordance with Article 14(1) of the Act, the Minister had ordered that he be immediately divested of his citizenship. He was required to return his certificate of registration as a Maltese citizen and his passport.

B. Constitutional redress proceedings

25. The applicant instituted constitutional redress proceedings, complaining under Articles 6, 8 and 14 of the Convention. He claimed that he had not had a fair trial and appropriate access to court for the determination on his right to citizenship. Moreover, the revocation of his citizenship had not been in accordance with the law. The prerequisites for such action had not existed as his first marriage had not been one of convenience.

26. By a judgment of 12 July 2011 the Civil Court (First Hall) in its constitutional jurisdiction rejected the applicant's complaint under Article 6, finding that the committee set up for that purpose had not been a tribunal, but solely an investigative body capable of giving recommendations but not making final decisions. The court, however, found that the applicant's Article 8 rights would be breached if, as a result of his being divested of his citizenship, he became an alien. His *de jure* family (in respect of the second marriage) would suffer irremediable upset if, as a father (of the two Maltese children of that marriage), he were required to move to another country. Thus, the revocation of citizenship in the present case was in breach of Article 8. Consequently, the court annulled the order of 31 July 2007 and considered that it was not necessary to rule on any further complaints.

27. On appeal, by a judgment of 25 May 2012 the Constitutional Court overturned the first-instance judgment in part. It rejected the Article 6 complaint on the basis that the provision was not applicable in the absence of a civil right. In that connection, it rejected the applicant's contention that the revocation of citizenship affected his right to a family life and therefore was civil in nature, as citizenship was a matter of public law and fell under the prerogatives of the State. It also reversed the part of the judgment in respect of Article 8, commenting that it had not been established that the

applicant had a family life in Malta, and, even if this were so, the revocation of his citizenship would not necessarily result in his having to leave Malta. Indeed, it had not transpired that the applicant would be denied Maltese residence or that he had applied for it and had been refused, nor had a removal order been issued.

C. Other developments

28. Following the lodging of the application with the Court, on 16 November 2012 the applicant's lawyer wrote to the relevant authorities informing them that the case was pending before the Court and that therefore no action should be taken on the basis of the order of 31 July 2007. No feedback, apart from an acknowledgment of receipt, was received concerning that letter. However, although the order to deprive the applicant of his citizenship with immediate effect remains in force, no action has been taken to date in pursuit of the order and no removal order has been issued.

29. Although the applicant considers that the implementation of the order is only a matter of time, he is currently still residing and carrying out his business in Malta. He has a trading licence, which is periodically renewed. He continued using a Maltese passport to travel until 2014, when it expired, as he had failed to return it to the authorities despite their request.

30. The applicant does not appear to have any contact with his first son, but claims to be in a family environment with his second wife and their children. Following the revocation of his citizenship, the applicant's second wife lost her exempt person status and the attached freedom-of-movement rights.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

A. Domestic law

1. The Constitution

31. Article 44 of the Maltese Constitution concerns the right to freedom of movement. Its sub-articles 1 and 4 read as follows:

> "(1) No citizen of Malta shall be deprived of his freedom of movement, and for the purpose of this article the said freedom means the right to move freely throughout Malta, the right to reside in any part of Malta, the right to leave and the right to enter Malta."
>
> "(4) For the purposes of this article, any person -
>
> (*a*) who has emigrated from Malta (whether before, on or after the appointed day) and, having been a citizen of Malta by virtue of article 3(1) or of article 5(1) of the

Maltese Citizenship Act as in force upon the coming into force of the Maltese Citizenship (Amendment) Act, 2000, has ceased to be such a citizen; or

(*b*) who emigrated from Malta before the appointed day and, but for his having ceased to be a citizen of the United Kingdom and Colonies before that day, would have become a citizen of Malta by virtue of article 3(1) of the Maltese Citizenship Act as in force upon the coming into force of the Maltese Citizenship (Amendment) Act, 2000; or

(*c*)* who is the spouse of a person mentioned in paragraph (*a*) or (*b*) of this sub-article or of a person who is a citizen of Malta by virtue of article 3(1) or of article 5(1) of the Maltese Citizenship Act as in force upon the coming into force of the Maltese Citizenship (Amendment) Act, 2000, and who has been married to that person for at least five years and is living with that person, or is the child under twenty-one years of age of such a person; or

(*d*) who is the widow or the widower of a person mentioned in paragraph (*a*) or paragraph (*b*) of this sub-article or of a person who at the time of his or her death was a citizen of Malta by virtue of article 3(1) or of article 5(1) of the Maltese Citizenship Act as in force upon the coming into force of the Maltese Citizenship (Amendment) Act, 2000, and who was still living with him or her at the time of his or her death and had been married to that person for at least five years or who would, but for the death of that person, have been so married for at least five years, or is the child under twenty-one years of age of such a person,

shall be deemed to be a citizen of Malta by virtue of article 3(1) or of article 5(1) of the Maltese Citizenship Act as in force upon the coming into force of the Maltese Citizenship (Amendment) Act, 2000:

Provided that if the Minister responsible for matters relating to Maltese citizenship at any time by order declares that it is contrary to the public interest that a spouse as is mentioned in paragraph (*c*), or a widow or widower as is mentioned in paragraph (d) or a child over eighteen years of age as is mentioned in paragraph (*c*) or (*d*) is to be so deemed, or to continue to be so deemed, such spouse, widow, widower or child, as the case may be, shall thereupon cease to be deemed to be a citizen of Malta as aforesaid:

Provided further that the Minister responsible for matters relating to Maltese citizenship shall not be required to assign any reason for the issue of any order referred to in the immediately preceding proviso, and the decision of the Minister on any such order shall not be subject to appeal to or review in any court.

*see Article 5 of Act *XIII of 2001*."

2. The Citizenship Act

32. The relevant articles of the Maltese Citizenship Act, Chapter 188 of the Laws of Malta, read as follows:

Article 14 – previously Article 9 (prior to the amendments in 2000)

"(1) Subject to the provisions of this article, the Minister may by order deprive of his Maltese citizenship any citizen of Malta who is such by registration or naturalisation if he is satisfied that the registration or certificate of naturalisation was obtained by means of fraud, false representation or the concealment of any material fact.

(2) Subject to the provisions of this article, the Minister may by order deprive of his Maltese citizenship any citizen of Malta who is such by registration or by naturalisation if he is satisfied that the citizen -

(*a*) has shown himself by act or speech to be disloyal or disaffected towards the President or the Government of Malta; or

(*b*) has, during any war in which Malta was engaged unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was to his knowledge carried on in such a manner as to assist an enemy in that war; or

(*c*) has, within seven years after becoming naturalised, or being registered as a citizen of Malta, been sentenced in any country to a punishment restrictive of personal liberty for a term of not less than twelve months; or

(*d*) has been ordinarily resident in foreign countries for a continuous period of seven years and during that period has neither -

(i) been at any time in the service of the Republic or of an international organisation of which the Government of Malta was a member; or

(ii) given notice in writing to the Minister of his intention to retain citizenship of Malta.

(3) The Minister shall not deprive a person of citizenship under this article unless he is satisfied that it is not conducive to the public good that that person should continue to be a citizen of Malta and, in the case referred to in subarticle (2)(*c*), it appears to him that that person would not thereupon become stateless.

(4) Before making an order under this article, the Minister shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which it is proposed to be made and of his right to an inquiry under this article; and if that person applies in the prescribed manner for an inquiry, the Minister shall refer the case to a committee of inquiry consisting of a chairman, being a person possessing judicial experience, appointed by the Minister and of such other members appointed by the Minister as he thinks proper.

(5) The Minister may make rules for the practice and procedure to be followed in connection with a committee of inquiry appointed under this article, and such rules may, in particular, provide for conferring on any such committee any powers, rights or privileges of any court, and for enabling any powers so conferred to be exercised by one or more members of the committee."

Article 15

"(1) A citizen of Malta who is deprived of his citizenship by an order of the Minister under article 14 shall, upon the making of the order, cease to be a citizen of Malta."

Article 19

"The Minister shall not be required to assign any reason for the grant or refusal of any application under this Act and the decision of the Minister on any such application shall not be subject to appeal to or review in any court."

Article 27

"(1) The acquisition or retention of Maltese citizenship by any person under the Constitution of Malta or any other law, prior to the enactment of the Maltese

Citizenship (Amendment) Act, 2000 shall not be affected in any way by the provisions of the said Act.

(2) This Act shall not apply with regard to any application for registration as a citizen of Malta filed before the 15th day of August, 1999."

33. The above-mentioned committee of inquiry is regulated by Subsidiary Legislation 188.02, the Deprivation of Maltese Citizenship (Committee of Inquiry) Rules.

34. Amongst others, the non-Maltese spouse of a citizen of Malta is eligible for "exempt person status", which may be enjoyed as long as the spouse is still married to and living with that person. Under the provisions of the Immigration Act (Chapter 217 of the Laws of Malta), an exempt person is entitled to freedom of movement. In accordance with the Maltese Constitution, this means the right to move freely throughout Malta, the right to reside in any part of Malta, the right to leave and the right to enter Malta. In 2004 Malta joined the European Union and the relevant directives became applicable, including Directive 2004/38/EC of 29 April 2004 on the right of EU citizens and their family members to move and reside freely within the territory of the Member States.

35. Under Article 5 of the Citizenship Act, every person born in Malta becomes a Maltese citizen on his date of birth. The Act also provides, however, and in so far as relevant, that a person born in Malta on or after 1 August 1989 may not become a citizen of Malta unless at the time of his birth, his father or his mother was a citizen of Malta or a person who, having been a citizen of Malta, emigrated from Malta (Article 44 (4)(*a*) and (*b*) of the Constitution). The two provisos do not apply in the case of a new-born infant found abandoned anywhere in Malta, who would by virtue thereof be stateless. Any such infant remains a citizen of Malta until his right to any other citizenship is established.

3. The Immigration Act

36. Article 14 of the Immigration Act, Chapter 217 of the Laws of Malta, in so far as relevant, reads as follows:

"(1) If any person is considered by the Principal Immigration Officer to be liable to removal as a prohibited immigrant under any of the provisions of article 5, the said Officer may issue a removal order against such person who shall have a right to appeal [before the immigration appeals board] against such order in accordance with the provisions of article 25A:

(2) Upon such order being made, such person against whom such order is made, shall be detained in custody until he is removed from Malta:

(3) Nothing in this article shall affect the obligation of any person who does not fulfil or who no longer fulfils the conditions of entry, residence or free movement to leave Malta voluntarily without delay.

(4) Removal of a person shall be to that person's country of origin or to any other State to which he may be permitted entry, in particular under the relevant provisions

of any applicable readmission agreement concluded by Malta and in accordance with international obligations to which Malta may be party.

(5) Nothing in this article shall preclude or prejudice the application of Maltese law on the right to asylum and the rights of refugees and of Malta's international obligations in this regard."

4. The Immigration Regulations

37. Subsidiary Legislation 217.04, in so far as relevant, provides the following rules:

"12. (1) A third country national shall only be entitled to reside in Malta if a uniform residence permit for a specific purpose is issued in his regard.

(2) The provisions of subregulation (1) shall not apply to a third country national who has been given temporary permission to reside in Malta for the purpose of the processing of an application for asylum or an application for a uniform residence permit.

(3)* Without prejudice to regulation 7(3), the provisions of regulations 5, 6, 8, 9 and 10 shall *mutatis mutandis* apply to this Part, so however that a third country national cannot apply for a licence or a uniform residence permit for the purpose of seeking or taking up employment; nor may he apply to change the nature of the uniform residence permit into one empowering him to seek or take up employment, while he is already in Malta, save as the Minister may direct in exceptional circumstances.

*Not yet in force."

38. Regulations 5, 6, 8, 9 and 10 refer to residence and employment in connection with European Union citizens.

39. Regulation 12(3) has not yet come into force. It will come into force on such date or dates as the Minister may by notice in the Gazette appoint.

B. International materials

1. United Nations

40. Malta is not a party to the 1954 United Nations Convention relating to the Status of Stateless Persons, nor is it a party to the 1961 Convention on the Reduction of Statelessness. A report by the United Nations Refugee Agency Office in Malta, called "Mapping Statelessness in Malta" (2014), recommended, *inter alia*, that Malta consider acceding to the two mentioned conventions and establishing an effective statelessness determination procedure, as well as ensuring the rights of stateless persons and awareness about statelessness among relevant Government institutions.

2. Relevant Council of Europe instruments

41. Desiring to promote the progressive development of legal principles concerning nationality, as well as their adoption in internal law, and desiring to avoid, as far as possible, cases of statelessness, the Council of Europe

drew up the 1997 European Convention on Nationality. One of its principles, provided for in Article 4, is that "statelessness shall be avoided". Article 6 provides that each State Party must facilitate in its internal law the acquisition of its nationality for stateless persons. Article 7, however, specifies that a State Party may not provide in its internal law for the loss of its nationality if the person concerned would thereby become stateless, with the exception of cases of acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to that person.

42. This Convention was signed by Malta on 29 October 2003 but has not been ratified.

43. On 15 September 1999 the Committee of Ministers of the Council of Europe adopted Recommendation No. R (99) 18 on the avoidance and reduction of statelessness. In particular, concerning the avoidance of statelessness as a consequence of loss of nationality, it recommends, in so far as relevant, the following:

> "c. In order to avoid, as far as possible, situations of statelessness, a State should not necessarily deprive of its nationality persons who have acquired its nationality by fraudulent conduct, false information or concealment of any relevant fact. To this effect, the gravity of the facts, as well as other relevant circumstances, such as the genuine and effective link of these persons with the state concerned, should be taken into account;"

3. Relevant European Union law and case-law of the Court of Justice of the European Union

44. Article 20 of the Treaty on the Functioning of the European Union (TFEU), reads as follows:

> "1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.
>
> 2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia:
>
> (a) the right to move and reside freely within the territory of the Member States;
>
> (b) the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;
>
> (c) the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;
>
> (d) the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.

These rights shall be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder."

(a) *Rottmann v. Freistaat Bayern,* 2 March 2010, CJEU, C-135/08 [2010] ECR II-05089

45. Dr Rottmann was born a citizen of Austria. After being accused in Austria of serious fraud in the exercise of his profession, he moved to Germany, where he applied for naturalisation. By acquiring German citizenship he lost his Austrian citizenship by operation of the law. Following information from the Austrian authorities that Dr Rottmann was the subject of an arrest warrant in their country, the German authorities sought to annul his acquisition of German citizenship on the grounds that he had obtained it fraudulently. Such a decision, however, had the effect of rendering him stateless. The referring court wished to know if this was a matter that fell within the scope of EU law, as Dr Rottmann's statelessness also entailed the loss of EU citizenship. The Court of Justice of the European Union (CJEU) ruled that an EU Member State's decision to deprive an individual of citizenship, in so far as it implied the loss of the status of EU citizen and the deprivation of the attached rights, fell within the ambit of EU law and, therefore, must be compatible with its principles.

46. The CJEU concluded that it was legitimate for a Member State to revoke naturalisation on account of deception, even when the consequence was that the person lost their EU citizenship, in addition to citizenship of that Member State. Such a decision, however, must comply with the principle of proportionality, which, among other things, required a reasonable period of time to be granted in order for the person to recover the citizenship of his or her Member State of origin.

(b) *Gerardo Ruiz Zambrano v. Office national de l'emploi (ONEm),* 8 March 2011, CJEU, C-34/09 [2011] ECR I-01177

47. Mr and Ms Zambrano, of Colombian nationality, were refused refugee status in Belgium but were not sent back to Colombia on account of the civil war in that country. From 2001, Mr and Ms Zambrano were then registered as resident in Belgium and Mr Zambrano worked there for a certain time, even though he did not hold a work permit. In 2003 and 2005, Mr and Ms Zambrano had two children who acquired Belgian nationality in accordance with the Belgian legislation applicable at that time. The competent authorities refused to accede to Mr and Ms Zambrano's application to regularise their situation and to take up residence as ascendants of Belgian nationals.

48. According to the CJEU, Article 20 of the TFEU precluded national measures which had the effect of depriving citizens of the Union of the genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens of the Union. The CJEU concluded that Article 20 TFEU

precluded a Member State from refusing a work permit and the right of residence within its territory to a third-country national upon whom his minor children, who were nationals and residents of that Member State, were dependent, in so far as such decisions deprived those children of the genuine enjoyment of the substance of the rights attaching to the status of citizen of the Union.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

49. The applicant complained that the decision to divest him of his Maltese citizenship had not been made in accordance with the law. It had interfered with his right to private and family life and exposed him to the risk of being separated from his family. The decision had not been accompanied by the relevant procedural safeguards as required under Article 8 of the Convention and the State had failed to fulfil its positive obligation to protect his rights under that provision. Lastly, the applicant complained that the decision had left him stateless. He thus had to live in a state of uncertainty, where he could not even leave the country for fear of not being let back in. The provision reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

50. The Government contested that argument.

A. Admissibility

1. Victim status

(a) The parties' submissions

51. The Government submitted that the applicant could not claim to be a "victim" in terms of Article 34 of the Convention. They contended that an applicant could be considered a victim only if the State had already decided to take steps against him, and interference would come about only upon the execution or implementation of that decision. In the present case, despite the lack of any interim measure by the Court, no removal order was awaiting execution or implementation, as no such order had been issued, and no

practical steps had been taken by the authorities in order to remove the applicant from Malta. The Government referred to *Vijayanathan and Pusparajah v. France* (27 August 1992, § 46, Series A no. 241-B), in which the Court had distinguished the applicants' case from that of the applicant in *Soering v. the United Kingdom* (7 July 1989, Series A no. 161), since in the former case no expulsion order had been made in respect of the applicants. They explained that deprivation of Maltese citizenship did not mean that the person so deprived would be removed from Malta. In order for the person to be removed from Malta, a removal order would have to be issued. Such an order had not been issued in the case of the applicant in the present case.

52. The applicant submitted that he was a victim under Article 34 of the Convention, since the revocation of his Maltese citizenship threatened the very basis of his ability to reside in Malta. He was directly affected by the impugned measure, in line with the Court's case-law. In this connection, he referred to *Groppera Radio AG and Others v. Switzerland* (28 March 1990, § 47, Series A no. 173). The applicant submitted that even though a deportation or removal order was not in force, the threat of such an order was imminent. Indeed, the Government had not stated that a deportation or removal order would not be issued and had expressed the view that following the annulment of his first marriage, "the applicant's stay in Malta was precarious". It was probable that no such action had been taken by the authorities only because they had been informed that the case was pending before the Court and that therefore no further steps were to be taken. The applicant submitted that once the Maltese Government had accepted that he could establish his second family in Malta, as he had in fact done, any subsequent curtailment of his status in Malta would directly affect that family life.

(b) The Court's assessment

53. The Court reiterates that the word "victim" in the context of Article 34 of the Convention denotes a person directly affected by the act or omission in issue (see, among many other authorities, *Nsona v. the Netherlands*, 28 November 1996, § 106, *Reports of Judgments and Decisions* 1996-V, and *Brumărescu v. Romania* [GC], no. 28342/95, § 50, ECHR 1999-VII). In other words, the person concerned must be directly affected by it or run the risk of being directly affected by it (see, for example, *Norris v. Ireland*, 26 October 1988, §§ 30-31, Series A no. 142, and *Otto-Preminger-Institut v. Austria*, 20 September 1994, § 39, Series A no. 295-A). It is not therefore possible to claim to be a "victim" of an act which is deprived, temporarily or permanently, of any legal effect (see *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, § 92, ECHR 2007-I). With reference to the specific category of cases involving the deportation of non-nationals, the Court has consistently held that an applicant cannot claim to be the "victim" of a deportation measure if the

measure is not enforceable (see *Vijayanathan and Pusparajah*, cited above, § 46; see also *Pellumbi v. France* (dec.), no. 65730/01, 18 January 2005, and *Etanji v. France* (dec.), no. 60411/00, 1 March 2005). It has adopted the same stance in cases where execution of the deportation order has been stayed indefinitely or otherwise deprived of legal effect, and where any decision by the authorities to proceed with deportation can be appealed against before the relevant courts (see *Sisojeva and Others*, cited above, § 93, with further references to the cases of *Kalantari v. Germany* (striking out), no. 51342/99, §§ 55-56, ECHR 2001-X, and *Mehemi v. France (no. 2)*, no. 53470/99, § 54, ECHR 2003-IV; see also *Andric v. Sweden* (dec.), no. 45917/99, 23 February 1999; *Benamar and Others v. France* (dec.), no. 42216/98, 14 November 2000; *Djemailji v. Switzerland* (dec.), no. 13531/03, 18 January 2005; and *Yildiz v. Germany* (dec.), no. 40932/02, 13 October 2005).

54. Regarding the applicant's victim status in relation to the complaint that his removal from Malta would affect his private and family life, the Court notes that the authorities have not issued a removal order. Indeed, no steps towards such action have been taken at any point since 2007, when the order to revoke his citizenship was issued and was thus enforceable. Although during the intervening period, proceedings concerning the applicant's complaints have been pending before the domestic courts and subsequently before the Court, neither the domestic courts nor the Court have ordered interim measures (capable of giving any legitimacy to the letter sent to the authorities by the applicant's legal representative – see paragraph 28 above). It follows that the authorities were under no obligation to desist from deporting the applicant, had they intended to do so.

55. Furthermore, even if such a removal order were to be issued, the applicant may appeal against it to the Immigration Appeals Board (see paragraph 36 above). The Court reiterates that where expulsions are challenged on the basis of alleged interference with private and family life (unlike complaints concerning Articles 2 and 3), it is not imperative, in order for a remedy to be effective, that it should have automatic suspensive effect (see *De Souza Ribeiro v. France* [GC], no. 22689/07, § 83, ECHR 2012). However, domestic courts must seriously examine the circumstances and legal arguments in favour of or against a violation of Article 8 of the Convention in the event of the removal order being enforced. Haste in the execution of a removal order may have the effect of rendering the available remedies ineffective in practice and therefore inaccessible (ibid, § 95). At this stage there is no indication that any eventual removal would be executed in a perfunctory manner and with such haste that it would have the effect of rendering the available remedies ineffective in practice and therefore inaccessible (contrast *De Souza Ribeiro*, cited above, § 96).

56. Moreover, on a more practical level, it appears that the applicant is currently stateless; thus, as the situation stands to date, it cannot be said that he is under a threat of expulsion (see for instance, *Okonkwo v. Austria* (dec.), no. 35117/97, 22 May 2001) as there is no guarantee that the Egyptian authorities would accept him, nor is it likely that he could be removed to another country. In any event, such arrangements would take a certain amount of time, and in the event of a removal order being issued and steps being taken in respect of its execution, the applicant would still have a possibility of pursuing the relevant remedies.

57. Thus, at this stage, the applicant cannot claim to be a "victim" of any actual or impending violation of his rights under Article 8 in connection with his potential removal, and the Government's objection in this respect is upheld.

58. On the contrary, the Court does not find it appropriate to reach the same conclusion in so far as the applicant complains about the revocation of his Maltese citizenship itself, the order for which has already been made and executed. It follows that in respect of this part of the complaint the Government's objection is dismissed.

2. Significant disadvantage

59. In their final observations (concerning comments on the applicant's claims for just satisfaction and further observations) of 22 May 2015, the Government submitted that the applicant's complaint was inadmissible, in terms of Article 35 of the Convention, on account of the fact that he had not suffered a significant disadvantage as a result of the alleged violation of the Convention. Although the applicant had been deprived of his Maltese citizenship, he still lived and worked in Malta. The applicant had not provided any evidence that he could not reacquire his Egyptian citizenship.

60. The Court reiterates that, according to Rule 55 of the Rules of Court, any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application. The Court notes that when the Government were invited to comment on the admissibility and merits of the application, they did not raise any objection to this effect in their observations of 2 March 2015. The Court finds it regrettable when new objections are raised by the Government at a stage where an applicant has in principle no further opportunity to reply. This is particularly so in the absence of exceptional circumstances which would explain the delay in raising such matters. Furthermore, while the Court may well decide to allow the applicant a right of reply, this would lengthen the procedure to the applicant's detriment as a result of the Government's untimely actions. In any event, the Court considers that this objection is to be dismissed for the following reasons.

61. Inspired by the general principle *de minimis non curat praetor*, the new criterion of no significant disadvantage hinges on the idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court. The assessment of this minimum level is, in the nature of things, relative and depends on all the circumstances of the case. The severity of a violation should be assessed taking account of both the applicant's subjective perceptions and what is objectively at stake in a particular case (see *Korolev v. Russia* (dec.), no. 25551/05, ECHR 2010). Thus, the absence of any such disadvantage can be based on criteria such as the financial impact of the matter in dispute or the importance of the case for the applicant (see *Adrian Mihai Ionescu v. Romania* (dec.) no. 36659/04, § 34, 1 June 2010; *Rinck v. France* (dec.), no. 18774/09, 19 October 2010; and *Kiousi v. Greece* (dec.), no. 52036/09, 20 September 2011). Moreover, a violation of the Convention may concern important questions of principle and thus cause a significant disadvantage without affecting pecuniary interests (see *Korolev* (dec.), cited above).

62. The Court has previously stated that although the right to citizenship is not as such guaranteed by the Convention or its Protocols, it cannot be ruled out that an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual (see *Karassev v. Finland* (dec.), no. 31414/96, ECHR 1999-II; *Slivenko v. Latvia* (dec.) [GC], no. 48321/99, § 77, ECHR 2002-II; *Savoia and Bounegru v. Italy* (dec.), no. 8407/05, 11 July 2006; and *Genovese v. Malta*, no. 53124/09, § 30, 11 October 2011). Furthermore, the private life of an individual is a concept that is wide enough to embrace aspects of a person's social identity (ibid., § 33).

63. In the light of the issues raised, the Court does not find it appropriate to dismiss the present complaint with reference to Article 35 § 3 (b) of the Convention. The Government's objection is therefore dismissed.

3. Conclusion as to admissibility

64. In respect of the complaint concerning the applicant's potential removal from Maltese territory, the Court considers that the applicant cannot claim to be a victim, within the meaning of Article 34 of the Convention, of the alleged violation of his right to respect for his private and family life. It follows that this part of the complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

65. In so far as the complaint concerns the deprivation of citizenship and its consequences, the Court considers that it is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' observations

(a) The applicant

66. The applicant insisted that his reason for marrying his first wife had not been to obtain citizenship by fraud, as evidenced by the birth of his son and also by a psychologist's report, in which his anxiety at the time when he was having marital problems had been noted. He was of the view that the authorities should not simply have relied on the 1998 judgment, but that the matter required a separate independent assessment. He also argued that he could not be blamed for not having informed the authorities about the annulment of his marriage, since annotations of such annulments were entered on the relevant marriage certificate kept in the records of the Public Registry, which was a Government department. Thus, the authorities had been aware of the situation from that very date. Nevertheless, they had acted on the premise that the applicant's citizenship had remained valid, and had eventually even given his second wife "exempt person status" on that basis.

67. The applicant submitted that depriving a person of citizenship was more sensitive than restricting eligibility for citizenship, and it could not be left to a State's discretion. Furthermore, any such decision would have to be accompanied by appropriate safeguards and an opportunity for the individual to defend himself.

68. The applicant submitted that at the time of the order depriving him of citizenship, namely 2007, he had established both a private and a family life in Malta. He had been working in Malta and had been married to his wife for more than five years and had two children, as well as a genetic bond with a son from the first marriage. In his view, when he had married for the second time, there had been no threat of his citizenship being taken away from him. Thus, it could not be said that his family life had been created at a time when the persons involved were aware that the immigration status of one of them was such that the continuation of that family life within the host State would be precarious from the outset.

69. The applicant submitted that citizenship was the gateway to several rights, including a right to unrestricted residence; a right to establish a family in Malta; a right to work there, to receive a pension, and so forth. Admitting that he had made no request for any work or residence permits, he submitted that he had no guarantee that he would acquire or be eligible for such permits. He referred to Regulation 12(3) of the Immigration Regulations (Legal Notice 205 of 2004 – see paragraph 37 above). Moreover, such permits would not solve the problem of his statelessness

and his limited freedom of movement as a result of his not having a valid passport – a matter which also impinged on his ability to make a living, given his trading business. Nor could the applicant afford to pay the exorbitant fees to acquire Maltese citizenship in accordance with the Individual Investor Programme of the Republic of Malta Regulations, 2014. He further submitted that whilst the Government sold Maltese citizenship to third-country nationals who had little or no connection to Malta, he had been deprived of his citizenship even though he was connected only to Malta.

70. The applicant submitted that the measure (as well as the proceedings before the committee of inquiry) had not been in accordance with the law. As indicated in the relevant letter (see paragraph 24 above), the deprivation was based on Article 14(1) of the Citizenship Act; however, pursuant to Article 27, that Act did not apply to any application for citizenship lodged before 15 August 1999, and indeed the applicant had applied for citizenship in 1993. In his view, the Citizenship Act as it had stood in 2007 did not apply to his circumstances, nor was there any saving clause stating that situations such as his would continue to be regulated by the Citizenship Act as in force prior to the amendments enacted in 2000.

71. The applicant submitted that public order was not listed under Article 8 of the Convention, nor had any other legitimate aim been relied on. Although he had been found guilty of injuring his wife, the suspended sentence had played no part in the Minister's decision.

72. Furthermore, the applicant submitted that the authorities' action had been so belated (initiating an investigation five years after the annulment, and taking three years to investigate and take a decision on his situation) that the measure could not be deemed justified or necessary. Such a delay showed that the applicant had not posed a threat – no reasons had been given as to why it had suddenly become necessary to change the state of affairs. Moreover, in the intervening period his ties with Malta had been further strengthened.

73. The applicant submitted that the Government had failed to protect him from statelessness. This rendered the measure draconian and was disproportionate to the aim pursued.

74. In the applicant's view, when weighing the interests of the individual against those of the State, the Court had to consider that when he had founded his second family, the prospects of joint residence were not only extremely high but even certain. The applicant had not maintained any appreciable ties with relatives in Egypt and he had now lived in Malta for over twenty years, he spoke the Maltese language and was perfectly integrated in Maltese culture and society. The economic consequences of his removal to any other country would be extremely detrimental to him. He also argued that should his children also be deprived of their current Maltese

citizenship on the basis of his own citizenship having been revoked, they too would become stateless.

(b) The Government

75. The Government submitted that the Convention did not guarantee a right to acquire a particular citizenship and that the issue of whether an applicant had an arguable right to acquire the citizenship of a State must in principle be resolved by reference to the domestic law of that State. They referred to *Petropavlovskis v. Latvia* (no. 44230/06, § 83, ECHR 2015).

76. The measure at issue in the present case was in accordance with the law, namely the Maltese Citizenship Act, Chapter 188 of the Laws of Malta. The relevant provision at the time was Article 9 of the Act, which was identical to Article 14 of the amended Act (see "Relevant domestic law" above). Contrary to the applicant's argument (see paragraph 70 above), the Government submitted that Article 27(2) of the Maltese Citizenship Act as amended in 2000, a transitory provision, dealt with "applications" for registration which had been lodged before 15 August 1999 and were still pending. In the case of the applicant, citizenship had already been granted before 15 August 1999; thus, when the amendments to the Maltese Citizenship Act were enacted, his application had already been processed. Consequently, he could not be considered "an applicant" in the sense of the domestic provision cited.

77. Contracting a marriage of convenience was considered to be perpetration of fraud. That had been the basis of the decision in respect of the applicant. Thus, the measure had not been arbitrary: the decision had been taken after the applicant had pleaded before the committee, produced evidence and made submissions – a procedural safeguard to protect him against any arbitrariness. Nor was the deprivation discriminatory: whenever the Department became aware that citizenship had been obtained by fraud, it took steps to deprive the individuals concerned of Maltese citizenship.

78. According to the Government, the Minister had deprived the applicant of his Maltese citizenship on the grounds that he had obtained Maltese citizenship by fraud, a serious act that was contrary to public order. Thus, the measure was aimed at the protection of public order, which was an intrinsic part of the public interest. Reference was made to the Court's judgments in *Antwi and Others v. Norway* (no. 26940/10, § 104, 14 February 2012) and *Boujlifa v. France* (21 October 1997, § 43, *Reports* 1997-VI). In that light, the Minister's order had been justified and necessary in a democratic society. Furthermore, even though the decision had not been based on this factor, the applicant also had a criminal record, having been found guilty of injuring his own wife.

79. The Government further argued that the deprivation of the applicant's Maltese citizenship, which had been implemented immediately, had not adversely affected him since his trading licences had been

continuously renewed and he had continued to make use of a Maltese passport. Reference was made to the Court's findings in, *inter alia, Riener v. Bulgaria* (no. 46343/99, § 155, 23 May 2006). In the present case (until the time of filing observations), it transpired that the applicant had not been hindered in his movement in and outside Malta. Indeed, he had continued to work in Malta and to reside there with his new family. Thus, in view of the above, there had not been an interference with the applicant's rights. Also, the Government submitted that the applicant could apply for a work permit which was valid for a period of time and renewable on request, and subsequently obtain a residence permit on that basis. Furthermore, once his immigration status had been regularised, he would be eligible for long-term residence status after five years of legal stay. However, the applicant had not attempted to pursue any of those avenues. Nor had he provided any information as to the possibility of reacquiring Egyptian nationality, or proved that this was impossible. Furthermore, if he feared returning to Egypt, he could have applied for refugee status or humanitarian protection.

80. In so far as the applicant complained about the State's positive obligations, the Government submitted that he had to prove the existence of private and family life at the time when the impugned measure had been adopted (they referred to *Boujlifa*, cited above, § 36). Thus, in the Government's view, the date to be considered for this purpose was that when the grounds for the deprivation of citizenship had materialised, namely 16 January 1998.

81. However, the committee conducting inquiries had found that the applicant had had no relationship with his first son. Nor had he, in 1998, had any relationship with the woman who was to become his second wife. Consequently, the applicant could not argue that he had had a "family life" in 1998. As in the case of *Adeishvili Mazmishvili v. Russia* (no. 43553/10, § 82-83, 16 October 2014), the applicant's relationship with his second wife had developed at a time when they were both aware of his precarious position as far as his citizenship was concerned.

82. The Government considered that the applicant was to blame for not having informed the Department for Citizenship and Expatriate Affairs, at the relevant time, about the judgment annulling his first marriage. It was not for the Government to keep abreast of such developments, which were dealt with by different authorities, and the applicant's failure to inform the authorities only showed his bad faith. The Government submitted that once the matter had come to the attention of the relevant authorities, they had started investigations. While it was true that the process had encountered some difficulties and thus some delay, this was due to the fact that it related to events that had happened ten years earlier.

83. Distinguishing between a removal order and deprivation of citizenship, in the absence of any adverse effects on the applicant, the Government were of the view that the Maltese authorities did not have a

positive obligation to regularise the applicant's status when revoking his Maltese citizenship.

2. The Court's assessment

84. The Court observes that old cases concerning loss of citizenship, whether already acquired or born into, were consistently rejected by the Convention organs as incompatible *ratione materiae* with the provisions of the Convention, in the absence of such a right being guaranteed by the Convention (see, for example, *X v. Austria*, no. 5212/71, Commission decision of 5 October 1972). However, as noted above, in recent years the Court has held that although the right to citizenship is not as such guaranteed by the Convention or its Protocols, it cannot be ruled out that an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual (see references mentioned at paragraph 62 above).

85. Indeed, most of the cases concerning citizenship brought before the Court since the above-mentioned development in the case-law have concerned applicants claiming the right to acquire citizenship and the denial of recognition of such citizenship (see, for example, *Karassev* (dec.), cited above), as opposed to a loss of citizenship already acquired or born into. Nevertheless, the Court considers that the loss of citizenship already acquired or born into can have the same (and possibly a bigger) impact on a person's private and family life. It follows that there is no reason to distinguish between the two situations and the same test should therefore apply. Thus, an arbitrary revocation of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of its impact on the private life of the individual. Therefore, in the present case it is necessary to examine whether the decisions of the Maltese authorities disclose such arbitrariness and have such consequences as might raise issues under Article 8 of the Convention.

86. The Court notes that the decision to deprive the applicant of his citizenship was in accordance with the law, namely Article 14 (previously Article 9) of the Maltese Citizenship Act (hereinafter "the Act"), which provides that "the Minister may deprive of his Maltese citizenship any citizen of Malta who is such by registration or naturalisation if he is satisfied that the registration or certificate of naturalisation was obtained by means of fraud, false representation or the concealment of any material fact". The Court notes that Article 27(1) only states that the amendments to the Act would not affect the granting or retention of citizenship obtained prior to the enactment of such amendments, and thus it has no bearing on the application of Article 14 (former Article 9), which has not undergone any amendments. The Court further accepts the Government's argument that the transitory provision in Article 27(2) of the Act (see paragraph 32

above) does not apply to the applicant, as his application had already been processed and determined. Thus, his citizenship was obtained prior to the amendments to the Act enacted in 2000. It follows that the deprivation of citizenship was in accordance with the law.

87. Moreover, the Court observes that, in accordance with sub-article (4) of Article 14 of the Act – which was applicable in 2006 when the applicant was informed that an order was to be made to deprive him of his Maltese citizenship – prior to the Minister's decision, the applicant was informed of the possibility of requesting an inquiry, and in fact proceeded to take such action. Thus, the applicant had the opportunity – of which he availed himself – to defend himself in a procedure which consisted of a number of hearings where he was assisted by a lawyer and where oral and written submissions were made, and evidence, including witness testimony, was produced before the relevant board. He subsequently had the opportunity to challenge that decision before the courts with constitutional jurisdiction affording the relevant guarantees. It follows that the decision depriving the applicant of his citizenship was accompanied by the necessary procedural safeguards.

88. Although it could be questioned whether in the instant case the authorities acted diligently and swiftly (see, *mutatis mutandis*, *Nunez v. Norway*, no. 55597/09, § 82, 28 June 2011, and *Borisov v. Lithuania*, no. 9958/04, § 112, 14 June 2011), the Court notes that any delay occurring did not disadvantage the applicant, who continued to benefit from the situation (compare *Kaftailova v. Latvia* (striking out) [GC], no. 59643/00, § 53, 7 December 2007).

89. The Court therefore concludes that the decision of the Maltese authorities to deprive the applicant of his Maltese citizenship was not arbitrary. Furthermore, the applicant was aware that when his marriage was annulled his citizenship could be revoked at any time by the Minister, and thus that he was in a precarious situation. Moreover, the Court cannot ignore the fact that the situation complained of came about as a result of the applicant's fraudulent behaviour (see paragraphs 14 and 24 above) and that any consequences complained of are to a large extent a result of his own choices and actions (compare *Shevanova v. Latvia* (striking out) [GC], no. 58822/00, § 49, 7 December 2007).

90. As to the consequences of the revocation of the applicant's Maltese citizenship, the Court notes that, as held above (see paragraph 56), the applicant is not threatened with expulsion from Malta. Importantly, although the applicant's Russian wife has lost her exempt person status, the applicant's sons VR and VL have not lost their Maltese citizenship, nor have there been any attempts to that effect by the authorities in the nine years since the applicant was deprived of his Maltese citizenship. Furthermore, as admitted by the applicant himself, to date he has been able to pursue his business and continues to reside in Malta.

91. The Court reiterates that neither Article 8 nor any other provision of the Convention can be construed as guaranteeing, as such, the right to a particular type of residence permit (see *Kaftailova*, cited above, § 51). If it allows the holder to reside within the territory of the host country and to exercise freely there the right to respect for his or her private and family life, the granting of such a permit represents in principle a sufficient measure to meet the requirements of that provision. In such cases, the Court is not empowered to rule on whether the individual concerned should be granted one particular legal status rather than another, that choice being a matter for the domestic authorities alone (see *Sisojeva and Others*, cited above, § 91; *Aristimuño Mendizabal v. France*, no. 51431/99, § 66, 17 January 2006; *Dremlyuga v. Latvia* (dec.), no. 66729/01, 29 April 2003; and *Gribenko v. Latvia* (dec.), no. 76878/01, 15 May 2003). In this connection, the Court notes that various possibilities appear to be open to the applicant (see paragraph 37 and 79 above), such as applying for a work permit, and subsequently a residence permit, which could eventually again make him eligible for citizenship. However, the applicant has taken no such steps, which could have prevented any adverse impact on his private and family life (compare *Savoia and Bounegru* (dec.), cited above), and no valid explanation has been given for his inaction. The Court notes that the only alleged obstacle referred to by the applicant is a legal provision which is not yet in force (see paragraphs 37 and 39 above).

92. Similarly, in connection with the applicant's claim that he is currently stateless, the Court notes that although, according to a letter by the Consul of the Embassy of the Arab Republic of Egypt, the applicant's request to renounce his Egyptian nationality was approved and his Egyptian passport withdrawn (see paragraph 10 above), he has not provided the Court with any official document (such as a presidential decree, which appears to be issued in such circumstances) confirming such renunciation. Nor has the applicant provided any information as to the possibilities of reacquiring Egyptian nationality (in the event that he has truly renounced that nationality). In any event, the fact that a foreigner has renounced his or her nationality of a State does not mean in principle that another State has the obligation to regularise his or her stay in the country (see, for instance, the case of Romanians who renounced their nationality and wanted to remain in Germany, in *Dragan and Others v. Germany* (dec.), no. 33743/03, 7 October 2004).

93. As to the applicant's limited freedom of movement, which would more appropriately be examined under Article 2 of Protocol No. 4 to the Convention, the Court notes that this complaint was not brought before the domestic authorities, even though the applicant was meant to return his passport in 2007, when the decision to revoke his citizenship was issued. The fact that he failed to submit his passport to the authorities and continued to reap its benefits until 2014, when his passport expired, does not exempt

the applicant from the obligation to exhaust relevant remedies. The Court cannot but note a pattern of inaction on the part of the applicant.

94. Given the above considerations, an assessment of the State's negative obligations under Article 8 of the Convention is not warranted in the present case. Nor does the Court need to assess the State's positive obligations, given that as the situation stands the applicant runs no risk of being deported (see paragraphs 54 and 56 above).

95. Bearing in mind the situation as it currently stands, the Court finds that there has been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint concerning the revocation of the applicant's citizenship admissible and the remainder of the application inadmissible;

2. *Holds*, by five votes to two, that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 21 June 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	András Sajó
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following are annexed to this judgment:

(a) dissenting opinion of Judge Pinto de Albuquerque;

(b) statement of dissent by Judge Zupančič.

A.S.
M.T.

DISSENTING OPINION OF JUDGE PINTO DE ALBUQUERQUE

1. I disagree with the findings of the Chamber on the merits. For me, there has been a violation of Article 8 of the European Convention on Human Rights (the Convention), in view of the unjustified, draconian measure taken by the national authorities against the applicant. The features of the present case are unique in the history of the European Court of Human Rights (the Court). The case concerns the revocation of the applicant's citizenship, which he had obtained on 19 April 1994 as a result of his marriage to a Maltese citizen. Such citizenship was revoked more than thirteen years later, on the basis that a domestic court had annulled the said marriage because it considered that the applicant's only reason to marry had been to remain in Malta and obtain Maltese citizenship. In addition to my serious doubts regarding the correctness of the annulment judgment, I entertain principled reservations to the majority's assessment of the fairness of the revocation procedure and the proportionality of the revocation order, in view of the applicant's ensuing statelessness, the risk of his imminent expulsion from Malta and its impact on his family life[1]. Although this case had all the ingredients for the Court to revisit its still insufficient case-law on the right to citizenship, unfortunately the Chamber did not seize the opportunity. Hopefully the Grand Chamber will do this at the request of the applicant and finally affirm the existence of an autonomous Convention right to citizenship.

1. For the sake of terminological accuracy, the concepts of citizenship and nationality are equated in this opinion, as has been the Court's and the Council of Europe's practice. As stated in a footnote to the explanatory report to the European Convention on Nationality: "Most countries of central and eastern Europe use the term 'citizenship' which has the same meaning as the term 'nationality' used in the European Convention on Nationality and by most western European States." In addition, I will consider a stateless person someone who is "not recognized as a national by any state under the operation of its law", as provided by Article 1 of the 1954 United Nations Convention relating to the Status of Stateless Persons. This definition, which concerns *de jure* stateless persons, is part of customary international law. Currently, there is no common definition of a *de facto* stateless person. In the 2010 Expert Meeting of the United Nations High Commissioner for Refugees (UNHCR) on the Concept of Stateless Persons, *de facto* stateless persons were defined as "persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country". See UNHCR Guidelines on Statelessness No. 1: "The definition of 'Stateless Person' in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons", HCR/GS/12/01, 20 February 2012, and "UNHCR and De Facto Statelessness", by Hugh Massey, LPPR/2010/01, April 2010.

The right to citizenship in international human rights law

2. Article 15 of the 1948 Universal Declaration of Human Rights (UDHR) states that "everyone has the right to a nationality" and that "no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality". A similar recognition of citizenship as a fundamental right can be found in other universal and regional legal instruments, such as Articles 1 to 3 of the Convention on the Nationality of Married Women (adopted in 1957 and entered into force in 1958)[2], Article 24 (3) of the International Covenant on Civil and Political Rights (ICCPR) (adopted in 1966 and entered into force in 1976)[3], Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women (adopted in 1979 and entered into force in 1981)[4], Article 29 of the International Convention on the Rights of All Migrant Workers and Members of Their Families (approved in 1990 and entered into force in 2003)[5], Articles 7 and 8 of the United Nations Convention on the Rights of the Child (adopted 1989 and entered into force in 1990)[6], Article 19 of the 1999 Charter for European Security of the Organization for Security and Co-operation in Europe[7], Article 18 (1) (a), (b) and (2) of the Convention on the Rights of Persons with Disabilities (adopted in 2006 and entered into

2. The Convention has 74 parties, including Malta.

3. The Covenant has 168 parties, including Malta. On the right to nationality as a human right, Human Rights Council Decision 2/111 (27 November 2006), and Resolutions 7/10 (27 March 2008), 10/13 (26 March 2009) and 13/2 (24 March 2010) and the Commission on Human Rights Resolutions 1998/48 (17 April 1998), 1999/28 (26 April 1999), 2005/45 (19 April 2005), and Human Rights Committee General Comment No.17: Article 24 (Rights of the Child), 7 April 1989, §§ 7 and 8.

4. The Convention has 189 parties, including Malta. See paragraph 6 to the commentary of Article 9 of Committee on the Elimination of Discrimination Against Women (CEDAW) General Recommendation No. 21: Equality in Marriage and Family Relations, 1994.

5. The Convention has 48 parties.

6. The Convention has 196 parties, including Malta. The question which State is responsible in any given instance of statelessness has been answered with reference to the situation of children who are born on the territory of a State who would otherwise be stateless (see UN High Commissioner for Refugees (UNHCR), "I Am Here, I Belong: The Urgent Need to End Childhood Statelessness", 3 November 2015, and I. Ziemele, "Article 7: The Right to Birth Registration, Name and Nationality and the Right to Know and Be Cared for by Parents", in Alen, A. et al. (eds.), *A Commentary on the United Nations Convention on the Rights of the Child*, Martinus Nijhoff Publishers, 2007). In its General Comment No.7, § 25, General Comment No. 9, §§ 35-36, and General Comment No. 11, § 41, the Committee on the Rights of the Child placed special emphasis on birth registration as a means to prevent statelessness of children.

7. Malta is a participating party in the OSCE. The participating parties not only affirmed their "recognition that everyone ha[d] the right to a nationality and that no one should be deprived of his or her nationality arbitrarily", but also committed themselves "to continue [their] efforts to ensure that everyone can exercise this right" and "to further the international protection of stateless persons".

force in 2008)[8], and at a regional level, Article XIX of the 1948 American Declaration of the Rights and Duties of Man, Article 20 of the American Convention on Human Rights (adopted in 1969 and entered into force in 1978)[9], Article 6 (3) and (4) of the African Charter on the Rights and Welfare of the Child (adopted in 1990 and entered into force in 1999)[10], Article 24 of the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (adopted in 1995 and entered into force in 1998)[11], Article 6 (g) and (h) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted in 2003 and entered into force in 2005)[12], Article 7 of the Covenant on the Rights of the Child in Islam (adopted in 2005)[13], Article 29 of the revised Arab Charter on Human Rights (adopted in 2005 and entered into force in 2008)[14], and Article 18 of the 2012 Association of Southeast Asian Nations Human Rights Declaration.

Other general provisions pertaining to the right to equal protection of the law, the right to the recognition of one's own legal status, the right to freedom of movement and residence within the borders of the State and the

8. The Convention has 164 parties, including Malta.

9. The Convention has 22 parties. In its Advisory Opinion on Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica, OC-4/84, the Inter-American Court of Human Rights, held, on 19 January 1984, that there were two aspects to this right which were reflected in Article 20 of the American Convention on Human Rights: "first, the right to a nationality established therein provides the individual with a minimal measure of legal protection in international relations through the link his nationality establishes between him and the state in question; and, second, the protection therein accorded the individual against the arbitrary deprivation of his nationality, without which he would be deprived for all practical purposes of all his political rights as well as those civil rights that are tied to the nationality of the individual". See also the Inter-American Court of Human Rights judgments on *Castillo Petruzzi et al.* Case, 30 May 1999, § 101 and IvcherBronstein Case (*Baruch Ivcher Bronstein vs. Peru*), 6 February 2001, § 88, and particularly, Yean and *Bosico Girls v. the Dominican Republic*, 8 September 2005, §§ 140-142, 154-158, *Expelled Dominicans and Haitians v. Dominican Republic*, 28 August 2014, §§ 253-264, and Organisation of American States Resolution of the General Assembly, AG/RES. 2826 (XLIV -O/14), Prevention and reduction of statelessness and protection of stateless persons in the Americas, of 4 June 2014.

10. The Convention has 47 parties. See General Comment on Article 6 of the African Committee of Experts on the Rights and Welfare of the Child, ACERWC/GC/02 (2014), adopted by the Committee at its twenty-third Ordinary Session (7-16 April 2014), and IHRDA and OSJI (on behalf of children of Nubian descent in Kenya) v. Kenya, Communication No. 002/2009, 22 March 2011. As recalled by the African Committee of Experts on the Rights and Welfare of the Child in its general comment on Article 6 of the African Charter on the Rights and Welfare of the Child, "being stateless as a child is generally an antithesis to the best interests of children".

11. The Convention has 4 parties.

12. The Convention has 36 parties.

13. There is no official information regarding the ratification status of the Covenant.

14. The Convention has 13 parties.

right to enter one's own country, like Article 5 (d) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination (adopted in 1965 and entered into force in 1969)[15], Articles 12 (4), 23 (4) and 26 of the ICCPR[16] and Articles 3 (2), 5 and 12 (1) of the African Charter on Human and Peoples' Rights (adopted in 1981 and entered into force in 1986)[17], have also been interpreted as protecting a right to citizenship and proscribing the arbitrary deprivation of citizenship.

The right to citizenship or nationality implies the right of each individual to acquire, change and retain a nationality[18]. Furthermore, anti-discrimination principles make it clear that denying citizenship to individuals on the basis of their gender, ethnicity, religion or other status is arbitrary and therefore impermissible. In terms of the substance of the right, a State cannot discriminate amongst its nationals on the basis of whether they hold their citizenship by birth or acquired it subsequently. As the United Nations Secretary-General's recent report on the arbitrary deprivation of nationality of children put it,

> "The arbitrary deprivation of nationality of children is in itself a human rights violation, with statelessness its possible and most extreme consequence. International human rights law is not premised on the nationality of the person but rather on the dignity that is equally inherent to all human beings. In practice, however, those who

15. The Convention has 177 parties, including Malta. See paragraphs 13-17 of Committee on the Elimination of Racial Discrimination (CERD), General Recommendation XXX on Discrimination Against Non Citizens, 1 October 2002.

16. In *Borzov v. Estonia*, Communication No. 1136/2002, 26 July 2004, the Human Rights Committee did not find that there was a violation of Article 26 of the Covenant on account of the refusal, on grounds of national security, of the Estonian authorities to grant citizenship to the author, who was allegedly stateless. He had a residence permit and continued to receive his pension while living in Estonia. In its decision, emphasis was laid on the fact that the author's application was duly reviewed by the national courts. In Stewart v. Canada, Communication No. 538/1993, 1 November 1996, it had held that "The language of article 12, paragraph 4, permits a broader interpretation, moreover, that might embrace other categories of long-term residents, particularly stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence." This same interpretation was confirmed in paragraph 20 of General Comment No. 27: Article 12 (Freedom of Movement), 2 November 1999, CCPR/C/21/Rev.1/Add.9. On the States parties' obligation under Article 23 (4) to ensure that the matrimonial regime contains equal rights and obligations for both spouses with regard to capacity to transmit to children the parent's nationality and that no sex-based discrimination occurs in respect of the acquisition or loss of nationality by reason of marriage, paragraph 25 of General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women), 29 March 2000, CCPR/C/21/Rev.1/Add.10.

17. The Convention has 53 parties. See African Commission on Human and Peoples' Rights, *Malawi African Association, Amnesty International, Ms Sarr Diop, Collectif des Veuves et Ayant-droit et Association Mauritanienne des droits de l'homme v. Mauritania*, nos. 54/91, 61/91, 98/93,164/97 – 196/97 and 210/98, 11 May 2000, § 126, and *John K. Modise v. Botswana* (no. 97/93) (2000), 6 November 2000, § 88.

18. UN Human Rights Council, Human rights and arbitrary deprivation of nationality: report of the Secretary-General, 14 December 2009, A/HRC/13/34, para. 21, p. 6.

> enjoy the right to a nationality have greater access to the enjoyment of various other human rights."[19]

3. States do not therefore have absolute sovereignty to deny citizenship to any person for any reason, as is also crystal-clear from a purposeful reading of the 1954 Convention relating to the Status of Stateless Persons (the 1954 Convention)[20] and the 1961 Convention on the Reduction of Statelessness (the 1961 Convention)[21].

The 1954 Convention was adopted on 28 September 1954 and entered into force on 6 June 1960. It does not establish a right for stateless persons to acquire the nationality of a State. However, Article 32 of the 1954 Convention requires that States should facilitate the assimilation and naturalisation of stateless persons, notably, by expediting naturalisation proceedings and reducing the relevant charges and costs. The final act of the 1954 Convention recommends that each Contracting State, when it recognises as valid the reasons for which a person has renounced the protection of the State of which he is a national, consider sympathetically the possibility of according that person the treatment which the Convention accords to stateless persons. This statement provides for the possibility of extending the protection of the 1954 Convention to a certain category of *de facto* stateless persons.

The major weakness of the 1954 Convention consists in the fact that it only affords protection to the *de jure* stateless persons and does not have a comprehensive non-discrimination provision. This is compounded by the fact that it does not offer guidance as to the procedures to be used to identify stateless persons, which may lead to failure to recognise stateless persons and result in their inability to effectively enjoy the rights emanating from the 1954 Convention.

While it does offer certain guarantees against expulsion and acknowledges the right to re-enter on the basis of a Convention travel document, on the condition of lawful presence in the country, the 1954 Convention does not regulate the right to enter a State, thereby leaving Contracting Parties free to refuse, detain or expel any stateless person seeking access to their soil without the proper authorisation.

Finally, the absence of a formalised procedure in place for supervising the full implementation of the 1954 Convention or for the receipt of individual complaints by stateless persons also weakens the protection afforded to these persons. In this respect it must be mentioned that, through a series of UN General Assembly Resolutions, the UNHCR has acquired a

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19. UN Human Rights Council, Impact of the arbitrary deprivation of nationality on the enjoyment of the rights of children concerned, and existing laws and practices on accessibility for children to acquire nationality, inter alia, of the country in which they are born, if they otherwise would be stateless, 16 December 2015, A/HRC/31/29, para. 27.
20. The Convention has 88 parties, not including Malta.
21. The Convention has 67 parties, not including Malta.

formal mandate over statelessness[22]. In addition to setting detailed guidelines on various aspects of statelessness, including the definition of a stateless person, statelessness determination procedures, the status of stateless persons, and the prevention of statelessness at birth[23], the UNHCR has developed a "Global Action Plan to End Statelessness: 2014 – 2024" (the "Global Action Plan"), in consultation with States, civil society and international organisations, which sets out a guiding framework made up of 10 actions that need to be taken to end statelessness within 10 years, consisting of resolving existing major situations of statelessness, ensuring that no child is born stateless, removing gender discrimination from nationality laws, preventing denial, loss or deprivation of nationality on discriminatory grounds, preventing statelessness in cases of State succession, granting protection status to stateless migrants and facilitating their naturalisation, ensuring birth registration for the prevention of statelessness, issuing nationality documentation to those with entitlement to it, acceding to the United Nations Statelessness Conventions, and improving quantitative and qualitative data on stateless populations. States parties should introduce safeguards to prevent statelessness by granting their nationality to persons who would otherwise be stateless and are either born in their territory or are born abroad to one of their nationals. States should also have a provision in their nationality laws to grant nationality to children of unknown origin found in their territory (foundlings).

4. The Convention on the Reduction of Statelessness, adopted on 30 August 1961 and which entered into force on 13 December 1975, aims to prevent, reduce and avoid statelessness by providing concrete and detailed measures to be taken by States parties to the Convention. It focuses on the four main causes of statelessness. Articles 1 to 4 set out measures to avoid statelessness among children. Articles 5 to 7 deal with statelessness due to loss or renunciation of nationality. Articles 8 § 1 and 9 concern measures to avoid statelessness due to deprivation of nationality. However, Article 8 § 2 of the 1961 Convention allows for an exhaustive set of circumstances under which deprivation of nationality resulting in statelessness is permissible. It does not prohibit the possibility of revocation of nationality under certain

22. For example, General Assembly Resolution 61/137 of 25 January 2007.

23. UN High Commissioner for Refugees (UNHCR), "Guidelines on Statelessness No. 1: The definition of 'Stateless Person' in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons", cited above; "Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person", HCR/GS/12/02, 5 April 2012; "Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level", 17 July 2012 2012, HCR/GS/12/03; "Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness", HCR/GS/12/04, 21 December 2012. The 2013 European Network on Statelessness Guide of Good Practices "Statelessness, determination and the protection status of stateless persons".

circumstances, nor does it address the subject of retroactively granting citizenship to all currently stateless persons.

Stateless persons may take the citizenship of the place of their birth or of the place where they were found in the case of a foundling, or they may take the citizenship of one of their parents[24]. States shall not deprive people of their citizenship so as to render them stateless, with the exceptions of cases where citizenship has been acquired by misrepresentation or fraud, or of "disloyalty" to the State.

5. The Executive Committee of the UNHCR, concerned with the precarious conditions faced by stateless persons and the persistence of statelessness in various regions of the world, has consistently urged States to ratify the 1954 and 1961 Conventions in its numerous conclusions[25]. It has also dedicated two conclusions exclusively to statelessness, namely Conclusion No. 78 on Prevention and Reduction of Stateless Persons, from 1995, and Conclusion No. 106 on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons, from 2006. The Executive Committee's Conclusion No. 106 covers the UNHCR's four dimensions of the Statelessness regime, namely the identification, prevention and reduction of statelessness and the protection of stateless persons. Under the heading of protection of stateless persons, the Executive Committee requests States to "give consideration to acceding to the 1954 Convention relating to the Status of Stateless Persons and, in regard to States Parties, to consider lifting reservations" and to those States which are not yet parties to the 1954 Convention to "treat stateless persons lawfully residing on their territory in accordance with international human rights law; and to consider, as appropriate, facilitating the naturalization of habitually and lawfully residing stateless persons in accordance with national legislation". It further asks States "not to detain stateless persons on the sole basis of their being stateless and to treat them in accordance with international human rights law" and also calls on States Parties to the 1954 Convention to fully implement its provisions.

6. While it is a clear tenet of international law that each State has the sovereign responsibility to determine under national law who are its citizens, that role is subject to international principles. In its Draft Articles on Nationality of Natural Persons in relation to the Succession of States, the International Law Commission (ILC) indicated that "the competence of States in this field may be exercised only within the limits set by international law"[26]. Citizenship can be acquired automatically by operation of law, at birth or at a later stage, or as a result of an act of the

24. UN Human Rights Council, "Impact of the arbitrary deprivation of nationality", cited above, paras. 10 to 15.

25. See a compilation of relevant extracts in UNHCR Executive Committee Conclusions related to Statelessness, July 2010.

26. Yearbook of the International Law Commission, 1999, vol. II (2), p. 24.

administrative authorities. States enjoy a degree of discretion with regard to the criteria governing acquisition of citizenship, but these criteria must not be arbitrary. In particular, international human rights law places a clear responsibility that the State should refrain from implementing citizenship policies that would contribute to the creation or perpetuation of statelessness. In addition to the right to citizenship, two core rights of international human rights law are also of particular relevance to statelessness and the protection of stateless persons. These are the right to equal protection by law and non-discrimination.

The right to citizenship in European human rights law

7. The right to a citizenship was neither included in the Convention nor in any of the Protocols thereto. The committee which drafted Protocol No. 4 to the ECHR contemplated inserting a provision to the effect that "a State would be forbidden to deprive a national of his nationality for the purpose of expelling him"[27]. Although the principle which inspired the proposal was approved by the committee, the majority of experts thought it inadvisable to tackle the delicate question of the legitimacy of measures depriving individuals of nationality. It was also noted that it would be very difficult to prove whether or not the deprivation of nationality had been ordered with the intention of expelling the person concerned. In 1988 the Council of Europe's Committee of Experts for the Development of Human Rights started examining the question of the right to a nationality as a human right and considering the possibility of inserting such right into the ECHR through an additional protocol to the Convention. However, States were not ready to adopt an additional protocol on the right to a nationality. In 1992 an expert committee on nationality initiated a feasibility study for a new, comprehensive convention on nationality.

As a result, the European Convention on Nationality was adopted in 1997[28].

27. See Explanatory Report to Protocol No. 4, § 23.

28. The explanatory report to this Convention states that "Even if the ECHR and its protocols do not, except for Article 3 of Protocol No. 4 (prohibitions on the expulsion of nationals), contain provisions directly addressing matters relating to nationality, certain provisions may apply also to matters related to nationality questions. … Persons who have their family life in a particular country, for example having lived there for many years with their family, even if they have not been able to become a national of this country, may have the right to remain in the country if they can show that they are entitled to respect for family life under Article 8 of the ECHR. This right will be particularly important in cases in which, following State succession, a large number of persons have not acquired the nationality of the State where they reside. Concerning the prohibition of inhuman or degrading treatment (Article 3 of the ECHR), actions that lower a national or alien in rank, position or reputation and are designed to debase or humiliate can be a violation of Article 3. Article 3 of Protocol No. 4 of the ECHR includes the right of nationals to enter

The principles established by Article 4 of the European Convention on Nationality, such as that everyone has the right to a citizenship, that statelessness shall be avoided, and that no one shall be arbitrarily deprived of his or her citizenship, are principles of such importance for ensuring social interaction of human beings in a democratic society that they must be seen as well-established principles of international law. Beyond the clear and uncontested evidence of a continuing trend in general international law[29], these principles have gained the status of customary international law[30].

Under Articles 4 and 7 (1) and (3) of the 1997 European Convention on Nationality, providing that statelessness is to be avoided, a given State has an obligation to facilitate the acquisition of its nationality for stateless persons and to refrain from deciding on the loss of its nationality if the person would thereby become stateless, save for cases of acquisition of nationality by means of fraudulent conduct, false information or concealment of any relevant fact attributable to that person[31]. This principle should be read in the light of the Council of Europe Committee of Ministers' Recommendation no. (99) 18 on the avoidance of statelessness, which recommends that a State should not necessarily deprive of its nationality persons who have acquired its nationality by means of fraudulent conduct, false information or concealment of any relevant fact, since this decision should take in account the gravity of the facts, as well as other relevant circumstances, such as the genuine and effective link of these persons with the State concerned[32]. In order to avoid and reduce cases of statelessness, particularly of children, the Committee of Ministers adopted a Recommendation CM/Rec(2009)13 on the nationality of children. Member States were recommended to take into account in their legislation regarding nationality the comprehensive principles contained in the appendix to the Recommendation.

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and not to be expelled from the territory of the State of which they are nationals. In addition, Article 4 of the same protocol prohibits the collective expulsion of foreigners."

29. The "clear and uncontested evidence of a continuing international trend" was the relevant test in Christine Goodwin v. the United Kingdom [GC], no. 28957/95, § 85, ECHR 2002-VI. In paragraph 29 of the explanatory report to the European Convention on Nationality, it is stated that "With the development of human rights law since the Second World War, there exists an increasing recognition that State discretion in this field must furthermore take into account the fundamental rights of individuals".

30. See Article 33 of the explanatory report to the European Convention on Nationality.

31. ETS no. 166. The Convention has been ratified by 20 States. Malta signed it, but has not ratified it yet.

32. It is important to recall the position of the Court of Justice of the European Union in its judgment in the case of *Rottman v. Freistaat Bayern*, 2 March 2010, §§ 55, 56 and 59, which concluded that "it is not contrary to European Union law, in particular to Article 17 EC, for a Member State to withdraw from a citizen of the Union the nationality of that State acquired by naturalisation when that nationality has been obtained by deception, on condition that the decision to withdraw observes the principle of proportionality."

8. The Convention organs have consistently held that a "right to nationality" similar to that in Article 15 of the Universal Declaration of Human Rights, or a right to acquire a particular nationality, is not guaranteed by the Convention or its Protocols, and have therefore declared the complaints related to this right incompatible *ratione materiae*[33]. This has also been applied to non-citizens and stateless persons prevented from acquiring the nationality of a State in cases of State succession[34]. However, in the *Karassev* case, the Court did not exclude "that an arbitrary denial of a citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such denial on the private life of the individual"[35]. There is nothing to suggest that the above principle cannot apply to cases of deprivation or loss of citizenship or to the right to renounce citizenship.

9. The issue of arbitrary denial of citizenship can also arise under Article 3 of Protocol No. 4, if the purpose of the denial is to evade the prohibition against expulsion of nationals. In *Slivenko v. Latvia*[36], the Court was asked to decide whether the expulsion of a Russian military officer's wife and daughter pursuant to the Latvian-Russian treaty on the withdrawal of Russian troops violated Article 3 of Protocol No. 4.

10. Finally, it may be mentioned that the European Commission of Human Rights did not exclude that the denial of nationality on the ground of race or ethnicity might also constitute degrading treatment under Article 3 of the Convention[37].

11. In sum, the now well-established prohibition of arbitrary denial or revocation of citizenship in the Court's case-law presupposes, by logical

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33. See *X v. Austria*, no. 5212/71, Commission decision of 5 October 1972, DR 43, p. 69; *Family K. and W. v. the Netherlands*, no. 11278/84, Commission decision of 1st July 1985, DR 43, p. 216; and *Poenaru v. Romania* (dec.), no. 51864/99, 13 November 2001.

34. See for instance *Fedorova v. Latvia* (dec.), no. 69405/01, 9 October 2003.

35. *Karassev v. Finland* (dec.), no. 31414/96, ECHR 1999-II, and the case-law mentioned in paragraph 61 of the present judgment. This has also been the case-law of the Constitutional Court of Malta (see *Tarek Mohammed Ibrahim v. Vici Prim Ministru* et, decided on 28 May 2012). Mr Karassev was born in Finland of parents who were citizens of the Russian Federation on the date of his birth. The Court concluded that the decision of the Finnish authorities refusing the citizenship by birth was not arbitrary in a way which could raise issues under Article 8. As to the consequences of the denial to recognise the applicant as a Finnish national, the Court noted that he was not threatened with expulsion from Finland, neither alone or together with his parents, who had residence permits, which could also be issued to the applicant at their request, the applicant also enjoyed social benefits and the like in Finland. Against this background, the Court did not find that the consequences of the refusal to recognise the applicant as a citizen of Finland, taken separately or in combination with the refusal itself, could be considered sufficiently serious so as to raise an issue under Article 8 of the Convention. The application was declared inadmissible as being manifestly ill-founded.

36. *Slivenko v. Latvia* (dec.) [GC], no. 48321/99, ECHR 2002-II.

37. *Slepcik v. the Netherlands and the Czech Republic* (dec.), no. 30913/96, 2 September 1996.

implication, the existence of a right to citizenship under Article 8 of the Convention, read in conjunction with Article 3 of Protocol No. 4[38].

Furthermore, a systemic interpretation of both provisions in line with the Council of Europe standards on statelessness warrants the conclusion that State citizenship belongs to the core of an individual identity[39].

In spite of the fact that matters of citizenship were traditionally considered to be within the domestic jurisdiction of each State, as was codified in Article 1 of The Hague Convention of 1930 on Certain Questions relating to the Conflict of Nationality Laws and recalled in Article 3 of the European Convention on Nationality, there are limits imposed by international law on each State's discretion. The manner in which States regulate matters bearing on nationality cannot today be deemed within their sole jurisdiction.

Taking into account the Convention's Article 8 right to an identity and to State citizenship, States parties are bound by two obligations. In the light of the above interpretation of the Convention in accordance with present-day circumstances and in harmony with international law, and regardless of ratification by the respondent State of the above-mentioned, relevant

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38. The exact same conclusion was reached by the Inter-American Court of Human Rights which, in its advisory opinion of 1984, proclaimed that the right to nationality is an inherent human right recognised in international law and that the powers of States to regulate matters relating to nationality are circumscribed by their obligations to ensure the full protection of human rights (Re Amendments to the Naturalisation Provisions of the Constitution of Costa Rica, cited above). See, among other scholars, Ludovic Hennebel and Hélène Tigroudja, *Traité de droit international des droits de l'homme*, Paris, 2016, pp. 1181-1187, Alessandra Annoni and Serena Follati (eds.), *The changing role of nationality in international law*, London, 2013, Societé Française de Droit International, *Droit international et nationalité*, Paris, 2012, Emmanuel Decaux, "Le droit a une nationalité en tant que droit de l'homme", in *Revue trimestrielle des droits de l'homme*, 89/2011; Mark Manly and Laura Van Waas, "The value of the human security framework in addressing statelessness", in Alice Edwards and Carla Ferstman (eds.), *Human Security and Non-citizens, Law, Policy and International affairs*, Cambridge University Press, 2009, pp 549-81; Katherine Southwick and M. Lynch, "Nationality Rights for All, a progress report and global survey on statelessness", in *Refugees International*, March 2009; Eva Ersboll, "The Right to a Nationality and the European Convention on Human Rights", in *Human Rights in Turmoil. Facing Threats, Consolidating Achievements*, Martinus Nijhoff Publishers, Leiden, 2007; and Ineta Ziemele, *State Continuity and Nationality: The Baltic States and Russia. Past, Present and Future as Defined by International Law*, Martinus Nijhoff Publishers, Leiden, Boston 2005.

39. In this respect, it should be mentioned that the Court has recently held that an individual's ethnic identity must be regarded as an essential aspect of his or her private life and identity, along with such aspects as name, gender, religion and sexual orientation (*S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 66, ECHR 2008, and *Ciubotaru v. Moldova*, no. 27138/04, § 53, 27 April 2010). It has also established that Article 8 embraces multiple aspects of the person's physical and social identity, like the recognition of an individual's legal civil status (registration of a marriage in *Dadouch v. Malta*, no. 38816/07, § 48, ECHR 2010 (extracts), and refusal of nationality in *Genovese v. Malta*, no. 53124/09, §§ 30 and 33, 11 October 2011).

international treaties[40], States parties to the Convention have a negative obligation not to decide on the loss of citizenship if the person would thereby become stateless and a positive obligation to provide its citizenship for stateless persons, at least when they were born – or found in the case of a foundling – in their respective territories, or when one of their parents is a citizen[41]. The creation and perpetuation of situations of statelessness should be avoided at any cost in a civilised Europe.

The marriage annulment in 1998

12. The Government argued that the applicant had to prove the existence of private and family life at the time when the grounds for the deprivation of citizenship had materialised, namely 16 January 1998[42]. The applicant countered that the relevant moment was the interference with his Article 8 right, namely 31 July 2007, date of the ministerial order of revocation of citizenship[43]. In any event, he insisted that his first marriage had not been a fraud and that the judgment of 1998 should not have been relied upon[44].

The majority do not address the issue of the temporal scope of the case explicitly, but implicitly indulge in several considerations correlating the two decisions, even stating that "the situation complained of came about as a result of the applicant's fraudulent behaviour"[45].

13. I find this approach unfortunate, since the interference with the applicant's Article 8 right to private and family life only occurred with the issuance of the ministerial order revoking his citizenship. In any event, I have the strongest doubts as to the legal and logical soundness of the annulment decision, in view of the simple fact that marriages of

40. The message of *Genovese*, cited above, § 44, must be repeated loud and clear: "The Court further observes that in searching for common ground among the norms of international law it has never distinguished between sources of law according to whether or not they have been signed or ratified by the respondent State (see *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 78, ECHR 2008)."

41. Obligations to grant nationality to children born in the territory of a State and that would otherwise be stateless are also contained in Article 1 of the Convention on the Reduction of Statelessness, Article 20 (2) of the American Convention on Human Rights, Article 6 (4) of the African Charter on the Rights and Welfare of the Child, Article 7 of the Covenant on the Rights of the Child in Islam, and Article 6 (2) of the European Convention on Nationality. Similar provisions contained in Article 2 of the Convention on the Reduction of Statelessness, Article 7 (3) of the Covenant on the Rights of the Child in Islam and Article 6 (1) (b) of the European Convention on Nationality also guarantee the right to a nationality to children of unknown descent.

42. See paragraph 80 of the judgment.

43. See paragraph 68 of the judgment.

44. See paragraph 66 of the judgment.

45. See paragraph 89 of the judgment.

convenience do not generally produce children[46]. When someone is not genuinely willing to accept a life-long compromise, like marriage, but only enters into the contractual marital relationship to gain a legal advantage, such as access to citizenship, he or she does not normally wish to have a child from this relationship, thus creating a life-long bond between the respective parents. The birth of a child within wedlock is very strong evidence of the genuineness of the compromise accepted willingly by the partners. No elements were provided to the Court to rebut this presumption.

Although the judgment of 19 January 1998 was not challenged and became final, this does not hinder the Court from drawing all logical conclusions for the purposes of assessing the national authorities' conduct from the time of the annulment until the order of deprivation of citizenship.

The national authorities' conduct from 1998 to 2007

14. The 1998 annulment judgment was entered in the relevant marriage register kept in the records of the Public Registry, which is a government department. This obviously means that the national authorities must have been aware of the applicant's legal situation since that date, and therefore the applicant cannot be reproached for not having informed the authorities about the annulment. The Government's argument that the department of Citizenship and Expatriate Affairs, the courts and the Public Registry were different authorities[47] is clearly unfounded from an international law perspective, since they all belong to the respondent State, and the lack of communication between them may engage its international liability.

15. Moreover, after the delivery of the annulment decision, it took the national authorities many years until they reacted. From 19 January 1998, date of the annulment judgment, to 8 May 2006, date of the applicant's notification that an order was to be made to deprive him of his Maltese citizenship on the basis of that judgment, the applicant lived a normal life without being bothered by the national authorities. In addition, his trading permits were continuously renewed[48]. This conduct of the competent national authorities over more than eight years led the applicant, as it would indeed have led any reasonable person, to consider that his citizenship was under no threat. And since there was no such pending threat, the applicant could genuinely aspire to create a second family in Malta after the failure of

46. At this juncture, it could also be relevant to consider the psychologist's report, in which the applicant's anxiety at the time when he was having marital problems was noted. The majority gave no reason to discard this report.

47. See paragraph 82 of the judgment.

48. See paragraph 79 of the judgment. In paragraph 88, the majority argue that any delay did not disadvantage the applicant, who continued to benefit from the situation, but the majority fail to consider that the delay itself and the concomitant benefits that the applicant drew from it have also had an impact on the consolidation of his legal expectations.

his first marriage. Hence, it cannot be argued, as the Government did, that when the applicant got married for the second time, to a foreigner, he was aware that the persistence of his new family in Malta would be precarious from the outset[49].

16. When the Government submitted that the applicant's failure to inform the national authorities showed his bad faith, it could be countered that, as a matter of fact, the revocation of the citizenship so many years after its lawful cause had been established constitutes *venire contra factum proprium*, taking into account the fact that the national authorities had, in the meantime, repeatedly acted in such a way as to confirm the lawful status of the applicant as a Maltese citizen and businessman. If anyone is to be reproached for bad faith in the present case, it is certainly not the applicant, but rather the national authorities.

17. The Government's point that such measure was justified by the protection of public order[50] does not help much to understand the ministerial decision, since it is not conceivable why the applicant, who did not put public order at risk for eight years, would in 31 July 2007 represent such a risk. It is also worth noting that the 2007 ministerial decision of revocation of citizenship was not based on the applicant's criminal record. This disregard for his criminal record makes perfect sense, since the act of aggression had occurred in 1994 in the context of an episode of domestic violence, was not followed by any subsequent similar incidents and the applicant was given a mere suspended sentence, which ultimately shows that the competent court did not find the offence serious enough to require imprisonment and, on the contrary, found the offender able to live a crime-free life in Maltese society. I find it very unfortunate, to say the least, that the respondent Government now invoke this argument[51] when the competent Minister himself did not find it necessary or even appropriate to do so in 2007. In fact, as it will be demonstrated, his order was totally silent on any public order consideration.

The revocation of the applicant's citizenship in 2007 and its consequences

18. The revocation of the applicant's citizenship was ordered in the following terms:

49. I cannot therefore share the majority's reproach of a "pattern of inaction on the part of the applicant" (paragraph 93 of the judgment). If there has been any inaction, it is certainly on the part of the domestic authorities. The Government cannot blame their own tardiness on the applicant.

50. See paragraph 78 of the judgment.

51. Ibid.

"ORDER BY THE DEPUTY PRIME MINISTER AND

MINISTER FOR JUSTICE AND HOME AFFAIRS

In terms of subarticle (1) of Article 14 of the Maltese Citizenship Act (Cap 188), it is hereby ordered that Mr Louay Ramadan Wahba Mabrouk (holder of Maltese Identity Card No. 438094M), a son of Ramadan Wahbah Mabrouk and Aziza Self El-Batanony, born in Cairo, Egypt, on the 17 June 1964 and presently residing at 14, Flat 3, Triq Barth, Hamrun, be deprived of his Maltese citizenship with immediate effect."

This order was communicated to the applicant by the following letter:

"Sir

With reference to your application for Maltese citizenship and your subsequent registration as a citizen of Malta on 19 April 1994, you are hereby informed that the Deputy Prime Minister and Minister for Justice and Home Affairs, being satisfied that the said registration was obtained by means of fraud, has issued an Order in terms of subarticle (1) of article 14 of the Maltese Citizenship Act (Cap 188), which Order is being herewith enclosed.

You are now required to call immediately at this Department regarding your immigration position in Malta and to return your certificate of registration as a citizen of Malta (No 5735).

Yours faithfully ..."

19. The decision to deprive the applicant of his Maltese citizenship of 31 July 2007 did not take into account the fact that he had not kept ties with his country of origin and his relatives in Egypt, that he had been living in Malta for over twenty years, that he spoke Maltese and that he was perfectly integrated into Maltese culture and society, having three children of Maltese citizenship living in Malta. Furthermore, it failed to consider that the applicant would become a stateless person as a result of the decision, and that at the time of his application for Maltese citizenship it had been a prerequisite for the applicant to renounce his Egyptian citizenship, which he in fact did, since dual nationality was not possible from an Egyptian perspective.

In sum, the ministerial decision failed to perform the *Karassev* balancing exercise. As can be seen literally from its text and the subsequent letter of notification, the order was an automatic application of the relevant legal provision, namely Article 14 (1) of the Maltese Citizenship Act. Yet the Minister had to be satisfied that deprivation of citizenship was conducive to the public good. The negative formulation of Article 14 (3) of the same Maltese law, according to which the Minister should not deprive someone of citizenship unless he is satisfied that it is not conducive to the public good that that person should continue to be a citizen of Malta, does not hinder the conclusion that the public good had to be factored into the ministerial decision. But no explicit consideration was given in the ministerial order to this matter, since quite paradoxically Article 19 of the said Maltese law does not even require the Minister's decision to be

reasoned[52]. The lack of reasoning was further compounded by the secrecy of the decision-making procedure. The committee's final recommendation to the Minister was not made available to the applicant, and the many requests by the applicant's lawyers for a copy of the records of these proceedings remained unsatisfied[53]. What is worse, Article 14(3) only safeguards the position of the stateless person in the case of subarticle (2)(c), which is manifestly insufficient.

One obvious conclusion is clear from the above: Maltese law provides for very poor procedural safeguards in respect of such ministerial orders in comparison with international standards for the protection of stateless persons[54].

In addition to calling for an urgent law reform, these serious shortcomings of the revocation procedure call into question the fairness and the proportionality of the measure taken in the present case[55].

20. Not without hesitation, the majority concede that the applicant is currently stateless and that there is no guarantee that the Egyptian authorities would accept him, nor is it likely that he could be removed to another country[56]. This legal situation has already entailed many undisputed, negative, practical consequences for the applicant and his family, such as, among others, the loss of his right to unrestricted residence

52. The automatic character of the ministerial decision, without any weighing-up of the relevant factors, can be seen very clearly in paragraphs 23 and 24 of the judgment.

53. See paragraph 22 of the judgment.

54. Compare and contrast with the UNHCR "Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person", cited above, and the excellent European Network on Statelessness Guide of Good Practices "Statelessness, determination and the protection status of stateless persons", 2013.

55. I cannot therefore follow the majority in their conclusion at the end of paragraph 87. It must be recalled that, according to Article 17 of the ILC's Draft Articles on the Nationality of Natural Persons (cited above), decisions relating to the acquisition, retention or renunciation of nationality should be issued in writing and be open to effective administrative or judicial review. The ILC also stated in its commentary on the Draft Articles that the review process could be carried out by a competent jurisdiction of an administrative or judicial nature in conformity with the internal law of each State. The ILC clarified that the term "effective" was intended to stress the fact that an opportunity had to be provided to permit meaningful review of relevant substantive issues, which required giving reasons for any negative decisions concerning nationality. The European Convention on Nationality also contains important procedural standards on deprivation of nationality, such as the requirement that decisions contain reasons in writing (Article 11) and that decisions be open to an administrative or judicial review in conformity with internal law (Article 12). The right to a review against deprivation of nationality is also guaranteed by Article 8 (4) of the Convention on the Reduction of Statelessness and Article 8 (2) of the Convention on the Rights of the Child.

56. See paragraph 56 of the judgment. There is clear inconsistency between this paragraph and paragraph 92.

and work in Malta, the loss of his Maltese passport and the loss of his second wife's "exempt person status"[57].

21. Nevertheless, the majority argue that the applicant is not threatened with expulsion from Malta and that the applicant's two sons from his second marriage have not lost their Maltese citizenship, nor have there been any attempts in this respect by the national authorities[58]. Apart from signalling to the national authorities not to call into question the Maltese citizenship of the applicant's two sons from his second marriage and not to threaten him with expulsion, this line of argument suggests what the majority expect to happen next: the applicant may apply for a work permit and subsequently a residence permit, which could eventually again make him eligible for citizenship[59]. The majority's *obiter dicta* speak loud and clear in favour of the freezing of the applicant's legal situation until his status is regularised in Malta.

22. I have a principled reservation to this tortuous way of thinking. As in other cases, the Court falls into the temptation of an *argumentum ad ignorantiam*: the lack of certainty about a future expulsion has been used to justify the present deprivation of a Convention right[60]. Although the Government left the applicant in utter limbo and put his entire private, family and professional life in abeyance, the Chamber showed an inadmissible degree of tolerance towards this state of legal uncertainty.

State citizenship being a core element of a person's identity, the assessment of any decision pertaining to the acquisition, change, denial or revocation of citizenship should not depend on the degree of the risk of expulsion, still less on the Court's speculation about such risk and about the maintenance or withdrawal of a work or residence permit. Although work and residence may impact upon an individual's identity, they do not exhaust it. The identity of an individual is determined by much more than his or her place of work or residence. The quintessential question of a person's

57. As the applicant himself put it, in his complaint, he and his family "are living in the constant terror that the Government will take action to expel them from the country". Moreover, he has even suffered financially because his work has been severely affected. He used to travel abroad as part of his job, but he now cannot do so freely, because he cannot be sure that once out of the country he will be allowed to re-enter freely. On the other hand, it cannot be expected of the applicant's family, including his two children who are Maltese nationals, that they should abandon their country of origin and leave Malta for some other foreign country, simply because their father has been deprived of his Maltese citizenship.

58. See paragraph 90 of the judgment. In *Hendrick Winata and Son Lan li v. Australia*, Communication No 930/2000, 26 July 2001, the Human Rights Committee held that the decision to deport two parents and to compel the family to choose whether a dependent child – a citizen – either remained alone or accompanied his parents, constituted an interference with their family life.

59. See paragraph 91 of the judgment.

60. The Court has occasionally used this fallacious argument: see my separate opinions in *Biao v. Denmark* [GC], no. 38590/10, 24 May 2016, *Chiragov and Others v. Armenia* [GC], no. 13216/05, 16 June 2015, and *S.J. v. Belgium*, no. 70055/10, 19 March 2015.

identity should not be decided on the basis of a prediction of uncertain, future risks, but on the past and present-day relationship that he or she maintains with the State and its people.

23. Furthermore, nor should the assessment of any decision pertaining to the acquisition, change, denial or revocation of citizenship depend on the status of the family life of the person in question. Whilst practically interrelated, these are, in essence, two very different legal issues, which should not be confused. This amalgam of essentially different issues prejudices an objective evaluation of the case.

As a matter of principle, the right to citizenship of a person without a family is worth no less protection than the right to citizenship of a person with a family.[61]

Conclusion

24. As United Nations High Commissioner for Refugees, António Guterres, formulated it, "Statelessness is a profound violation of an individual's human rights"[62]. It is high time for the Court to recognise explicitly that State citizenship belongs to the core of someone's identity, which is protected by Article 8 of the Convention. This is an autonomous Convention human right. This right to citizenship should neither be amalgamated with the right of an alien to enter, to reside or to work in a particular country, nor with the alien's right to family life. The right of States to decide who their citizens are is not absolute, since States must comply with their international human rights obligations when adopting practices or laws concerning citizenship. In this connection, three rights are of particular relevance, namely, the right to citizenship, equal protection by law and non-discrimination. In particular, any denial or deprivation of citizenship on arbitrary or discriminatory grounds will be in breach of international human rights law and the Convention.

25. In view of the above, the Maltese revocation order is at odds not only with the applicant's right to family life, but also with his Convention right to citizenship. The serious procedural shortcomings of the revocation procedure, such as the lack of any public, reasoned balancing exercise by the Minister, to weigh up the individual rights and public interests at stake, as well as the present negative consequences of his decision, show more

61. Or, in the words of the Court itself in Genovese (cited above, §§ 30 and 33): "even in the absence of family life, the denial of citizenship may raise an issue under Article 8 because of its impact on the private life of an individual, which concept is wide enough to embrace aspects of a person's social identity. While the right to citizenship is not as such a Convention right and while its denial in the present case was not such as to give rise to a violation of Article 8, the Court considers that its impact on the applicant's social identity was such as to bring it within the general scope and ambit of that Article."

62. "Global Action Plan to End Statelessness: 2014 – 2024".

than just an unfair and disproportionate decision. They reveal that the procedure for revocation of citizenship in Malta is in need of urgent reform, in order to enshrine openly the basic principle of prohibition of statelessness and to secure the necessary procedural safeguards.

STATEMENT OF DISSENT BY JUDGE ZUPANČIČ

To my regret I cannot agree with the majority that there has been no violation of Article 8 of the Convention.