

Big win for thousands of South Africans stripped of their citizenship without even knowing



The Constitutional Court of South Africa has affirmed a ruling by the Supreme Court, declaring certain sections of the Citizenship Act unconstitutional and invalid.

The order relates to section 6(1) of the Citizenship Act, which states that South Africans automatically lose their citizenship if they voluntarily obtain citizenship with another country.

Those who would like to retain their South African citizenship under these circumstances would need to apply to the Minister of Home Affairs to do so.

However, the existence of these laws is in direct contradiction to rights enshrined in Section 20 of the Constitution which states that no South African may be stripped of their South African citizenship.

Removing the right to citizenship would also violate other rights enshrined in the Constitution, including the right to vote, the right to reside in South Africa, the right to stand for public office and the right to choose any occupation.

The Democratic Alliance (DA) launched court action a decade ago, challenging the provisions of the Act on behalf of thousands of citizens who had lost their South African citizenship without even knowing.

The party noted that citizenship was stripped without prior notice, without justifiable reasons and without any person making a decision to do so.

The first challenge to the Act was dismissed by the High Court on the basis that the provisions had a legitimate government purpose, and that the loss of citizenship wasn't the same as being deprived of citizenship.

The party was granted leave to appeal.

In June 2023, the Supreme Court of Appeal sided with the party, ruling that the section was irrational and inconsistent with the Constitution and thus invalid.

While the Department of Home Affairs agreed to abide by the decision, it argued that the state should still have the power to regulate the process by which citizenship is acquired and lost.

Utterly irrational



The Constitutional Court upheld the Supreme Court's ruling.

The ConCourt said that an individual's right to identity and to participate in their community and country is paramount, and that losing citizenship under the Act had severe consequences—in effect, deeming someone a foreigner.

It said that there is no legitimate government purpose in automatically stripping someone of their citizenship under the circumstances in the Act and that the rationale for even having it in the laws remains unexplained.

The distinction between losing one's citizenship and being deprived of citizenship in this case was semantics, with the legal result being the same.

The court added that the Act provides no criteria on how the Minister should exercise their discretion in allowing someone to keep their citizenship, nor gives any boundaries.

"The legislature argued that dual citizenship is permissible, subject only to ministerial discretion. This reasoning is unclear and utterly irrational," the court said.

"There is no conceivable purpose nor rational connection why a South African should automatically lose their citizenship by acquiring the citizenship of another country, particularly with the increasing cross-border migration of people."

The court said that the provision is constitutionally invalid absent any check on the minister's "unfettered power" to decide who loses or retains citizenship.

The DA said that the ruling will be a major victory for nearly 2 million South Africans living abroad, many of whom may not have even known their citizenship was stripped.

"So many South African citizens had the rug pulled out from under them when they suddenly discovered they had lost their citizenship, without warning," it said.

"It is equally important for those living in South Africa who have acquired a second nationality."