

Trends in nationality law in Europe

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Focus on six trends

- Acquisition of nationality at birth:
Increasing equal treatment of men and women and more ius soli elements
- Changed attitude towards multiple nationality
- Developments in respect of conditions for naturalisation
- Loss of nationality due to residence abroad
- Deprivation of nationality in case of

Equal treatment of men and woman

- In the far past women followed nationality status of their husband; children acquired nationality father
- 1957 Convention □ no automatic change of nationality upon marriage, but women should have facilitated access to nationality husband
- 1979 CEDAW □ no change of nationality upon marriage/ equal rights to transmit nationality to children

Equal treatment for men and women

- Transitory provisions in favour of children of a mother who was a national and a foreign father:
- Retroactivity of the possibility of transmission of nationality by the mother □ how far back?
- Option rights □ how long □ NL 3 years 1985-1988
- NL: Re-introduction option rights for (grand)children of NL mother in 2010 without limitation in time

Not always transmission of
nationality to children: some
exceptions abroad

Exceptions in case of birth abroad

(*Belgium* (1985), *Germany* (2000), Ireland,
Portugal, UK or in case of nationality-
mixed marriages (see Croatia, Macedonia,
Montenegro, Serbia, *Slovenia*, until 2013
Latvia)

Art. 6 ECN allows these exceptions.

However they should not lead to
statelessness (Principle 1 of

Exceptions on ius sanguinis
in case of birth out of
wedlock

**Transmission of nationality of
father: Increasing equal equal
treatment of children born within
or out of wedlock** (Luxembourg
1987; Germany 1993; Iceland 1998;
Denmark 1999/2014; Sweden
2001/2015; UK 2002; Norway 2006;
Austria 2014). Problematic still:
Finland, Malta, Turkey
Netherlands 2003 (abolishment
nationality consequences of

Influence of ECHR

- Decision ECtHR *Genovese v Malta*
11-10-11
- Discrimination of children born out of wedlock in respect of access to nationality father violates Art. 14 juncto Art. 8 ECHR
- Citizenship is as part of the social identity “private life” protected by Art. 8 ECHR
- Applies *a fortiori* for loss of nationality

Increasingly introduction of *ius soli* elements

- Germany: child born in GER to parent residing there since 8 years □ obligation to make choice between age of 18 and 23, but on this requirement many exceptions since December 2014
- In Italy bill pending on introduction of ***ius soli temporato*** or ***ius culturae***

Attitude towards multiple nationality

- Council of Europe very active in field of nationality law: already in 1949 □ desirability of system of multiple nationalities
- **1963 Convention** on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality
- **1993 Second Protocol** to 1963 Convention
- **1997 European Convention** on

Art. 1 (1) 1963 Convention

- Nationals of the Contracting Parties who are of full age and **who acquire of their own free will**, by means of naturalisation, option or recovery, the nationality of another Party shall lose their former nationality. They shall not be authorised to retain their former nationality.

1963 Convention

- Austria 1969
- Belgium 1991
- Denmark 1972
- France 1965
- Germany 1969
- Italy 1968
- Luxemburg 1971
- Netherlands 1985
- Norway 1969
- Sweden 1969
- [Ireland; Spain; UK only chapter II on military service]
- Therefore ratification by 13 States, **10 States** are/were bound by chapter I

Equal treatment men and women

Realization of **equal treatment** in nationality law took place in most countries in the 70's and 80's

Consequence: Considerable more cases of multiple nationality *iure sanguinis* due to introduction *ius sanguinis a matre et a patre*

Question: why avoid multiple nationality in case of voluntary acquisition of foreign nationality, but accept (or even stimulate) multiple nationality in case of birth as child of parents with different nationalities

Second protocol 1993

- Allows exceptions on main rule of 1963 Convention:
- a) if a person acquires the nationality of another Contracting Party on whose territory either he was born and is resident, or has been ordinarily resident for a period of time beginning before the age of 18
- b) if a person acquires the nationality of his spouse
- c) if a minor whose parents are nationals of different Contracting Parties acquires the nationality of one of his parents

Second protocol 1993

- Ratified by France, Italy, Netherlands
- Between these countries Art. 1 1963 Convention still applied, but the States involved may provide that nationality is not lost in the cases covered by the Second Protocol
- France denounced protocol 2008/ March 2009
- Italy in 2009/ June 2010 ☐ only
Netherlands still bound

1963 Convention

- **Austria** (reservation: authorisation to retain nationality possible, if the other State gives consent)
- Belgium denounced convention in 2007
- **Denmark** □ **denunciation on 25 August 2014**
- *France* 2nd prot./ no loss of nationality in Cc: denunciation 2008/ 5 March 2009
- Germany denunciation in 2001
- *Italy* 2nd prot./ no loss of nationality in Lc: denunciation 2009/ 4 June 2010
- Luxemburg denunciation convention 2008/ 10 July 2009
- **Netherlands** 2nd prot./ exceptions loss of nationality
- **Norway** □ **denunciation discussion 2015**
- Sweden denunciation in 2001

- Compare **Haydn: Farewell symphony**

1963 Convention

- Situation 1963 Convention illustrates an important trend: **increasing acceptance of cases of multiple nationality**
- Only one country (Norway) is bound without exceptions
- Two other contracting States provide for exceptions: Austria and Netherlands

1997 European Convention on nationality

- Codification of customary international law regarding nationality: art. 3-5
- Some rules on acquisition of nationality art. 6
- Exhaustive list of grounds for loss of nationality art. 7/ 8
- **Neutral regarding multiple nationality**

Trends conditions for naturalisation

- **Length residence requirement:**
- **In 10 MS: 5 years BE, NL (-> 7?), UK**
- **In 1 MS: 6 years**
- **In 4 MS: 7 years**
- **In 7 MS: 8 years DE, PO (3 perm res), RO, SLK**
- **In 1 MS: 9 years**
- **In 5 MS: 10 years IT, SLV**
- **N.B.: ECN max 10 years**

Trends conditions for naturalisation

- **Residence requirements: Huge differences**
- **Moreover differences regarding requiring:**
 - **Habitual residence**
 - **Lawful residence (at moment of application or whole period)**
 - **Permanent residence (at moment of application or whole period)**

Trends conditions for naturalisation

- **Attitude multiple nationality** □ **renunciation requirement**
- **Exist in 9 MS, but in some of them many exceptions**
- **Abolishment of renunciation of previous nationality as condition for naturalisation:**
Finland 2003; Italy 1992/2004; Sweden 2001.
Making more exceptions on this condition:
Germany 2000/2007; Netherlands 2003 .Contra this trend: proposals government Netherlands 2012!

Trends conditions for naturalisation

Introduction (more) severe

language tests: Austria

1998/2006, Baltic countries,

Luxembourg 2001, Denmark 2002,

UK 2002/2005, Netherlands

2003/2011 (double language tests

in West Indies!!!), France 2006,

Norway 2006, Romania 2007

Introduction general integration

tests: Denmark 2002, France 2003,

UK 2002/2005; Netherlands 2003,

Austria 2006

Trends conditions for naturalisation

- **Challenges on more “technical” level**
- ***Regulation of proof of identity as condition for naturalisation***

Loss of nationality due to residence abroad

- Mr Jan Smits was born in the Philippines in 1988, where his father, a Belgian citizen, worked
- Jan also obtained Filipino citizenship from his mother, a Filipino citizen
- The family moved back to Belgium when Jan was 3 y. old

Loss of nationality due to residence abroad

- After graduating from high school in Belgium in 2006, Jan went to university in England (2006-2010)
- He started working in Germany right after graduation
- 2016 : Mr Smits loses Belgian citizenship
 - Born outside Belgium
 - Having resided outside Belgium between age of 18 and 28 y.
 - Possesses another nationality

Loss of nationality due to residence abroad

- Loss following long term residence abroad : 13 European MS
- Belgium, Cyprus, Denmark, Finland, France, Iceland, Ireland, Malta, Netherlands, Norway, Spain, Sweden Switzerland

Loss of nationality due to residence abroad

- **Differences**

- *How* does loss operate (lapse / withdrawal)
- *When* does loss operate
- Personal scope (persons born abroad / naturalized / all citizens)
- Actions which may be undertaken to prevent loss of citizenship

Loss of nationality due to residence abroad

- **Common ground**
 - Statelessness as a *barrier* to loss
 - Possibility to *prevent loss* - diversity
 - Simple request to prevent loss / other requirements
 - Right to retain nationality / discretion
- Difficult issue : information to persons concerned?

Loss of nationality due to residence abroad

- **Assessment**
- 1) Ground of loss tolerated by **international law**
 - ECN Art. 7 : “lack of a genuine link between State Party and a national habitually residing abroad”
 - Art. 7(3), (4) & (5) 1961 Convention on Reduction of Statelessness : loss of nationality on account of residence abroad

Loss of nationality due to residence abroad

- 2) Compatibility with ***European law***?
- Loss of citizenship when residing in another MS could be a limitation of free movement of persons
- Model to be followed : *Dutch caveat* for residency in other MS →
 - No application to citizens living in other MS (art. 15 (1)(c))
 - Period of 10 y. of residence abroad interrupted if residence for more than one year in EU MS

Loss of nationality due to residence abroad

- **3) Lapse vs withdrawal**
- Lapse → do nationals living abroad receive sufficient information on risk of loss?

Deprivation of nationality in case of jihadist terrorism

- Link between terrorism and nationality (deprivation) → different reactions in MS

Deprivation of nationality in case of jihadist terrorism

- 1) Many countries :
 - No new provision adopted
 - Possibly dealt with using classic provisions →
 - Voluntary military service in another State / foreign military force
 - Seriously prejudicial behavior – sentenced because of serious crime

Deprivation of nationality in case of jihadist terrorism

- 2) Other countries : existing provision strengthened – *e.g.* UK
 - *Before 2015* : possibility for Secretary of State to withdraw citizenship if this is conducive to public good – linked to conduct seriously prejudicial to the vital interests of the UK – except if leads to statelessness
 - 2015: introduction of possibility to deprive naturalised citizens of citizenship if reasonable ground that the person is able to become a citizen of another state

Deprivation of nationality in case of jihadist terrorism

- 2) Other countries : existing provision strengthened – *e.g.* Belgium
 - *Before 2015* : deprivation possible if found guilty of terrorist crime – but limited to most serious terrorist crimes; no deprivation if person has been Belgian national for 10 years
 - *Since 2015*: deprivation possible if found guilty of any terrorist offense – no limitation in time

Deprivation of nationality in case of jihadist terrorism

- 3) Other countries : new provisions introduced – e.g. Austria – new provision in 2014 - § 33(2)
Staatsbürgerschaftsgesetz:
- “Einem Staatsbürger, der freiwillig für eine organisierte bewaffnete Gruppe aktiv an Kampfhandlungen im Ausland im Rahmen eines bewaffneten Konfliktes teilnimmt, ist die Staatsbürgerschaft zu entziehen, wenn er dadurch nicht staatenlos wird”

Deprivation of nationality in case of jihadist terrorism

- 4) Other countries : debate – without adoption of new provisions – e.g.
 - France : *'la déchéance pour tous'*
 - Netherlands : bill under consideration in Parliament (since 2014)

Deprivation of nationality in case of jihadist terrorism

- **Questions**

- 1) Efficiency as counter-terrorism mechanism / protection of national safety ?
 - No research to date
 - Potential fall out : 'export' of risk

Deprivation of nationality in case of jihadist terrorism

- 2) Deprivation as *preventive* measure (before any criminal conviction – *e.g.* Austria, Australia, UK, Canada, etc.): questionable in light of international standards
 - Risk of arbitrary deprivation
 - Weaker judicial guarantees – person concerned is already deprived (no access to territory etc.)

Deprivation of nationality in case of jihadist terrorism

- 3) Issue of *equality*
 - *e.g.* UK : new possibility only for “naturalized” citizens; Belgium : no deprivation for citizens ‘at birth’; in general : deprivation only for binationals, but number of binationals may not renounce one of their nationalities
 - Equality and nationality : some categories are comparable, proportionality not always met

Deprivation of nationality in case of jihadist terrorism

- 4) Weak judicial control:
 - Judicial control only *ex post*
 - If *ex ante* judicial control : often no suspensive effect of appeal; same judge ruling on criminal sanction and deprivation

Protection of legitimate expectations

- Mr Koolhaas was born in the Netherlands in 1937
- He migrated to the US in 1957 and married an American citizen in 1961
- In 1962 he obtained US citizenship, but never disclosed this fact to the Dutch authorities
- His 2 children, born in the US in 1963 and 1965, always possessed US and Dutch passports

Protection of legitimate expectations

- Mr Koolhaas dies in 2007
- In dealing with his estate, one of the children reveals to Dutch embassy in 2009 that the late Mr Koolhaas acquired US citizenship in 1962
- Dutch embassy is of the opinion that Mr Koolhaas lost Dutch nationality in 1962 and could not transmit it to his 2 children

Protection of legitimate expectations

- How can the 2 'children' be protected?
- Distinction between:
 - Protection through nationality specific provisions
 - Protection outside nationality law

Protection of legitimate expectations

- 1) Protection through nationality specific provisions
- **First model** : civil law → '*possession d'état*'
- *e.g.* France (art. 21-13 French Civil Code) : “Persons who have enjoyed in a constant manner the possession of the status of French nationality for ten years ... may also claim the French nationality by such a signed declaration...”

Protection of legitimate expectations

- Similar provisions in : Luxembourg (art. 4); Spain (art. 18); Germany (section 3 StatsGz); Belgium (until 2013)
- *Features*
 - Being treated as national by authorities (*e.g.* passport)
 - During a certain period (10, 12 years)
 - Good faith
 - Sometimes : registration as national

Protection of legitimate expectations

- ***Second model*** : administrative law
→ acquisition as a compensation for administrative mistake
- *e.g.* Czech Republic : acquisition of Czech citizenship for a person wrongly issued a citizenship certificate if in good faith and certificate not repealed for 10 y.

Protection of legitimate expectations

- Similar provisions in : Estonia, Finland, Switzerland
- Effects may be different:
 - Facilitated acquisition (Finland, Switzerland)
 - Automatic grant (Estonia)

Protection of legitimate expectations

- 2) Protection through general mechanisms
- General principle of protection of legitimate expectations?

Protection of legitimate expectations

- General principle of protection of legitimate expectations?
 - National legal orders
 - EU law:
 - Recognition of the principle of protection of legitimate expectations by ECJ very early on
 - Principle of protection of legitimate expectations as to maintenance of status of EU citizen (AG Maduro – Rottmann)

Protection of legitimate expectations

- Questions:
 - *When* are expectations legitimate? Number of years? Good faith? Descendant?
 - How does protection work?
 - Facilitated naturalization?
 - Automatic grant?

Important sites

- <http://eudo-citizenship.eu/>
- <http://www.refworld.org/statelessness.html>

Follow recent developments!

- Citizenship News on EUDO-citizenship
- Summary Conclusions of UNHCR Expert Conferences in 2010/2013
 - Prato on definition statelessness/ de facto statelessness
 - Geneva on statelessness determination procedures
 - Dakar and Tunis Conclusions on interpretation of 1961 Convention

Follow recent developments!

- On the basis of these conclusions UNHCR published in 2012 Guidelines 1-4
- Guidelines 5 (on interpretation loss provisions in 1961 Convention are forthcoming in 2016)
- Results ILEC-project 2013-2015 See
- <http://www.ilecproject.eu/>