



Survey on Rules on Loss of Nationality in International Treaties and Case Law

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Abstract

This paper offers a picture of the obligations existing under international and European law in respect of the loss of nationality. It describes international instruments including obligations in this field with direct relevancy for the loss of nationality of Member States of the European Union, but also obligations regarding loss of nationality in regional non-European treaties. Attention is given to two important judicial decisions of the European Court of Justice (*Janko Rottmann*) and the European Court of Human Rights (*Genovese v Malta*) regarding nationality. Special attention is devoted to Article 15 of the Universal Declaration of Human Rights, which forbids the arbitrary deprivation of nationality. A survey is provided of possible sub-principles that can be derived from this rule. Finally, some observations are made on the burden of proof in cases of loss of nationality.

This paper was prepared in the context of the ILEC project (Involuntary Loss of European Citizenship: Exchanging Knowledge and Identifying Guidelines for Europe), which aims to establish a framework for debate on international norms on involuntary loss of nationality. For more information visit: www.ilecproject.eu



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1. Introduction

1.1 Purpose and structure of this paper

The purpose of this paper is to offer a picture of the obligations existing under international and European law in respect of the loss of nationality. First, international instruments including obligations in this field will be described, insofar as they are directly relevant for the loss of nationality of Member States of the European Union (Section 2).¹ Second, obligations regarding loss of nationality in regional non-European treaties will be briefly listed, because they may serve as sources of inspiration for Europe (Section 3). In Sections 4 and 5, attention is given to two important judicial decisions of the European Court of Justice (*Janko Rottmann*) and the European Court of Human Rights (*Genovese v Malta*) regarding nationality.

One of the most important rules of international law regarding loss of nationality is enshrined in Article 15 of the Universal Declaration of Human Rights, which forbids the arbitrary deprivation of nationality. Although the Universal Declaration is not a binding instrument, we can observe that the rule forbidding arbitrary deprivation is repeated in several other international treaties and instruments. It is therefore appropriate to elaborate on possible sub-principles that can be derived from the message of Article 15 of the Universal Declaration; this will happen in Section 6. Finally, in Section 7, some remarks will be made on the burden of proof in cases of loss of nationality.

1.2 Some terminological and conceptual observations on loss and deprivation of nationality

Some terminological and conceptual remarks are necessary in order to clarify the use of the expressions “loss of nationality”, “deprivation of nationality”, “quasi-loss of nationality”, “lapse of nationality” and “withdrawal of nationality”.

Article 15 of the Universal Declaration of Human Rights forbids “arbitrary deprivation”, which obviously also includes arbitrary *ex lege* loss of nationality.² However, the 1961 Convention on reduction of statelessness uses the expression “loss of nationality” for loss by operation of law (*ex lege*) and the term “deprivation” where the loss is initiated by the authorities of the State. This terminology differs again from

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¹ No attention will be paid to rules related to State Succession.

² The formulation of Article 15 is *inter alia* a reaction to the bad experiences of deprivation of nationality by the Nazi government in Germany during WW II. Therefore, one should realise that the Nazi government did deprive individual persons of their German nationality, but that most people were stripped of their German nationality by a Decree of Adolf Hitler of 25 November 1941, which provided that Jews having their habitual residence outside of Germany lose their German nationality. These people did therefore not lose German nationality by a specific act of deprivation, but actually “*ex lege*” by operation of the law (see Elfte Verordnung zum Reichsbürgergesetz of 25 November 1941, Reichsgesetzblatt I, 722). Weis 1979, p. 115, 116 also mentions that the term “deprivation” can be used in a broad sense or in a narrower sense.

the European Convention on Nationality, for example, where the term “loss” is used in a broader sense that includes loss by deprivation.

In this paper, the expression “loss of nationality” will be used in a wide sense and refers to all observations that a certain nationality is not possessed anymore.³ Loss of nationality can happen automatically by operation of law (*ex lege*); in such cases we can observe a “lapse of nationality”.⁴ But loss of nationality can also happen by an act of the competent authorities; in such cases we also can speak about “deprivation of nationality”, or “withdrawal of nationality”.⁵ A deprivation or withdrawal of nationality *can* have, but need not have, a retroactive effect.

1.3 Quasi-loss of nationality

The question has to be raised and answered of whether the rules established in international instruments restricting the loss of nationality, in particular in order to avoid statelessness, also apply if a State uses ‘alternative’ legal constructions and concludes that a person did not lose the nationality, but rather never acquired this nationality. Examples of such conclusions are a retroactive restriction of a ground for acquisition, a deprivation with retroactive effect to the moment of acquisition, an *ab initio* nullity of the acquisition, or simply the observation that the conditions for the acquisition of the nationality were never fulfilled.

A retroactive restriction of a ground for loss has to be classified as an arbitrary deprivation in the sense of, *inter alia*, Article 15 Universal Declaration of Human Rights and Article 4 European Convention on Nationality. The loss of nationality and possibly statelessness as a consequence of such retroactivity cannot be accepted.⁶

In respect of a deprivation of a nationality with retroactivity, it has to be concluded that it would be contrary to the aim and purpose of treaty provisions restricting the loss of nationality (e.g. in order to avoid causing statelessness) if a State could escape from those obligations by simply providing for a retroactive effect to the moment of acquisition. Such a juridical fiction should not influence the scope of application of those obligations.

The same conclusion should be reached in all cases where a state *ex post* observes that the conditions for acquisition were never fulfilled, whether because of an *ab initio* nullity or for other reasons. A different approach would, for example, heavily frustrate the protection of Article 5(1) of the 1961 Convention in case of recognition, legitimation, denial of paternity, annulment of a recognition, legitimation or adoption, or annulment of a marriage, because according the rules of many legal systems these constructions have a retroactive effect. In this light, it is submitted that the same approach should be followed in other cases where after a reasonable period of possession of a nationality, it is discovered that the conditions for the acquisition of nationality were not fulfilled. In the ILEC project, all cases where somebody is deemed never to have acquired a particular nationality are coined cases of quasi-loss of nationality. One of the main objects

³ Compare the definition in the Glossary of Eudo-citizenship, where “loss of nationality” is described as “*Any mode of loss of the status as national of a country (voluntarily or involuntarily, automatically or by an act by the public authorities).* The main types of loss are renunciation, withdrawal and lapse of nationality.” See: <http://eudo-citizenship.eu/databases/citizenship-glossary/glossary> (accessed on 1 July 2013). N.B. in the ILEC-project shall not extensively be dealt with “renunciation” as ground for loss of nationality, due to the fact that that mode of loss is voluntary.

⁴ Compare the definition of “automatic loss of nationality” in the Glossary of Eudo-citizenship: “*Any ex lege mode of loss of nationality, i.e. loss of nationality by an act of law that requires neither explicit expression of intent (application, declaration, making use of an option or similar modalities) by the target person or his or her legal agent to renounce nationality, nor a decision or act by a public authority.* Used synonymously with lapse of nationality.”

⁵ Compare the definition of “withdrawal of nationality” in the Glossary of Eudo-citizenship: “*Any mode of non-automatic loss of nationality based on a decision by a public authority to deprive the target person of his or her nationality. The simple issue of an official notice informing the target person of the fact that he or she has lost nationality ex lege does not count as a decision by the public authority.*”

⁶ See further remarks in Section 6.

of the project is to examine how international law and the legal systems of the Member States of the European Union deal with these cases of quasi-loss of nationality.

2. International instruments relating to the loss of nationality with relevancy for the Member States of the European Union

This section presents a survey of multilateral international instruments that include provisions with relevancy for the grounds of loss of nationality; bilateral treaties are not included in the survey. To give an impression of the geographical influence of the treaties, the number of Contracting States is indicated, as well as the number of Member States of the European Union bound by the respective instruments. Footnotes indicate which of the Member States are Contracting States.

2.1 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws with a Protocol on Statelessness (12 April 1930)⁷

The 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws was the first international treaty to enshrine general rules on the avoidance and reduction of statelessness. The Convention was initiated by the League of Nations and came into force on 1 July 1937. At the time of writing, 20 states are party to this Convention and⁸ of the Member States of the European Union, four⁹ are bound by it.¹⁰

The first six Articles of the Convention deal with some general principles of nationality law. They underpin, in particular, the principle of national autonomy in nationality matters. Article 7 concerns expatriation permits (i.e. loss of nationality on application of the person involved). Such permits should only cause the loss of the nationality of the State which issues the permit if the person involved possesses another nationality or “unless and until” he or she acquires another nationality. In case of the latter, the loss of the first nationality is conditional on the acquisition of the other nationality. Furthermore in that case, the expatriation permit shall contain a period within which the other nationality has to be acquired and shall lapse if the holder does not acquire a new nationality within that fixed period.

Several Articles address the influence of marriage on the nationality of women. Loss of nationality due to marriage with a foreigner shall be conditional on the acquisition of the nationality of the husband (Article 8). The same applies if the nationality of the husband changes during marriage. This may only cause the loss of nationality by his wife if she acquires her husband’s new nationality (Article 9). The Convention therefore allows for exceptions to the principle of unity of nationality within the family (the ‘unitary system’) if necessary for the avoidance of statelessness. This was the first step towards a system that allows married women to have a nationality of their own (‘dualist’ system).¹¹ Articles 10 and 11 also underpin this. Article 10 prescribes that the naturalisation of the husband during marriage shall not involve a change in the nationality of the wife except with her consent. Article 11 forbids an automatic recovery of the nationality lost on marriage after the dissolution of the marriage. Such recovery may only happen on the (ex-)wife’s own application. However, if she does recover it, she shall lose the nationality that she acquired by reason of the marriage.

The child of (legally) unknown parents shall have the nationality of the country of birth (Article 14). Until the contrary is proved, a foundling is presumed to have been born on the territory of the State in which it was found.

⁷ LNTS vol. 179, 89.

⁸ See <http://treaties.un.org/pages/LONViewDetails.aspx?src=LON&id=512&lang=en> (accessed 1 July 2013).

⁹ Belgium, Netherlands, Sweden and the United Kingdom.

¹⁰ Belgium excluded the application of Article 16, the Netherlands made reservations on Articles 8, 9 and 10, whereas Sweden declared that it does not accept to be bound by the provisions of the second sentence of Article 11, in the case where the wife referred to in the article, after recovering the nationality of her country of origin, fails to establish her ordinary residence in that country.

¹¹ See on the evolution from a unitary system to a dualist system: Final report on “Women’s equality and nationality in international law” of International Law Association London Conference 2000 (<http://www.unhcr.org/3dc7cccf4.html>, accessed 1 July 2013). Compare De Groot (2012c).

Countries that do not provide for the automatic acquisition of nationality to all children born on their territory must nevertheless grant citizenship to those children born on their territory to parents who have no nationality or are of unknown nationality. This obligation is weak, however, because the Convention provides that “the conditions governing the acquisition of its nationality in such cases” shall be determined by States (Article 15).

Articles 16 and 17 of the Convention prescribe that loss of nationality by legitimation, recognition or adoption by a foreigner shall be conditional on the acquisition by the child of the nationality of another State by the change in civil status.

The Protocols attached to the 1930 Convention do not deal with issues related to the loss of nationality.

2.2 Universal Declaration of Human Rights (New York, 10 December 1948)

After World War II, the Universal Declaration of Human Rights¹² (UDHR) codified “nationality” as a human right in its Article 15, which reads:

- 1) Everyone has the right to a nationality.
- 2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

The weakness of Article 15 is that it does not indicate which nationality a person may have a right to. Moreover, under which circumstances one must conclude that a deprivation is arbitrary is subject to discussion.¹³ Remarks on the latter issue will follow in Section 6 of this paper.

Furthermore, the Universal Declaration is not an international treaty and is therefore – in spite of the high moral standard – not directly binding upon the Member States of the United Nations. Nevertheless, international law scholars recognise that a number of provisions of the Universal Declaration have acquired the status of customary international law.

The principles of Article 15 have influenced treaty obligations, and the principle that everyone has a right to a nationality is repeated in numerous binding international treaties. The principle that arbitrary deprivation of nationality is forbidden also follows from Article 5(d)(iii) of the 1965 International Convention on the Elimination of all Forms of Racial Discrimination, Article 8(1) of the 1989 Convention on the Rights of the Child (no “unlawful interference”), Article 19(1)(a) and (b) the 2006 Convention on the Rights of Persons with Disabilities, as well as in regional treaties such as in Article 20(3) of the 1969 American Convention on Human Rights, Article 24 of the 1995 Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms, Article 4(c) of the European Convention on Nationality, Article 29(1) of the 2004 Arab Charter on Human Rights, and Article 18 of the 2012 ASEAN Declaration of Human Rights.

2.3 Convention relating to the Status of Stateless Persons (New York, 28 September 1954)¹⁴

In 1954, a UN Convention relating to the Status of Stateless Persons was opened for signature. The aim of the Convention is to guarantee minimum rights for stateless persons. It was originally intended as a Protocol to the 1951 Convention relating to the Status of Refugees, but was deferred for independent consideration as a standalone treaty, given the unique status of stateless persons.¹⁵ The 1954 Convention’s most significant contribution is the definition of the term “stateless person” in Article 1(1) of this Convention:

¹² Resolution 217 A (III) of 10 December 1948 adopted by the General Assembly of the United Nations.

¹³ For a general overview of these issues see UN Human Rights Council, *Human rights and arbitrary deprivation of nationality: report of the Secretary-General*, 14 December 2009, A/HRC/13/34, available at: <http://www.unhcr.org/refworld/docid/4b83a9cb2.html> (accessed 1 July 2013). On the arbitrary interpretation of loss provisions, compare De Groot (2012d), Inleiding, Nr. 189 (p. 225-228).

¹⁴ UNTS 360, 130. See Goodwin-Gill, Introduction to the Convention relating to the status of stateless persons, United Nations Audio visual Library of International Law, available on: http://untreaty.un.org/cod/avl/pdf/ha/cssp/cssp_e.pdf (accessed 1 July 2013).

¹⁵ UNTS 189, 137.

For the purpose of this Convention, the term “stateless person” means a person who is not considered as a national by any State under the operation of its law.

This universal definition of who qualifies as a “stateless person” is accepted as customary international law and is also relevant for the scope of application of, for example, the 1961 Convention on the Reduction of Statelessness and the 1997 European Convention on Nationality. Article 1(2) of the 1954 Convention excludes some categories of persons from the personal scope of the Convention.¹⁶ However, these exclusions are not relevant if the definition of statelessness provided by the 1954 Convention is used outside of the scope of that Convention.

The 1954 Convention contains only one provision that regulates States’ nationality laws. Article 32 prescribes the Contracting States to “as far as possible facilitate the assimilation and naturalisation of stateless persons. They shall in particular make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings.”¹⁷ The Convention does not include any rule on loss of nationality.

The 1954 Convention entered into force on 6 June 1960 and is binding for 71 States parties at the time of writing.¹⁸ Of the Member States of the European Union, 24 are bound by this Convention.¹⁹

2.4 Convention on the Nationality of Married Women (New York, 20 February 1957)²⁰

As mentioned above, the 1930 Hague Convention still accepted the unequal treatment of men and women in nationality law as a matter of fact, but provided for rules which try to avoid this unequal treatment creating statelessness. By contrast, the 1933 Montevideo Convention prescribed complete equality in nationality matters for Contracting States parties in the Americas. The Convention on the Nationality of Married Women initiated by the United Nations and concluded in New York in 1957 took an intermediate position. Article 1 of this Convention provided that “neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife.” Article 2 underpins that “that neither the voluntary acquisition of the nationality of another State nor the renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the wife of such national.”

The 1957 New York Convention entered into force one year after it was opened for signature, on 11 August 1958. To date, 80 States are Contracting Parties. Of the Member States of the European Union, 14 are bound by

¹⁶ Article 1(2) read as follows:

2. This Convention shall not apply:

- (i) To persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance;
- (ii) To persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country;
- (iii) To persons with respect to whom there are serious reasons for considering that:
 - (a) They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;
 - (b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country;
 - (c) They have been guilty of acts contrary to the purposes and principles of the United Nations.

¹⁷ A similar rule is given by Art. 34 of the 1951 Convention relating to the status of refugees.

¹⁸ See <http://treaties.un.org/doc/Publication/MTDGS/Volume%20I/Chapter%20V/V-3.en.pdf> (accessed 1 July 2013).

¹⁹ Only Cyprus, Estonia, Malta and Poland did not accede to this Convention.

²⁰ UNTS 309, 65 (http://treaties.un.org/pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg_no=XVI-2&chapter=16&Temp=mtdsg3&lang=en).

this Convention.²¹ Of note, the Netherlands denounced the Convention in 1992 because it contains some rules that conflict with the complete equal treatment of men and women in nationality law as prescribed by the 1979 Convention on the Elimination of All Forms of Discrimination Against Women.²² Luxemburg and the United Kingdom did the same in 2007 and 1982, respectively.

2.5 Convention on the Reduction of Statelessness²³

In order to implement the right to a nationality as enshrined in Article 15 of the Universal Declaration of Human Rights, a resolution of the UN Economic and Social Council (ECOSOC) adopted in August 1950 instructed the International Law Commission to begin work on a draft convention (or conventions) for the elimination of statelessness.²⁴ The Convention on the Reduction of Statelessness was finally adopted on 30 August 1961 and entered into force on 13 December 1975, two years after the sixth accession (see Article 18(1)). The Convention is binding for 51 States. Of the Member States of the European Union, 16 are bound by this Convention.^{25,26}

The object and purpose of the 1961 Convention is not the complete elimination of statelessness, but the reduction of cases of statelessness at birth and of the causes of statelessness by the automatic (*ex lege*) loss of nationality later in life or through deprivation of nationality.

It was an important development of international law that the 1961 Convention gives a child who would otherwise be stateless the right to acquire the nationality of its country of birth through one of two means. First, a State may grant its nationality to otherwise stateless children born in its territory automatically by operation of law (*ex lege*). Second, a State may grant nationality to otherwise stateless persons born in their territory later upon application. The granting of nationality on application may, according to Article 1(2), be subject to one or more of four conditions.²⁷

The Convention further includes provisions in favour of foundlings (Article 2), on acquisition of the nationality of the mother by descent²⁸ if the child was born in her country's territory and would otherwise be stateless (Article 1(3)), on acquisition of the nationality of a parent by descent via an application procedure for individuals who do not acquire nationality of the country of their birth (Article 1(4)), and on acquisition of the nationality of a parent by descent for individuals born abroad who would otherwise be stateless (Article 4). Article 1(4) and Article 4(2) allow exceptions to their rules under some circumstances.²⁹

Loss of nationality (*ex lege*) is, in principle, prohibited by the 1961 Convention if it would cause statelessness (Articles 5-8). Two exceptions are expressly allowed, however. First, Article 7(4) of the 1961 Convention permits loss of nationality by operation of law for naturalised persons who reside abroad for a period of not less than seven consecutive years if the individual fails to declare to the appropriate authority an intention to retain the nationality. Second, the 1961 Convention allows for the loss of nationality by

²¹ Austria, Bulgaria, Cyprus, Czech Republic, Denmark, Finland, Germany, Hungary, Latvia, Poland, Romania, Slovakia, Slovenia and Sweden.

²² See De Groot (2012c).

²³ UNTS 989, 1759 (http://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=V-4&chapter=5&lang=en).

²⁴ Resolution 319, B III.

²⁵ Austria, Bulgaria, Croatia, Czech republic, Denmark, Finland, Germany, Hungary, Ireland, Latvia, the Netherlands, Portugal, Romania, Slovakia, Sweden and the United Kingdom.

²⁶ Austria and Ireland made reservations. Austria retained the right to deprive a person of his nationality if such person enters, on his own free will, the military service of a foreign State. Furthermore, Austria retained the right to deprive a person of his nationality if, being in the service of a foreign State, he conducts himself in a manner seriously prejudicial to the interests or to the prestige of the Republic of Austria. Ireland retained the right to deprive a naturalised Irish citizen of his citizenship pursuant to Section 19 (1) (b) of the Irish Nationality and Citizenship Act, 1956, on grounds specified in the aforesaid paragraph.

²⁷ These conditions are discussed in greater detail in De Groot (2012a).

²⁸ *Iure sanguinis*, i.e. by *jus sanguinis*. This means literally: by right of the blood, a person acquires the nationality of a parent at birth or by the establishment of a child-parent family relationship.

²⁹ All of these provisions are discussed at greater length in De Groot (2012a).

operation of law for nationals born abroad if they do not take residence in the territory of the State before the expiration of one year after attaining the age of majority, or do not register before the expiration of that period.

Furthermore, Article 8(2)(b) of the 1961 Convention allows deprivation of nationality (i.e. not loss *ex lege*, but on the initiative of the authorities) even if a person would be rendered stateless, if “the nationality has been obtained by misrepresentation or fraud”.

Finally, Article 8(3) allows a Contracting State to retain some specific grounds for deprivation of nationality, even with statelessness as a consequence. But these grounds must exist in the nationality law of a State at the time of that State’s ratification or accession to the 1961 Convention, and a State must make a declaration upon ratification or accession in order to maintain (one or more of) these grounds for loss. The grounds for loss that can be retained, even if statelessness would be caused, are:

- a. that, inconsistently with his duty of loyalty to the Contracting State, the person
 - (i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or
 - (ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State;
- b. that the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.

Of importance is, that Article 8(4) prescribes, that a State shall not exercise a power of deprivation “except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body.”

Deprivation of nationality on racial, ethnic, religious or political grounds is absolutely forbidden (Article 9).

Article 10 deals with the avoidance of statelessness in cases of transfer of State territory.

Articles 11 and 14 provide for the establishment of a body within the United Nations with special responsibility for reducing statelessness and contain the obligation to submit disputes between States on statelessness issues to the International Court of Justice. Four resolutions were adopted in the Final Act of the 1961 Convention. The most important of these recommends that *de facto* stateless persons³⁰ should “as far as possible” be treated as *de jure* stateless persons in order to enable them to acquire an effective nationality. The other resolutions provide for guidance regarding the interpretation of certain terms used in the Convention or recommend a certain administrative practice. Resolution II deals with the interpretation of the term “naturalised person” in Article 7(4), whereas Resolution III relates to Article 7(4) and (5) and to Article 8(2)(a): States making the retention of nationality by their nationals abroad subject to a declaration or registration should take “all possible steps to ensure that such persons are informed in time of the formalities and time limits to be observed if they are to retain their nationality.”

³⁰ On this term, see paragraph 7 of the Guidelines on the Definition of “Stateless Person” in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons with reference to the *Summary Conclusions of the Expert Meeting on the Concept of Stateless Persons under International Law* (Prato, May 2010). The Prato expert meeting concluded on the following operational definition for the term: “*De facto* stateless persons are 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.

Protection in this sense refers to the right of diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance generally, including in relation to return to the State of nationality.”

2.6 Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality (Strasbourg, 6 May 1963)³¹ (inclusive Second Protocol 1993)

The core Articles of this Convention provide:

Art. 1. -1 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.

- 2. Nationals of the Contracting Parties who are minors and acquire by the same means the nationality of another Party shall also lose their former nationality if, where their national law provides for the loss of nationality in such cases, they have been duly empowered or represented. They shall not be authorised to retain their former nationality.

-3. Minor children, other than those who are or have been married, shall likewise lose their former nationality in the event of the acquisition ipso jure of the nationality of another Contracting Party upon and by reason of the naturalisation or the exercise of an option or the recovery of nationality by their father and mother. Where only one parent loses his former nationality, the law of that Contracting Party whose nationality the minor possessed shall determine from which of his parents he shall derive his nationality. In the latter case, the said law may make the loss of his nationality subject to the prior consent of the other parent or the guardian to his acquiring the new nationality.

However, without prejudice to the provisions of the law of each of the Contracting Parties concerning the recovery of nationality, the Party of which the minor referred to in the foregoing paragraph possessed the nationality may lay down special conditions on which they may recover that nationality of their own free will after attaining their majority.

- 4. In so far as concerns the loss of nationality as provided for in the present Article, the age of majority and minority and the conditions of capacity and representation shall be determined by the law of the Contracting Party whose nationality the person concerned possesses.

Art. 2. -1. A person who possesses the nationality of two or more Contracting Parties may renounce one or more of these nationalities, with the consent of the Contracting Party whose nationality he desires to renounce.

- 2. Such consent may not be withheld by the Contracting Party whose nationality a person of full age possesses ipso jure, provided that the said person has, for the past ten years, had his ordinary residence outside the territory of that Party and also provided that he has his ordinary residence in the territory of the Party whose nationality he intends to retain.

Consent may likewise not be withheld by the Contracting Party in the case of minors who fulfil the conditions stipulated in the preceding paragraph, provided that their national law allows them to give up their nationality by means of a simple declaration and provided also that they have been duly empowered or represented.

- 3. The age of majority and minority and the conditions for being empowered or represented shall be determined by the law of the Contracting Party whose nationality the person in question desires to renounce.

Art. 3. The Contracting Party whose nationality a person desires to renounce shall not require the payment of any special tax or charge in the event of such renunciation.

However, the Second Protocol to this Convention allows Contracting States to make some specific exceptions by adding three new paragraphs to Article 1:

- 5. Notwithstanding the provisions of paragraphs 1 and, where applicable, 2 above, where a national of a Contracting Party 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, each of these Parties may provide that he retains the nationality of origin.

- 6. Notwithstanding the provisions of paragraphs 1 and, where applicable, 2 and 5 above, in cases of marriage between nationals of different Contracting Parties, each of these Parties may provide that the spouse, who acquires of his or her own free will the nationality of the other spouse, retains the nationality of

³¹ UNTS vol. 634, 221.

origin.

- 7. Notwithstanding the provisions of paragraph 2 above, where applicable, when a national of a Contracting Party who is a minor and whose parents are nationals of different Contracting Parties acquires the nationality of one of his parents, each of these Parties may provide that he retains the nationality of origin."

Of the Member States of the European Union, three (Austria,³² Denmark and the Netherlands) are bound by the nationality part this Convention.³³ Originally, Belgium, France, Germany, Italy, Luxemburg and Sweden were also Contracting Parties, but these countries denounced either the whole Convention or the nationality chapter of the Convention. The Second Protocol was previously binding for France, Italy and the Netherlands, but France and Italy denounced the Protocol together with the nationality part of the Convention in 2008 and 2009, respectively.³⁴ The Second Protocol is now only relevant for the Netherlands.

2.7 International Convention on the Elimination of all Forms of Racial Discrimination (New York, 21 December 1965)³⁵

The International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) was opened for signature in 1965.³⁶ At the time of writing, 176 States are bound by the Convention. All of the Member States of the European Union are bound by this Convention.

Article 5 of this Convention obliges the States Parties "to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of" a number of enumerated rights, including "the right to nationality" as set forth in Article 5(d)(iii). The ICERD therefore prohibits racial discrimination in law and practice with regard to the acquisition, loss and deprivation of nationality.

2.8 International Covenant on Civil and Political Rights (New York, 16 December 1966)³⁷

The International Covenant on Civil and Political Rights (ICCPR) was concluded in New York in 1966. At the time of writing, 167 countries, including all Member States of the European Union, are bound by this Convention.³⁸

Article 24(3) of the ICCPR guarantees that "[e]very child has the right to acquire a nationality."

The ICCPR, however, does not indicate to which State a child may claim his or her right to nationality. Moreover, Article 24(3) does not specify that a child has the right to acquire a nationality at birth; it only guarantees a "right to acquire a nationality" (in the French language version, "*droit d'acquérir une nationalité*"). In this respect, the provisions of the 1961 Convention are considerably more concrete.³⁹ The ICCPR does not include any rule on loss or deprivation of nationality. However, the message of Article 24(3) has to be kept in mind if any loss provision would lead to statelessness of a child.

³² Austria reserved the right to allow any of its nationals to retain Austrian nationality if a Contracting Party for whose nationality a national applies gives its prior consent thereto.

³³ <http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=043&CM=1&DF=27/02/2013&CL=ENG>.

³⁴ See De Groot and Schneider (2006); De Groot and Vink (2008), pp. 24-27.

³⁵ UNTS 660, 195.

³⁶ The Convention was adopted by the General Assembly of the UN in resolution 2106 (XX) of 21 December 1965.

³⁷ UNTS 999, 171.

³⁸ http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en (accessed 1 July 2013).

³⁹ On Art. 24(3) ICCPR, see De Groot (2012a).

2.9 European Convention on the Adoption of Children (Strasbourg, 24 April 1967)⁴⁰ and European Convention on the Adoption of Children (revised) (Strasbourg, 27 November 2008)

Article 11(2) of the European Convention on the Adoption of Children underpins:

“ 2. A loss of nationality which could result from an adoption shall be conditional upon possession or acquisition of another nationality.”

The same rule is enshrined in Article 12(2) of the European Convention on the Adoption of Children (Strasbourg, 27 November 2008) (CETS No. 202).⁴¹

14 Member States of the European Union are bound by the 1967 Adoption Convention,⁴² whereas five Member States are Contracting Parties to the 2006 Adoption Convention.⁴³

2.10 Convention on the Elimination of all Forms of Discrimination against Women (New York, 18 December 1979)⁴⁴

Of paramount importance for the equal treatment of men and women – also in nationality law – is the 1979 Convention on the Elimination of all Forms of Discrimination of Women (CEDAW).⁴⁵ At the time of writing, 187 States are bound by CEDAW.⁴⁶ All Member States of the European Union are bound by this Convention.

CEDAW Article 9 prescribes:

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure, in particular, that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

The second sentence of Article 9(1) repeats, albeit with slightly different wording, the language of the 1957 Convention on the Nationality of Married Women and is therefore not new. The significant contribution of CEDAW Article 9(2) is that it prescribes women equal rights as men with respect to the right to transmit nationality to their children.

As a consequence of Article 9(2), a State may not provide for different rules regarding the loss of nationality by children depending on whether their father or mother loses a nationality.⁴⁷

⁴⁰ UNTS 634, 255 (<http://www.conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=058&CM=7&DF=27/02/2013&CL=ENG&VL=1>).

⁴¹ CETS No. 202 (<http://www.conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=202&CM=7&DF=27/02/2013&CL=ENG>).

⁴² Austria, Czech Republic, Denmark, Germany, Greece, Ireland, Italy, Latvia, Malta, Poland, Portugal, Romania, Sweden and the United Kingdom.

⁴³ Denmark, Finland, Netherlands, Romania and Spain.

⁴⁴ UNTS 660, 195.

⁴⁵ On this Convention, see De Groot (2012c).

⁴⁶ http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (accessed 1 July 2013).

⁴⁷ *Iure sanguinis*, either *a patre* or *a matre*. See also the judgment of the European Court of Human Rights 11 October 2011 in *re Genovese v Malta*, Appl. 53124/09, where the Court decided that differential treatment in respect of the acquisition of the nationality of a parent of children of a Maltese father and children of a Maltese mother violates article 8 in conjunction with article 14 of the European Convention of Human Rights.

2.11 Convention on the Rights of the Child (New York, 20 November 1989)⁴⁸

Articles 7 and 8 of the 1989 Convention on the Rights of the Child (CRC) render the obligations set forth in ICCPR Article 24(3) slightly more concrete. At the time of writing, all UN Members States, with the exception of the United States and Somalia (i.e. 194 countries), are bound by the CRC, making it one of the most universally ratified Conventions. All Member States of the European Union are party to the CRC.⁴⁹

The relevant provisions of the CRC read as follows:

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.”

Article 7(1) neither indicates to which nationality a child may have a right, nor guarantees that the nationality is acquired at birth.⁵⁰ Rather, Article 7(1) follows the wording of ICCPR Article 24(3) and not that of Principle 3 of the UN Declaration of the Rights of the Child adopted in 1959⁵¹, which states that “the child shall be entitled *from his birth* (...) to a nationality” (emphasis added).⁵²

It is remarkable that Article 8(1) forbids “unlawful interference” (in French, “*ingérance illegal*”) and Article 8(2) speaks of “illegally deprived” (in French, “*illégalement*”). However, it is obvious that each “unlawful interference” that causes the loss of nationality by the child has to be classified as “illegal deprivation” under Article 8(2). Consequently, in such cases the loss of nationality should be deemed not to have taken place or the State should provide for the recovery of nationality on application without any further condition. It has to be underscored that deprivation in the sense of Article 8(2) does not only mean deprivation by a specific act of the authorities, but includes also an *ex lege* loss as a consequence of another act, which is classified as unlawful under Article 8(1).

2.12 European Convention on Nationality (Strasbourg, 6 November 1997)⁵³

In Europe, the most important and comprehensive Convention on nationality matters is the 1997 European Convention on Nationality (ECN). To date, 20 countries are bound by this Convention. Of the Member States of the European Union, 13 are bound by this Convention.⁵⁴

⁴⁸ UNTS 1577, 3.

⁴⁹ http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (accessed 1 July 2013).

⁵⁰ Of the Contracting States to the 1961 Convention, Tunisia made the following reservation “The Government of the Republic of Tunisia considers that Article 7 of the Convention cannot be interpreted as prohibiting implementation of the provision of national legislation relating to nationality and, in particular, to cases in which it is forfeited.”

⁵¹ <http://www.un.org/cyberschoolbus/humanrights/resources/child.asp> (accessed 1 July 2013).

⁵² For more details, see De Groot (2012a).

⁵³ CETS No. 166.

⁵⁴ Austria, Bulgaria, Czech Republic, Denmark, Finland, Germany, Hungary, Netherlands, Portugal, Romania, Slovakia and Sweden (<http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=166&CM=1&DF=07/02/2012&CL=ENG>) (accessed 1 July 2013).

First of all, Articles 4(a)–(c) of the European Convention on Nationality repeat the message of Article 15 UDHR as follows:

Article 4 – Principles

The rules on nationality of each State Party shall be based on the following principles:

- a. everyone has the right to a nationality;
- b. statelessness shall be avoided;
- c. no-one shall be arbitrarily deprived of his or her nationality; ..

Article 4(d) underpins – in line with the 1957 Convention on the nationality of married women and Article 9(1) CEDAW – that “neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse”.

Article 5 formulated two important principles related to non-discrimination:

1. The rules of a State Party on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin.
2. Each State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently.

Article 5(1) is firmly based on international law. The rule enshrined in Article 5(2) is rather innovative. However, it has to be admitted that the formulation is rather vague due to the use of the term “guided”. In that light, it is not surprising to observe that several States treat naturalised nationals different from nationals by birth, e.g. in respect to the applicable grounds for loss of nationality.

Article 6 gives some rules on the acquisition of nationality. It starts in Article 6(1)(a) with the acquisition of nationality by *ius sanguinis* : “Each State Party shall provide in its internal law for its nationality to be acquired *ex lege* by

- a) children one of whose parents possesses, at the time of the birth of these children, the nationality of that State Party, subject to any exceptions which may be provided for by its internal law as regards children born abroad. With respect to children whose parenthood is established by recognition, court order or similar procedures, each State Party may provide that the child acquires its nationality following the procedure determined by its internal law.

Article 6(1)(b) of the ECN prescribes the acquisition of nationality to “foundlings found in its territory who would otherwise be stateless.”

Article 6(2) regulates the access to nationality for otherwise stateless children in general:

Article 6 – Acquisition of Nationality

2. Each State Party shall provide in its internal law for its nationality to be acquired by children born on its territory who do not acquire at birth another nationality. Such nationality shall be granted:
 - a) at birth *ex lege*; or
 - b) subsequently to children who remained stateless, upon an application being lodged with the appropriate authority, by or on behalf of the child concerned, in the manner prescribed by the internal law of the State Party. Such an application may be made subject to the lawful and habitual residence on its territory for a period not exceeding five years immediately preceding the lodging of the application.

Article 6(4)(g) of the ECN requires the facilitation of the naturalisation of several categories of foreigners. The ECN also includes rules on the loss of nationality and on procedural issues. The fact that Articles 7 and 8 of the European Convention on Nationality provide for an exhaustive list of acceptable grounds for loss of nationality is very important. Furthermore, Article 7(3) underpins that grounds of loss may not cause statelessness except in the case of article 7(1)(b): “acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant”. This restriction considerably reduces cases of statelessness. The grounds mentioned in Article 7(4) and (5)

1961 Convention on the Reduction of Statelessness that may cause statelessness cannot do so under the European Convention on Nationality.

The following grounds for loss of nationality are acceptable under Article 7 ECN:

- a) voluntary acquisition of another nationality;
- b) acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant;
- c) voluntary service in a foreign military force;
- d) conduct seriously prejudicial to the vital interests of the State Party;
- e) lack of a genuine link between the State Party and a national habitually residing abroad;
- f) where it is established during the minority of a child that the preconditions laid down by internal law which led to the *ex lege* acquisition of the nationality of the State Party are no longer fulfilled;
- g) adoption of a child if the child acquires or possesses the foreign nationality of one or both of the adopting parents.

Article 7(2) allows States to provide “for the loss of its nationality by children whose parents lose that nationality except in cases covered by sub-paragraphs (c) and (d) of paragraph (1). However, children shall not lose that nationality if one of their parents retains it.” Article 7(3) underpins that a State “may not provide in its internal law for the loss of its nationality under paragraphs (1) and (2) of this Article if the person concerned would thereby become stateless, with the exception of the cases mentioned in paragraph (1), sub-paragraph (b) of this Article.”

Moreover, Article 8 ECN recognises the right to renounce a nationality, provided this does not cause statelessness.

The rules of Article 11 and 12 are important for both acquisition and loss decisions. Article 11 prescribes that “decisions relating to the acquisition, retention, loss, recovery or certification of its nationality [shall] contain reasons in writing.” These reasons in writing are, of course, essential in cases where one wants to challenge the decision involved. Article 12 underpins that “decisions relating to the acquisition, retention, loss, recovery or certification of its nationality [shall] be open to an administrative or judicial review in conformity with its internal law.”

Both provisions are extremely important in cases of deprivation of nationality, but also essential if one wants to challenge the observation of authorities that a nationality is automatically (*ex lege*) lost or is never acquired (quasi-loss of nationality).

It must be noted that some Contracting States made important reservations on the occasion of their accession to the European Convention on Nationality. Those reservations related to Article 7 on the acceptable grounds for loss of nationality should be mentioned here.

The most elaborated reservations were made by Austria, which retained the right to deprive a national of its nationality if:

1. he acquired the nationality more than two years ago either through naturalisation or the extension of naturalisation under the Law on Nationality of 1985 as amended;
2. neither Section 10, paragraph 4, nor Section 16, paragraph 2, nor Section 17, paragraph 4, of the Law on Nationality 1985 as amended were applied;
3. on the day of naturalisation (or extension of naturalisation) he was not a refugee as defined in the Convention of 28th July 1951 or the Protocol relating to the legal Status of Refugees of 31st January 1967; or
4. despite the acquisition of its nationality, he has retained a foreign nationality for reasons for which he is accountable.

Furthermore, Austria retained the right to deprive a national of its nationality if such a person, being in the service of a foreign State, conducts himself in a manner that is seriously prejudicial to the interests or the reputation of the Republic of Austria.

Concerning Article 7 in conjunction with Article 7, paragraph 1, lit (c), Austria retained the right to deprive a national of its nationality if such person voluntarily enters the military service of a foreign State.

Concerning Article 7 in conjunction with Article 7, paragraph 1, lit (f), Austria retained the right to deprive a national of its nationality whenever it has been ascertained that the conditions leading to the acquisition of nationality *ex lege*, as defined by its internal law, are not fulfilled any more.

Germany declared that loss of German nationality *ex lege* may, on the basis of the "option provision" under Section 29 of the Nationality Act [*Staatsangehörigkeitsgesetz-StAG*] (opting for either German or a foreign nationality upon coming of age), be effected in the case of a person having acquired German nationality by virtue of having been born within Germany (*jus soli*) in addition to a foreign nationality.

Germany also declared that loss of nationality may also occur if, upon a person's coming of age, it is established that the requirements governing acquisition of German nationality were not met. However, the German law has been modified since this reservation was made and on this point is in accordance with Article 7 ECN. Therefore, the reservation could be taken back.

Germany declared also that loss of German nationality can occur in the case of an adult being adopted.

Two Member States of the European Union – Bulgaria and Hungary – made reservations on Articles 11 and 12 ECN, which oblige States to give reasons for *inter alia* decisions on loss of nationality and to provide for judicial review of such decisions. Denmark made also a reservation on Article 12, which is practically only relevant for rejections of applications for naturalisation.

Recently, the Council of Europe adopted additional rules that should contribute to an enhanced reduction in cases of statelessness. A Committee of Experts appointed by the Secretary General worked in 2008-09 on a Recommendation on the Nationality of Children, which was adopted by the Committee of Ministers on 9 December 2009.⁵⁵ The Secretary General asked *inter alia* to pay special attention to statelessness issues.

Recommendation 2009/13 contains 23 principles,⁵⁶ several of which have relevancy for grounds for loss of nationality. Principle 10 recommends providing that the revocation or annulment of an adoption will not cause the loss of nationality acquired by this adoption if statelessness would be the consequence. Principle 15 takes an additional step by recommending that the nationality acquired by the adoption should not be lost in case of revocation or annulment if the child is lawfully and habitually resident on the territory for a period of more than five years. Principle 18 deals with the nationality position of children who were treated in good faith as nationals. After a specific period of time to be fixed by domestic law, they should not be declared as not having acquired their nationality. Finally, Principle 22 is also relevant: States should provide that children who have lost their nationality have the right to apply for recovery of it before the age of majority, or within at least three years of reaching the age of majority.

⁵⁵ The complete text of Recommendation 2009/13 can be consulted at <https://wcd.coe.int/ViewDoc.jsp?id=1563529&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>; the text of the Explanatory Memorandum can be accessed at [https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM\(2009\)163&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM(2009)163&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383) (both sites accessed 1 July 2013).

⁵⁶ On Recommendation 2009/13, see Fransman (2011), pp. 56-58 and De Groot (2011b).

2.13 Convention on the Rights of Persons with Disabilities (New York, 13 December 2006)⁵⁷

The Convention on the Rights of Persons with Disabilities includes rules on nationality in its Article 18. The Convention was opened for signature on 30 March 2007 and entered into force on 3 May 2008. In July 2012, 132 States were party to the Convention. Of the Member States of the European Union, 26 are bound by this Convention.⁵⁸ Ireland and the Netherlands signed the Convention in 2007, but have not yet acceded.

Art. 18 reads:

1. States Parties shall recognise the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:

- a) have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;
- b) are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;
- c) are free to leave any country, including their own;
- d) are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.

2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

The Convention mainly repeats principles already enshrined in other international instruments. Its relevancy would appear to be that health requirements for naturalisation are problematic in light of Article 18(1)(a).

Its relevance consists in its claim for compensation for persons with disabilities in so far as this is necessary for their fulfilment of the requirements for acquisition of nationality, in particular by naturalisation. In relation to, for instance, language requirement facilities, aid and special education may be needed and requirements that cannot be met, regardless of special facilities, must be waived.

2.14 European Convention on the Avoidance of Statelessness in Relation to State Succession (Strasbourg, 19 May 2006).⁵⁹

The European Convention on the Avoidance of Statelessness in Relation to State Succession has been ratified by six States at the time of writing. Of the Member States of the European Union, three are bound by this Convention.⁶⁰ Due to the specific purpose of this Convention in the context of State succession, a description of the rules contained in this international instrument would go beyond the scope of this paper.

⁵⁷ UNTS 2515, 3.

⁵⁸ See http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en (accessed 1 July 2013).

⁵⁹ CETS No. 200.

⁶⁰ Austria, Hungary and the Netherlands (<http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=200&CM=1&DF=07/02/2012&CL=ENG>) (accessed 1 July 2013).

3. Non-European regional instruments with relevancy for loss of nationality

3.1 Convention on the Nationality of Women (Montevideo, Uruguay, 26 December 1933)⁶¹

Equal treatment of men and women with respect to nationality rights was first prescribed by a regional treaty in the Americas. The 1933 Convention on the Nationality of Women, concluded in Montevideo, declares that “[t]here shall be no distinction based on sex as regards nationality, in their legislation or in their practice.”

This general rule of gender equality for nationality matters rendered provisions such as Articles 8 and 9 of the 1930 Hague Convention or its Protocol superfluous for States parties in the Americas.

The Convention entered into force on 29 August 1934 and remains binding for 17 States.⁶²

Another Convention on nationality issues was concluded in Montevideo on 26 December 1933. Article 6 of this Convention on Nationality⁶³ reaffirms the core rule of gender equality as regards nationality as enshrined in the 1933 Convention on the Nationality of Women.⁶⁴

3.2 American Convention on Human Rights (San José, Costa Rica, 22 November 1969)⁶⁵

The 1969 American Convention on Human Rights was the first regional instrument to reaffirm Article 15 of the UDHR’s universal promise of the right to nationality. At the time of writing, 24 countries are bound by this Convention.⁶⁶

Article 20 of the American Convention reads as follows:

1. Every person has the right to a nationality.
2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.
3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

The text of Articles 20(1) and 20(3) mirrors the language of UDHR Article 15, with slight changes.⁶⁷ Article 20(2) of the American Convention, however, guarantees the acquisition of nationality of the country of birth (*iure soli*) if a person does not have the right to another nationality.

3.3 African Charter on the Rights and Welfare of the Child (Addis Ababa (Ethiopia) 1990)⁶⁸

The African Charter on the Rights and Welfare of the Child enshrines the right to a nationality in its Article 6. The African Charter entered into force in 1999 and there are currently 43 States party to the Charter.⁶⁹ Of the Contracting States to the 1961 Convention, Benin, Chad, Lesotho, Liberia, Libya, Niger, Nigeria and Rwanda are bound by the African Charter; Swaziland and Tunisia signed the Charter, but have not yet ratified it.

⁶¹ *American Journal of International Law* 1934, Special Supplement, p. 61.

⁶² <http://www.oas.org/Juridico/english/sigs/a-33.html> (accessed 1 July 2013).

⁶³ For a survey of the Contracting States, see <http://www.oas.org/Juridico/english/sigs/a-34.html> (accessed 1 July 2013).

⁶⁴ *American Journal of International Law* 1934, Special Supplement p. 63.

⁶⁵ OAS Treaty Series No. 36, UNTS 1144, 123.

⁶⁶ <http://treaties.un.org/Pages/showDetails.aspx?objid=08000002800f10e1> (accessed 1 July 2013).

⁶⁷ The minor differences are that UDHR Article 15 claims that “everyone” has right to nationality. Compare also Article 4 European Convention on Nationality.

⁶⁸ OAU Doc. CAB/LEG/24.9/49 (1990).

⁶⁹ <http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Charter%20on%20the%20Rights%20and%20Welfare%20of%20the%20Child.pdf> (accessed 1 July 2013).

Article 6 on “Name and Nationality” reads as follows:

1. Every child shall have the right from his birth to a name.
2. Every child shall be registered immediately after birth.
3. Every child has the right to acquire a nationality.
4. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

The African Charter does not include a provision that forbids arbitrary deprivation. However, the message that every child has the right to acquire a nationality has to be kept in mind when interpreting loss provisions.

3.4 Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (Minsk, 26 May 1995)⁷⁰

The 1995 Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms guarantees in its Article 24:

1. Everyone shall have the right to citizenship.
2. No one shall be arbitrarily deprived of his citizenship or of the right to change it.

The use of the word “citizenship” instead of “nationality” is remarkable. The background of this is the fact that in the Russian language and in the Russian legal system, a difference existed between “citizenship” – which indicates the link between a person and the State – and “nationality” – which indicates the link between a person and an ethnicity.⁷¹

3.5 Arab Charter on Human Rights (22 May 2004)⁷²

In the Arab Charter on Human rights of 15 September 1994,⁷³ which never came into force, Article 24 enshrines the right to a nationality:

“No citizen shall be arbitrarily denied of his original nationality, nor denied his right to acquire another nationality without legal basis.”

This provision evidently paraphrased Article 15 Universal Declaration of Human Rights.

⁷⁰ <http://www.unhcr.org/refworld/pdfid/49997ae32c.pdf>.

⁷¹ In the Glossary on the website of the Eudo-citizenship project, the following remarks are made: “While modern international law uses the term 'nationality' to refer to the legal bond between an individual and a sovereign state, Russian domestic law uses the term 'citizenship' (grazdanstvo - гражданство). According to Russian legislation, there is striking difference between citizenship (grazdanstvo - гражданство) and nationality (national'nost' - национальность). In consequence, in the Russian context, the term 'citizenship' cannot be used as a synonym for nationality.”

The Constitution of the Russian Federation distinguishes between these two legal definitions. Thus, under Article 6 of the Russian Constitution, citizenship (grazdanstvo - гражданство) of the Russian Federation shall be acquired and terminated according to federal law; it shall be one and equal, irrespective of the grounds of acquisition (Article 6 (1); a citizen of the Russian Federation may not be deprived of his or her citizenship (grazdanstvo - гражданство) or of the right to change it (Article 6 (3). At the same time, with regard to Article 26 (1) of the Russian Constitution the term ‘nationality’ (national'nost' - национальность) is associated with the ethnicity of the person: ‘Everyone shall have the right to determine and indicate his nationality (national'nost' - национальность). No one may be forced to determine and indicate his or her nationality (national'nost' - национальность). As a result, in the Russian language, the term nationality (national'nost' - национальность) refers to individual membership in a nation (нация) as a cultural, linguistic and historic community.” (<http://eudo-citizenship.eu/databases/citizenship-glossary/terminology>, accessed on 1 July 2013). Compare also the terminological remarks made in De Groot (2012b).

⁷² <http://www1.umn.edu/humanrts/instree/loas2005.html?msource=UNWDEC19001&tr=y&auid=3337655> (accessed on 1 July 2013)

⁷³ <http://www1.umn.edu/humanrts/instree/arabcharter.html> (accessed 1 July 2013)

A new Arab Charter on Human Rights was adopted by the Council of the League of Arab States on 22 May 2004, which came into force on 15 March 2008.⁷⁴ Article 29 deals with the right to a nationality:

1. Everyone has the right to nationality. No one shall be arbitrarily or unlawfully deprived of his nationality.
2. States parties shall take such measures as they deem appropriate, in accordance with their domestic laws on nationality, to allow a child to acquire the mother's nationality, having due regard, in all cases, to the best interests of the child.
3. No one shall be denied the right to acquire another nationality, having due regard for the domestic legal procedures in his country.

3.6 Covenant on the Rights of the Child in Islam (Sana'a, Republic of Yemen, June 2005)⁷⁵

The Covenant on the Rights of the Child in Islam, adopted by the 32nd Islamic Conference of Foreign Ministers in Sana'a, Republic of Yemen in June 2005, underscores the right of the child to a nationality. Article 7 provides:

1. A child shall, from birth, have the right to a good name, to be registered by authorities concerned, to have his nationality determined and to know his/her parents, all his/her relatives and foster mother.
2. States Parties to the Covenant shall safeguard the elements of the child's identity, including his/her name, nationality, and family relations in accordance with their domestic laws and shall make every effort to resolve the issue of statelessness for any child born on their territories or to any of their citizens outside their territory.
3. The child of unknown descent or is legally assimilated to this status shall have the right to guardianship and care but without adoption. He shall have a right to a name, title and nationality.

This provision is clearly inspired by Articles 7 and 8 of the Convention on the Rights of the Child. Article 7(2) designates both the country of birth of the child and the country of nationality of a parent as the States responsible for granting nationality to reduce statelessness of children. Furthermore, the attention to the position of children whose position is legally assimilated to the status of children of unknown descent is important. The target group of Article 7(3) constitutes children whose parent(s) may be known, but who do not have a legally recognised link of parentage with a parent. They are indeed in the same vulnerable position as foundlings and are in need of protection against statelessness.

3.7 ASEAN Declaration of Human Rights (Phnom Penh, Cambodia, 18 November 2012)⁷⁶

The recently adopted ASEAN Declaration of Human Rights expressly forbids the arbitrary deprivation of nationality in its Article 18:

“Every person has the right to a nationality as prescribed by law. No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality.”

4. Case law of the ECtHR, in particular the ruling in *Genovese v Malta*⁷⁷

The *Genovese v Malta* case concerned discrimination of a child born out of wedlock in respect of the acquisition of the nationality of the father. *Genovese* was the child of a British mother and a Maltese

⁷⁴ <http://www.icnl.org/research/monitor/las.html> (accessed 1 July 2013).

⁷⁵ <http://www.unhcr.org/refworld/docid/44eaf0e4a.html> (accessed 1 July 2013).

⁷⁶ <http://www.thecambodiaherald.com/cambodia/detail/1?page=11&token=ODYwNjEzMDgzNTIzODcwMGlyNTNiZGRkZWw4ODM0>

⁷⁷ For details and a more comprehensive analysis, see De Groot (2011a), De Groot and Vonk (2011) and De Groot and Vonk (2012).

national. Although the paternity of the Maltese man was established both in Scotland and in Malta, the child was not entitled to Maltese nationality because he was born out of wedlock and not legitimised by subsequent marriage of the parents. A child born within wedlock to a Maltese father or a child born out of wedlock to a Maltese mother would have acquired Maltese nationality. This differential treatment could be qualified as discrimination in the sense of Article 14 ECHR. However, a difficulty was that Article 14 ECHR is not a stand-alone provision, but can only lead to the conclusion that the ECHR is violated in combination with the observation that a right protected under another provision is violated. Nationality is not directly protected by any other Article of the Convention.

It was argued that the non-access to the nationality of the father would constitute a violation of the family life between father and child as protected by Article 8 ECHR. However, this claim was rejected due to the fact that the father only had a very cursory relationship with the mother and refused all contact with the child.

Nevertheless, the ECtHR concluded there was a violation of Article 14, *juncto* Article 8. The Court observes that the (non-)access to the nationality of the father has an impact on the social identity of the child and, via this, on the private life of the child as protected under Article 8 ECHR.

Of course, the direct consequence of the *Genovese v Malta* ruling is that children born out of wedlock should have access to the nationality of a parent under precisely the same conditions as a child born within wedlock; if the family relationship is established, the conditions for the acquisition of nationality *iure sanguinis* should be the same as for other children.

However, it is evident that the ruling in *Genovese v Malta* also affects cases of loss of nationality. A loss of nationality has perhaps an even greater impact on the social identity of a person. This implies of course that grounds for loss may never be discriminatory under Article 14 ECHR. Moreover, the fact that the access to and the possession of a nationality may be protected as part of the private life of a person under Article 8 also has consequences for the applicability and enforceability of the right to an effective remedy under Article 13 ECHR: “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.” This implies that in case of deprivation or other modes of loss of nationality, the person involved may also have access to the European Court of Human Rights.

5. Case law of the ECJ, in particular the ruling on *Janko Rottmann*⁷⁸

Janko Rottmann was an Austrian citizen who was naturalised in Germany in 1999. In the following year, the German authorities discovered that Rottmann committed fraud during the naturalisation procedure by not informing the German authorities that he was “wanted” in Austria because of the accusation of crimes committed there. Consequently, the German authorities want to deprive him of German nationality. This deprivation would render Rottmann stateless, because he lost Austrian nationality by the voluntary acquisition of German nationality. Rottmann challenged the deprivation decision of the German authorities in court.

The question was raised of whether a deprivation of German nationality with statelessness as a consequence would violate EU law. The German Federal Administrative Court (*Bundesverwaltungsgericht*) decided to initiate a preliminary ruling procedure. The first issue that had to be dealt with in Luxembourg was whether the deprivation of German nationality of a German national by German authorities was an internal matter outside the ambit of European law.

In his Opinion, Advocate-General Poiares Maduro underpinned that Rottmann could only fulfill the residence requirement for naturalisation in Germany by having used the right of free movement and that, for that reason, EU law was involved. The ECJ states, without any reference to the use of free movement rights, that it is clear that the situation of a citizen of the Union who is confronted with the deprivation of the nationality of a Member State and therefore of European citizenship “falls, by reason of its nature and its consequences, within the ambit of European Union law.”(para. 42). Furthermore, the Court stresses:

⁷⁸ For details and a more comprehensive analysis, see De Groot and Selig (2011).

“citizenship of the Union is intended to be the fundamental status of nationals of the Member States”. (paragraph 43).

Second, the influence of European law on the nationality law of the Member States had to be assessed. The Court observes: “ [The exercise of] power to lay down the conditions for the acquisition and loss of nationality, [...], is amenable to judicial review carried out in the light of European Union law.” (paragraph 48). Regarding withdrawing naturalisation with statelessness as a consequence, the Court observes that this could be compatible with European Union law (paragraph 50), but underpins that: “In such a case, it is, however, for the national court to ascertain whether the withdrawal decision at issue in the main proceedings observes the principle of proportionality so far as concerns the consequences it entails for the situation of the person concerned in the light of European Union law, in addition, where appropriate, to examination of the proportionality of the decision in the light of national law.” (paragraph 55).

The ECJ also indicates which interests and facts have to be taken into account in the context of the required proportionality test. Attention has to be paid to the consequences that the decision entails for the person concerned and, if relevant, for the members of his family with regard to the loss of the rights enjoyed by every citizen of the Union. In this respect, it is necessary to establish, in particular, whether that loss is justified in relation:

- a) to the gravity of the offence committed by that person;
- b) to the lapse of time between the naturalisation decision and the withdrawal decision; and
- c) to whether it is possible for that person to recover his original nationality.

The Court also underlines, that deprivation may also be possible if the original nationality is not recovered (para. 57), but in such cases:

“it is, nevertheless, for the national court to determine whether, before such a decision withdrawing naturalisation takes effect, having regard to all the relevant circumstances, observance of the principle of proportionality requires the person concerned to be afforded a reasonable period of time in order to try to recover the nationality of his Member State of origin.”

The obvious message of the Rottmann ruling of the ECJ is that the European proportionality principle has to be observed by Member States in the case of deprivation of nationality. Moreover, the application of *ex lege* grounds for loss should not lead to consequences that are evidently not proportional.

However, one should appreciate that other general principles of EU law could also be of relevance for the grounds for acquisition and loss of nationality. In his Opinion in the Rottmann case, Advocate-General Poiares Maduro identified the equality principle (Opinion, paragraph 34) and the principle of protection of legitimate expectations (Opinion, paragraph 31). It is evident that the principle of access to the court can be added to this, because without judicial control the other principles would not be effective.

6. Arbitrary deprivation

All provisions on loss of nationality should be read and interpreted in light of the general principle already enshrined in the Universal Declaration of Human Rights that arbitrary deprivation of a nationality is forbidden. It is therefore appropriate to elaborate on the notion of *arbitrary* deprivation. Several principles could be identified as following from this obligation to avoid all arbitrariness, for example:

1. A loss or deprivation of nationality must have a firm legal basis.⁷⁹

⁷⁹ The Arab Charter of Human Rights provides explicitly that “no one shall be arbitrarily or *unlawfully* deprived of his nationality” (italics added, dG). However, it has to be underscored “arbitrary” deprivation can also extend to interference provided for under the law. See Report of the Secretary General, submitted to the Human Rights Council, *Human rights and arbitrary deprivation of nationality: report of the Secretary-General*, 14 December 2009, A/HRC/13/34, par. 24.

2. A legal provision regarding loss or allowing deprivation of nationality may not be enacted with retroactivity – “*nulla perditio, sine praevia lege*”.⁸⁰ However, restriction of a loss provision may be given retroactivity.⁸¹
3. In case of the introduction of a new ground of loss, a reasonable transitory provision has to be made to avoid an individual losing his nationality due to an act that had already started before the introduction of the new ground of loss.⁸²
4. A legal provision regarding the acquisition of nationality may not be repealed with retroactivity.
5. The principle “*tempus regit factum*”,⁸³ i.e. to establish whether a person acquired or lost a nationality by certain acts or facts, the legislation which was in force at the moment these acts or facts happened has to be applied.⁸⁴ Transitory provisions may make exceptions, but not contrary to principles 2 and 3 above.
6. Loss or deprivation provisions must be easy accessible and predictable. They may not be interpreted by analogy (applied on facts which are not evidently covered by the wording of the provisions involved).⁸⁵
7. The grounds given for a deprivation decision must be proportional.⁸⁶ The Secretary-General, in a Report submitted to the Human Rights Council, underscored this: “Measures leading to the deprivation of nationality must serve a legitimate purpose that is consistent with international law and, in particular, the objectives of international human rights law. Such measures must be the least intrusive instrument of those that might achieve the desired result, and they must be proportional to the interest to be protected. In this respect, the notion of arbitrariness applies to all State action, legislative, administrative and judicial. The notion of arbitrariness could be interpreted to include not only acts that are against the law but, more broadly, elements of appropriateness, injustice and lack of predictability also.”⁸⁷
8. The administrative practice based on loss or deprivation provisions may not be discriminatory;⁸⁸
9. It must be possible to challenge the application of loss-provisions or acts of deprivation in court. The Secretary-General, in a Report submitted to the Human Rights Council underpinned: “Procedural safeguards are essential to prevent abuse of the law. States are thus expected to observe minimum procedural standards in order to ensure that decisions on nationality matters do not contain any

⁸⁰ Literally, “no loss without previous law”. Compare the “*nulla poena sine praevia lege poenali*” principle in criminal law (literally, “no punishment without previous criminal law”).

⁸¹ Compare the restriction of the loss of Netherlands nationality by minors by an introduction of some exceptions in 2003 with retroactivity from 1985. See De Groot (2012d), Comment on Article 16.

⁸² If, for example, a State were to introduce the voluntary acquisition of a foreign nationality as a ground for loss of nationality, no loss should occur if the acquisition of a foreign nationality is realised after the instruction of this ground for loss, but the application for that acquisition was already made before this introduction.

⁸³ Literally, “the time governs the fact”.

⁸⁴ This is excellently expressed by Article 17-2(1) of the French Code civil: “*L’acquisition et la perte de la nationalité française sont régies par la loi en vigueur au temps de l’acte ou du fait auquel la loi attache ces effets*”.

⁸⁵ Compare Hoge Raad (Supreme Court of the Netherlands) 27 September 1997, 625 (with comment of Hans-Ulrich Jessurun d’Oliveira). See also the remark on “predictability” by the Secretary General, submitted to the Human Rights Council, *Human rights and arbitrary deprivation of nationality: report of the Secretary-General*, 14 December 2009, A/HRC/13/34, paragraph 25, last sentence.

⁸⁶ Compare the European Court of Justice 2 March 2010 in re Janko Rottmann (Case C-135/08 [2010]). On that decision, see De Groot and Seling (2011).

⁸⁷ See Secretary-General, in a Report submitted to the Human Rights Council, *Human rights and arbitrary deprivation of nationality: report of the Secretary-General*, 14 December 2009, A/HRC/13/34, paragraph 25. Compare also paragraph 27.

⁸⁸ See Secretary-General, in a Report submitted to the Human Rights Council, *Human rights and arbitrary deprivation of nationality: report of the Secretary-General*, 14 December 2009, A/HRC/13/34, paragraph 21.

element of arbitrariness.” Also, “Violations of the right to a nationality must be open to an effective remedy.”⁸⁹

These principles not only have to be observed if the loss or deprivation would cause statelessness, but in all cases where a person would be stripped of a nationality.

7. Some notes on the burden of proof

The burden of proof in nationality matters is a complicated issue. Recently, the UNHCR underlined that the burden of proof of being “otherwise stateless” for the application of Articles 1-4 of the 1961 Convention on the Reduction of Statelessness is shared by the applicant claiming the nationality of a State under those Articles and the State involved.⁹⁰ However, the burden of proof in respect of the operation of loss provisions could be different, in particular in cases where loss provisions can only operate if no statelessness is caused. In such a case, the burden of proof of *not* causing statelessness by the application of a loss provision or a deprivation possibility is completely on the State that wants to impose the loss of its nationality or wants to deprive a person of its nationality. The State must prove, with firm and clear evidence, that the person involved possesses another nationality in addition to the nationality of the State in question and that the loss or deprivation of its nationality therefore does not render this person stateless. This difference is caused by the fact that if somebody wants to have access to the nationality of a State based on the obligations of Articles 1-4, the person involved has to submit all documentation and information reasonably available to him that makes it likely that he is otherwise stateless⁹¹; (s)he wants the State to become active and fulfil the obligations under the Convention. If, on the other hand, the State wants to impose loss of its nationality on a person or wants to deprive a person of its nationality, it is up to this State to come up with complete evidence that, by doing this, the obligations to avoid statelessness under international law are not violated.

One illustration of this burden of proof in respect of loss provisions is a decision of the *Hoge Raad* (Supreme Court of the Netherlands) in a case regarding the interpretation of a provision of the bilateral nationality treaty between the Netherlands and Surinam concluded on the occasion of independence of the latter from the Netherlands in 1975.⁹² According to the nationality authorities of the Netherlands, a certain person had acquired the nationality of Surinam based on a specific provision of the bilateral nationality treaty.⁹³ The nationality of the Netherlands would consequently have been lost. However, the State of Surinam gave a different interpretation to the relevant treaty provision and concluded that the person involved did not acquire the nationality of Surinam. Therefore, both States denied that the person involved was in possession of their nationality. The conclusion of the Netherlands nationality authorities was challenged in court and finally the Supreme Court concluded that she was still in possession of nationality of the Netherlands because “a reasonable interpretation [of the relevant treaty provisions; dG] in accordance with general principles of nationality law has, as a consequence, that nationality of the Netherlands is exclusively lost by the effective acquisition of the nationality of Surinam, which means that it has to be certain that the Surinamese authorities actually recognise that nationality. If there are doubts regarding this, the judge will have to investigate in more detail whether it is indeed the case and if there is no certainty about this, must conclude that the Netherlands nationality of the person involved continues.”⁹⁴

⁸⁹ See Secretary-General, in a Report submitted to the Human Rights Council, *Human rights and arbitrary deprivation of nationality: report of the Secretary-General*, 14 December 2009, A/HRC/13/34, paragraphs 43 and 46.

⁹⁰ See UNHCR Guidelines on statelessness No. 4, paragraphs 20 and 21.

⁹¹ Compare also UNHCR Guidelines on statelessness No. 4, par. 22 and 23.

⁹² Toescheidingsovereenkomst inzake nationaliteiten, Tractatenblad 1975, 132; Surinaams Tractatenblad 1981, 1. For an English translation, see UNTS 14598.

⁹³ The core issue was the relationship between Article 5(1) and Article 5(2) of that treaty.

⁹⁴ See *Hoge Raad* 7 April 1989, Nederlandse Jurisprudentie 1990, 791 (with comment from G.R. de Groot): “Een redelijke, met algemene beginselen van nationaliteitsrecht overeenkomende uitleg van [de relevante verdragsbepalingen] brengt mee dat het Nederlanderschap slechts verloren gaat door het effectief verkrijgen van de Surinaamse nationaliteit in dier voege dat dient vast te staan dat de Surinaamse overheid die nationaliteit daadwerkelijk erkent. Indien te dier zake twijfel bestaat, zal de Nederlandse rechter nader hebben te onderzoeken of dit

It is inspiring to note that the Court concluded that an “effective acquisition” (*effectieve verkrijging*) of the Surinamese nationality has to be proved by evidence that the Surinamese State actually (*daadwerkelijk*, i.e. really by an “act” (*daad*)) recognises the acquisition of its nationality by the person involved. If there are doubts over the recognition of this acquisition, the Netherlands authorities and judges have to conduct investigations into whether or not the Surinamese authorities recognise the acquisition and, if there still are doubts over that recognition, it has to be concluded that Netherlands nationality is not lost. In other words, the full burden of proof and the risk of proof are completely on the State which wants impose loss of nationality.

It is also a consequence of this burden of proof that a court which has to assess whether a loss of nationality took place, or a deprivation of nationality is allowed, because no statelessness is caused cannot make do with a marginal judicial review of the conclusion of the competent authorities, but has to conduct a full judicial review.

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Annex 1. Reference system

In the ILEC-papers shorthand references are used when referring to relevant Articles from national legislation of the Member States of the European Union. The first three characters of the name of a country in English are used in order to refer to the nationality provisions of a country. However, some adaptations of this system were necessary in order to avoid confusion.

AUT = Austria;⁹⁵ BEL = Belgium; BUL = Bulgaria; CYP = Cyprus; CRO = Croatia; CZE = Czech Republic; DEN = Denmark; EST = Estonia; FIN = Finland; FRA = France; GER = Germany; GRE = Greece; HUN = Hungary; IRE = Ireland; ITA = Italy; LAT = Latvia; LIT = Lithuania; LUX = Luxembourg; MAL = Malta; NET = Netherlands; POL = Poland; POR = Portugal; ROM = Romania; SLK = Slovakia; SLN = Slovenia; SPA = Spain; SWE = Sweden; UK = United Kingdom.

⁹⁵ The European Bulletin on Nationality uses the abbreviation AUS for Austria; we prefer the more common abbreviation of AUT.

Annex 2. Latin terms

<i>De facto</i>	factually; in fact
<i>De iure</i>	legally
<i>Ex lege</i>	by operation of the law, automatically
<i>Ex nunc</i>	without retroactivity
<i>Ex tunc</i>	with retroactivity
<i>Iure sanguinis</i>	by <i>ius sanguinis</i>
<i>Iure soli</i>	by <i>ius soli</i>
<i>Ius sanguinis</i>	Lit.: right of the blood: a person acquires the nationality of a parent at birth or by the establishment of a child-parent family relationship
<i>Ius sanguinis a matre</i>	Lit.: right of the blood from the mother: a person acquires the nationality of the mother at birth or by the establishment of a child-mother family relationship
<i>Ius sanguinis a patre</i>	Lit.: right of the blood from the father: a person acquires the nationality of the father at birth or by the establishment of a child-father family relationship
<i>Ius soli</i>	Lit.: right of the soil: a person acquires the nationality of his country of birth
<i>Nulla perditio sine praevia lege</i>	Lit.: no loss [of nationality] without a previous law [which provides for the loss]
<i>Nulla poena sine praevia lege (poenali)</i>	Lit.: no punishment without a previous (criminal) law
<i>Praesumptio iuris sanguinis</i>	presumption of an acquisition of a nationality <i>iure sanguinis</i>
<i>Tempus regit factum</i>	Lit.: the time governs the fact: for establishing whether a person acquired or lost a nationality by certain acts or facts, the legislation has to be applied which was in force at the moment these acts or facts happened



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