LEXONOMICA
Vol. 16, No. 2, pp. 143–164, December 2024

STEPS TOWARDS A REALISATION OF THE RIGHT TO HAVE A NATIONALITY

GERARD-RENÉ DE GROOT,[1]
GUAYASÉN MARRERO GONZÁLEZ[2]

[1] Maastricht University, Faculty of Law, Maastricht, The Netherlands
r.degroot@maastrichtuniversity.nl
[2] Universidad de La Laguna, Faculty of law, Tenerife, Spain
gmarrerg@ull.edu.es

CORRESPONDING AUTHOR
r.degroot@maastrichtuniversity.nl

Accepted
25. 10. 2024

Revised
3. 12. 2024

Published
19. 12. 2024

Abstract International standards regarding the acquisition and loss of nationality are increasingly being developed by various international institutions. This paper focusses on standard setting (in particular by the United Nations, the Council of Europe and the European Union) with relevance for European countries. While international treaties on or including rules on nationality law are addressed, attention is also given to soft law instruments such as guidelines and recommendations. Moreover, several new standards have also emerged from the decisions of international courts. The authors conclude that all these rules have as result that the margin of appreciation for national governments and courts in matters related to nationality law matters is getting increasingly smaller.

Keywords
nationality
acquisition of nationality,
loss of nationality,
naturalization,
quasi-loss of nationality,
citizenship

https://doi.org/10.18690/lexonomica.16.2.143-164.2024

University of Maribor Press

1 Introduction

This publication describes the gradual enhancement of the right to have nationality through the development of international standards. Particular attention will be paid to steps taken by the United Nations, the Council of Europe and the European Union.[1], [2]

Already more than three-quarters of a century ago the Universal Declaration of Human Rights (1948)[3] stated in Article 15:

"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."

This declaration sounds marvellous, but it does not indicate to which *specific* nationality a person would have a right to, nor does it mention what *arbitrary* exactly means. Moreover, the Universal Declaration does not have the status of an international treaty.

The content of Article 15 of the Universal Declaration is repeated by Article 4 (a) and (c) of the 1997 *European Convention on Nationality* (Strasbourg, 6 November 1997; hereinafter: ECN)[4], but neither this treaty gives a right to a specific nationality, and it does not indicate under which circumstances a deprivation of nationality is considered arbitrary. Article 4 (b) ECN expressly adds that "statelessness shall be avoided".

[1] See for a complete survey, including regional instruments and international court decisions for Africa and the Americas: de Groot & Vonk, 2016, and de Groot, Vonk & Marrero González, 2018.
[2] For Africa the adoption on 17 February 2024 by the Assembly of Heads of State and Government of the African Union of the *Protocol to the African Charter on Human and Peoples Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa* is very important. See Manby, 2024.
[3] UN General Assembly, Universal Declaration of Human Rights, 217 A (III), 10 December 1948.
[4] Council of Europe, European Convention on Nationality, ETS 166, 6 November 1997. 21 Contracting States (status as of September 2024).

Attention to the problem of statelessness was already given by the *Convention relating to the status of stateless persons* (New York, 28 September 1954).[5] This treaty, which recently celebrated its 70th birthday, gives in Article 1 a definition of statelessness:

"1. 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."

Despite the restriction "for the purpose of this Convention" this definition is also used for the interpretation of the concept "statelessness" in all other treaties with provisions related to statelessness. It is considered to be a rule of customary international law (UN High Commissioner for Refugees, 2014: in particular paras. 22-56 and 83-107).

The definition of statelessness in the 1954 Convention deals only with *de iure statelessness*, i.e., stateless in the strict legal sense. *De facto* stateless persons are not included. In its Handbook on Statelessness, the UNHCR elaborates on different aspects of the definition of statelessness and also underpins the need to have a formal statelessness determination procedure as an implicit obligation stemming from the 1954 convention (see UN High Commissioner for Refugees, 2014)[6].

The 1954 Statelessness Convention includes only one provision on the access to a nationality. Art. 32 prescribes 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."

However, the use of the phrase "as far as possible" even twice in this article makes the whole obligation to facilitate the naturalisation rather vague! It is also remarkable that the provision also obliges to facilitate the "assimilation", whatever that may mean in this context![7]

[5] UN General Assembly, Convention relating to the Status of Stateless Persons, United Nations, Treaty Series, vol. 360, p. 117, 28 September 1954. 98 Contracting States (status as of September 2024).
[6] See and compare: UN High Commissioner for Refugees (UNHCR), Expert Meeting - The Concept of Stateless Persons under International Law ("Prato Conclusions"), May 2010.
[7] See on the State practice on this obligation the GLOBALCIT database, modes of acquisition A22 (refugees) and A23 (stateless persons).

The text of Article 32 of the 1954 Convention corresponds *verbatim* with Article 34 of the 1951 Refugee Convention in respect of the facilitation of the naturalisation of refugees.[8]

Below, a survey will be given on the gradual development of international standards in international conventions, soft law instruments and case law regarding the right to a nationality in the following fields:

1. Attribution at birth or by establishment of filiation: ***ius soli/ius filiationis*** (sanguinis).
2. Acquisition by ***naturalisation*** or registration (option).
3. ***Loss*** of nationality (automatic loss or deprivation).

Attention will only be paid to standards elaborated or applicable in Europe.

2 Reduction of statelessness of children

The first convention dealing i.a. with the access of (otherwise) stateless children to a nationality was the 1961 Convention on the Reduction of Statelessness of 30 August 1961.[9] This treaty was the result of long discussions which started already in the early 1950s and were finalised in 1959/1961. The provisions were already very complicated due to the compromise character of the text. Moreover, the obligations stemming from this treaty are strongly influenced by later human rights treaties. For those reasons, the UNHCR organized two expert meetings to discuss the contemporary content of the obligations of this convention considering later treaties. The results were the UNHCR Guidelines on Statelessness No. 4 (2012) on the interpretation of Art. 1-4 CRS[10] and No. 5 (2020) on the interpretation of Art.

[8] UN General Assembly, Convention Relating to the Status of Refugees, United Nations, Treaty Series, vol. 189, p. 137, 28 July 1951. See on the *travaux preparatoires* of Art 34 of the Refugee Convention: UN High Commissioner for Refugees, 1990; and on the *travaux* on Art. 32 of the Convention on the Status of Stateless Persons: Fisher, 2022.
[9] UN General Assembly, Convention on the Reduction of Statelessness, United Nations, Treaty Series, vol. 989, p. 175, 30 August 1961.
[10] UN High Commissioner for Refugees (UNHCR), Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, HCR/GS/12/04, 21 December 2012.

5-9 CRS[11], based on the Dakar Conclusions (2012)[12] and Tunis Conclusions (2014)[13].

This action of the UNHCR in respect of formulating Guidelines combined with lobbying for the access to the 1961 Convention had as one of the consequences a remarkable increase of Contracting States to the 1961 Convention on the Reduction of Statelessness from 36 parties in 2011 to 80 parties in 2024.

It is appropriate to highlight briefly the three most important treaties, which influenced the content of the obligations from the 1961 Convention:

1. Article 9 of the *International Convention on the Elimination of All Forms of Discrimination Against Women (New York, 18 December 1979)*[14]:

"1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that 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. State Parties shall grant women equal rights with men with respect to the nationality of their children."

These two principles made those provisions of the 1961 Convention obsolete, which were based on the priority of the nationality of the father/husband, as still reflected by the 1957 New York Convention on the Nationality of Married Women.[15]

---

[11] UN High Commissioner for Refugees (UNHCR), Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness, HCR/GS/20/05, May 2020.
[12] UN High Commissioner for Refugees (UNHCR), Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children: ("Dakar Conclusions"), September 2011.
[13] UN High Commissioner for Refugees (UNHCR), Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ("Tunis Conclusions"), March 2014.
[14] UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, United Nations, Treaty Series, vol. 1249, p. 13, 18 December 1979. 189 Contracting States (status as of September 2024).
[15] UN General Assembly, Convention of the Nationality of Married Women, A/RES/1040, UN General Assembly, 29 January 1957. Some states renounced this treaty after they ratified the 1979 Convention. However, it is striking that the 1957 Convention still has 75 Contracting States.

2. Article 7 of the *Convention on the Rights of the Child* (New York, 20 November 1989)[16]

"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."

This provision made it necessary to check whether the right of a (otherwise) stateless child to acquire a nationality could be made stronger and speeded up.

3. This right of every child to acquire a nationality is also enshrined in Article 24 (3) International Covenant on Civil and Political Rights (New York, 19 December 1966).[17]And, of course, it became necessary to always pay attention to the best interest of a child as prescribed by Article 3 of the 1989 Convention!

Revisiting the obligations of Article 1 of the 1960 Convention in light of the just mentioned human rights treaties had important consequences for the access of the nationality of the state of birth for (otherwise) stateless children. The position of the UNHCR as reflected in the Guidelines on Statelessness No. 4 is the following.

The 1961 Convention on the Reduction of Statelessness gives children who would otherwise be stateless the right to acquire the nationality of their country of birth through one of the following means. First, a State may grant its nationality to otherwise stateless children born on its territory automatically by operation of law (*ex lege*). The second alternative is that a State may grant nationality to otherwise stateless persons born on their territory later upon application. The grant of nationality on application may, according to Article 1(2), be subject to one or more

[16] UN General Assembly, Convention on the Rights of the Child, United Nations, Treaty Series, vol. 1577, p. 3, 20 November 1989. 196 Contracting States, i.e., all Member States of the United Nations except the United States of America.
[17] UN General Assembly, International Covenant on Civil and Political Rights, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966. 173 Contracting States (status as of September 2024).

of four conditions. Article 1 of the 1961 Convention also allows Contracting States to provide for the automatic grant of nationality to otherwise stateless children born in their territory subsequently, at an age determined by domestic law.

A Contracting State may apply a combination of these alternatives for acquisition of its nationality by providing different modes of acquisition based on the level of attachment of the individual to that State. For example, a Contracting State might provide for automatic acquisition of its nationality by otherwise stateless children born in their territory whose parents are permanent or lawful residents in the country, whereas it might require an application procedure for those whose parents are not lawful residents. Any distinction in the treatment of different groups, however, cannot be based on discriminatory grounds and must be reasonable and proportionate.[18]

Where the Contracting States opt to grant nationality upon application, it is permissible for them to do so subject to the fulfilment of certain conditions. Permissible conditions are listed exhaustively in Article 1(2) of the 1961 Convention and they include: a fixed period for lodging an application immediately following the age of majority (Article 1(2)(a)); habitual residence in the Contracting State for a fixed period, not to exceed five years immediately preceding an application nor ten years in all (Article 1(2)(b)); restrictions on criminal history (Article 1(2)(c)); and the condition that an individual has always been stateless (Article 1(2)(d)).[19]

[18] See UNHCR Guidelines on Statelessness No 4, para. 33.
[19] See UNHCR Guidelines on statelessness No 4, para. 40-43.

Providing for a discretionary naturalisation procedure for otherwise stateless children is not permissible under the 1961 Convention. A State may choose not to apply any of the permitted conditions and simply grant nationality upon submission of an application.[20]

Contracting States that opt to grant nationality upon application pursuant to Article 1(1)(b) of the 1961 Convention, should accept such applications from children who would otherwise be stateless born in their territory as soon as possible after their birth and during childhood. However, where Contracting States set deadlines to receive applications from otherwise stateless individuals born in their territory at a later time, they must accept applications lodged at a time beginning not later than the age of 18 and ending not earlier than the age of 21 in accordance with Article 1(2)(a) of the 1961 Convention. These provisions ensure that otherwise stateless individuals born in the territory of a Contracting State have a window of at least three years after majority to lodge their application.[21]

The condition of a period of "habitual residence" on the territory of the country of birth in order to acquire that country's nationality is not to exceed five years immediately preceding an application nor ten years in all. "Habitual residence" should be understood as stable, factual residence and does not imply a legal or formal qualification. The 1961 Convention does not allow Contracting States to make an application for the acquisition of nationality of otherwise stateless individuals conditional on *lawful* residence.[22] So far, the 1961 Convention differs from the provision of Art. 6 (2) of the European Convention on Nationality 1997, which provides that children born on the territory of a state who do not acquire at birth another nationality should acquire the nationality of the country of birth either automatically at birth or later on application, which may be subject to the *lawful* and habitual residence on the territory for a period not longer than five years immediately preceding the application.

[20] Ibidem.
[21] Ibidem.
[22] See UNHCR Guidelines on statelessness No 4, para. 40-43.

Also, Principle 2 of Recommendation 2009/13 of the Committee of Ministers of the Council of Europe on the nationality of children[23] allows to require a lawful residence by providing "that children born on their territory who otherwise would be stateless acquire their nationality subject to no other condition than the lawful and habitual residence of a parent".

Art. 2 of the 1961 Convention and Art. 6 (1)(b) of the ECN 1997 provide both that a foundling found on the territory of a state should acquire the nationality of that state. Children found abandoned on the territory of a Contracting State must be treated as foundlings and accordingly acquire the nationality of the country where found.[24] Article 2 of the 1961 Convention does not define an age at which a child can be considered a foundling. The UNHCR Guidelines on Statelessness No. 4 underscore that at a minimum, the safeguard for Contracting States to grant nationality to foundlings should apply to all young children who are not yet able to communicate accurate information pertaining to the identity of their parents or their place of birth.[25] If a State provides for an age limit for foundlings to acquire nationality, the age of the child at the date the child was found is decisive and not the date when the child came to the attention of the authorities.[26] Nationality acquired by foundlings pursuant to Art. 2 of the 1961 Convention and Art. 6 ECN should only be lost if it is proven that the child concerned possesses another State's nationality.[27]

A child born in the territory of a Contracting State without having a parent, who is legally recognised as such (e.g., because the child is born out of wedlock and the woman who gave birth to the child is legally not recognised as the mother), should also be treated as a foundling and should immediately acquire the nationality of the State of birth[28]

[23] Council of Europe: Committee of Ministers, Recommendation CM/Rec(2009)13 of the Committee of Ministers to member states on the nationality of children, CM/Rec(2009)13, 9 December 2009.
[24] See also Principle 8 of Recommendation CM/Rec(2009)13 and Kaneko-Iwase, 2021.
[25] UNHCR Guidelines on statelessness No 4, para. 58.
[26] UNHCR Guidelines on statelessness No 4, para. 60.
[27] UNHCR Guidelines on statelessness No 4, para. 61. Compare Article 7(1)(f) ECN: if later the child's parents or the place of birth are discovered, and the child derives a citizenship from (one of) these parents or acquired a citizenship because of his place of birth, the citizenship acquired because of the foundling provision may be lost. However, according to Article 7(3) such discovery may never cause statelessness.
[28] This is, e.g., the case with the so-called "delivery under X" ("*accouchement sous X*") in France. French law allows a woman who gives birth to a child out of wedlock to ask not to be mentioned as the mother in the birth certificate of the child (Article 326 French Code civil). Consequently, the child will not have a family relationship with that woman. Such children are therefore legally in a similar vulnerable position as foundlings and should enjoy the benefit

It is also appropriate, to point to a specific statelessness avoiding rule in respect of the acquisition of the nationality of a parent *iure sanguinis*. A child has the right to acquire the nationality of a parent, but states may make exceptions for children born abroad and may provide for a special procedure for children born out of wedlock. However, if the child would otherwise be stateless the child must always automatically acquire the nationality of the parent, also in case of birth abroad.[29] What is more, a State may never make a distinction based on the maternal or paternal parentage.[30] In other words, the acquisition of nationality through the father (*ius sanguinis a patre*) needs to happen under the same conditions as the acquisition of nationality through the mother (*ius sanguinis a matre*).[31] Moreover, a State may never regulate any ground for acquisition of nationality in a way which would result in ethnic, racial or religious discrimination.[32]

A state may provide that a child of a national born abroad only acquires the nationality of this parent if a) both parents are nationals; b) both parents lodge a joint declaration; or c) one parent lodges a declaration. A State may also differentiate between the first, second and subsequent generations born abroad.

A parent in the sense of the international standards on attribution/acquisition of nationality is a person who acquired this status under the law of the state involved or under foreign law but recognised in the state involved. It does not matter whether the legal status of the parent is based on genetic truth. A State shall not make the acquisition of nationality by parentage conditional on evidence of the biological truth if this evidence was not yet a condition for the establishment of the parentage.

of the statelessness avoiding rule of Article 2. Contracting States should not be able to subject such children to the application procedure of Article 1(1) and article 1(2). The same applies for legal systems which still require, that a mother has to recognise her child born out of wedlock in order to establish a family relationship. The European Court of Human Rights concluded on 13 June 1979 in the Marcks-case (C-6833/74) that such requirement of recognition violates Article 8 of the European Convention of Human Rights. As a consequence of that decision, this requirement was abolished in the Member States of the Council of Europe, but the construction still exists in several other countries.

[29] Art. 6 (1)(a) ECN, Principle 1 Recommendation CM/Rec(2009)13.

[30] Art. 9(2) International Convention in the Elimination of all Forms of Discrimination of Women 1979; Genovese v. Malta, Application no. 53124/09, Council of Europe: European Court of Human Rights, 11 October 2011.

[31] Principle 11 of Recommendation CM/Rec(2009)13.

[32] Art. 5 ECN, Art. 9 1961 Convention.

Consequently, if the parentage established abroad between a child born via surrogacy and an intended parent is recognized by the parent's country of nationality, the child must be granted access to the nationality of the intended parent under the same conditions as a child born to that parent.[33] In other words, it is not the "blood" (*sanguis*) of a child that matters for the acquisition of nationality but the legal tie of parentage (*filiatio*). It would therefore better to use the expression *ius filiationis* instead of *ius sanguinis.*

However, a great disadvantage of the 1961 Convention is that there is no monitoring body. The UNHCR has only the responsibility to supervise the identification, prevention and reduction of statelessness and the protection of stateless persons. This does enable it to recommend rules on implementing the obligations stemming from the 1954 and 1961 Conventions. Also, the ECN 1997 does not have a body responsible for the correct implementation of its rules. Moreover, this absence of a monitoring body applies *a fortiori* for soft law instruments like Recommendation 2009/13 and the UNHCR Guidelines on Statelessness No 4 and 5.

This is different from the Convention on Civil and Political Rights 1966, where the UN Human Rights Committee monitors the correct implementation of the obligations not only via a reporting system, but also via an individual complaint mechanism. Via such individual complaint, the Human Rights Committee was called to assess the case of Denny Zhao v Netherlands.[34] Denny was born in the Netherlands in 2010. His nationality is registered as *unknown.* His mother was born in China in 1989, but her birth was not registered. She was abandoned by her parents. At the age of 15, she was trafficked to the Netherlands. There she stayed since 2003 as an illegal alien. She did not have any proof of Chinese nationality. And the same applied to Denny. He was registered as of *unknown nationality.*[35]

[33] Principle 11 Recommendation CM/Rec(2009)13 and para. 32 of the Explanatory Memorandum on this Recommendation. Also compare Mennesson v. France, Application no. 65192/11, Council of Europe: European Court of Human Rights, 26 June 2014; and Labassee v. France, Application no. 65941/11, Council of Europe: European Court of Human Rights, 26 June 2014.

[34] Please note that Protocol 3 to the Convention on the rights of the child also provides for an individual complaint possibility. However, this protocol is not in force for the Netherlands.

[35] In the Netherlands more than 74.000 persons were registered as of *unknown nationality* (including more than 13.000 children below 10 years).

If Denny were recognised as a stateless child born in the Netherlands, he still could not acquire Netherlands nationality because he stayed illegally in the country and a stateless child born in the Netherlands could only acquire the nationality of the Netherlands by confirmation of a declaration (option) under the condition of a lawful presence in the country. In a decision of 19 October 2020, the UN Human Rights Committee concluded that the Netherlands violated Art. 24(3) CCPR. Under reference to the Guidelines No 4 of UNHCR on 1961 Convention the Committee concluded, that a registration as of unknown nationality should not exceed 5 years and that the condition of requiring a lawful residence (instead of a habitual residence) is also against Art. 24(3) CCPR[36].

An important development is also the fact that the European Court of Human Rights concluded on 11 October 2011 in case *Genovese v Malta* that nationality is part of the social identity of a person and for that reason protected under private life of Art. 8 European Convention of Human Rights. Consequently, not providing for acquisition of nationality in case of birth outside of wedlock would constitute a discrimination of Art. 8 in combination with Art. 14 European Convention of Human Rights.

Despite these very hopeful developments, still very problematic cases of acquisition by filiation exist. This is in particular the case if a child of a national is born abroad. In such cases, the decision on acquisition of nationality by parentage depends on the existence of a birth certificate, which can be recognized by the state of nationality of the parent. The recognition may depend in several cases on the legalization and sometimes the verification of the birth certificate. Children of a national born in war regions (e.g., Iraq or Syria) may meet difficulties in this respect, in particular if the birth certificate was made by an "authority" which is not entitled to register child births by the official authorities of the state. If the mother is a national, a way out of this difficulty is to submit DNA evidence of the parentage to the competent court in the state of nationality of the mother.[37] If only the father is national also the marriage with the mother must be proven. Alternatively, the possibility of recognition or judicial establishment of paternity in the state of nationality of the father has to be studied (de Groot, 2021).

[36] See Bingham, L. & Klaas, J. (2021).
[37] This requires some assistance of the state of nationality of the mother to collect DNA samples.

A very remarkable case on the lack of a birth certificate mentioning the Dutch mother of a child born abroad, had to be solved by the Court of The Hague, 26 July 2016 (Case nr. C/09/505797). A non-married woman of both Netherlands and Moroccan nationality gave birth to a child in Morocco. She was told that the baby died during the birth. However, about 20 years later a Moroccan relative told her that this was not true. Her child – a boy – was living in the village of the grandparents as the child of a couple who was not able to get children, and which were indicated as parents in the Moroccan birth certificate. She met the young man concerned and got very good contact with him. He would love to come to the Netherlands and live with her, but in order to do so he would need a birth certificate with his real mother mentioned. To try to change the Moroccan birth certificate was not an attractive option, i.a. because this could lead to criminal law procedures against the couple who educated the young man as their child. The Court of The Hague ordered to make a new birth certificate reflecting as mother the Netherlands/Moroccan woman based on DNA evidence submitted to the court proofing that she was the mother of the young man and also mentioning that the content of the Moroccan birth certificate was false.

In a more recent case *G.T.B. v. Spain*[38] the European Court of Human Rights concluded that there was a violation of Article 8 of the ECHR in a case in which Spanish authorities failed to comply with obligation to act with due diligence to assist a Spanish national, born abroad but living in Spain since he was two months old, to obtain a birth registration. The case involved an unusual delay, first in the request for birth registration and subsequently in the processing of this request by the Spanish authorities. This delay prevented the plaintiff from obtaining an identification document during his first twenty-one years of his life, placing him in a situation of vulnerability that affected numerous dimensions of his every day's life.

But not all cases have such a happy end. What is the case if the marriage between a father possessing the nationalities of the Netherlands and Morocco and a Moroccan mother is polygamous and child is born by the second wife in Morocco? The Supreme Court (Hoge Raad) decided that this parentage cannot be recognised until

[38] G.T.B. v. Spain, Application no. 3041/19, Council of Europe: European Court of Human Rights, 16 November 2023.

the polygamous situation does not exist anymore and, even then, no acquisition of nationality takes place[39].

In this context also the judgment of the Court of Justice of the European Union of 14 December 2021 in the case *V.M.A. v Stolichna obshtina, rayon 'Pancharevo'*[40] has to be mentioned regarding a child born in Spain in 2019. The Spanish birth certificate mentions as mothers a Bulgarian woman and a UK woman. The Bulgarian mother requests in Bulgaria a birth certificate for the child (i.e. a transcription of the Spanish certificate) and a national Bulgarian ID card. Her request was partial successful. The Court came to the conclusion that Bulgaria is obliged (i) to issue to that child an identity card or a passport without requiring a birth certificate to be drawn up beforehand by its national authorities, and (ii) to recognize […] the 156document from the host Member State that permits that child to exercise, with each of those two persons, the child's right to move and reside freely within the territory of the Member States.

It is obvious that still work has to be done in order to realise a smooth recognition of a parentage established abroad inter alia in order to get access to the nationality of a parent, to which the child in principle is entitled given the parentage is recognized.

3 Acquisition by naturalisation or registration/option

Until recently, only a few rules existed in international documents regarding the acquisition of a nationality. The oldest are the rules of Art. 34 of the 1951 Refugees Convention and Art. 32 of the 1954 Statelessness Convention, which oblige to facilitate such naturalisation of refugees and stateless persons respectively.

The next step was made in Art. 6(3) ECN 1997, which obliges states to provide for the possibility of naturalisation of persons lawfully and habitually living on its territory. The maximum period of residence required should not exceed ten years before the lodging of the application.

[39] See: Hoge Raad, 19 May 2017, ECLI:NL:HR:2017:942.
[40] V.M.A. v Stolichna obshtina, rayon 'Pancharevo', C-490/20, Court of Justice of the European Union, 14 December 2021.

If we compare the conditions required by states for a naturalisation, one can witness a huge variation.[41]

For this reason, a judgment of the Court of Justice of the European Union of 18 January 2022 in *JY v Wiener Landesregierung*[42] was very welcome. It concerned an Estonian national, who following a guarantee that she would be naturalised in Austria upon renunciation of Estonian nationality, renounced her nationality of origin as required by Austrian law. She submitted proof of her renunciation to the Austrian authorities. However, these authorities found out, that she committed two traffic offences in the meantime, and for that reason the Austrian authorities revoked the guarantee that she would be naturalised. Which offences did she commit? 1) Failure to display a compliant vehicle inspection disc in her car and 2) Driving a motor vehicle while under the influence of alcohol. For both offenses she only got a quite moderate fine.

The Court concluded that JY falls within the scope of EU law in spite of the fact that she was now stateless. The assurance of naturalisation is revoked with the effect of preventing JY from recovering the status of citizen of the Union.

Moreover, the Court underpins, that national authorities and courts are required to ascertain whether the decision to revoke the assurance as to the grant of the nationality is compatible with the principle of proportionality in the light of the consequences it entails for that person's situation. That requirement of compatibility with the principle of proportionality is not satisfied where such a decision is based on administrative traffic offences which, under the applicable provisions of national law, give rise to a mere pecuniary penalty.

This decision opens the door to a more general question of the role of the principle of proportionality in respect of conditions for naturalisation.

[41] See most recently the data included in the GLOBALCIT database Grounds for acquisition, Modes A06-A06f (2022). Compare also with the comparative study of Huddleston, 2019.
[42] JY v Wiener Landesregierung, C-118/20, Court of Justice of the European Union, 18 January 2022.

4 At the border of non-acquisition and loss of nationality

Sometimes states come to the conclusion that a person who was treated as a national until then, never acquired this nationality. This can e.g. happen if the nationality is acquired via the father and the family relationship with him is annulled with retroactivity. Only for this type of cases, Art. 7(1)(f) ECN 1997 provides for a limitation: such loss is allowed but may only occur during the minority of the person concerned.

But in many other cases, such a protective limitation does not exist. What is e.g. the legal position of a person who was allegedly adopted by a national abroad, but after many years it is discovered that the adopter(s) registered the child as being naturally born to them? And what is the case if somebody was naturalized in a state using identity papers which later appear not to be her/his own? What are the consequences of the discovery of such identity fraud? Can the naturalisation be repealed and if yes, is there a time limitation? Does a proportionality test apply? Or is the naturalisation in such case simply null and void and the person concerned is deemed never having acquired the nationality by naturalisation? The approaches of states differ considerably from each other.[43]

In such cases states often underline that the nationality was never acquired, but the person concerned will experience it as loss of nationality. It is for that reason appropriate to label these cases as ***quasi-loss*** or ***de facto loss.***

The European Court of Human Rights was confronted with this type of case in *Ahmadov v Azerbaijan* (30 January 2020). Ahmadov was born in Georgia (USSR) but is of Azerbaijani ethnicity. Since 1991 he was in Azerbaijan and registered there, first as a student, later at his sister's residence for several years. In 1998 he got a new photo and a stamp in his Soviet passport indicating that he is an Azerbaijani citizen. However, ten years later - in 2008 - an Azerbaijani ID card was refused, because he would only have been a temporary resident of Azerbaijan at the time of State succession and did not acquire citizenship for that reason.

[43] See for details de Groot & Patrick Wautelet, 2014; and de Groot & Patrick Wautelet, 2015.

Central in this dispute was the interpretation of a quite unclear provision of the Azerbaijani nationality act regulating the acquisition of nationality in the State succession context.

All complaints of Ahmadov were rejected by the Azerbaijani courts and the case was sent to Strasbourg. The European Court of Human Rights acknowledged that an arbitrary denial of citizenship might raise an issue under Art. 8 ECHR. The court underlined, that the same principles must apply to the revocation of citizenship already obtained, since this might lead to a similar – if not greater – interference.

Consequently, the court had to answer the question whether the non-recognition of the nationality by the national courts was arbitrary. Was it in accordance with the law? Did procedural safeguards exist?
Because the national courts did not substantiate their decisions and did not consider the stamp in the passport in 1998, the Human Rights Court concluded that Art. 8 ECHR was violated.

This case sets an important standard for other types of cases of quasi-loss or de-facto loss of nationality.

5 Loss of nationality (deprivation or automatic loss)

The 1961 Convention on the Reduction of Statelessness deals with deprivation and automatic loss of nationality in its Art. 5-8. In most cases the loss may not cause statelessness, but in Art. 7 and 8 some exceptions on these rules are permitted. Further guidance on the application of these provisions is given by the UNHCR Guidelines on statelessness No 5 from 2020.[44]

The 1997 European Convention on Nationality gives in Art. 7 an exhaustive list of acceptable ground for loss of nationality and stipulates that such loss with statelessness as consequence is only allowed if the acquisition of nationality took

[44] UN High Commissioner for Refugees (UNHCR), Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness, HCR/GS/20/05, May 2020.

place "by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant."[45]

The Court of Justice of the European Union decided on 2 March 2010 in the case *Rottmann*[46] that in all cases of deprivation of nationality based on fraud during the naturalisation procedure a proportionality test is mandatory.

It is very remarkable that the Secretary General of the United Nations in a document on "Human Rights and arbitrary deprivation" on 14 December 2009 – less than three months earlier – also declared that in all cases of deprivation a proportionality test is essential in order to avoid the arbitrariness of the deprivation decision.[47]

Another question was, of course, whether a proportionality test would also be required in cases of automatic (*ex lege*) loss of nationality. The Court of Justice of the European Union was called to decide that question in case *Tjebbes e.a. v The Netherlands* (12 March 2019).[48] The case concerned loss of the nationality of the Netherlands by permanent residence abroad, where the loss also caused the loss of European citizenship. The court decided that it must be possible to apply *ex post* a proportionality test also in such a case of automatic loss![49]

It was immediately clear that the requirement of an *ex post* proportionality test would also apply for all other grounds of automatic loss, e.g. voluntary acquisition of a foreign nationality, foreign military service or annulment of the parentage which was the basis for the acquisition.[50]

On deprivation of nationality acquired in a fraudulent way by naturalisation, the European Court of Human Rights also gave important guidance in a judgment of 22 December 2020, (43936/18 in the case of *Usmanov v Russia*). The Russian

[45] Furthermore, Art. 8 of the ECN deals with loss of nationality by renunciation and stipulates that renunciation never may cause statelessness. See for more details de Groot & Marrero González, 2024.
[46] Janko Rottmann v Freistaat Bayern, C- 135/08, Court of Justice of the European Union, 2 March 2010.
[47] UN Human Rights Council, Human rights and arbitrary deprivation of nationality: report of the Secretary-General, A/HRC/13/34, 14 December 2009.
[48] M.G. Tjebbes, G.J.M. Koopman, E. Saleh Abady, L. Duboux v Minister van Buitenlandse Zaken, C-221/17, Court of Justice of the European Union, 12 March 2019.
[49] This line of case law is in the meantime confirmed in two other judgments: Court of Justice of the European Union 5 September 2023 (in the Danish case C-689/21) and Court of Justice of the European Union 25 April 2024 (in the German cases C-684/22 and C-686/22).
[50] See for more details de Groot, 2020.

nationality of Usmanov was annulled because of fraud committed during the naturalisation procedure ten years earlier, due to the fact that the application for naturalisation did not provide information on all siblings of Usmanov. The Court applied a two-step approach when examining this deprivation:

1. Was there an interference with Art. 8 ECHR in light of the consequences of the annulment for the applicant?
2. Was the deprivation arbitrary, because of a lack of clarity of domestic law, an excessively formalistic approach, inadequate procedural safeguards or an absence of balancing exercise?

Because of the far-reaching consequences following from the Russian government's annulment decision, the Court firstly found that the annulment had interfered with the applicant's private and family life, as guaranteed by Article 8 of the Convention. The decision to annul the applicant's Russian citizenship had deprived him of any legal status in Russia. He had been left without any valid identity documents. As already found in the Court's earlier case-law, Russian citizens had to prove their identity unusually often in their everyday life, even when performing such mundane tasks as exchanging currency or buying train tickets, and the internal passport was also required for more crucial needs, such as finding employment or receiving medical care. Failure to possess a valid identity document was also punishable by a fine. Furthermore, the annulment of the applicant's citizenship had been a precondition for the imposition of the entry ban on him and the decision to remove him from Russian territory.

To assess whether the deprivation was arbitrary the Court had to examine *"the lawfulness of the impugned measure, accompanying procedural guarantees and the manner in which the domestic authorities had acted"* (see §65 *Usmanov v Russia*).

Although the annulment had a legal basis in domestic legislation, the Court was not satisfied that this legal basis was sufficiently clear, nor by the procedural safeguards accompanying the measure. It therefore found that the revocation decision had indeed violated Article 8 of the Convention. Moreover, the authorities had not been required to give a reasoned decision specifying the factual grounds on which it had been taken, like the surrounding circumstances, such as the nature of the missing information, the reason for not submitting it to the authorities, the time elapsed

since obtaining citizenship, the strength of the ties which the person concerned had with a country, his or her family situation or other important factors. In particular, they had not been required to explain why the failure by the applicant to indicate the full number of his siblings had been relevant for obtaining Russian citizenship (see §67 *Usmanov v Russia*).

Because of the absence of a balancing exercise which the domestic authorities had been expected to perform, the impugned measure was grossly disproportionate to the applicant's omission.

The case law of the European Court of Human Rights on deprivation of nationality because of behaviour seriously prejudicial to the state, e.g., because of jihadists activities gives – regrettably – less guidance to states which rules have to be followed. The decision of the European Court of Human Rights of 25 June 2020 in the case *Ghoumid e.a. v France*[51] illustrates this. France deprived five persons of French nationality in October 2015 because of sentences to six, respectively eight years prison in 2007 for delicts committed in the period 1995-2004. These deprivations were obviously reactions on the attack on Charlie Hebdo in January 2015.

However, the Court came to the conclusion, that the deprivation was not arbitrary: the long period since the crimes and since the sentences were as such not enough to conclude that the deprivation is arbitrary. Furthermore, the Court found that there was no interference with family life because no expulsion decision was made. The Court also pointed out, that there was no violation of the principle *ne bis in idem* (double jeopardy) because deprivation is a matter of administrative jurisdiction and not of criminal jurisdiction. Finally, the Court pays attention to the fact that no statelessness is caused, because all persons concerned possess Moroccan or Turkish nationality. In our opinion, precise such deprivation of nationality of dual nationals is extremely problematic in view of international solidarity of States fighting against jihadists.[52]

[51] Ghoumid e.a. v France, Application no. 52273/16, Council of Europe: European Court of Human Rights, 25 June 2020.
[52] Compare: Boekestein & de Groot, 2019.

6 Conclusion

We can witness an increasing influence of international and European law on the nationality laws of States.

On the global level, States increasingly become party to the two statelessness conventions of 1954 and 1961. This is due to the campaign of the UNHCR to ratify these conventions – and also due to the fact that the UNHCR gave detailed guidance on the interpretation of these treaties by five Guidelines on statelessness. Very important is also the document prepared by the Secretary General on the importance of the principle of proportionality in all cases of deprivation of nationality. The recent case law of the UN Human Rights Committee dealing with the interpretation of Art. 24 of the CCPR is also of great importance.

In Europe, the European Convention on Nationality of 1997 set clear standards regarding nationality law and this is, inter alia, supplemented by soft law instruments of the Council of Europe. Since the European Court of Human Rights recognized that nationality is a part of the identity of a person covered by private life protection under Art. 8 of the European Convention on Human Rights also case law on nationality issues of this Court plays an influential role.

Last but not least, case law of the Court of Justice of the European Union sets more and more standards in respect to acquisition and in particular loss of nationality, because of the intimate link between the nationality of a Member State and European citizenship.

It is obvious, that the margin of appreciation of national governments and courts in nationality law matters gets increasingly smaller. And it is also certain, that we are absolutely not at the end of this development.

References

Bingham, L. & Klaas, J. (2021) A victory for human rights in Zhao v. the Netherlands (the 'Denny case'): Nationality from birth, without exceptions, Globalcit, URL: https://globalcit.eu/a-victory-for-human-rights-in-zhao-v-the-netherlands-the-denny-case-nationality-from-birth-without-exceptions/

Boekestein, T. L. & de Groot, G. R. (2019) Discussing the Human Rights Limits on Loss of Citizenship: A normative-legal Perspective on egalitarian Arguments regarding Dutch Nationality Laws targeting Dutch-Moroccans', Citizenship Studies (CCST), Vol 23, pp. 320-337.

de Groot, G. R. & Marrero González, G. (2024) Avoiding statelessness in case of loss of nationality, in: Courneloup S. & Pataut E. (eds.), Perdre sa nationalité, Dalloz: Paris.

de Groot, G. R. & Wautelet, P. (2014) Reflections on Quasi-loss of nationality from comparative, international and European perspective, CEPS Paper in Liberty and Security.in Europe No. 66, URL: https://cdn.ceps.eu/wp-content/uploads/2014/08/No%2066%20ILEC%20-%20Quasi-loss%20of%20nationality_0.pdf

de Groot, G. R. & Wautelet, P. (2015) Reflections on Quasi-loss of nationality from comparative, international and European perspective in: Carrera Núñez S. R. & de Groot G. R. (eds.), European citizenship at crossroads: the role of the European Union on loss and acquisition of nationality, Oisterwijk: Wolf Legal Publishers.

de Groot, G. R. (2020) Considerations on the Tjebbes ruling of the CJEU, EU Citzenship Report.

de Groot, G. R. (2021) Het terughalen van kinderen van (vermeende) jihadstrijders uit Syrië en Irak, Recht van de Islam 34: Kind tussen twee werelden? Positie van het kind in grensoverschrijdende situaties (Bijdragen aan het 39ste RIMO-symposium van 2021), URL: https://www.verenigingrimo.nl/wp/wp-content/uploads/DeGroot_2022_HetTerughalenVanVermeendeJihadstrijders.pdf

de Groot, G. R. & Vonk, O. W. (2016) International standards on nationality law, Texts, cases and materials, Oisterwijk.

de Groot, G. R., Vonk, O. W. & Marrero González, G. (2018) Normas internacionales de derecho de nacionalidad, Oisterwijk.

Fisher, B. L. (2022) The Travaux Préparatoires of the 1954 Convention Relating to the Status of Stateless Persons, SSNR, URL: http://dx.doi.org/10.2139/ssrn.4037774

Huddleston, T. (2019) Naturalisation in action. How nationality laws work in practice across Europe, PhD, Maastricht University.

Kaneko-Iwase, M. (2021) Nationality of Foundlings, Avoiding Statelessness Among Children of Unknown Parents Under International Nationality Law, Springer.

Manby, B. (2024) A new treaty on statelessness and the right to a nationality in Africa, Globalcit, URL: https://globalcit.eu/a-new-treaty-on-statelessness-and-the-right-to-a-nationality-in-africa/

UN High Commissioner for Refugees (1990) The Refugee Convention, 1951: The Travaux préparatoires analysed with a Commentary by Dr. Paul Weis, URL: https://www.unhcr.org/media/refugee-convention-1951-travaux-preparatoires-analysed-commentary-dr-paul-weis

UN High Commissioner for Refugees (2014) Handbook on Protection of Stateless Persons, 30 June 2014, URL: https://www.unhcr.org/wp-content/uploads/sites/27/2017/04/CH-UNHCR_Handbook-on-Protection-of-Stateless-Persons.pdf

Povzetek v slovenskem jeziku (Abstract in Slovene language)

Različne mednarodne institucije vse bolj razvijajo mednarodne standarde glede pridobitve in izgube državljanstva. Ta članek se osredotoča na določanje standardov (zlasti s strani Združenih narodov, Sveta Evrope in Evropske unije), ki so pomembni za evropske države. Obravnavane so mednarodne pogodbe o pravu o državljanstvu ali vključno s pravili o njem, pozornost pa je namenjena tudi instrumentom mehkega prava, kot so smernice in priporočila. Poleg tega je več novih standardov nastalo tudi na podlagi odločitev mednarodnih sodišč. Avtorja ugotavljata, da je posledica vseh teh pravil, da se polje proste presoje nacionalnih vlad in sodišč v zadevah, povezanih s pravom o državljanstvu, vse bolj zmanjšuje.