

Netherlands - Council of State (Raad van State), ECLI:NL:RVS:2013:1575

The case concerns withdrawal of Dutch nationality from the applicant on the basis of fraud, which left the latter stateless. The fraud consisted of the fact that the applicant's relationship with his partner, which was the basis for the legality of his residence, was not exclusive at the time when he renewed his residence permit and applied for Dutch citizenship. Has it been known to the authorities that the relevant relationship was not exclusive, he would not have qualified for a legal residence permit, nor Dutch nationality, therefore the acquisition of nationality was classified as fraudulent and withdrawn.

Case name (in original language) : ECLI:NL:RVS:2013:1575

Case status: Decided

Case number: ECLI:NL:RVS:2013:1575

Date of decision: 16/10/2013

State: Netherlands

Court / UN Treaty Body: Council of State of the Netherlands (Raad van State)

Language(s) the decision is available in: Dutch

Applicant's country of birth: Suriname

Applicant's country of residence: Netherlands

Key aspects: Deprivation of nationality, Respect for private and family life

Relevant Legislative Provisions:

Article 6(1f) of the Dutch Royal Law on Nationality (Rijkswet op het Nederlanderschap).

Facts

The applicant applied for Dutch nationality through an "option" (confirmation) procedure in November 2008, and received Dutch nationality in January 2009. He was at that time legally residing in the Netherlands on the basis of having a

relationship with a partner who had family reunification rights (partner 1). In May 2010 he applied for a residence permit for his partner at the time (partner 2), and in the context of that application he stated that his relationship with partner 1 has ended in February 2008, and he started his relationship with partner 2 in August 2008.

In May 2012 the Ministry withdrew the applicant's Dutch nationality on the basis that he failed to inform the state that his relationship with partner 1 has ended when he applied for the prolongation of his residence permit as well as when applying for Dutch nationality. According to the Ministry, if he had been honest about his relationship status, he would not have received a legal residence permit as he was not in a long-term exclusive relationship with partner 1, and consequently would not have complied with the requirement of having a legal residence permit when obtaining his Dutch nationality.

The applicant appealed the decision withdrawing his Dutch nationality in Court.

Legal arguments by the applicant

Firstly, the applicant maintained that he did not hide any facts that were relevant for his obtaining the Dutch nationality. He said that while his relationship with partner 1 was no longer physical since February 2008, they still lived together and ran a shared household. He claimed that there is no legislative requirement for the relationship from which he derived residence rights to be of a physical nature, and that he could not have known that the authorities expected him to inform them of the fact that he was not in a physical relationship with partner 1 at the time of his application for Dutch nationality. He claimed that the nature of his relationship with partner 1 at the relevant time was such that falls under the protection of family life under Article 8 of the ECHR.

Secondly, the applicant argued that the interests of the State to withdraw nationality to correct this fraud cannot be weight more heavily as the applicant's interests in retaining Dutch nationality. He maintained that he was a productive member of Dutch society. Moreover, the applicant maintained that he has been unsuccessfully attempting to reacquire his Surinamese nationality, therefore he would left stateless if his Dutch nationality was definitively withdrawn.

Legal arguments by the opposing party

The Ministry argued that it based its decision on the evidence that the applicant concealed the fact that his relationship with partner 1 was no longer stable and exclusive at the relevant time.

Decision & Reasoning

The Court ruled against the applicant.

Firstly, it considered that the Regulations Implementing the Migration Law define the type of relationship from which residence rights can be derived as one that is long-term and exclusive, and is sufficiently equivalent to a marriage. Since the applicant has declared to have been in a relationship with partner 2 since August 2008, his relationship with partner 1 could not have been exclusive at the time of his application for Dutch nationality. Merely living with partner 1, without the relationship being exclusive, is insufficient to see that relationship as equivalent to marriage.

Secondly, the fact that the applicant's request for a Surinamese passport in 2011 was rejected is not a sufficient ground for invalidating the withdrawal of Dutch nationality. The Court considers it possible that if the applicant tries again to reacquire his citizenship after the definitive loss of his Dutch citizenship, he may not in fact end up stateless. Apart from that the court reasoned as follows:

"According to Article 14 of the Dutch Royal Law on Nationality, statelessness is not an obstacle for withdrawing a nationality on the basis of fraudulent acquisition. The Ministry has in fact considered the potential statelessness of the applicant that would result from withdrawing his Dutch nationality, and came to the conclusion that the statelessness of the applicant was justified, considering the nature and severity of the fact he has concealed, and the relevant interests of the State discussed above'.

Decision documents

[ECLI_NL_RVS_2013_1575.pdf](#)

Outcome

The Court ruled against the applicant, confirming the validity of the administrative decision withdrawing his nationality and rendering him stateless.