



[Netherlands - Council of State \(Raad van State\), case no. 200306971/1](#)

When naturalising in the Netherlands the applicant committed to renouncing his original nationality. The Dutch authorities have withdrawn his naturalisation as he missed the deadline for renunciation, but by then the applicant had already taken steps to renounce his original nationality, albeit after the deadline, thus leading to the decision of the Dutch authorities potentially rendering him stateless. The Court considered the direct effect of ECN in the Dutch legal order, as well as whether the applicant's case amounted to fraudulent acquisition of nationality, which would potentially justify rendering him stateless under the ECN. The Court ordered the authorities to take a new decision, which takes into the account the developments that took place after the deadline, and referring to the risk of statelessness.

Case status: Decided

Case number: 200306971/1

Date of decision: 18/08/2004

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: Unknown

Applicant's country of residence: Netherlands

Legal instruments: 1997 European Convention on Nationality

Key aspects: Acquisition of nationality, Voluntary renunciation of nationality

Relevant Legislative Provisions:

Article 7 of the European Convention on Nationality

Articles 14 and 15 of the Dutch Royal Nationality Law

Facts

The applicant naturalised in the Netherlands in April 2001, and in that procedure he

promised to renounce his other nationality. According to the authorities, the applicant was sent letters on the 24 April, 23 July and 8 November 2001 with follow ups requesting him to renounce his other nationality, setting the final deadline at 8 December 2001. The applicant claims to have never received such letters, and initially not having understood what was required of him. On 19 December 2001, after the applicant spoke to a friend who explained the renunciation requirement to him, the applicant contacted the representatives of the state of his original nationality, and expressed the wish to renounce that nationality. On 4 February 2002 his Dutch nationality was withdrawn, as he failed to comply with the renunciation requirement within the deadline. The applicant submitted a declaration from the consular representatives of his original nationality, dated 25 February 2002, that on 22 April 2002 he was granted permission to acquire Dutch nationality as long as he renounces his original nationality, and that he will no longer be consider as a national by the state of his original nationality from the moment he acquires Dutch nationality. The applicant appealed against the decision withdrawing his Dutch naturalisation. He won the case in the lower instance court, but the authorities appealed that judgment, resulting in the present judgment of the Supreme Court.

Legal arguments by the applicant

The applicant argued that he originally misunderstood the renunciation requirement of his naturalisation in the Netherlands, and did not receive the letters from the Dutch government with relevant reminders. Once he understood what was required of him, he took the necessary steps with the representatives of the state of his original nationality, and renounced that nationality. He claimed, among others, that withdrawing his naturalisation after this would render him stateless.

Legal arguments by the opposing party

The authorities argued that the fact that the applicant did not receive three of their letters is the responsibility of the applicant, and that his actions with the representation of the state of his original nationality, as well as letters from them, are inadmissible as they have taken place after the set deadline for fulfilling his renunciation requirement.

The authorities moreover argued that the lower instance court incorrectly implicitly assumed that article 7 (1) of the ECN is directly applicable in the Netherlands. Alternatively, to the extend it may be directly applicable, it does not preclude the

ground for withdrawal of naturalisation if the naturalised national failed to renounce his former nationality within the deadline.

Decision & Reasoning

In relation to the risk of statelessness, the Court reasoned as follows:

"2.4.1. According to the Explanatory Report of the Council of Europe on the ECN (hereinafter: the Explanatory Report), Article 7 of the ECN contains an exhaustive list of scenarios in which nationality can be automatically lost or withdrawn at the initiative of the state. States parties are therefore not free to provide for the loss of nationality in other circumstances than the ones permitted by the Convention. Since this provision is formulated as a prohibition, no further legislation is required for it to be effective in national law, apart from changes in national law to eliminate any potential conflicting legislation. The [lower instance court] was therefore correct in directly applying Article 7b ECN."

"2.4.2. According to the Explanatory Report regarding [Art. 7b ECN] (paragraph 61), fraudulent conduct, provision of false information or concealment of any relevant fact must be understood as an intentional act or omission by the applicant, which has played a substantial role in the acquisition of nationality. For example, if a person obtains a nationality of a State Party on the condition that he subsequently renounces his original nationality and then does not voluntarily do so, the State Party is entitled to withdraw his nationality."

"2.4.3. In view of Article 7 of the ECN and the explanatory notes to it, Article 15d of the Dutch Royal Nationality Law should be read as meaning that a naturalisation can be revoked if the person concerned, in violation of a statement signed by him, intentionally does not give up his original nationality."

The Court finds that the authorities failed to comply with their administrative decision to fully reconsider their decision once the applicant submitted a complaint.

"2.4.4 [...] It could have become apparent in the complaint procedure [had a full reconsideration taken place], that the applicant has renounced his original nationality. The way in which the authorities applied the grounds for withdrawal of naturalisation are moreover at odds with Article 14, second paragraph, of Dutch Royal Nationality Law, since it may result in the person concerned becoming stateless."

Decision documents

[RvS_18%20Aug%202004.pdf](#)

Outcome

The Court upheld the decision of the lower instance court, and annulled the administrative decision withdrawing the applicant's naturalisation, ordering the authorities to take a new decision which takes the judgments into account.