

Netherlands - Council of State (Raad van State), ECLI:NL:RVS:2020:3045

The applicant is a dual Dutch/Moroccan national whose Dutch nationality was withdrawn on the basis of a criminal conviction for terrorist activities. The Court rejected the applicant's appeal, concluding, among others, that prevention of statelessness is a valid reason for differentiated treatment between those with a single and with multiple nationalities, and that withdrawal of nationality is not a punitive measure. Withdrawal of nationality in addition to the criminal sentence does not violate the principle that prohibits repeated punishments for the same action.

Case name (in original language) : ECLI:NL:RVS:2020:3045

Case status: Decided

Case number: ECLI:NL:RVS:2020:3045

Citation: <https://www.uitspraken.nl/uitspraak/raad-van-state/bestuursrecht/vreemdelingenrecht/hoger-beroep/ecli-nl-rvs-2020-3045>

Date of decision: 30/12/2020

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: Netherlands

Applicant's country of residence: Netherlands

Legal instruments: 1961 Statelessness Convention, 1997 European Convention on Nationality, European Convention on Human Rights (ECHR), European Union law

Key aspects: Deprivation of nationality, Discrimination, Procedural safeguards

Relevant Legislative Provisions:

Article 14, in conjunction with Article 8, of the European Convention on Human Rights (ECHR)

Article 21 of the EU Charter of Fundamental Rights

Article 5, 7 and 17 of the European Convention on Nationality

Article 8 of the 1961 Convention on the Reduction of Statelessness

Article 14(2b) and 14(8) of the Dutch Nationality Law

Facts

The applicant's Dutch nationality was withdrawn on the basis of a criminal conviction for planning to commit a crime of terrorism. The applicant has previously spent some time in Syria in a training camp of a terrorist organisation. The applicant also has Moroccan nationality.

Legal arguments by the applicant

Firstly, the applicant argued that the lower instance court failed to consider the reports from the police and social workers from which it is apparent that he has rejected his former beliefs, and has "resocialised" into Dutch society. He moreover argued that he was unjustly denied access to some of the evidence about him that was submitted by the State, and therefore could not defend himself against such evidence.

Secondly, the applicant argued that withdrawal of nationality is a punitive measure, which means he has been punished twice for the same crime, in violation of the *ne bis in idem* principle.

Thirdly, the applicant argued that his stay in Syria (between July 2013 and January 2014) took place before the law which allows withdrawal of nationality on this basis came into force (in September 2014). He had no opportunity to foresee the consequences of his actions in light of legislation that was introduced later, thus violating the *lex certa* principle (legal certainty).

Fourthly, the applicant argues that he has been discriminated against in violation of article 14 ECHR, in conjunction with article 8 ECHR, article 21 of the EU Charter of Fundamental Rights, and Article 5 and 17 of the European Convention on Nationality. The fact that withdrawal can only take place because the applicant possesses another nationality is a direct discrimination between individuals with only Dutch nationality and those with more than just Dutch nationality, and constitutes indirect discrimination on the basis of race, ethnic origin, and religion. These

distinctions are unlawful and disproportionate. The 1961 Convention on the Reduction of Statelessness (1961 Convention) and the European Convention on nationality cannot be used as a basis for justifying such discrimination, because these conventions intend to prevent discrimination on the basis of nationality. The 1961 Convention aims to prevent statelessness, and does not require nationality to be withdrawn from those who have multiple nationalities. The applicant submitted that he is unable to renounce his Moroccan nationality.

Fifthly, the applicant argued that the personal proportionality test did not take place, violating the proportionality requirements of Dutch law, EU law, and the ECHR.

Finally, the applicant asked the Court to refer a preliminary ruling question on the compatibility of the withdrawal with EU law.

Decision & Reasoning

Firstly, the Court rejected the applicant's arguments related to the procedure and evidence, ruling that the restricting access to some selected documents was in the interests of national security, which outweighed the interests of the applicant in gaining access to such documents. The Court moreover ruled that the applicant did not sufficiently demonstrate that the "resocialisation trajectory" imposed on him by a lower instance court was in fact successful.

Secondly, the Court considers whether withdrawal of nationality is a punitive sanction, applying three criteria from the ECHR judgment in *Engel v. the Netherlands* : the classification of the measure under national law, the nature of the crime in relation to the aim of the measure, and the severity of the measure. The Court notes that withdrawal of nationality is not an automatic measure that is imposed by the criminal court on everyone who has been convicted of a crime of terrorism. Withdrawal of nationality requires the Ministry to evaluate the situation separately after the criminal conviction has become final, and determine whether the interests of the Netherlands have been heavily affected to the extent that the bond of nationality between the state and the individual can no longer exist. The withdrawal of nationality is therefore not a punitive measure, but an administrative one. The Court reasons as follows:

"The primary goal of the measure is not fighting jihadism and protecting national security. The Minister correctly points out that the withdrawal of Dutch nationality expresses the fact that the applicant has turned against the interests of the

Netherlands to such a great extent that a bond with the Netherlands can no longer exist. This measure targets a group of Dutch nationals who have been convicted for a terrorist crime, and whose convictions have become final, and expresses that the bond with the Netherlands can no longer exist. [This] involves a proportionality test. This indicates that general norms of criminal law are not at stake here, and that the withdrawal of Dutch nationality is not a punitive sanction".

"When determining the severity of the measure it is important whether the measure intends to add to the suffering, and whether the measure is so severe that because of its severity it ought to be considered as punitive. The severity of the measure is considered on the basis of objective criteria; the subjective experience of the measure by the person concerned is generally not relevant here. The Court rules that the withdrawal of Dutch nationality, while an invasive measure with extensive consequences, does not aim to add to the suffering. Moreover, the applicant retains his Moroccan nationality, whereby he does not become stateless".

The court concludes that the *ne bis in idem* principle has not been violated.

Thirdly, the Court rejects the arguments that the withdrawal violated the principle of legal certainty, as the relevant legislation allows for a retroactive effect of the provision. The requirement of the law is that the relevant criminal conviction became final after the introduction of the legislation allowing the withdrawal - and not that the relevant crimes have been committed after the legislation allowing the withdrawal was introduced.

Fourthly, with regard to discrimination and statelessness, the Court relies on the jurisprudence of the European Court of Human Rights on Article 14, to establish that distinction between similar situations can be justified if the distinction is made on the basis of reasonable and objective grounds, and if the measure is proportionate to its aim. The Court applies this test to Dutch legislation on withdrawal of nationality, and reasons as follows:

"6.2. As correctly established by the [lower instance court], the provision on withdrawal on the basis of Article 14(2b) of the Dutch Nationality Law is in principle applicable to anyone who has been convicted for crimes indicated in that provision. The applicant however points out that in reality only Dutch nationals with multiple nationalities are affected by this provision, because Article 14(8) of the Dutch Nationality Law stipulates that loss of Dutch nationality does not take place if it

results in statelessness. As explained by the Minister, this direct differentiation finds its origin in the 1961 Convention on the Reduction of Statelessness and in Article 7(3) of the ECN. As established earlier by this Court (judgment of 18 August 2004, ECLI:NL:RVS:2004:AQ7002), the state parties to the ECN are limited in the scenarios whereby loss of nationality can take place. The aim of Article 14(8) of the Dutch Nationality Law that prohibits loss that leads to statelessness is lawful, considering among others the 1961 Convention and the ECN. Prevention of statelessness is an obligation that stems from international conventions, and implies that states have to distinguish between individuals with a single nationality and with multiple nationalities. On the other hand, there is no international right to multiple nationalities. The Court finds support for this in the reports of the UN Human Rights Committee (A/HRC/25/28, point 6) "Human rights and arbitrary deprivation of nationality" of 19 December 2013, and "Opinion on the draft constitutional law on "protection of the Nation" of France" of 14 March 2016. The Minister was not incorrect to take the view that limitation on his authority to withdraw Dutch nationality on the basis of Article 14(2b), only in cases where it does not lead to statelessness, is an appropriate measure to achieve the above mentioned aim. Moreover, in every individual case the Minister conducts a proportionality test."

" 6.3. To the extent that Article 14(2b) of the Dutch Law on Nationality indirectly distinguishes on the basis of race, ethnic origin and religion, it is objectively and reasonably justified. The goal of withdrawal of Dutch nationality on the basis of this provision, which expresses that the applicant has turned against the Dutch interests to such an extent the bond with the Netherlands can no longer exist, is in principle legitimate. This goal is in line with Article 7(1d) of the ECN and Article 8(3a(ii) of the 1961 Convention, which explicitly allow for withdrawal of nationality due to behaviour that damaged essential interests of the state parties. The withdrawal of Dutch nationality is a suitable measure to achieve the aforementioned goal. The Minister was not incorrect to take the view that the withdrawal of Dutch nationality was necessary considering the seriousness of the facts committed by the applicant. Finally, the Court takes into consideration that Article 14(2b) of the Dutch Law on Nationality, read in conjunction with Article 14(8) is formulated in an objective manner, in the sense that the Minister can apply this provision to each Dutch national who has a second nationality, where it is irrelevant how long the person possesses the Dutch nationality, and in which manner it has been acquired."

The Court concludes that the non-discrimination principle has not been violated.

Fifthly, the Court reasons as follows concerning the proportionality test:

"The Minister has correctly considered in the proportionality evaluation that the applicant does not become stateless as a result of withdrawal, because he also has Moroccan nationality. He has also correctly taken into account that the loss of EU citizenship does not have an impact on the EU citizenship of his children, that the EU citizenship of the applicant is not necessary for him to be able to lead a family life with his children, that he did not substantiate that he even had contact with his children, and that he did not submit much about his personal circumstances. The Minister was not incorrect to consider that the circumstance that the applicant was a Dutch national since birth, considering the nature and seriousness of the committed acts and the serious violation of the essential interests of the state, does not weight sufficiently heavy to consider the withdrawal of Dutch nationality and the consequent loss of EU citizenship disproportionate.

"It follows from the criminal conviction that the applicant, also after he left Syria, did not distance himself from the jihadi-salafistic ideas. The Probation reports of 30 December 2015 and 30 May 2016 indicate that Probation raised concerns about the thought patterns of the applicant. According to the Probation, he has clear negative and rejecting attitude towards the Dutch government, looks up on the Internet jihadi songs, texts, photos and videos, and indicates that he wants to maintain contact with people he has met during his detention in the Terrorism Unit. According to the judgment of the court, serious consideration needs to be given to the fact that the applicant was going to commit a crime that aimed at physical bodily integrity of one or more persons. The applicant did not show that he has in the meantime distanced himself from jihadi-salafistic ideas and that he de-radicalised."

The Court furthermore concludes that even though withdrawal of nationality forms an interference with the right to family life as enshrined in Article 8 ECHR, the interference is lawful and proportionate, and therefore does not violate Article 8 ECHR. Neither is Article 3 violated as there is no evidence that the applicant would be subject to ill-treatment in Morocco.

Finally, the Court rules that there is no need for preliminary ruling questions to the Court of Justice of the European Union, and dismisses the applicant's appeal.

Decision documents

[RvS_30Dec2020.pdf](#)

Outcome

The Court dismisses the applicant's appeal, rendering the withdrawal of the applicant's Dutch nationality effective.