



## [Netherlands - AB Council of State \(Raad van State\)](#)

In a case concerning a Dutch national associated with ISIS, the Council of State ruled that the decisions from the Dutch authorities to declare the applicant undesirable and to withdraw her Dutch nationality should be annulled on the grounds that they did not sufficiently take into consideration the best interests of her minor children and her right to family life.

**Case name (in original language) :** AB Raad van State 29 juni 2022

**Case status:** Decided

**Case number:** 202006910/1/V1 & 202006913/1/V6

**Citation:** AB Raad van State 29 juni 2022, 202006910/1/V1 & 202006913/1/V6  
ECLI:NL:RVS:2022:1722

**Date of decision:** 29/06/2022

**State:** Netherlands

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

**Language(s) the decision is available in:** Dutch

**Applicant's country of birth:** Netherlands

**Applicant's country of residence:** Netherlands

**Legal instruments:** European Convention on Human Rights (ECHR)

**Key aspects:** Deprivation of nationality, Determination/confirmation of nationality  
, Respect for private and family life

**Relevant Legislative Provisions:**

Article 8 of the European Convention on Human Rights

General Administrative Law Act (Algemene wet bestuursrecht): Articles 3:2; Article 3:46; Article 8:29

Netherlands Nationality Act (Rijkswet op het Nederlanderschap): Article 14; Article 22a

Aliens Act 2000 (Vreemdelingenwet 2000): Article 67; Article 68c

## **Facts**

The applicant was born in Morocco and received Dutch nationality when she moved to the Netherlands as a minor together with her parents. In March 2013, the applicant travelled to Syria and married an ISIS militant, with whom she had two children, born in 2015 and 2016, respectively. She openly praised the modus operandi of ISIS at the time and posed in pictures with an automatic firearm. After 2017, she remained affiliated with ISIS and made pro-ISIS statements on social media. She facilitated the spread of these statements semi-publicly by speaking positively about her life in an area where ISIS' religious police operate. She stayed in an ISIS-controlled area until early 2019.

In 2019, the applicant reported to the Dutch Embassy in Ankara, Turkey with a request for consular assistance to return to the Netherlands. She travelled to the Netherlands in 2019 with a Turkish emergency document but was denied entry into the Netherlands at the airport. She has been in criminal detention since. The criminal court eventually sentenced her to 48 months of imprisonment, of which 16 months were conditional, for participating in a terrorist organisation.

After the abovementioned sentencing, the Secretary of State ruled that the woman should be regarded as undesirable in the Netherlands because she would pose a danger to public order. Following this decision, the Secretary of State decided to revoke her Dutch nationality. The applicant challenged both the declaration of undesirability and the withdrawal of Dutch nationality.

## **Legal arguments by the applicant**

The applicant argues that the district court failed to recognise that the State Secretary did not make an individual assessment and failed to substantiate why she would pose a danger to public order. The State Secretary had only presented in general terms that she should be regarded as undesirable in the interest of the public order, national safety, and the interests of the Netherlands and its international relations.

Furthermore, the applicant argues that the declaration of undesirability is an unjustified interference with her family and private life. According to the applicant, she had made an error of judgement in the past, but that does not mean she has no ties with the Netherlands and her family, who live there. On the contrary, she very

much wanted to return to the Netherlands and had therefore tried to escape from the Kurdish camp with her children. The children have been in the Netherlands ever since, and the declaration of undesirability would mean she would be separated from her children, possibly for years. The District Court unjustly ruled that the declaration of undesirability does not affect the Dutch nationality of her children without a careful balancing of interests.

### **Legal arguments by the opposing party**

The Secretary of State argued that an individual assessment had been conducted and submitted relevant documents. The statements from the AIVD (General Intelligence and Security Service) (Algemene Inlichtingen- en Veiligheidsdienst), on which the decision is based, set out all the personal facts and circumstances of the applicant.

Furthermore, the Secretary of State stated that there is no breach of the right to family life because the applicant willingly and voluntarily left the Netherlands in July 2013 to reside permanently in an area controlled by ISIS. Therefore, if the court were to conclude that there is a breach of family life between the applicant and her parents and two brothers and sister, the infringement would not be unjustified since the applicant has decided to no longer reside close to her family members. Furthermore, the declaration of undesirability would not change her current family life status as she has already left the Netherlands and is married in Syria to a member of ISIS with whom she now has two children.

### **Decision & Reasoning**

The Council of State first ruled that the Secretary of State and the AIVD (General Intelligence and Security Service) assessed the case's individual characteristics. It established that there was no reason to doubt the contents of the underlying documents and evidence that the applicant had joined ISIS. Furthermore, the Council of State considered that the applicant had been imprisoned because she participated in a terrorist organisation. Therefore, the applicant's first argument was dismissed.

Concerning the second ground, according to the Dutch decree on acquisition and loss of nationality, the withdrawal of Dutch nationality should be assessed together with Article 8 ECHR. This is because withdrawing the applicant's nationality could breach her right to family and private life.

According to ECtHR case law, the Secretary of State should have considered the right of family life and struck a fair balance between, on the one hand, the interests of the person concerned and their family and, on the other hand, the Dutch public interest. In doing so, all facts and circumstances must be taken into consideration.

This means the Secretary of State should have balanced the nature and severity of the crime committed, the length of the applicant's residence in the Netherlands, the time that passed since the crime and the conduct, the family life of the applicant, and the interest and welfare of the applicant's children. In particular, the court should have considered the seriousness of the problems that the children would likely encounter in the country to which the applicant may be deported. Furthermore, according to ECHR case law, in all decisions concerning children, their interests must be a primary consideration. Therefore, although not decisive, those interests must be given considerable weight.

According to previous Dutch case law of the Council of State, it should consider these abovementioned interests under Article 8 ECHR in its assessment of the justification of the declaration of undesirability. Therefore, the court is allowed to take into consideration all facts and circumstances which have occurred after the concerned decisions have been made.

The Council of State ruled that the Secretary of State did not consider the interests of the applicant's minor children in the balancing exercise. According to the Council of State, what is particularly important is that the children derive Dutch nationality from their mother by birth and have resided in the Netherlands as of 2019, where they have and continue to receive an education. Furthermore, the report of the Child Protection Counsel (Raad voor de Kinderbescherming) demonstrated that the applicant has a close relationship with her children. The State Secretary must consider these facts in weighing the interests and present them in their decision but have failed to do so. Because it failed to do so, the declaration of undesirability is unjust and should therefore be annulled. Because the decision to withdraw the applicant's Dutch nationality is based on the decision to regard her as undesirable, the decision to withdraw her nationality should be annulled as well.

### **Decision documents**

[Uitspraak 202006910 1 V1 en 202006913 1 V6 - Raad van State.pdf](#)

### **Outcome**

Because the decision to declare the applicant undesirable did not take into consideration the best interests of the applicant's children, as well as her right to family life, the Council of State overturned that decision. Furthermore, because the declaration of undesirability was linked to the decision to revoke the applicant's nationality, the latter decision was also annulled. Both decisions were thus annulled.

### **Caselaw cited**

- ECHR 2 August 2001, Boultif vs Switzerland, ECLI:CE:ECHR:2001:0802JUD005427300;
- ECHR 18 October 2006, Üner vs the Netherlands, ECLI:CE:ECHR:2006:1018JUD004641099;
- ECHR 3 October 2014, Jeunesse vs the Netherlands, ECLI:CE:ECHR:2014:1003JUD001273810;
- Council of State (ABRvS) 3 December 2014, ECLI:NL:RVS:2014:4481;
- Council of State (ABRvS) 17 April 2019, ECLI:NL:RVS:2019:990;
- Council of State (ABRvS) 1 July 2020, ECLI:NL:RVS:2020:1503;
- Council of State (ABRvS) 30 April 2021, ECLI:NL:RVS:2021:928