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Study for Type A report – Loss of nationality due to permanent residence abroad

Considerations on the *Tjebbes* judgment of the Court of Justice of the
European Union

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Executive Summary

In the judgment of the Court of Justice of the European Union (CJEU) of 12 March 2019, *Tjebbes and Others* (case C-221/17), the Court concluded that the principle of proportionality should also be applied in cases where the loss of Member State nationality and the associated loss of European citizenship occurs by operation of law due to the fact that the persons concerned were living more than ten years outside the European Union. Even under these circumstances, the proportionality of the loss must be established in each specific case. The same applies in cases where the loss of nationality by a parent is extended to minor children: the proportionality of the extension has to be assessed separately, with special attention for the best interests of the child.

In this report, this judgment is analysed in light of the rules in force in the Netherlands. The possible consequences for the relevant provisions of the Netherlands Nationality Act are discussed. Remarks are also made on the nationality laws of other Member States that provide for loss of nationality due to residence abroad. Attention is also paid to the possible consequences of the *Tjebbes* ruling for other automatic loss provisions in force in the Member States of the European Union. The consequences of *Tjebbes* for provisions on loss of nationality by (extension to) minors are discussed extensively.

In respect of the rules in force in the Netherlands, it is likely that both Article 15(1)(c) (in conjunction with Article 15(3) and (4)) and Article 16 of the Netherlands Nationality Act must be revised. Alternatively, the Netherlands government could decide to introduce an *ex post* proportionality test that could result in the *ex tunc* re-acquisition of Netherlands nationality. The CJEU obviously assumed in its judgment that such *ex post* assessment of the proportionality of the loss is already possible according to the law in force. However, this is not the case. The courts and administrative authorities of the Netherlands are currently considering how the proportionality assessment as required by *Tjebbes* could be implemented. The judgment of the Council of State (*Raad van State*) in the case that gave rise to the Court of Justice's ruling in *Tjebbes* will be published on 12 February 2020.

As the Court rejected the request to limit the temporal effect of the judgment, an *ex post* assessment of the proportionality of the relevant loss provisions may have to be realised for all cases where the loss of nationality happened after the introduction of European citizenship on 1 November 1993.

In addition, the nationality laws of other Member States providing for loss of nationality due to residence abroad may have to be revisited. This applies in particular for Belgium, Denmark, Finland, Spain and Sweden.

Other grounds for automatic loss of nationality may also need to be revisited. The regulation of the loss of nationality due to voluntary acquisition of a foreign nationality, as in force in Slovakia, the Netherlands and Spain, could prove to be problematic. The same applies for the regulation of the loss of nationality due to participation in foreign military, as is the case in Austria, Germany and Spain, as well as for the Austrian provision on loss of nationality on grounds of behaviour seriously prejudicial to the vital interests of the State.

Problems may also arise in several Member States in respect of the loss of nationality by a minor due to the annulment of maternity or paternity. It is striking that only a few Member States expressly regulate this type of loss. In fourteen Member States it may be necessary to revise the automatic extension of (certain modes of) loss by a parent to minor children.



Attention is also needed for cases of “quasi” loss of nationality, where the nationality is not lost, but deemed never to have been acquired, without any possible assessment of proportionality.



1. Introduction

Over 25 years ago, on 1 November 1993, the Maastricht Treaty entered into force. The Treaty introduced European citizenship, which was linked to the possession of the nationality of a Member State. The rules of the Member States determine who is, in principle, considered a European citizen. However, it was clear from the outset that European law could have an indirect impact on the grounds for acquiring and losing the nationality of a Member State. This was already clear from the *Micheletti* judgment of the Court of Justice of 7 July 1992: “Under international law, it is for each Member State, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality”.¹

The relevance of general principles of European law was demonstrated nine years ago by the *Rottmann* judgment of the Court of Justice of 2 March 2010: the deprivation of nationality resulting in the loss of European citizenship is only possible if the administration respects the principle of proportionality.²

In the case of *Tjebbes and Others*,³ the central question was whether the principle of proportionality should also be applied to cases in which the loss of nationality and the associated loss of European citizenship occurs by operation of law.⁴ The Court's answer is sensational: even then, the proportionality of the loss must be established in the specific case. The consequences of this will be extensively examined in this report.

The judgment in the *Tjebbes and Others* case was issued in response to preliminary questions referred by the Netherlands Council of State (*Raad van State*). The questions concerned the interpretation of Article 15(1)(c) and Article 16(1)(d) of the Netherlands Nationality Act (*Rijkswet op het Nederlanderschap*; hereafter: *RwNed*). The former provision concerns the loss of Netherlands nationality due to ten years of residence outside of the Netherlands and the European Union, and the latter provision concerns the loss of Netherlands nationality by a minor whose parent loses the Netherlands nationality on grounds of permanent residence abroad.

As the question in this case was whether Netherlands nationality law is in accordance with European law, it is appropriate to discuss the relevant Netherlands provisions on loss of nationality and, in doing so, to also discuss relevant Netherlands case-law and administrative practice, before going into the considerations of the Court of Justice and examining the consequences the judgment should have for Netherlands law. It is useful to focus not only on the provisions currently in force, which are central to the judgment, but also on a number of its “predecessors”. The Court has refused to limit the effects of the judgment in time, so that the question will also have to be answered as to the consequences for the former provisions that have already been repealed.

Therefore, the development of the rules regarding the loss of Netherlands nationality due to residence abroad will first be described (section 2). Sections 3 and 4 will be devoted to the provisions of Article 15 and 16 *RwNed*. After some remarks on the facts of the concrete cases in *Tjebbes* (section 5), the

¹ CJEU 7 July 1992, in re *Micheletti*, C-369/90, para. 10.

² CJEU 2 March 2010, in re *Rottmann*, C-135/08.

³ CJEU 12 March 2019, in re *Tjebbes e.a.*, C-221/17.

⁴ Some terminological remarks are appropriate. Loss of nationality can happen *automatically* (also referred to as *ex lege*, *ipso iure*, *by operation of the law* or *lapse*). Another possibility is that the loss occurs after an act of *deprivation* by the State authorities (also referred to as *withdrawal*).



decision of the Court of Justice of the European Union will be analysed (section 6), followed by an attempt to indicate the possible consequences for the relevant provisions of the Netherlands Nationality Act (section 7). In section 8, remarks will be made on the nationality laws of other Member States that provide for loss of nationality due to residence abroad. Section 9 will be devoted to an analysis of the consequences of the *Tjebbes* ruling for automatic loss provisions in force in the Member States of the European Union. In section 10, special attention will be given to the consequences of *Tjebbes* for provisions on loss of nationality by extension to minors. In section 11, some attention will be given to the possible consequences of *Tjebbes* for the construction on quasi-loss of nationality.

2. Overview of the development of loss of Netherlands nationality due to ten years of residence abroad

Dutch citizens have risked losing their nationality as result of residing abroad since the nineteenth century.⁵ The Netherlands Nationality and Residence Act (*Wet op het Nederlanderschap en het ingezetenschap*)⁶ of 1892 (in force on 1 July 1893) stipulated that Netherlands nationals who had their residence outside the Netherlands (including colonies and possessions in other parts of the world) for ten consecutive years would lose their Netherlands nationality automatically, unless they notified the Netherlands government every ten years that they wished to remain Netherlands nationals. No specific form was required for such an 'extension' declaration. The loss of Netherlands nationality based on these nineteenth-century provisions had no effect on the minor children of the person concerned. In the case of these children, the term of ten years did not start to run until the date of reaching the age of majority (Article 7(3) of the 1892 Act).⁷ The loss of Netherlands nationality based on this provision occurred for the first time on 1 July 1903, i.e. 10 years after the entry into force of the Act of 1892.

From 1903 onwards, there were so many protests about this loss provision, which could also cause the loss of Netherlands nationality by persons born in the Netherlands, that it was decided to change the regulation.⁸ The Act of 15 July 1910⁹ limited this loss scheme to Netherlands nationals born abroad and was accompanied by a very generous transitional scheme. The majority of persons who had lost their Netherlands nationality on the grounds of ten years of residence outside of the Netherlands were granted Netherlands nationality again. As will be seen below, it would take until 1 April 2013 before the Netherlands nationality could be lost again by a Netherlands national born in the Netherlands who resides abroad.¹⁰

⁵ Art. 9(3) of the Civil Code of 1838 already stipulated that Netherlands nationality was lost when the place of residence was established abroad with the apparent intention of not returning to the Netherlands. If they were engaged in trade with the Netherlands, it was assumed that they would eventually return to the Netherlands. The nationality law of 1850 was even more precise and indicated in Art. 10(3) that it had to concern a stay of more than five years with the apparent intention of not returning.

⁶ Act of 12 December 1892, *Staatsblad* 1892, 268.

⁷ The age of majority was initially 23 years (so that Netherlands nationality under the law of 1892 could occur when reaching the age of 33), but on 1 December 1905 it became 21 years (so that Netherlands nationality could be lost on the 31st birthday). This remained the case until 1985.

⁸ See in detail the booklet published by the Netherlands Chamber of Commerce in London '*De geschiedenis van de Wet op het Nederlanderschap (12 December 1892, Stb. No. 268) in den Vreemde*', Amsterdam: J.H. Bussy 1907.

⁹ *Staatsblad* 1910, 216.

¹⁰ This is in particular relevant for the case of Ms Koopman (one of the joint cases in *Tjebbes e.a.*). See section 5 below.



The old provisions could also cause statelessness. This applied until 1 January 1985. On that day, a completely new loss construction came into effect, which was milder on the one hand (preventing statelessness), but much stricter on the other hand (no renewal declaration possible). From 1985, persons who, after reaching the age of majority, had resided outside of the Kingdom of the Netherlands for ten consecutive years, other than in the employment of the Netherlands, the Netherlands Antilles, Aruba,¹¹ or an international organisation, lost their Netherlands nationality automatically if they lived in a country where they were also born and of which they also have the nationality (Article 15(c) Netherlands Nationality Act 1984 (*Rijkswet op het Nederlanderschap*) in force on 1 January 1985). Since then, the age of majority was 18 years, so that the loss under this provision could occur on the 28th birthday. Minor children of persons who lost their Netherlands nationality on this basis equally lost their nationality (Article 16(1)(c) *RwNed*, as in force in 1985).

Because there were quite a few differences between the grounds for loss of nationality under Article 15(c) *RwNed* and the previously applicable regulation under the Act of 1892, a transitional article provided that all loss deadlines restarted as of 1 January 1985. As a result, many Netherlands nationals living abroad lost their Netherlands nationality on 1 January 1995, without being able to prevent this loss by means of a renewal declaration. For this reason, on 1 January 1995, a huge number of Netherlands nationals born and living abroad lost their Netherlands nationality.¹²

On 1 April 2003, this ground for loss was again drastically amended.¹³ Netherlands nationals possessing also another nationality can still lose their Netherlands nationality automatically as a result of ten years of foreign residence. However, since 1 April 2003, this also applies to persons born in the Netherlands, even if they do not reside in the country of their other nationality but in a third country. However, loss does not occur if the person concerned resides within the territory “to which the Treaty on European Union applies”. An exception also applies to Netherlands nationals employed by the Kingdom of the Netherlands or by an international body in which the Kingdom is represented, as well as to their spouses, registered partners or concubinary partners. Loss can be prevented by obtaining a Netherlands passport or ID card¹⁴ at least once every ten years, or a “declaration of possession of Netherlands nationality” (*verklaring omtrent het bezit van het Nederlanderschap*), according to Article 15(4) *RwNed*. Article 15(3) *RwNed* stipulates that foreign residence is not considered to be interrupted if one's main residence has not been established within the Kingdom of the Netherlands or within the European Union for at least one year.

The loss in question works by operation of law and – if the text of this provision is applied literally – cannot be prevented by proving a close relationship with the Netherlands.

The limitation of this ground for loss to cases in which a person resides outside the European Union has to do with the right of free movement of persons guaranteed by European law. If a loss due to a stay

¹¹ The separate mention of Aruba applies from 1 January 1986 in connection with the acquisition of *status aparte* as a separate country within the Kingdom of the Netherlands.

¹² This moment is highly relevant because Netherlands nationality was since 1993 linked to European citizenship. All Netherlands nationals who lost Netherlands nationality on 1 January 1995 also lost European citizenship, except if they also were a national of another Member State of the European Union.

¹³ Act of 21 December 2000, *Staatsblad* 2000, 618, in force on 1 April 2003.

¹⁴ Or – since 2017 – an alternative ID-card, which on application will be issued for a person whose passport and ID-card are annulled in order to avoid that (s)he joins terrorists groups abroad. Such alternative ID-card cannot serve as a travel document.



abroad could also occur if a Netherlands national, who also has another nationality, resides in another Member State of the Union, this would most likely constitute a violation of European law. This would certainly be the case if the other nationality is that of a non-Member State. Even if the other nationality is that of another Member State, such a loss would not be unproblematic. The prospect of a possible loss of Netherlands nationality could discourage persons from making use of their EU free movement rights. By excluding residence in another Member State from the scope of this ground for loss, the Netherlands is taking European law into account. This is to be welcomed, but the way in which this is done is not ideal. The wording does not take account of the fact that there are also other non-EU States to which free movement of persons applies, namely the Member States of the European Economic Area (Liechtenstein, Norway and Iceland), as well as Switzerland. This omission will be discussed in more detail below, as two of the four parties in the *Tjebbes and Others* case are resident in Switzerland.

The 2003 amendment provided that all deadlines would start running again as of 1 April 2003. The new provision could thus only cause the loss of nationality as of 1 April 2013.

The text of Article 15(1)(c) in conjunction with (3) and (4) *RwNed*, as in force in 2020 is (translated in English) :

“Article 15

1. A person who is of full age shall lose his or her Netherlands nationality: [...] c. if he or she also has a foreign nationality and, after coming of age and while possessing both nationalities, has his or her principal place of residence for a continuous period of ten years outside the Netherlands, Aruba, Curaçao, Sint Maarten, and outside the areas to which the Treaty on European Union applies, other than in the service of the Netherlands, Aruba, Curaçao, Sint Maarten and/or of an international body at which the Kingdom is represented, or as the spouse of or as an unmarried person in a permanent relationship living with a person in such a service; [...]

3. The period referred to in the first subsection under c is not deemed to be interrupted if the person concerned has his or her principal place of residence for a period shorter than one year in the Netherlands, Aruba, Curaçao, Sint Maarten and/or in the areas to which the Treaty on European Union applies.

4. The period referred to in the first subsection under c is interrupted by issuing a declaration with respect to the possession of Netherlands nationality or a travel document, Netherlands identity card or alternative Netherlands identity card within the meaning of the Passport Act (Paspoortwet). A new period of ten years commences as from the day of issue.”¹⁵

3. Netherlands case law on Article 15 paragraph 1 (c) *RwNed*/ Netherlands Nationality Act (loss due to ten years of residence abroad)

In order to understand the exact scope of application of Article 15(1)(c) *RwNed*, a brief comment on an important judgment of the Netherlands Supreme Court (*Hoge Raad*) of 27 March 2015 on the application of Article 15(1)(c) *juncto* Article 15(4) *RwNed* is essential.¹⁶

¹⁵http://eudo-citizenship.eu/admin/?p=file&appl=currentCitizenshipLaws&f=NL%20Netherlands%20Nationality%20Act_consolidated%205_11_13_ENGLISH.pdf

¹⁶ ECLI:NL:HR:2015:761. H.U. Jessurun d’Oliveira, ‘Automatisch verlies nationaliteit voor Nederlander buitenaf onhoudbaar: het recht van de EU en het Europees Nationaliteitsverdrag verfrommelen artikel 15(1) onder c *RWN*’, *Nederlands*



The Netherlands Supreme Court interpreted the extension constructions referred to in Article 15(4) RWNed very restrictively. In the case which gave rise to the decision of the Supreme Court, the persons involved had indeed applied for passports on time, but these had not been issued to them because the Netherlands authorities had doubts about the applicants' possession of Netherlands nationality. A letter from the Immigration and Naturalisation Department (IND) stating that the persons concerned were Netherlands nationals was not regarded as a declaration of possession of Netherlands nationality within the meaning of Article 15(4) RWNed. It was also decided that the initiation in 2012 of a court procedure to determine the possession of Netherlands nationality on the basis of Article 17 RWNed was not a circumstance that blocked the loss of Netherlands nationality on 1 April 2013 pursuant to Article 15(1)(c).

The Supreme Court also refused an interpretation of Article 15(1)(c) in light of Article 7 of the European Convention on Nationality (hereinafter: ECN).¹⁷ Article 7 ECN enumerates the grounds of loss that may be used by Contracting States, with paragraph 1(e) thereof stating “*the lack of a genuine link between the State Party and a national habitually residing abroad*”. It is, of course, crucial to establish the circumstances in which such a “genuine link” is lacking. In the French version, the phrase ‘*absence de tout lien effective*’ is used. The French wording (in particular the word ‘tout’) implies that the ground for loss may only be applied if there is no effective link at all. This would make it necessary to check whether there is still any indication of a link between the person and the State concerned. The Explanatory Report on Article 7 helps to get a better picture of the limits of the admissibility of this type of loss provision:

“70. For the purposes of this article, the term ‘lack of a genuine link’ applies only to dual nationals habitually residing abroad. Moreover, this provision applies in particular when the genuine and effective link between a person and a State does not exist, owing to the fact that this person or his or her family have resided habitually abroad for generations. It is presumed that the State concerned will have taken all reasonable measures to ensure that this information is communicated to the persons concerned.”

However, Article 7 ECN does not, according to the Supreme Court, have direct effect. The Supreme Court also dismissed the argument that, because the loss of Netherlands nationality also implied the loss of European citizenship, this would trigger the relevance of the EU law principle of proportionality.¹⁸

It has to be mentioned that the *Nationale Ombudsman* published an extremely critical report on this ground for loss on 12 May 2016 under the title “*En toen was ik mijn Nederlanderschap kwijt.....*” (‘And then I lost my Netherlands nationality ...’).¹⁹ It is especially the poor information provided to those involved that is severely criticised.

Juristenblad 2016, p. 248-255. Compare also the case note by Gerard-René de Groot, *Jurisprudentie Vreemdelingenrecht* 2015, nr. 259, p. 1215-1224.

¹⁷ CETS 166.

¹⁸ See on Art. 7 ECN also para. 37 and 38 of the *Tjebbes* judgment.

¹⁹ Report in response to complaints about the Ministry of the Interior and Kingdom Relations and the Ministry of Foreign Affairs, report number: 2016/045. See the Response of Ministers of the Interior and Kingdom Relations, Ministry of Foreign Affairs and Ministry of Transport, Public Works and Water Management 3 October 2016, available for consultation at www.nationaleombudsman.nl/system/files/bijlage/Reactie%20van%20ministerie%20BUZA%20op%20rapport%20Verlies%20Nederlanderschap%203%20oktober%202016.pdf. Compare also Jochen Blad and Marianne van der Kleij, *En toen was ik mijn Nederlandse nationaliteit kwijt*, *Jaargang Vreemdelingenrecht* 2016, nr. 4, p. 76-94, as well as Gerard-René de Groot, *Towards a toolbox for nationality legislation*, Text of the valedictory lecture as Professor of Comparative law and Private



4. Loss of Netherlands nationality by minor children (Article 16 RwNed/ Netherlands Nationality Act)

Article 16 RwNed extensively regulates the circumstances under which loss of the Netherlands nationality by a parent is extended to a minor child. The reason for this extension is the desire to maintain the unity of nationality within a family.²⁰

Article 16 of the 1985 version of the RwNed was much broader than the current loss provision that is in force since 2003. In particular, the ratification of the European Convention on Nationality made it necessary to lay down more exceptions to the rule that the child follows the loss of the parent's nationality in Article 16. Where initially the only exception that applied was that a minor would not lose the Netherlands nationality as a result of the loss of this status by a parent "if and as long as the other parent has the Netherlands nationality" (*indien en zolang een ouder het Nederlandschap bezit*), a whole list of exceptions was laid down in Article 16(2) RwNed from 1 April 2003.²¹ As a result of these amendments, Article 16 has become a very difficult provision to apply.

The text of Article 16 as in force in 2019 reads (translated in English):

"Article 1

1. A minor shall lose his or her Netherlands nationality:

- a. by judicial establishment of parenthood, recognition, legitimation or adoption by an alien, if he or she thereby acquires the nationality of the alien or already possesses it;*
 - b. by making a declaration of renunciation if he or she possesses the nationality of the father, mother or adoptive parent as referred to in Article 11 eighth subsection;*
 - c. if his or her father or mother acquires another nationality of his or her own free will and the minor thereby also acquires the foreign nationality or already possesses it;*
 - d. if his or her father or mother loses his or her Netherlands nationality pursuant to Article 15 first subsection under b, c or d or pursuant to Article 15A;*
 - e. if he or she acquires the same nationality as his or her father or mother in his or her own right.*
- For the application of parts c, d and e, father or mother must also be taken to mean the adoptive parent from whom the minor acquired Netherlands nationality, and the person who exercises joint custody over the minor and from whom the minor acquired Netherlands nationality. The declaration of renunciation as referred to in part b has no legal effect until the minor who has reached the age of twelve and, on his or her request, the parent who is not a legal representative, have been heard. Renunciation is not possible if the child and that parent have objections to that. The minor who has reached the age of sixteen years shall make the declaration of renunciation in his or her own right and cannot be represented in this.*

2. The loss of Netherlands nationality referred to in the first subsection shall not occur:

- a. if and for as long as a parent possesses Netherlands nationality;*
- b. if a parent dies after the time at which Netherlands nationality would be lost pursuant to the first subsection;*

International Law at Maastricht University, delivered on 14 October 2016, Maastricht: Nexuslegal 2016, p. 29-34. See also Gerd Westendorp, *Wanneer ben ik mijn Nederlandschap verloren, Asiel- en Migrantenrecht* 2019, p. 34, 35.

²⁰ The Netherlands authorities in the *Tjebbes* procedure used this argumentation.

²¹ It is noteworthy that the parts of Art. 16 (2), in particular the exceptions mentioned in (a), (b), (c) and (d) were introduced with retroactive effect from 1 January 1985. See art. III Act of 21 December 2000, *Staatsblad* 2000, 618.



- c. if a parent dies as a Netherlands national before the time at which Netherlands nationality would be lost pursuant to the first subsection;*
 - d. if the minor complies with Article 3 third subsection or Article 2 under a of the Netherlands Nationality and Residence Act of 12 December 1892 (Staatsblad 268), without prejudice to the case referred to in the first subsection under b;*
 - e. if the minor was born in the country of the nationality acquired by him or her and has his or her principal place of residence there at the time of the acquisition, without prejudice to the case referred to in the first subsection under b;*
 - f. if the minor has or has had his or her principal place of residence in the country of the nationality acquired by him or her for a continuous period of at least five years, without prejudice to the case referred to in the first subsection under b; or*
 - g. if, in the case referred to in the first subsection under e, a parent is a Netherlands national at the time of the acquisition.*
- For the application of parts a, b, c and g, a parent must also be taken to mean the adoptive parent as referred to in Article 11 eighth subsection, and the person who exercises joint custody over the minor and from whom the minor acquired Netherlands nationality.”²²*

Where, in the context of the operation of Article 15(1)(c) RWNed, the will of the parents is partly irrelevant, their consent is never required for Article 16 to be applied to their children. The child follows the parent residing abroad in the loss of nationality even if the parent does not have parental authority, or if the minor has his or her main residence in the Netherlands or another Member State of the European Union.²³

5. Some remarks on the concrete cases which gave rise to the preliminary questions

For a good understanding of the effects of Article 15(1)(c) and Article 16(1)(d) RWNed, it is useful to devote a few words to the cases that gave rise to the preliminary questions posed by the Council of State to the Court of Justice in *Tjebbes and Others*. This concerns the refusal to issue a Netherlands passport to four persons who, according to the Netherlands Ministry of Foreign Affairs, had lost the Netherlands nationality due to permanent residence abroad.

Ms Tjebbes was born in Canada and acquired Netherlands and Canadian nationality by birth. She lives in Canada. Her Netherlands passport was valid until 2008. A part of her childhood, she was living in the Netherlands and went there to school there.

Ms Koopman was born in the Netherlands as a Netherlands national but acquired Swiss nationality through her marriage to a Swiss national. Her Netherlands passport was valid until 2005. She lives in Switzerland, outside of the European Union. However, Switzerland has very special ties with the EU, which allow, among other things, for the free movement of persons.²⁴ As a result of Koopman's loss of

²² http://eudo-citizenship.eu/admin/?p=file&appl=currentCitizenshipLaws&f=NL%20Netherlands%20Nationality%20Act_consolidated%2025_11_13_ENGLISH.pdf

²³ Gerard-René de Groot criticized this in the commentary on Art. 16 RWNed, in: *Personen en familierecht*, Deventer: Wolters Kluwer, loose-leaf edition (suppl. 276 (February 2018)).

²⁴ See below section 6.2.



Netherlands nationality, her nearly eighteen-year-old daughter, Ms Duboux, also lost her Netherlands nationality.

The fourth case concerns an Iranian citizen, naturalised as a Netherlands citizen, living in Iran. Her Netherlands passport was valid until 2004. Of all the persons affected by this loss provision, her loss of European citizenship likely has the biggest impact. Given the visa requirements for Iranian nationals, she might face difficulties in visiting the European Union.

It should be noted that during the procedure, the Netherlands authorities pointed out that former Netherlands citizens could become Netherlands citizens again by exercising an option right pursuant to Article 6(1)(f) RvNed. However, in order to be able to exercise this right of option, the person concerned must have had the main residence in the Netherlands for at least one year and must have been admitted for an indefinite period. These are requirements that are difficult to meet. The person concerned must move to the Netherlands; establishing oneself in another Member State of the European Union does not suffice. Moreover, not every former Netherlands citizen will be able to obtain a residence permit for the Netherlands, in particular not a residence permit for an indefinite period.

6. Analysis of the Court decision (including Opinion AG Mengozzi)

6.1. Automatic loss of nationality due to residence abroad: need of a proportionality test in concreto?

The Netherlands Government had argued that the proportionality test had already been taken into account *in abstracto* when designing the loss scheme in question under Article 15(1)(c). Therefore, in concrete cases, it would no longer be necessary to verify whether the loss of Netherlands nationality is a proportionate measure.

According to the Opinion of 12 July 2018 by Advocate-General Mengozzi, compliance with the principle of proportionality does not

“involve an examination of either the indirect consequences entailed by the application of that legislation for the situation of each of the persons concerned or the circumstances specific to each individual case which are unrelated to the connecting factor between that person and the Member State concerned as chosen by the national legislature.” (Opinion, para. 4)

The Court, however, saw this differently. It is true that a ground for loss such as the one at issue is acceptable in the view of the Court, but

“The loss of the nationality of a Member State by operation of law would be inconsistent with the principle of proportionality if the relevant national rules did not permit at any time an individual examination of the consequences of that loss for the persons concerned from the point of view of EU law.” (para. 41)

The Court continues by underlining that the competent national authorities and courts must

“be in a position to examine, as an ancillary issue, the consequences of the loss of that nationality and, where appropriate, to have the person concerned recover his or her nationality *ex tunc* in the



context of an application by that person for a travel document or any other document showing his or her nationality". (para. 42)²⁵

Striking is that the Court obviously supposes that this is already possible according the law of the Netherlands. In paragraph 43, the Court mentions:

"In fact, the referring court states, in essence, that under national law both the Minister and the competent courts are required to examine the possibility of retaining Netherlands nationality in the procedure governing applications for passport renewal, by carrying out a full assessment based on the principle of proportionality enshrined in EU law."²⁶

In paragraph 44, the Court goes on to state that

"That examination requires an individual assessment of the situation of the person concerned and that of his or her family in order to determine whether the consequences of losing the nationality of the Member State concerned, when it entails the loss of his or her citizenship of the Union, might, with regard to the objective pursued by the national legislature, disproportionately affect the normal development of his or her family and professional life from the point of view of EU law."

The last phrase of paragraph 44, "those consequences cannot be hypothetical or merely a possibility", is somewhat enigmatic. Apparently, these words should be taken with a grain of salt, especially when reading paragraph 46.²⁷

It is also necessary to examine whether

"the loss of nationality is consistent with the fundamental rights guaranteed by the Charter... and specifically the right to respect for family life as stated in Article 7 of the Charter," (para. 45).²⁸

6.2. Relevant circumstances for the proportionality test

The Court identifies in paragraph 46 a number of circumstances that may play a role in the context of the proportionality test:

"that following the loss, by operation of law, of Netherlands nationality and of citizenship of the Union the person concerned would be exposed to limitations when exercising his or her right to move and reside freely within the territory of the Member States, including, depending on the circumstances, particular difficulties in continuing to travel to the Netherlands or to another Member State in order to retain genuine and regular links with members of his or her family, to pursue his or her professional activity or to undertake the necessary steps to pursue that activity."

²⁵ Several authors consider this as a balance act of the CJEU: the ground for loss is acceptable, but subject to a proportionality test. See Stephen Coutts, "Bold and Thoughtful: The Court of Justice intervenes in nationality law Case C-221/17 Tjebbes", retrieved from <https://europeanlawblog.eu/2019/03/25/bold-and-thoughtful-the-court-of-justice-intervenes-in-nationality-law-case-c-221-17-tjebbes/>; P. Elsuwege, P. & H.H.C. Kroeze, "Het arrest Tjebbes: de evenredigheidstoets als complexe brug tussen nationaliteitswetgeving en Unieburgerschap", *Nederlands tijdschrift voor Europees recht* 2019, p. 166-173; Xavier Miny & Frédéric Bouhon, "Nationalité et citoyenneté, les deux visages du Janus européen - La conformité de la perte de plein droit de la nationalité d'un État membre au regard du droit européen". *Revue Trimestrielle Des Droits De L'homme*, (119) 2019, p. 719-742. -However, Dimitri Kochenov, "The Tjebbes Fail", *European Papers - European Forum*, Insight 25 April 2019, www.europeanpapers.eu, p. 319-336, was obviously very disappointed by the approach of the Court.

²⁶ This is a misunderstanding of the CJEU. See on this point below section 6.4.

²⁷ Plans for the future (e.g. working in the EU) or possible difficulties with regard to consular protection appear to be sufficient, but undeniably have a hypothetical dimension to some extent.

²⁸ Jules Lepoutre, "Expatriation et perte de la citoyenneté européenne", *Recueil Dalloz*, 25 avril 2019, p. 875-879 wondered why only *family life* and not also *private life* was mentioned by the Court.



“The fact that the person concerned might not have been able to renounce the nationality of a third country and that person thus falls within the scope of Article 15(1)(c) of the Law on Nationality”.

“the serious risk, to which the person concerned would be exposed, that his or her safety or freedom to come and go would substantially deteriorate because of the impossibility for that person to enjoy consular protection under Article 20(2)(c) TFEU in the territory of the third country in which that person resides.”

The question of whether or not to maintain easy access to the European Union is therefore highly relevant. As mentioned above, this may not be difficult for Canadians and Swiss, but it would be drastically different for Iranians.

The possibility of renouncing one’s other nationality must also play a role. In particular, the Court will have considered the impossibility of renouncing the nationality of many Islamic states (including Iran) and some Latin American countries. However, it should be borne in mind that there are several countries that do not allow a citizen living in that country to renounce his or her nationality or, for example, make it impossible for a person who has not yet completed military service or against whom criminal charges are pending, to renounce his or her nationality.²⁹

The political climate in the country of the other nationality, or in the country where the Netherlands national resides, apparently plays an essential role.

If one examines these points of attention, one gets the feeling that the Court is particularly hesitant about the proportionality of the loss of European citizenship by the Netherlands-Iranian citizen.

However, other circumstances not mentioned by the Court may also play a role in the context of the proportionality test. In the light of the partly dramatic experiences with the application of this loss provision, at least the following factors should additionally be relevant:³⁰

Whether or not the person concerned applied in time for a Netherlands passport, or alternatively for a Netherlands ID-card or proof of possession of Netherlands nationality. It is also important to pay due regard to the initiation of proceedings based on Article 17 RWNed.³¹

Poor information should also be an extremely relevant circumstance. The mere provision of general information, for example via a website, is problematic. To the extent that the addresses of those involved are known to the Netherlands representations abroad, individuals should be informed

²⁹ GLOBALCIT (2017). Global Database on Modes of Loss of Citizenship, version 1.0. San Domenico di Fiesole: Global Citizenship Observatory, Robert Schuman Centre for Advanced Studies, European University Institute.

<http://globalcit.eu/loss-of-citizenship>: “Mode L01, Renunciation of citizenship”. See also: Jelena Dzankic, Ashley Mantha-Hollands & Rainer Bauböck, Acquisition and loss of citizenship in the 28 Member States of the European Union, EU-Citizen report 2019, para. 3.3.1, p. 28, 29.

³⁰ See Gerard-René de Groot, ‘Beschouwingen over het HvJ EU-arrest Tjebbes’, *Asiel- en Migrantenrecht* 2019, p. 196-203, in particular p. 200, 201. Miny/Bouhon, p. 735 also stress, that the circumstances mentioned by the court are ‘pas exhaustives, ni explicites’. They conclude; “Les pistes sont nombreuses, et, en conséquence, il n’est pas infondé d’avancer qu’une telle conception amène *in fine* le juge à déterminer, sans le dire, s’il n’existe pas un rattachement avec l’Union”. See also Hermie de Voer, “Tjebbes tegenover de Nederlandse rechtspraak”, *Asiel- en Migrantenrecht* 2019 (December), p. 429 and Advocate-General Paul Vlas in his Opinion of 6 December 2019 in a case pending at the Supreme Court of the Netherlands (*Hoge Raad*), para. 2.16 (ECLI:NL:PHR:2019:1273).

³¹ Compare the case that formed the basis of the decision of the Supreme Court of 27 March 2015, mentioned above in section 3.



individually of the fact that, if their Netherlands passport is not renewed, they risk losing their Netherlands nationality.

Whether or not they were born in the Netherlands should be an extremely important factor. In any case, excellent information about the grounds for loss would have been of great importance, when the loss of Netherlands nationality due to permanent residence abroad also became applicable to persons born in the Netherlands in 2003. As already mentioned above, Ms. Koopman still had a Netherlands passport valid until 2005. Did the Netherlands embassy or consulate warn her that failure to renew her passport could result in the loss of the Netherlands nationality? After all, it was more than a hundred years ago that people born in the Netherlands could lose their Netherlands nationality on this ground. It is difficult to expect that Netherlands nationals living abroad will constantly keep an eye on the Netherlands Official Journal (*Staatsblad*) to see whether new rules on loss of nationality are adopted, in light of which they need to take action to retain their nationality.

Whether or not they can easily regain Netherlands nationality must also play a role. It has already been pointed out above that this possibility or impossibility is strongly linked to the ease of acquiring a residence permit.

Having had a main residence in the Netherlands or the European Union at some point in life should also be important, even if that residence was shorter than the year prescribed by Article 15(3) *RwNed* or at an earlier time than during the last ten years. Together with other signs of still having a link – such as regular visits to the Netherlands or possessing a house or an apartment in the Netherlands – importance should be attached to such a stay.³²

It should also be relevant, whether the person concerned is the first generation born abroad, or the second or further generation born outside the Netherlands.

Unlike the corresponding regulations in most other countries,³³ the Netherlands loss provision concerning a stay abroad does work by applying a cut-off point when a certain age is reached, but can be triggered at a much later point in a person's life. For this reason, it is even more important, in the context of a proportionality test, to pay attention to the difficulties that persons may have in contacting consular posts of the Netherlands in order to obtain a new Netherlands travel document. This is particularly the case if a Netherlands national living abroad and also possessing another nationality – for example because of his or her advanced age or health difficulties – becomes dependent on the actions of others in order to 'save' their Netherlands nationality. The distance from the place of residence of the person concerned and the nearest Netherlands consulate can also be a relevant factor.

It is also remarkable that the Court did not pay any attention to the fact that Ms. Koopman and her daughter are living in Switzerland and therefore are making use of their free movement rights, albeit

³² As a child, Mrs. Tjebbes had lived in the Netherlands for several years and had attended school.

³³ As in the Scandinavian countries, Belgium and Spain (see section 8).



not directly granted by EU law, but based on the Treaty concluded by the EU and Switzerland.³⁴ This should also be a circumstance that has to be taken on board in the proportionality test.³⁵

6.3. Extension of the loss to minor children

A proportionality test must be carried out separately for each of the persons concerned. It should therefore not be automatic that a minor child automatically loses his or her Netherlands nationality without a possible proportionality test. According to the Court of Justice, such an assessment has to take into account:

“possible circumstances from which it is apparent that the loss of Netherlands nationality by the minor concerned, which the national legislature has attached to the loss of Netherlands nationality by one of his or her parents in order to preserve unity of nationality within the family, fails to meet the child’s best interests as enshrined in Article 24 of the Charter because of the consequences of that loss for the minor from the point of view of EU law.” (para. 47)

Particularly important are any difficulties that the child would have had in taking action him or herself to save their Netherlands nationality. Advocate-General Mengozzi pays extensive attention to this. He has difficulty with the fact that the Union citizenship of a minor is always ancillary to that of an adult, unless it concerns one of the exceptional cases referred to in Article 16(2) *RwNed* (see Opinion, para. 143). He went on to emphasise:

"the fact that upon becoming an adult a child may recover Netherlands nationality on certain conditions cannot, on its own, make up for the fact that while a minor that person would not have had to lose the nationality in question if the best interests of the child and his status of citizen of the Union had been duly taken into consideration" (Opinion, para. 145).

He therefore concludes that

“by failing to provide that the best interests of a child who is a citizen of the Union should be taken into consideration *in any decision* that might lead to that child losing his citizenship of the Union, save in the few exceptional cases provided for by Article 16(2) of the Law on Netherlands nationality, the Netherlands legislature went beyond what is necessary in order to attain the objective of unity of nationality within the family whilst taking into account the best interests of the child.” (Opinion, paragraph 146).

The fact that Article 16 *RwNed* appears to go too far in linking the loss of the Netherlands nationality by a minor child to that of a parent was already evident from the above-mentioned fact that the child shares in the loss, even if the parent has no parental authority or even if the child resides in the Netherlands or the European Union (see above section 4). It should be noted that, according to Article 16 *RwNed*, such a loss also occurs in cases other than loss due to permanent residence abroad, such as

³⁴ *Abkommen zwischen der Schweizerischen Eidgenossenschaft einerseits und der Europäischen Gemeinschaft und ihren Mitgliedstaaten andererseits über die Freizügigkeit* of 21 June 1999, in force on 1 June 2002, AS 2002 1539. See also <https://www.admin.ch/opc/de/classified-compilation/19994648/index.html> (visited on 22 January 2020).

³⁵ Compare also Hans-Ulrich Jessurun d’Oliveira, “Tjebbes en aanhangend nat: Brexit. Nationaliteitsrecht van de lidstaten ingekaderd door Unierechtelijke beginselen.” *Nederlands Juristenblad* 2019, p. 2788 and Matjaž Tratnik, & Petra Weingerl (2019), “National Autonomy in Matters of Nationality from International and EU Law Perspective”, section 4.3.2, p. 22-30.



if the Netherlands parent renounces the Netherlands nationality or loses the nationality due to the voluntary acquisition of a foreign nationality.³⁶

Reference should also be made to Recommendation 2009/13 of the Committee of Ministers of the Council of Europe on the position of children in nationality law. Among other things, it urges that older minors in particular be given both procedural and substantive rights if decisions about their nationality are to be taken.³⁷

6.4. *The assessment of the proportionality by the national authorities and courts*

For the reasons already mentioned above, the Court of Justice is of the opinion that the national authorities and courts must be able to review the situation afterwards (*ex post*) and must be able to come to the conclusion that the loss of the Netherlands nationality did not occur, because this would be disproportionate:

“in a situation such as that at issue in the main proceedings, in which the loss of the nationality of a Member State arises by operation of law and entails the loss of citizenship of the Union, the competent national authorities and courts must be in a position to examine, as an ancillary issue, the consequences of the loss of that nationality and, where appropriate, to have the person concerned recover his or her nationality *ex tunc* in the context of an application by that person for a travel document or any other document showing his or her nationality.” (para. 42)

This construction appears to go against the automatic nature of this type of loss provisions and appears to be at odds with the legal certainty that is desirable in nationality law. Moreover, it is a construction that makes it likely that many people who are unpleasantly surprised by such a possible loss will appeal to the courts.

The Court of Justice obviously understood that the law of the Netherlands already allowed for such an *ex post* assessment of the proportionality of the loss:

“In fact, the referring court states, in essence, that under national law both the Minister and the competent courts are required to examine the possibility of retaining Netherlands nationality in the procedure governing applications for passport renewal, by carrying out a full assessment based on the principle of proportionality enshrined in EU law.” (para. 43)

However, attention has already been drawn to the fact that this might be a misunderstanding of the applicable legislation:

“The Court further suggested that the Dutch legislation already contains a requirement to carry out ‘a full assessment based on the principle of proportionality enshrined in EU law. However, this betrays a profound misunderstanding of the Netherlands Nationality Act on the part of the Court, as this Act does not establish this requirement.”³⁸

Authorities and courts in the Netherlands are considering how such an *ex post* proportionality test can be implemented.

³⁶ See section 4.

³⁷ See on that Recommendation: Gerard-René de Groot, Strengthening the position of children: Council of Europe’s Recommendation (2009)13, in: Erik Witjens, Viola Van Bogaert en Carlos Bollen (ed.) *E hof di ley*, Den Haag: Boom Juridische uitgevers 2014, p. 467-493.

³⁸ Martijn van den Brink, “Bold, but Without Justification? Tjebbes”. European Papers - European Forum, Insight 25 April 2019, www.europeanpapers.eu, p. 411.



However, the Court of The Hague recently stated in a decision of 22 August 2019³⁹ that a proportionality test cannot be carried out in a procedure initiated on the basis of Article 17 RWNed, where the applicant requests an assessment of whether or not (s)he possesses Netherlands nationality. According to the Court, this type of procedure does not allow a proportionality test to be applied. According the Court of The Hague, in order to obtain an assessment of proportionality, the applicant has to initiate another type of procedure, namely an administrative court procedure to appeal against a rejection of an application for a Netherlands passport or (alternative) ID card or any other document which demonstrates the possession of Netherlands nationality.⁴⁰ This judgment is questionable, as the Chamber of the Court of The Hague dealing with the procedures of Article 17 RWNed is specialised in nationality law issues.⁴¹ Moreover, a decision of the Court of The Hague in a procedure under Article 17 RWNed is binding for all authorities of the Netherlands (effect *erga omnes*; see Article 19 RWNed), whereas a judgment of an administrative court lacks this effect.⁴²

Furthermore the Dutch language version of *Tjebbes* caused additional confusion. It was already mentioned above that, according the Court, the competent authorities and courts “must be in a position to examine, *as an ancillary issue*, the consequences of the loss of that nationality” (para 42; italics added). In the version in the Dutch language, the word used for “as an ancillary issue” is “*incidenteel*”. However, that word can be interpreted as “occasionally” in the meaning “sometimes” or “now and then”. Such a reading would imply that a proportionality test would not be systematically required.⁴³ This interpretation was attacked by Jessurun d’Oliveira, who underpinned that the expression should be interpreted in light of the English, Italian and Spanish version of the judgment.⁴⁴

6.5. Refusal to limit the effects of the temporal scope of the judgment

Attention must be paid to the fact that the Netherlands had asked for a time limit to be set for any conclusion that Article 15(1)(c) is wholly or partly contrary to European law. The Court did not do this. Paragraph 49 states that:

“In the light of the answer to the question referred, there is no need to rule on the request put forward at the hearing by the Netherlands Government that the Court should limit the temporal

³⁹ Decision C/09/562195/ HA RK 18/532.

⁴⁰ “De rechtbank is van oordeel dat artikel 17 RWN, waarop het onderhavige verzoek is gegrond, geen ruimte biedt voor een belangenafweging als bedoeld in het Tjebbes-arrest. De rechtbank kan op grond van dit artikel slechts vaststellen of iemand de Nederlandse nationaliteit bezit of niet. Teneinde een belangenafweging over zijn situatie te bewerkstelligen dient verzoeker een andere procedure te voeren. Zoals uit de hiervoor genoemde overwegingen van het Hof van Justitie in het Tjebbes-arrest blijkt, dient die belangenafweging plaats te vinden wanneer door betrokkene een aanvraag tot verkrijging van een reisdocument of ander document waaruit zijn nationaliteit blijkt wordt ingediend. Tegen een buiten behandeling stellen van die aanvraag kan door betrokkene worden opgekomen in een bestuursrechtelijke procedure alwaar ruimte is voor de in het Tjebbes-arrest bedoelde belangenafweging”.

⁴¹ Jessurun d’Oliveira, p. 1787 underpins, that for that reason the question whether or not Netherlands nationality is lost, is for that court the main question. Gerard-René de Groot concludes in his case note under the decision of the Court of The Hague of 22 August 2019, *Jurisprudentie Vreemdelingenrecht* 2020, volume 1, that the refusal of the Court to apply a proportionality assessment is therefore completely unacceptable.

⁴² Advocate-General Paul Vlas in his Opinion of 6 December 2019 in a case pending at the Supreme Court of the Netherlands (*Hoge Raad*), para. 2.22 (ECLI:NL:PHR:2019:1273) comes also to the conclusion that the Court of The Hague has to make a proportionality assessment as required in *Tjebbes*. The decision of the Supreme Court (*Hoge Raad*) is expected to be published in spring 2020.

⁴³ On this way the term seems to be interpreted by Van Elsuweden/ Kroeze, p. 170, 171.

⁴⁴ Jessurun d’Oliveira, p. 2789.



effects of the judgment to be delivered in the event that it were to find the Netherlands legislation to be incompatible with Article 20 TFEU.”

This implies that even rather old cases can still be reopened. In my opinion, this applies in the event of the loss of Netherlands nationality since the introduction of European citizenship on 1 November 1993.⁴⁵

Above it was set out that the loss provision in the 1985 version only took effect in 1995 because of a transitional regulation. Between 1985 and 1995, no Netherlands national could lose their nationality due to permanent residence abroad.⁴⁶ Until 31 December 1984, however, Netherlands nationals were also able to lose this status automatically because of 10 years residence abroad based on Article 7(5) of the Netherlands nationality and Residence Act 1892 (*Wet op het Nederlanderschap en het ingezetenschap*). At that time, however, there was no question of linking this to European citizenship.⁴⁷ Until 1985, the age limit for such a loss was 31 years (21 years plus 10 years), so that the youngest persons who could have lost their nationality under the loss provision of Article 7(5) were born in 1953. All those who are currently younger than 67 cannot have lost their Netherlands nationality because of permanent residence abroad before 1 January 1995, so that they could request the court to assess the proportionality of the loss of their European citizenship.

7. Consequences for Article 15 and 16 Netherlands Nationality Act⁴⁸

7.1 Introduction

The Council of State has not yet ruled on the cases that gave rise to the preliminary ruling of the Court of Justice in *Tjebbes and Others*. There was a hearing by the Council of State on 1 October 2019.⁴⁹ The government has until now not initiated legislative changes and did not send any instructions to relevant authorities on how to implement the *Tjebbes* ruling of the Court of Justice. The judgment of the Council of State will be published on 12 February 2020.⁵⁰

However, if the courts in the Netherlands do not identify a way in which the proportionality assessment can be carried out in the context of an existing procedure, it seems that both Article 15(1)(c) (in conjunction with Article 15(3) and (4)) and Article 16 *RwNed* must be revised. Alternatively, the Netherlands government could decide to introduce a dedicated *ex post* proportionality test that could result in the *ex tunc* re-acquisition of Netherlands nationality.

⁴⁵ This happened in the letter of orientation of the Danish Ministry for immigration and integration sent to the Danish Naturalisation Committee. See below section 8.

⁴⁶ See above section 2.

⁴⁷ In addition, the formless nature of the then extension declaration meant that all contact moments with the Netherlands government could be taken into account when answering the question as to whether the loss provision had been interrupted. This comes close to a proportionality test.

⁴⁸ See the remarks and suggestions of Gerard-René de Groot, “Verlies van nationaliteit wegens langdurig buitenlands verblijf, HvJ EU 12 maart 2019. Beschouwingen over het HvJ EU-arrest Tjebbes”, *Asiel- en Migrantenrecht* 2019, p. 196-203.

⁴⁹ The Council of State (*Raad van State*) also joined two other cases dealing with the loss of Netherlands nationality due to residence abroad to the cases mentioned above in section 5. Moreover, again another case is pending at the Supreme Court (*Hoge Raad*). See Johan Sluymmer, “Vaststelling van Nederlanderschap”, *Asiel- en Migrantenrecht* 2019 (December), p. 441-443.

⁵⁰ Website *Raad van State*: <https://www.raadvanstate.nl/uitspraken/@119876/201504577-2-a3-201507057-2-a3-201508588/#toonpersaankondiging> (visited on 11 February 2020)..



Special attention should also be given to the temporal scope of the ruling. Due to the fact that European citizenship was introduced in 1993, new legislation or instructions should also pay attention to the ground for loss of Article 15(c) *RwNed*, as in force between 1985 and 2003.

7.2 Consequences for Article 15(1)(c) Netherlands Nationality Act

A possible solution would be to delete Article 15(1)(c) (and perhaps Article 15(1)(a)) and Article 16) of the *RwNed*. Now that the Court of Justice has not limited its decision in time, it will be necessary to provide for a substantial retroactive effect.

An alternative is to convert the provisions mentioned into possibilities for deprivation of Netherlands nationality. In the context of the intention to proceed with such a deprivation, a proportionality test is then required. It goes without saying that such a construction is labour-intensive for government bodies and that its application would lead to many procedures.

Another option would be to legislate that the lost Netherlands nationality can be regained in a very simple manner via the confirmation of an option statement. The requirement of at least one year's main residence and admission for an indefinite period of time in the Netherlands would then have to be scrapped as, according to the Court of Justice, it is precisely those who will have difficulties in obtaining a permanent residence permit that apparently deserve protection. Consideration should be given to allow such a simplified re-acquisition not only to those whose Netherlands nationality has lapsed on the grounds of permanent residence abroad, but also to those who have lost their Netherlands nationality on account of voluntarily acquiring a foreign nationality (Article 15(1)(a) *RwNed*).

Ideally, persons born in the Netherlands or naturalised in the Netherlands would never lose Netherlands nationality on account of residence abroad. Consideration should also be given to allowing the possible loss on such grounds to occur only upon reaching a certain age (e.g. 28 years) rather than at any time. Moreover, *applying* for a Netherlands travel document (or alternative ID card) should be sufficient to interrupt the limitation period, in order to prevent that administrative delays are to the detriment of the person concerned. The same should apply to the initiation of the special nationality determination procedure pursuant to Article 17 *RwNed*.

7.3 Possible consequences for Article 15 (1)(a) Netherlands Nationality Act

In light of *Tjebbes*, one can also hesitate whether Article 15(1)(a) can be maintained unchanged. This provision provides for automatic loss of Netherlands nationality due to the voluntary acquisition of a foreign nationality. However, there are situations in which Netherlands citizens are confronted with the message that they have lost their Netherlands nationality because of an act that they regarded as confirmation of the fact that they also possess a certain foreign nationality, while the Netherlands government sees the same act as the voluntary acquisition of that nationality.⁵¹

⁵¹ See *Rechtbank Den Haag* 27 november 2018, ECLI:NL:RBDHA:2018:15862. In that judgment the Court declined to ask a preliminary ruling on the conformity of Art. 15(1)(a) *RwNed* with European Union law. Compare also *Rechtbank Den Haag* 22 August 2019, already mentioned above in section 6.4.



7.4 Consequences for Article 16 Netherlands Nationality Act

As mentioned before, the grounds for the loss of Netherlands nationality for minors are already very complicated due to the justified but complicated exceptions of Article 16(2) *RwNed*. The *Tjebbes* judgment of the Court of Justice makes it necessary to think about more exceptions, such as that the loss should not occur if it goes against the best interests of the child. One should therefore dare to ask whether it would not be preferable for a minor to never to lose his or her Netherlands nationality (with perhaps the exceptions of the loss possibilities of Article 3(2) *RwNed*⁵² and Article 14 (6) *RwNed*⁵³). Such a starting point would make it unnecessary to ‘calculate’ whether one of (the complex exceptions to) the grounds for loss in Article 16 is fulfilled. Such a solution is also in line with the approach of Advocate-General Mengozzi and makes complex proportionality assessments unnecessary.

8. Analysis of the consequences of *Tjebbes* for the nationality laws of other Member States providing for loss due to residence abroad⁵⁴

Apart from the Netherlands, nine other Member States of the European Union provide that persons may lose nationality due to continuous residence abroad.⁵⁵ The details of these regulations vary considerably, and important differences between regulations across these Member States exist concerning the type of loss (automatic loss versus withdrawal procedure), the personal scope (only applicable to persons born abroad versus applicable to all nationals), statelessness prevention (only applicable to dual citizens versus applicable to all nationals), age (whether or not there is an age limit), and the actions that target persons can undertake to prevent the loss of nationality.

Denmark

⁵² Loss of Netherlands nationality acquired by a founding in the Netherlands if it is discovered within five years that (s)he possesses another nationality *iure sanguinis*.

⁵³ Loss of nationality because of the annulment of the parentage on which the acquisition of Netherlands nationality was based. However, see the critical comments on that provision made by Gerard-René de Groot, ‘Verlies van de nationaliteit wegens het wegvallen van familierechtelijke betrekking’, in: Katharina Boele-Woelki e.d.(ed.), *Actuele ontwikkelingen in het familierecht*, Negende UCERF symposium, Nijmegen: Ars Aequi Libri 2015, p. 89-111.

⁵⁴ Thanks to my student-assistant Mathias Thorkildsen for assisting me with checking the information on *ex lege* loss provisions in the Member States of the EU.

⁵⁵ See also Gerard-René de Groot and Maarten Vink, *A Comparative Analysis of Regulations on Involuntary Loss of Nationality in the European Union*, Background paper ILEC-project (project on Involuntary Loss of European Citizenship), CEPS Paper in Liberty and Security in Europe No. 75 (December 2014), <http://www.ceps.be/book/survey-rules-loss-nationality-international-treaties-and-case-law>, 52 p.; also included as chapter 3, in: Sergio Carrera Nuñez and Gerard-René de Groot, *European citizenship at the Crossroads: The Role of the European Union on Loss and Acquisition of Nationality*, Oisterwijk: Wolf Legal Publishers 2015, p. 41-116, in particular Table 3.5. See also GLOBALCIT (2017). Global Database on Modes of Loss of Citizenship, version 1.0. San Domenico di Fiesole: Global Citizenship Observatory, Robert Schuman Centre for Advanced Studies, European University Institute. <http://globalcit.eu/loss-of-citizenship>: “Mode L02, Residence abroad”. See also: Jelena Dzankic, Ashley Mantha-Hollands & Rainer Bauböck, Acquisition and loss of citizenship in the 28 Member States of the European Union, EU-Citizen report 2019, para. 3.3.2, p. 29-33.



Danish law provides that any person who is born abroad and has never lived in Denmark nor stayed there under conditions indicating a special tie with Denmark shall lose her or his Danish nationality upon reaching the age of 22 (Article 8 (1) *Lov om dansk infødsret* (Law on Danish Nationality)).⁵⁶

The Minister of Immigration and Integration, or anyone authorised by the Minister, may, on application submitted before this time, permit the nationality to be retained; factors that may be taken into consideration are listed on the Ministry's website.⁵⁷

A person is not affected by this loss provision if he/she has had residence in Denmark for at least three months, or in another Nordic country for at least 7 years. Likewise, a person will not be affected if he/she has stayed in Denmark for a cumulative period of one year, or close to one year if other circumstances surrounding the stays indicate that the person had a personal affiliation with Denmark when turning 22 years old (long-term study program in Denmark, frequent vacations, or military service). Since 1999, this mode of loss only becomes effective if the target person does not become stateless.

An application to maintain the Danish nationality can be made to the Ministry before the 22nd birthday. When considering this application, the Ministry will take into account the number and lengths of stays in Denmark, when such stays took place (whether such stays are close to when the person is turning 22 or if they are many years earlier), knowledge of the Danish language, and other connections to Denmark such as contact with Danish relatives or Danish associations. It takes around 8 to 10 months to process such an application. The application should be sent between the applicant's 21st and 22nd birthday, so that the consideration of the application takes place as close as possible to the 22nd birthday of the applicant. A fee of 1200 DKK applies (around €160).⁵⁸

On 11 October 2019, the Ministry for Immigration and Integration sent a letter of orientation⁵⁹ to the Naturalisation Committee concerning the handling of applications for retention of Danish nationality based on the *Tjebbes* judgment. According to this letter, the evaluation of applications for retention of nationality must in the future involve a proportionality test, taking into account the factors mentioned in §44-46 of the *Tjebbes* judgment. The Ministry also indicates that attention has to be paid to the applicant's attachment to other EU Member States – that is attachment that is already established under the Union citizen's exercise of his or her free movement rights.⁶⁰

Moreover, the letter states there shall be no automatic loss of Danish nationality of minor children as a result of the loss by their parents where this leads to loss of their Union citizenship without an

⁵⁶ Thanks to Eva Ersbøll for her detailed feedback on an earlier draft of this information on Denmark.

⁵⁷ Among other things, the ministry may take into consideration the length of the applicant's stays in Denmark, number of visits, whether visits in Denmark have taken place relatively close to the applicant's 22 years birthday, the mastering of the Danish language, and the general attachment to Denmark, for example through contact with Danish family or Danish associations etc.

⁵⁸ See 'Bevarelse af dansk statsborgerskab', Utlændinge- og Integrationsministeriet (Danish Ministry of Immigration and Integration), <https://uim.dk/arbejdsomrader/statsborgerskab/danske-statsborgere/bevarelse-af-dansk-statsborgerskab> (visited on 22 January 2020).

⁵⁹ <https://www.ft.dk/samling/20191/almdelel/IFU/bilag/6/2089776/index.htm> (visited on 22 January 2020).

⁶⁰ See also the remarks by Tuğba Öztunç Backe and Rass Holdgaard (2019). "Unionsborgerskabet beskytter statsborgerskabet", 24-09-2019, Advokaten nr. 7 2019, also available on <https://www.advokatsamfundet.dk/Service/Publikationer/Tidligere%20artikler/2019/Advokaten%207/Unionsborgerskabet%20beskytter%20statsborgerskabet.aspx>. Regrettably, the case note of Holst-Christensen on *Tjebbes* in *EU-ret & Menneskeret* does not pay any attention to the consequences of *Tjebbes* for Danish nationality law.



independent evaluation of the effects on the minor children. A modification of Article 8(2) Law on Danish Nationality Law is proposed.⁶¹ With the proposed amendment of Article 8(2), the term 'will' is replaced by the term 'may', and thus this provision will no longer provide for the child's *ex lege* loss of nationality. Rather, it is changed to a rule on nationality deprivation based on an individual assessment, where Article 7 of the EU Charter of Fundamental Rights on the right to family life and Article 24 on the rights of the child must be taken into consideration.

Moreover, former Danish citizens who were 22 years of age on or after November 1, 1993 (the date of the entry into force of the TFEU), who applied to preserve Danish nationality before the age of 22, but had their application rejected, whereby they also lost their Danish and EU citizenship, will be able to request to have their application **reconsidered**, provided that the loss of nationality had effects in relation to EU law. The latter will generally be the case if the person has had a family or employment relationship with another EU Member State other than Denmark before the age of 22. The same applies for persons who lost their Danish and EU citizenship for being the minor child of a parent that had their application for retention of nationality rejected, when that application was made before the parent turned 22 and after 1 November 1993.⁶²

Finland

In Finland a ground for loss exists that is very similar to the Danish regulation: Article 34 *Kansalaisuuslaki/Medborgarskapslag* (Finnish Nationality Act) provides that Finnish nationality is lost automatically (*ex lege*) at the age of 22, when the person concerned has been born abroad, has another nationality, and it has not been established before the age of 22 that a sufficient connection with Finland exists. In Finland, the personal scope of this ground for loss also includes persons born in the country. According to Article 34(2), a sufficient connection is deemed to exist, if (in English translation):⁶³

- "1. the person was born in Finland and his or her municipality of residence referred to in the Municipality of Residence Act (201/1994) is in Finland when he or she reaches the age of 22 years;
2. the person's municipality of residence has been in Finland or he or she has been permanently resident and domiciled in Denmark, Iceland, Norway or Sweden for a total of minimum seven years in all before he or she has reached the age of 22 years; or
3. the person has, after reaching the age of 18 but before reaching the age of 22 years:
 - (a) given notice in writing to a Finnish diplomatic mission or the Register Office of his or her wish to retain Finnish citizenship;
 - (b) applied for or received a Finnish passport or identity card; or
 - (c) completed in Finland military or civil service or service referred to in the Act on Voluntary Military Service for Women (194/1995); or
 - (d) been granted Finnish citizenship on application or after notification."

⁶¹ L 83 Forslag til lov om ændring af lov om dansk indfødsret og lov om udenrigstjenesten. See <https://www.ft.dk/samling/20191/lovforslag/l83/index.htm> (visited on 22 January 2020)

⁶² See 'Mulighed for genoptagelse af sager om bevis for bevarelse af dansk statsborgerskab på baggrund af en dom fra EU-Domstolen', Utlændinge- og Integrationsministeriet (Danish Ministry of Immigration and Integration), <https://uim.dk/nyheder/2019-10/mulighed-for-genoptagelse-af-sager-om-bevis-for-bevarelse-af-dansk-statsborgerskab-pa-baggrund-af-en-dom-fra-eu-domstolen> (visited 22 January 2020).

⁶³ <http://globalcit.eu/country-profiles/> → Finland.



Section 37 Finnish Nationality Act stipulates that the Finnish Immigration Service is responsible for giving instructions on how to retain nationality at the age of 22. Such instructions are given annually to all Finnish citizens who will reach the age of eighteen that year and who have not had a municipality of residence in Finland for at least seven years.⁶⁴

Persons who lose their nationality by application of Section 34 Finnish Nationality Act are able to re-acquire it relatively easily by registration in accordance with Section 29 Finnish Nationality Act.

Sweden

In Sweden, a very similar ground for loss also exists: Section 14 of *Lag 2001:82 om svenskt medborgarskap*/Swedish Nationality Act provides (in English translation⁶⁵) that

“A Swedish citizen loses his or her Swedish citizenship on reaching the age of twenty-two if he or she

1. was born abroad,
2. has never been domiciled in Sweden, and
3. has never been here under circumstances that indicate a link with Sweden.

However, permission to retain citizenship may be granted if an application is made before the Swedish citizen has reached the age of twenty-two.

When a person loses his or her Swedish citizenship under the first paragraph, his or her child also loses its Swedish citizenship if the citizenship was acquired as a consequence of the parent's Swedish citizenship. However, the child does not lose its citizenship if the other parent still holds Swedish citizenship and the child also derives its Swedish citizenship from him or her. The loss of Swedish citizenship does not apply if it would result in the person becoming stateless.”⁶⁶

“Section 16

The Government may, following agreement with Denmark, Finland, Iceland or Norway, prescribe the application of one or more of the provisions in Sections 17-19. The term "contracting state" in these provisions means a state with which Sweden has entered into such an agreement.

Section 17

The provisions contained in Section 14, first paragraph do not apply to a person who has been domiciled for a total of at least seven years in a contracting state.”

Belgium

A different procedure exists in Belgium for the prevention of loss of nationality due to residence abroad: the person concerned has to make a declaration stating the wish to continue being a citizen. In Belgium, inspired by Denmark and the Netherlands, this ground for loss was introduced in 1985 in Article 22 (5) *Wetboek op de Belgische nationaliteit/Code de la nationalité belge*/Nationality Code. It applies to

⁶⁴ Information on the website of the Finnish Immigration Service (English): <https://migri.fi/en/retaining-finnish-citizenship-at-the-age-of-22>, (visited 22 January 2020).

⁶⁵ <http://globalcit.eu/country-profiles/> → Sweden.

⁶⁶ See on the application of this provision in the past: Hakon Sandesjö and Kurt Björk, *Nya medborgarskapslagen met kommentarer*, Norstedt Juridik AB 2005, p. 141-150.



Belgian nationals born abroad and outside the former Belgian colonies, who have their main residence (*résidence principale*) continuously abroad between their 18th and 28th birthday and are not in Belgian public service or working for a Belgian company or association.

If the conditions provided for in Article 22 are fulfilled, the result will be the *ex lege* loss of nationality for the person involved on his/her 28th birthday. This can be prevented by making a declaration expressing the wish to remain a citizen ("*déclaration de conservation/behoudsverklaring*") before reaching the age of 28. Such declaration shall be made at the Belgian consular offices where the person is registered in the consular population register.⁶⁷ The child of a person who loses Belgian nationality on this ground will also lose this nationality. A person who has lost his Belgian nationality can re-acquire it by an option procedure (Article 24 Belgian nationality code).⁶⁸

It appears that the Belgian provisions, which are quite similar to those in force in the Netherlands, will have to be revisited in light of *Tjebbes*.

Luxembourg had a provision very similar to the Belgian one since 1987, but required permanent residence abroad for 20 years (Article 25(8) old Luxembourgian Nationality Act). However, Luxembourg abolished this ground for loss in 2006 before it could take effect.

Spain

In Spain, loss of nationality due to residence abroad only applies to persons who have been born abroad and who have acquired Spanish nationality from a parent who was also born abroad (Article 24(3) *Código Civil*/ Spanish Civil Code). Furthermore, they only risk to lose Spanish nationality if they possess the nationality of their country of residence (*cuando las leyes del país donde residen les atribuyan la nacionalidad del mismo*). They do not lose their Spanish nationality if they declare their will to retain it before the officer in charge of the Civil Registry (*el encargado del Registro Civil*) within three years of their attaining the age of majority (*mayoría de edad o emancipación*).

Concerns are raised about this ground for loss.⁶⁹ Attention is asked for the fact that it may happen that the persons concerned are not duly informed about the actions they need to undertake in order to maintain their Spanish nationality. Excellent information about this ground for loss is key. Alternatively, this ground for loss should be deleted.⁷⁰

In **Cyprus, Ireland and Malta**, loss of nationality does not occur automatically, but by withdrawal, and the scope of the provisions is restricted to naturalised citizens who habitually reside abroad for a continuous period of seven years. Public service for the State or an International Organization abroad,

⁶⁷ Regrettably, the article of Miny and Bouhon on *Tjebbes* in *Revue trimestrielle Des Droits de l'Homme* 2019 does not pay any attention to the consequences of *Tjebbes* for Belgian nationality law.

⁶⁸ See Belgian government web page on retention of citizenship (available in Dutch, French, German and English): https://diplomatie.belgium.be/en/services/services_abroad/nationality/losing_retaining_and_regaining/retain

⁶⁹ Aurelia Álvarez Rodríguez, *Nacionalidad Española: Normativa vigente e interpretación jurisprudencial*, Thomson/ Aranzadi 2008, p. 119, 120.

⁷⁰ However, in her observations on *Tjebbes* in *La Ley Unión Europea*, No. 69, 30 de abril 2019, Aurelia Álvarez Rodríguez does not address the possible consequences of this ruling for Spanish nationality law.



or giving (for Cyprus and Ireland: annually) notice in writing of the intention to retain the nationality, suffices to retain it (See Section 14(2)(d) Maltese Citizenship Act; Section 113(4) *Ο Περί Αρχείου Πληθυσμού Νόμος του 2002* (141(I)/2002)/ Cypriote Civil Registry Law 2002; Section 19(2) Irish Nationality and Citizenship Act).

In **France**, Article 23-6 *Code civil*/ 23-6 French Civil Code provides (in English translation⁷¹):

“The loss of the French nationality may be established by judgment when the person concerned, who is French by filiation, has not the apparent status thereof and never had his habitual residence in France, if the ancestors from whom he held his French nationality themselves neither have the apparent status of being a French national nor have resided in France for half a century.

The judgment shall determine the date when the French nationality was lost. It may decide that that nationality was lost by the ancestors of the person concerned and that the latter never was French.”

The notion “apparent status” (*possession d’état*) refers to acts which are typical for a French citizen, e.g. the application for a French passport, the exercise of voting rights for French elections and so on.⁷²

It is obvious that the withdrawal constructions, which exist in Cyprus, Ireland and Malta, would easily allow for the implementation of a proportionality test. This also applies for France. The provisions on loss due to residence abroad in Belgium, Denmark, Finland, Sweden and Spain might – like in the case of the Netherlands – have to be revised in light of the *Tjebbes* ruling, unless provisions exist that allow for a proportionality check with the possibility of an *ex tunc* reacquisition of the nationality in the context of related procedures, for example during the examination of requests for the confirmation of nationality or a subsequent passport application.

9. Analysis of the consequences of *Tjebbes* for other automatic loss provisions in force in the Member States

9.1. Voluntary acquisition of a foreign nationality⁷³

In a decreasing number of Member States, nationality laws provide for the loss of nationality as a result of voluntary acquisition of a foreign nationality. Nineteen out of the 28 Member States allow for the voluntary acquisition of another nationality without consequences in terms of loss of the original

⁷¹ <https://www.legifrance.gouv.fr/Traductions/en-English/Legifrance-translations> (visited 22 January 2020).

⁷² See on this notion Paul Lagarde, *La nationalité française*, Paris 2012, para. 166-168 and 241-247. See also the information available on <https://gt.ambafrance.org/Nationalite-Francaise-Perte-par> (visited 22 January 2020).

⁷³ See also Gerard-René de Groot and Maarten Vink, *A Comparative Analysis of Regulations on Involuntary Loss of Nationality in the European Union*, Background paper ILEC-project (project on Involuntary Loss of European Citizenship), CEPS Paper in Liberty and Security in Europe No. 75 (December 2014), <http://www.ceps.be/book/survey-rules-loss-nationality-international-treaties-and-case-law>, 52 p.; also included as chapter 3, in: Sergio Carrera Nuñez and Gerard-René de Groot, *European citizenship at the Crossroads: The Role of the European Union on Loss and Acquisition of Nationality*, Oisterwijk: Wolf Legal Publishers 2015, p. 41-116, in particular Table 3.1. See also GLOBALCIT (2017). Global Database on Modes of Loss of Citizenship, version 1.0. San Domenico di Fiesole: Global Citizenship Observatory, Robert Schuman Centre for Advanced Studies, European University Institute. <http://globalcit.eu/loss-of-citizenship>: “Mode L05, Residence abroad”. See also: Jelena Dzankic, Ashley Mantha-Hollands & Rainer Bauböck, Acquisition and loss of citizenship in the 28 Member States of the European Union, EU-Citizen report 2019, para. 4, p. 42-46.



nationality. The nine other Member States provide in principle for loss of nationality in case of voluntary acquisition of a foreign nationality. However – strikingly – all of these Member States provide for exceptions to the main rule.

In two Member States (Ireland, Latvia) this ground for loss is constructed as a withdrawal possibility. According to Irish law, Irish citizenship of a naturalised citizen can be revoked if the person concerned voluntarily acquires a foreign nationality (Article 19(1)(e) Irish Nationality Act). Latvian nationality may be revoked by a court decision of a Regional Court, if a citizen has acquired the nationality of another state without submitting an application regarding renunciation of Latvian nationality (Article 24(1)(1) Latvian Nationality Act). In those two States, the implementation of a proportionality test should not be pose any difficulties.

However, in seven Member States (Austria, Estonia, Germany, Lithuania, the Netherlands, Slovakia and Spain), voluntary acquisition of a foreign nationality may lead to automatic loss of nationality of the Member State involved. It is thus necessary to analyse these provisions from the point of view of the Court's judgment in *Tjebbes*.

Austria

An Austrian citizen will not lose Austrian nationality as a result of the voluntary acquisition of another nationality if (s)he obtained prior permission to retain Austrian nationality (§ 27(1) *Staatsbürgerschaftsgesetz* / Austrian Nationality Act). Permission to maintain Austrian nationality can be granted in the national interest of Austria. For minors, the best interests of the child are also taken into account (§ 28 Austrian Nationality Act). Since 1999, a person who has acquired Austrian nationality by descent can also apply for a permission to retain Austrian nationality for reasons of private and family life. This possibility was recently extended to naturalised Austrians by a judgment of the Constitutional Court.⁷⁴ The possibility to grant such permission allows the authorities to apply a proportionality test in the context of an application for the permission to retain nationality. This should comply with the requirements of *Tjebbes*, in particular if this permission could also be granted with retroactive effect (*ex tunc*). Furthermore, the Austrian Supreme Administrative Court (*Verwaltungsgerichtshof*) has already concluded on 30 September 2019 that, in light of *Tjebbes*, a proportionality test is appropriate when deciding on the application of § 27(2) Nationality Act.⁷⁵

Estonia⁷⁶

§ 29 *Kodakondsuse seadus*/Estonian Nationality Act deals with the loss of Estonian nationality upon acceptance of nationality of other state or renunciation of Estonian nationality:

⁷⁴ Verfassungsgerichtshof 17 June 2019, E 1832/2019; AT:VFGH:2019:E1832.2019, paragraph 2.

⁷⁵ ECLI:AT:VWGH:2019:RA20180104477.L02.

⁷⁶ Thanks to Anette Piirsalu, student-assistant Private International Law at Maastricht University for helping me with finding information on the Estonian law and administrative practice.



“A person is considered by the governmental authority authorised by the Government of the Republic to have ceased to be an Estonian citizen upon acceptance of the citizenship of another state or upon renunciation of Estonian citizenship in favour of the citizenship of another state.”⁷⁷

In practice, this provision is applied only in relation to citizens who have acquired the nationality by naturalisation. Estonian nationality cannot be taken away from citizens by birth, according to § 8 of the Constitution. For that reason, it is argued by the Chancellor of Justice that this provision is unconstitutional.⁷⁸

The procedure to be followed to withdraw nationality is based on the Administrative Procedure Act, which prescribes the principle of investigation in § 6: during the proceedings, an administrative authority is required to establish the facts relevant to the matter and, if necessary, collect evidence on its own initiative for such purpose. Moreover, § 3(2) of the same Act lays out the proportionality requirement.

Additionally, the webpage of the Chancellor of Justice summarises some aspects of this paragraph. It is stated there that the national authority has to make a comprehensive research into all relevant facts to determine whether the nationality should cease to exist or not. There should be clear information provided to the concerned citizen and he or she should be granted enough time to decide whether or not they decide to give up their second nationality. The authority also gives the concerned citizen possibility to contest the start of this procedure.⁷⁹

In light of these procedural rules, the Estonian regulation seems to be in conformity with the requirements established in *Tjebbes*.

Germany

Germany provides – like Austria – for the possibility of written consent from the German authorities to retain nationality (§ 25(2) *Staatsangehörigkeitsgesetz*/ German Nationality Act). If the applicant has her or his habitual residence abroad, the question is whether continuous ties with Germany are likely or not. Before 1 January 2000, this consent was seldom granted.⁸⁰ However, since 1 January 2000, not only public but also private interests are taken into account (§ 25(2)(2)).

The number of permissions granted to retain German nationality (*Beibehaltungsgenehmigungen*) for German citizens acquiring the nationality of another state increased from 1,295 in 2000 to 5,159 in 2013, with around half of these permissions granted to Germans acquiring US citizenship. Since 28

⁷⁷ Translation available on

http://data.globalcit.eu/NationalDB/docs/EST%20Citizenship%20Act%201995_as%20amended%202006_ENGLISH.pdf.

However, in that translation, the word “deemed” was used order to translate the Estonian term “loetakse”. Because “deemed” would not allow contra-evidence or a proportionality check, we decided to use the term “considered”, given the fact that Estonian law seems to give discretionary power to the authorities which assess whether Estonian nationality is lost.

⁷⁸ See opinion 6-1/080515/00805182, available on

https://www.oiguskantsler.ee/sites/default/files/field_document2/6iguskantsleri_margukiri_sunniga_saadus_kodakondsuse_st_loobumine.pdf (visited on 22 January 2020).

⁷⁹ See also the general yearly overview 2018/2019 of the Chancellor of Justice about the citizenship is here:

<https://www.oiguskantsler.ee/annual-report-2019/citizenship>.

⁸⁰ Kay Hailbronner et al., *Staatsangehörigkeitsrecht*, 6th edition Beck, München 2017, comments 344 on Par. 25 StAG, p. 505-512.



August 2007, asking and receiving permission is no longer required for German citizens acquiring the nationality of another EU Member State or Switzerland: they do not lose German nationality.

According to a decision by the Federal Administrative Court,⁸¹ the loss of nationality according to § 25 only occurs if the person involved had knowledge or should have had knowledge about her or his German nationality. If she or he had been unaware of her or his German nationality when applying for a foreign nationality, the loss of German nationality does not occur. However, if the persons concerned were aware of their German nationality, but not of the consequences of voluntary acquisition when they applied for foreign nationality, they would lose their German nationality.⁸²

As already concluded for Austria, the procedure to ask for a written consent from the German authorities to retain German nationality in case of a voluntary acquisition of another nationality, should allow for a proportionality test in the context of the assessment of that request, in order to comply with the requirements of *Tjebbes*. In particular it would be important that this consent could also be granted *ex post* with retroactive effect (*ex tunc*).⁸³

Lithuania

Article 26 *Lietuvos Respublikos Pilietybes Istatymo Pakeitimo Isratymasi* /Nationality Law of Lithuania deals with the loss of nationality on acquiring another nationality. Article 26 provides (in English translation⁸⁴):

“1. A citizen of the Republic of Lithuania who has acquired citizenship of another state shall lose citizenship of the Republic of Lithuania from the date of the acquisition of citizenship of another state, except for persons who, pursuant to subparagraphs 1-5 and 7 of Article 7 of this Law, may be citizens of both the Republic of Lithuania and another state at the same time.

2. A citizen of the Republic of Lithuania who has acquired citizenship of another state must, within two months from the date of the acquisition of citizenship of another state, notify in writing an institution authorised by the Government of the Republic of Lithuania, or a diplomatic mission or consular post of the Republic of Lithuania thereof.”

The relevant exceptions of Article 7 are:

- 1) a person who has acquired citizenship of the Republic of Lithuania and citizenship of another state at birth and has not reached 21 years of age;
- 2) a person who was exiled from the occupied Republic of Lithuania before 11 March 1990 and acquired citizenship of another state;
- 3) a person who fled the Republic of Lithuania before 11 March 1990 and acquired citizenship of another state;
- 4) a descendant of a person referred to in subparagraph 2 or 3 of this Article;
- 5) a person who by virtue of marriage to a citizen of another state he has ipso facto acquired citizenship of that state;

⁸¹ Bundesverwaltungsgericht 10 April 2008 (5C28.07), *NJW* 2008, 2729.

⁸² Hailbronner et al.2017, comment 15 on Par. 25 StAG, p. 495, 496.

⁸³ Ferdinand Weber, “Freundliche Übernahme? Die Einhegung des Staatsangehörigkeitsrechts durch den Gerichtshof der Europäischen Union”, *Juristenzeitung*, p. 453 also concludes in his article on *Tjebbes* that Par. 25 StAG is very likely unproblematic.

⁸⁴ <http://globalcit.eu/country-profiles/> → Lithuania.



- 6) [...]
- 7) a person under 21 years of age, provided he, being a citizen of the Republic of Lithuania, was adopted by citizens (citizen) of another state before reaching 18 years of age and, as a result of the adoption, acquired citizenship of that state.

There are no indications that Lithuanian law could provide for a proportionality test during a request for confirmation of nationality or the application of an identity document. Lithuania might have to revisit Article 26 in order to assess whether a proportionality assessment can be implemented.

Netherlands

See already the remarks made above in section 7.

As already observed above, a proportionality assessment seems to be lacking. The Dutch authorities and courts are currently reflecting on the consequences of *Tjebbes* for this ground for loss and its interpretation and implementation.

Slovakia

Slovak nationality is lost by operation of law in case of acquisition of another nationality, except when this nationality was acquired by birth or marriage (Article 9(1)(b) *Zákon Národnej rady Slovenskej republiky o štátnom občianstve Slovenskej republiky* / Slovak Nationality Act). This ground for loss was introduced in Slovakia in July 2010, in response to the facilitated access to Hungarian nationality for ethnic Hungarians from January 2011.

There are no indications that Slovakian law could provide for a proportionality test during a request for confirmation of nationality or the application of an identity document. The Slovak authorities should reflect on the question if and how Article 9(1)(b) should be interpreted and adapted as a result of *Tjebbes*.

Spain

In Spain, adults (*emancipados*) who have their habitual residence abroad lose Spanish nationality if they voluntarily acquire the nationality of another state that was attributed to them before they reached majority (Article 24(1) *Código civil* / Spanish Civil Code). The loss happens three years after the acquisition of the foreign nationality (respectively reaching the age of majority) but can be avoided by making a declaration to retain Spanish nationality. A Spanish citizen who resides in Spain does not lose her or his nationality by voluntary acquisition of another nationality.

In accordance with the Spanish constitution (Article 11(3)), and based on a number of bilateral treaties, the acquisition of the nationality of Latin-American countries, Andorra, Philippines, Equatorial Guinea or Portugal is not sufficient ground for the loss of Spanish nationality (Article 24(2)(2) *Código civil*).⁸⁵

⁸⁵ J. Aznar Sanchez, *La doble nacionalidad: doctrina, convenios, legislación, jurisprudencia*, Madrid: Montecorvo 1977.



However, it should be stressed that this exception only applies to persons who are Spanish citizens by origin (*españoles de origen*).

Spanish nationality is not lost by voluntary acquisition of another nationality when Spain is at war (Article 24(4) *Código civil*). The background of this provision is that people should not be able to avoid military conscription in times of war by acquiring another nationality (and thereby losing Spanish nationality).

The possibility to avoid the loss of nationality by making a declaration of retention is the same as provided for retention of Spanish nationality in case of residence abroad (Article 14 (3) *Código civil*). Excellent information on this possibility is key. In light of *Tjebbes*, an *ex post* assessment of the proportionality should also be possible in case of, for example, an application for a Spanish passport after the limitation period of three years.

Remarks

The provisions in Estonia, Ireland and Spain, where citizens who have acquired their nationality other than by birth are treated differently from so-called citizens 'of origin' should be noted. Discrimination of persons who have acquired nationality by naturalisation could constitute a violation of Article 5 of the European Convention on Nationality.⁸⁶

In those countries where voluntary acquisition is, under certain circumstances, a ground for loss of nationality, the notion of 'voluntary' needs further specification. In cases where the person concerned acquires another nationality without any application and without any possibility to avoid the acquisition, the provisions in question certainly do not apply. In cases of obvious coercion, they do not apply either.

However, a more nuanced situation arises when possession of nationality is a pre-requisite to participate in economic activities, and persons are thus 'forced' to apply for a foreign nationality because of economic circumstances. Whereas in the latter case Spain does not consider the acquisition of a foreign nationality to be voluntary,⁸⁷ Germany and the Netherlands do consider this a legitimate ground for loss.⁸⁸

Furthermore, with regard to the notion of 'acquisition', a related question is whether voluntary 'acquisition' also covers cases where the foreign nationality is acquired *ex lege* but could be rejected. Whereas the answer is affirmative in the Netherlands, in line with a judgment by the Supreme Court,⁸⁹ in countries such as Austria and Germany, the answer on this question is negative.⁹⁰

⁸⁶ See also: Jelena Dzankic, Ashley Mantha-Hollands & Rainer Bauböck, Acquisition and loss of citizenship in the 28 Member States of the European Union, EU-Citizen report 2019, p. 54.

⁸⁷ See Aurelia Álvarez Rodríguez, *Guía de la nacionalidad Española*, Madrid 1996, p. 86.

⁸⁸ On Germany: Hailbronner et.al. 2017, comments 11 and 12, p. 492, 493. On The Netherlands: De Groot, "Nationaliteitsrecht", in *Personen- en familierecht*, looseleaf edition, Deventer: Wolters Kluwer, comments 1.1.1-1.1.5 on Art. 15 RvNed.

⁸⁹ Hoge Raad 3 September 2004, RV 2004, No. 35 (at least under application of the Nationality Act of 1892).

⁹⁰ For Austria: W. Zeyringer, 'Autriche', in C.L. Closset & M.J. Verwilghen (ed.), *Jurisclasseur Nationalité*, looseleaf edition, Paris: Editions Techniques, No. 73; for Germany: *Allgemeine Verwaltungsvorschrift zum Staatsangehörigkeitsrecht* of 18 October 2000, 25.1.3.



9.2. Participating in foreign military/ Behaviour seriously prejudicial to the vital interests of the State

In twelve Member States, the participation in a foreign army may cause the loss of nationality.⁹¹ In nine of these Member States, foreign military service may be a ground for a withdrawal procedure. In such a procedure, a proportionality test can easily be implemented. However, in three Member States (Austria, Germany and Spain) this ground for loss operates automatically (*ex lege*):

Austria provides that a national who voluntarily enters the military service of a foreign country will be deprived (*istzu entziehen*) of the nationality (§ 32 *Staatsbürgerschaftsgesetz*/Austrian Nationality Act). The same applies for a national in the services of a foreign country if the national, through his behaviour, severely damages the interests or the reputation of Austria. (§ 33(1) *Staatsbürgerschaftsgesetz*). The words “*ist zu entziehen*” suggest that there is no discretion, although, in the second mentioned provision, discretion is implied in the assessment whether or not the behaviour severely damages the national interests of Austria. Finally, an *ex post* proportionality test could take place during a procedure on the confirmation of nationality based on § 42 *Staatsbürgerschaftsgesetz*.

For **Germany**, “a German who, without the consent of the Federal Ministry of Defense or a body designated by the said Ministry, voluntarily enlists with the armed forces or a comparable armed organization of a foreign state whose nationality he or she possesses, shall lose German nationality. This shall not apply if he or she is entitled to enlist in the aforesaid manner by virtue of an inter-governmental agreement.” (§ 28 *Staatsangehörigkeitsgesetz* / German Nationality Act).

The loss occurs automatically (*ist ... von Amts wegen festzustellen*/ has to be determined *ex officio*). The wording of the provision suggest the absence of discretion of the authorities. Weber concludes that the administrative courts will have to decide how to implement the proportionality test required by *Tjebbes*.⁹²

However, an *ex post* proportionality test could take place during a procedure on the confirmation of nationality based on § 30 *Staatsangehörigkeitsgesetz*.

Spain has also such ground for loss, be it only for those Spanish nationals who did *not* acquire the nationality by “*origen*”, but later in life, e.g. by naturalisation (see Article 15(1)(b) *Código civil*/ Spanish Civil Code). The nationality law itself thus does not appear to provide for a proportionality assessment.

⁹¹ See Gerard-René de Groot and Maarten Vink, *A Comparative Analysis of Regulations on Involuntary Loss of Nationality in the European Union*, Background paper ILEC-project (project on Involuntary Loss of European Citizenship), CEPS Paper in Liberty and Security in Europe No. 75 (December 2014), <http://www.ceps.be/book/survey-rules-loss-nationality-international-treaties-and-case-law>, 52 p.; also included as chapter 3, in: Sergio Carrera Nuñez and Gerard-René de Groot, *European citizenship at the Crossroads: The Role of the European Union on Loss and Acquisition of Nationality*, Oisterwijk: Wolf Legal Publishers 2015, p. 41-116, in particular Table 3.4. See also GLOBALCIT (2017). Global Database on Modes of Loss of Citizenship, version 1.0. San Domenico di Fiesole: Global Citizenship Observatory, Robert Schuman Centre for Advanced Studies, European University Institute. <http://globalcit.eu/loss-of-citizenship>: “Mode L03, Service in foreign army”. Compare also: See also: Jelena Dzankic, Ashley Mantha-Hollands & Rainer Bauböck, Acquisition and loss of citizenship in the 28 Member States of the European Union, EU-Citizen report 2019, para. 3.3.4, p. 39-41.

⁹² Ferdinand Weber, p. 453, 454.



9.3. Loss due to annulment of maternity or paternity

In eleven Member States, a person who acquired the nationality as the child of a national can lose the nationality if the relevant parentage tie is annulled, for example, by a judicial confirmation following a denial of paternity, if the family relationship ends because of annulment or revocation of adoption, or if it ends because of adoption. Such loss takes place automatically (*ex lege*) in Belgium, Cyprus, Czech Republic, Denmark, Estonia, Ireland, Italy, Luxembourg, Netherlands, Poland, and Portugal. If this happens during the minority of the child and if this does not lead to statelessness, such cases of loss are permitted by the European Convention (Articles 7(1)(f) and 7(1)(g) and Article 5 of the 1961 Convention on the Reduction of Statelessness.

It is striking that only in four Member States (Belgium, Finland, Germany and the Netherlands) this ground for loss is regulated expressly. In the other States, the loss in such cases is seen as a consequence of general principles.⁹³

When comparing regulations in these four Member States, we can distinguish between three main procedural approaches. In three countries, if it is established, before the person concerned reached the age of 18 years, that the preconditions laid down by internal law that led to the *ex lege* acquisition of nationality are no longer fulfilled, the person involved is automatically assumed no longer to be a citizen (Belgium⁹⁴ and The Netherlands⁹⁵).

Germany provides for a nullification procedure in similar situations, implying that the person is deemed never to have been a national. In Germany, the successful denial of paternity has as a consequence that the child loses its legal links to this person with retroactivity from the day of its birth. Hence, the original nationality acquisition is nullified. Consequently, the person concerned loses German nationality, if he or she does not also derive this nationality from the mother or acquired this *iure soli*. Since 2009, loss of nationality is only possible until the child reaches the age of five, except in those cases where the recognition of paternity is annulled by a court on application of the authorities because this recognition happened for immigration law purposes (Par. 17(3) *Staatsangehörigkeitsgesetz*/German Nationality Act). However, this annulment is not possible if ‘family life’ (*sozial-familiäre Beziehung*) exists between the father and the child.⁹⁶

Finally, Finland provides for a possibility of withdrawal of nationality. Only the Finnish rules thus seem to enable the easy implementation of a proportionality test.⁹⁷

Italy has a very particular provision, which only applies to the loss of a family relationship due to the annulment of adoption, and specifically to cases where the adoption is revoked due to criminal behaviour of the adopted child against the adoptive parents (Article 3(3) *Legge sulla cittadinanza*/

⁹³ Information collected in the ILEC-project. See Gerard-René de Groot and Maarten Vink, *A Comparative Analysis of Regulations on Involuntary Loss of Nationality in the European Union*, Background paper ILEC-project (project on Involuntary Loss of European Citizenship), CEPS Paper in Liberty and Security in Europe No. 75 (December 2014), <http://www.ceps.be/book/survey-rules-loss-nationality-international-treaties-and-case-law>, 52 p.; also included as chapter 3, in: Sergio Carrera Nuñez and Gerard-René de Groot, *European citizenship at the Crossroads: The Role of the European Union on Loss and Acquisition of Nationality*, Oisterwijk: Wolf Legal Publishers 2015, p. 41-116, in particular Table 3.6.

⁹⁴ Art. 8 (4) Code de Nationalité Belge/ Belgian Nationality Act.

⁹⁵ Art. 14 (6) *RwNed*.

⁹⁶ Hailbronner 2017, comments 15-17a on Par. 17 (3) *Staatsangehörigkeitsgesetz*.

⁹⁷ Art. 32 *Kansalaisuuslaki* /Finnish Nationality Act.



Italian Nationality Law). This loss provision is arguably at odds with Article 17(f) European Convention due to the absence of a limitation to minors.

10. Analysis of the consequences of *Tjebbes* for provisions on loss of nationality by extension to minors

Nine Member States of the European Union do not allow for the extension of loss from parents to their children (Czech Republic, Estonia, France, Hungary, Ireland, Latvia, Malta, Portugal and Spain). Irish law even explicitly states that the loss of Irish citizenship by a person shall not of itself affect the citizenship of her or his children (Section 22(2) Irish Nationality Act). However, one should realise that in countries where this possible extension does not exist, parents may be able to represent their minor children in respect of a declaration of renunciation or may lodge an application for release from nationality on their behalf.

The withdrawal of the child's nationality based on the loss of this nationality by the parents is possible in Finland, Germany, Greece and Lithuania.

The automatic loss is possible in: Austria, Belgium, Bulgaria, Croatia, Cyprus, Denmark, Italy, Luxembourg, Netherlands, Poland, Romania, Slovakia, Slovenia and Sweden. Five countries provide for the extension of loss – and only under certain conditions – exclusively in case of a declaration of renunciation or of release of nationality on application (Croatia, Luxembourg, Poland, Romania and Slovakia).

In three states (Cyprus, Greece and Italy), the nationality of a minor can be lost or withdrawn, if the nationality of a parent is withdrawn and acquisition of the nationality of the child was based this parent's nationality. Striking is that in these three countries no explicit regulation of this extension of loss of nationality exists.⁹⁸

In nine other Member States, automatic loss of nationality by a parent can also cause the loss of nationality by children. This may apply in case of voluntary acquisition of a foreign nationality by a parent (Austria, Lithuania and The Netherlands) or loss of nationality by a parent due to permanent residence abroad (Belgium, Denmark, Netherlands and Sweden).

With regard to withdrawal because of fraud, nationality authorities who deprive a parent of her or his nationality for this reason may, under certain circumstances, withdraw the nationality of a child for the same reason. In Germany, for example, the loss of nationality by children due to the loss of nationality by their parents is formally not an extension, because in respect of a child all relevant circumstances – including attention to the best interest of the child - have also to be taken into account (§ 35(5) *Staatsangehörigkeitsgesetz*/ German Nationality Act).

⁹⁸ Information collected during the ILEC project. See Gerard-René de Groot and Maarten Vink, *A Comparative Analysis of Regulations on Involuntary Loss of Nationality in the European Union*, Background paper ILEC-project (project on Involuntary Loss of European Citizenship), CEPS Paper in Liberty and Security in Europe No. 75 (December 2014), <http://www.ceps.be/book/survey-rules-loss-nationality-international-treaties-and-case-law>, 52 p.; also included as chapter 3, in: Sergio Carrera Nuñez and Gerard-René de Groot, *European citizenship at the Crossroads: The Role of the European Union on Loss and Acquisition of Nationality*, Oisterwijk: Wolf Legal Publishers 2015, p. 41-116, in particular Table 3.7.



In Austria, the loss of nationality because of voluntary acquisition of another nationality extends to (adopted) children, if they are minors and unmarried and follow the parent into the foreign nationality by law, or would follow the parent if they were not already in the possession of that nationality, except where that the other parent remains an Austrian citizen (§ 29 *Staatsbürgerschaftsgesetz* / Austrian Nationality Act). Minors who are 14 or older need to consent to the acquisition of the foreign nationality (and hence the loss of Austrian nationality).

Danish nationality is lost by an unmarried child under the age of 18 years if a parent loses Danish nationality due to permanent residence abroad, children lose Danish nationality as well (Par. 8(2) *Lov om dansk indfødsret* / Danish Nationality Law). However, in the Letter of orientation of the Ministry for immigration and integration of 11 October 2019 –already mentioned above⁹⁹ – the amendment of this provision is announced in light of *Tjebbes*.

The Netherlands seems to be the country with the widest scope of modes of loss of nationality by the parent that can extend to children: voluntary acquisition of another nationality), voluntary renunciation, permanent residence abroad, and fraud). In all cases, ‘father and mother’ is deemed to include the adoptive father or mother from whom the minor acquired Netherlands nationality. However, Netherlands nationality is not lost if the other parent continues to possess Netherlands nationality or one of the other exceptions mentioned in Article 16 (2) *RwNed* is fulfilled. This provision may have to be revisited following *Tjebbes* (see above section 7.4).

Belgian law follows the same approach, for voluntary renunciation and for loss due to permanent residence abroad, but adds as a condition that the relevant parent(s) must exercise their parental authority in respect to the child (Article 22(1)(3) and (6) *Code de Nationalité Belge* / Belgian Nationality Act). This provision may equally have to be revisited.

It appears problematic that in Austria and the Netherlands the loss of nationality by a parent can also extend to children, even though the parent does not have (shared) parental authority regarding the children concerned. That is evidently contrary to the best interests of the child.

In some Member States one finds a provision that loss of nationality by a parent due to fraud can include children (Bulgaria, Finland and Slovenia). This is only acceptable if a separate deprivation decision is made in respect of each child under consideration of the minor’s situation, culpability, circumstances under which the fraud was committed and the genuine ties between the child and the state involved (see Article 33 *Kansalaisuuslaki* / Finnish Nationality Law). It follows from *Tjebbes* that the best interests of the child should be of paramount relevance.

11. Consequences of *Tjebbes* for cases of quasi loss of nationality

In some Member States, the nationality is not considered lost, but deemed never to have been acquired under certain circumstances. Due to the fact that the person concerned experiences this as loss of nationality, this construction is labelled in the literature as “quasi” loss of nationality.¹⁰⁰

⁹⁹ See section 8.

¹⁰⁰ Gerard-René de Groot and Patrick Wautelet), *Reflections on Quasi-loss of nationality from comparative, international and European perspective*, Background paper ILEC-project (project on Involuntary Loss of European Citizenship), CEPS Paper in Liberty and Security in Europe No. 66 (August 2014), 28 p., also available on <http://www.ceps.eu/publications/reflections->



This construction is used, for example, in the Netherlands if identity fraud is discovered to have been committed during the application for naturalisation before 2003.

Other examples are cases where minor children were supposed to be included in the naturalisation of parents, but where, after many years, doubts suddenly arise on the extension of the naturalisation to the minors involved, even though until then, these children were always treated as nationals. See on this type of cases the recent decision of the Court of The Hague of 20 August 2019, which concluded that the “child” concerned was never a Netherlands national, in spite of the fact that she was treated as such during at least 15 years.¹⁰¹

The quasi loss construction was already very problematic in light of *Rottmann* and now even more after the *Tjebbes* ruling. In his case note under the just mentioned decision of the Court of The Hague, Pieter Boeles argues that, also in such case of quasi-loss of nationality, a proportionality test is appropriate in light of the *Tjebbes* ruling.

quasi-loss-nationality-comparative-international-and-european-perspective; also included as chapter 4, in: Sergio Carrera Nuñez and Gerard-René de Groot, *European citizenship at the Crossroads: The Role of the European Union on Loss and Acquisition of Nationality*, Oisterwijk: Wolf Legal Publishers 2015, p. 117-157.

¹⁰¹ Pieter Boeles, Case note on decision Rechtbank Den Haag zp Rotterdam, ECLI:NL:RBDHA:2019:8546, in *Jurisprudentie Vreemdelingenrecht* 2019, no. 173, p. 1209-1219



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- Boeles, Pieter (2019), Case note on decision Rechtbank Den Haag zp Rotterdam, ECLI:NL:RBDHA:2019:8546, in *Jurisprudentie Vreemdelingenrecht* 2019, no. 173, p. 1209-1219

14. Courts decisions referring to *Tjebbes*

Austria

Verwaltungsgerichtshof 30 September 2019, ECLI:AT:VWGH:2019:RA20180104477.L00 [*Tjebbes* makes proportionality test necessary when applying Par. 27 (1) StBG (loss due to voluntary acquisition foreign nationality)].

Netherlands

Rechtbank Den Haag 22 August 2019, C/09/562195/ HA RK 18/532 (not yet published; will appear in *Jurisprudentie Vreemdelingenrecht* 2020, volume 1, with case note Gerard-René de Groot) [no proportionality test possible in special nationality determination procedure of Art. 17 RwNed]

Rechtbank Den Haag 16 September 2019, ECLI:NL:RBDHA:2019:9682 [*Tjebbes* not relevant in deprivation procedure due to terrorist activities]

Gemeenschappelijk Hof van Justitie van Aruba, Curacao, Sint Maarten en van Bonaire, Sint Eustatius en Saba 11 June 2019 (preliminary ruling request to *Hoge Raad*/ Supreme Court, ECLI:NL:OGHACMB:2019:112 [is *Tjebbes* also have relevant in cases of quasi-loss of nationality; is the European principle of legitimate expectations relevant]



Hoge Raad 20 December 2019, ECLI:NL:HR:2019:2036 [*Tjebbes* deals with loss of nationality and not with acquisition of nationality. For that reason, *Tjebbes* is not relevant for the protection of legitimate expectations of persons treated as nationals during many years]

See also:

Opinion Advocate-General Paul Vlas 1 November 2019, ECLI:NL:PHR:2019:114 [Opinion on preliminary ruling request of Gemeenschappelijk Hof 11 June 2019] [*Tjebbes* has nothing to do with protection of legitimate expectations]

Opinion Advocate-General Paul Vlas 6 December 2019, ECLI:NL:PHR:2019:1273 [in a case pending at the Supreme Court of the Netherlands (*Hoge Raad*)], para. 2.22 [also the Court of The Hague in a procedure of Art. 17 RvNed has to make a proportionality assessment as required by *Tjebbes*]

15. National instructions on the application of *Tjebbes*

Denmark

11 October 2019, Ministry for Immigration and Integration, Letter of orientation to the Naturalisation Committee concerning the handling of applications for retention of Danish citizenship based on the *Tjebbes* judgment: <https://www.ft.dk/samling/20191/almdel/IFU/bilag/6/2089776/index.htm>

<https://uim.dk/nyheder/2019-10/mulighed-for-genoptagelse-af-sager-om-bevis-for-bevarelse-af-dansk-statsborgerskab-pa-baggrund-af-en-dom-fra-eu-domstolen>