

Quasi-loss of nationality

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I. Context

- ILEC-project on involuntary loss of nationality (www.ilecproject.eu) → progeny of *Rottmann* (C-135/08)
- 'Quasi-loss' of nationality as one of the components
- Research based on
 - Comparative analysis 28 MS (questionnaire)
 - International/European law

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II. The story of José

- José born in Chile – fled his country in 1977 during Pinochet dictatorship → came to the Netherlands
- In order to escape Chile, José used a friend's passport → refugee application (1977) using his friend's identity

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II. The story of José

- José married to an American national (1982)
- Two children born in the Netherlands:
 - Irena (1983)
 - Julio (1985)
- Naturalization (1986) – under his friend's identity

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II. The story of José

- 2014 : José wants to recover his real identity
- Consequences?
 - Identity fraud → loss of nationality (art. 14 Dutch Act)
 - Fraud committed *before* 01.04.2003 → naturalization is void *ab initio*
 - José's children would also lose their nationality

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III. Cases of quasi-loss?

- José's case : nationality was never acquired → '*quasi-loss*'
- Other instances of quasi-loss:
 - Disappearance family relationship (*e.g.* annulment of paternity)
 - Incorrect application/interpretation of nationality law (*e.g.* voluntary acquisition of nationality)

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IV. Legal framework?

- National law?
 - Falls in between acquisition and loss – no specific rule
 - In some cases – solution:
 - Constitutional protection
 - Nationality law (*e.g.* statute of limitation)
 - Family law (*e.g.* apparent status in case marriage null and void)

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IV. Legal framework?

- International law?
 - Most protection rules predicated on loss, not quasi-loss (*e.g.* art. 5(1) 1961 Convention Statelessness : loss of nationality as a consequence of change in family status) – broad interpretation ?
 - Some provisions may help – though not directly aimed at quasi-loss – *e.g.*:
 - Art. 7(1)(f) ECN : no loss after minority of child
 - Procedural guarantees in case of deprivation

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V. Outlook

- Quasi-loss *is* loss
- Protection mechanisms in relation to loss should apply – *e.g. Rottmann* – proportionality test
- Adaptation of protection rules?
'Quasi-loss twist' - *e.g.* protection of legitimate expectations

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