



Quasi-loss of nationality

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I. Context





- ILEC-project on involontary 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





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





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





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





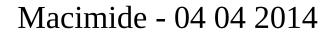
III. Cases of quasi-loss?





- 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)







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)





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



