



EMN Ad-Hoc Query on Loss of nationality by operation of law on account of residence abroad and acquisition of nationality by operation of law by children not born in the territory.

Requested by Tessa VAN DER MIESEN on 3rd August 2017

Residence

Responses from Austria, Lithuania, Malta, Netherlands, Portugal, Slovak Republic, United Kingdom, Norway (8 in total)

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

Background information:

Under Dutch nationality law, Dutch nationality is lost by operation of law if the person concerned resides outside the territory of the European Union for an uninterrupted period of ten years and also holds another nationality in addition to Dutch nationality. This ten-year period can be interrupted, among other things, by issuing a Dutch passport. If the period is not interrupted, an effective connection (genuine link) with the Netherlands is no longer presumed to exist and Dutch nationality is lost by operation of law, without any special individual circumstances having been assessed. Minor children of the person concerned who loses Dutch nationality in this manner lose their Dutch nationality as a general rule, again by operation of law.

On 19 April 2017 the Administrative Jurisdiction Division of the Council of State referred questions to the Court of Justice of the European Union for a preliminary ruling on the compatibility of these provisions in Dutch nationality law with European law.

The questions for a preliminary ruling are as follows: (source: <https://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=91002>, legal ground 18)

[...] Should Articles 20 and 21 of the Treaty on the Functioning of the European Union, partly in the light of Article 7 of the Charter of Fundamental Rights of the European Union, be interpreted such that they, in view of the lack of an individual assessment of the principle of proportionality regarding the consequences of the loss of nationality for the situation of the person concerned from the perspective of Union law, preclude statutory provisions, as under discussion in these main proceedings, which set out:


- a. that an adult who also holds a third-country nationality, loses the nationality of the relevant EU Member State and thus citizenship of the European Union by operation of law because his/her main residence has been abroad and outside the European Union for an uninterrupted period of ten years, whereas options for interrupting that ten-year period exist?
- b. that under certain circumstances, a minor loses the nationality of the relevant EU Member State and thus citizenship of the European Union by operation of law as a consequence of losing the nationality of the parent, as referred to under a.? [...]



If the Court of Justice of the European Union considers that loss of Dutch nationality by operation of law is incompatible with European law because no assessment is conducted according to the European principle of proportionality, this could have far-reaching consequences for Dutch nationality law as a whole. In this connection, the Netherlands wishes to learn to what extent other countries have similar provisions concerning loss of nationality. By extension, an equally relevant factor is to what extent parents can pass on their nationality to their children born outside the territory of the state.


Questions


1. 1. Does the nationality law of your country include loss of nationality by operation of law on account of the voluntary acquisition of the nationality of a third country? 1.a If so, under what circumstances does loss of nationality occur by operation of law? 1.b Is a distinction made between adults and minors?
2. 2. Does the nationality law of your country include loss of nationality by operation of law on account of the absence of an effective connection between the country and a citizen, in the situation that this citizen is habitually resident abroad and holds the nationality of a third country? 2.a If so, under what circumstances does loss of nationality occur by operation of law? 2.b Is a distinction made between adults and minors?
3. 3. Do children born on the territory of a third country acquire the nationality of the parent(s) by operation of law by descent? Please explain. 3.a If not, can they in such a case acquire the nationality of their parents by submitting an application or on the basis of registration? 3.b Do different rules apply in case the parent(s) were themselves not born in your country? And if so, what regulation applies?


Responses


	Country	Wider Dissemination	Response
	Austria	Yes	<p>1. Yes (see Art. 27 para 1 Citizenship Act). 1.a) In general, persons lose the Austrian citizenship, if they acquire a foreign nationality on account of their application, declaration or express consent, unless the retention of the Austrian citizenship has been approved beforehand (Art. 27 para 1 Citizenship Act). 1. b) Yes. Minors only lose the Austrian citizenship, if the application, declaration or express consent has been made by their legal representative or with the express consent of the legal representative before the acquisition of the foreign nationality. If the legal representative is someone other than parents, a civil court must have approved the consent by the legal representative before acquisition of the foreign citizenship (Art. 27 para 2 Citizenship Act). Minors age 14 or above only lose the Austrian citizenship if they have expressly consented to the declaration of will leading to the acquisition of the foreign citizenship (Art. 27 para 3 Citizenship Act). The retention of the Austrian citizenship may especially be granted if this is in the best interest of the minor (Art. 28 para 1 sub-para 2 Citizenship Act).</p>

			<p>2. No (see the response to Question 1).</p> <p>3. Yes. In general, children become Austrian citizens at the time of birth if at this time their mother or legally recognized father is an Austrian citizen (see Art. 7 para 1 Citizenship Act). In this respect, the place of birth is not decisive.</p>
	Lithuania	Yes	<p>1. Yes. According to Republic of Lithuania Law on Citizenship Article 24, part 2 and Article 26, the citizen of the Republic of Lithuania, who has acquired citizenship of another state, loses the citizenship of the Republic of Lithuania, except in cases provided in this Law. If both child's parents loses the citizenship of the Republic of Lithuania (or one of the parents is not the citizen of the Republic of Lithuania or is unknown), a child under 18 years of age, who has acquired citizenship of the Republic of Lithuania by means other than by birth, shall lose citizenship of the Republic of Lithuania, except in cases where the loss of citizenship of the Republic of Lithuania would render the child stateless. A child between 14 and 18 years of age may lose citizenship of the Republic of Lithuania only with his consent, except in cases where the loss of citizenship of the Republic of Lithuania would render the child stateless (Republic of Lithuania Law on Citizenship Article 28, part 2 and 4).</p> <p>2. No.</p> <p>3. A child both of whose parents or one of them are citizens of the Republic of Lithuania shall acquire citizenship of the Republic of Lithuania by birth, irrespective of whether he was born in or outside the territory of the Republic of Lithuania (Republic of Lithuania Law on Citizenship Article 14).</p>
	Malta	Yes	<p>1. Maltese citizenship is not lost by the voluntary acquisition of a foreign citizenship. Following the amendments to the Maltese Citizenship Act (Cap 188), the concept of dual citizenship became the rule and not the exception and the acquisition of a foreign citizenship will not entail the loss of Maltese citizenship.</p>

			<p>2. Maltese citizenship in such circumstances can only be lost by deprivation as prescribed for in article 14 (2) of the Maltese Citizenship Act (Cap 188). The said article is being reproduced hereunder: (2) Subject to the provisions of this article, the Minister may by order deprive of his Maltese citizenship any citizen of Malta who is such by registration or by naturalisation if he is satisfied that the citizen (d) has been ordinarily resident in foreign countries for a continuous period of seven years and during that period has neither – (i) at any time in the service of the Republic or of an international organisation of which the Government of Malta was a member; or (ii) given notice in writing to the Minister of his intention to retain citizenship of Malta. Before the Minister issues the order in question, the person concerned has the right of inquiry before an ad hoc Committee established by law. In such circumstances there is no distinction between adults and minors.</p> <p>3. As the law stands now the child born, outside Malta, to a Maltese parent, who is a citizen of Malta by birth in Malta or by registration (apart from certain exceptions) or naturalization, shall acquire Maltese citizenship automatically at birth – article 5(2) and article 17(1) of the Maltese Citizenship Act (Cap 188) refer http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1 If the parent is not a citizen of Malta as referred to in the previous paragraph, once the child satisfies the conditions of the proviso to article 5(2) or 5(3), (4), (5) and (6) of the Maltese Citizenship Act (Cap 188) http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1 s/he would be registered as a citizen of Malta on application.</p>
	Netherlands	Yes	<p>1. 1a. As a general rule by operation of law the voluntary acquisition of another nationality leads to loss of Dutch nationality ex lege, regardless of whether a EU-nationality or a third country nationality is acquired However, the law includes a number of exceptions to this rule and the loss of Dutch nationality may never lead to statelessness. 1b. Minors will lose the Dutch nationality if they acquire another nationality. Minors will also share the loss of nationality if their parent(s) voluntarily acquire(s) another nationality and the minor already holds that nationality. However, a number of statutory exceptions to these loss of nationality provisions apply to minors.</p> <p>2. 2. Yes. 2a. An adult Dutch national who also holds another nationality in addition to Dutch nationality loses Dutch nationality if s/he resides outside the territory of the Kingdom of the</p>

			<p>Netherlands and outside the European Union for an uninterrupted period of ten years. It is possible to interrupt this ten-year period by taking up residence within the Kingdom of the Netherlands or within the European Union for a period of at least one year. This ten-year period can also be interrupted if a Dutch travel document or a declaration concerning possession of Dutch nationality is issued. Loss of nationality does not occur if the person concerned or his/her spouse is employed by the Dutch government or an international organisation in which the Netherlands is represented. 2b. As a general rule by operation of law, minor children share the loss of nationality, if the parent(s) lose(s) Dutch nationality in the manner described above. A number of statutory exceptions to this loss of nationality provision apply to minors.</p> <p>3. 3. Yes. Dutch nationality is acquired by operation of law by descent from Dutch parents, irrespective of the child's place of birth. The children of Dutch nationals who were born abroad, in turn, again by operation of law acquire Dutch nationality by descent, provided the parent still holds Dutch nationality. The same applies to third-generation children born outside the Netherlands. 3a. - 3b No.</p>
	Portugal	Yes	<p>1. No. In Portugal, the loss of nationality only occurs if the citizen demands for that, to the Administration, and it can only be considered if he/she has another nationality. Different situation, is when the nationality has been acquired with fraudulent assumptions.</p> <p>2. N/A.</p> <p>3. N/A.</p>
	Slovak Republic	Yes	<p>1. Yes. 1a. Loss of Slovak citizenship occurs when the person acquires a foreign nationality based on an explicit consent. This does not apply for cases when: a Slovak citizen acquires a foreign nationality in relation to the marriage with a citizen of another country provided that the foreign citizenship is acquired during this marriage; a foreign citizenship is acquired by birth. 1b. No.</p> <p>2. No. 2a. N/A 2b. N/A</p>

			<p>3. Yes, provided that at least one of the parents is a citizen of the Slovak Republic (irrespective of where the child is born). 3a. N/A 3b. See above.</p>
	United Kingdom	Yes	<p>1. British nationality can only be lost in 2 ways – where the person renounces that status, or if the Home Secretary deprives the person of their citizenship by order. Under the British Nationality Act 1981 a person who is a British national can renounce that status, but only if he or she already has another citizenship or nationality, or will acquire another citizenship or nationality after renouncing British nationality. In addition the person must be over the age of 18 and of sound mind. Under section 40 of the British Nationality Act 1981, the Secretary of State can deprive any person of their British nationality if:</p> <ul style="list-style-type: none"> • the Secretary of State is satisfied that deprivation is conducive to the public good • the individual obtained their British citizenship by means of fraud, false representation or concealment of material fact. <p>A person will not have their British nationality removed on the basis of long term absence from the UK, or if they acquire another nationality. In UK law a British citizen is not prevented from having another nationality. We recognise, for example, that people may often retain a strong affinity with their country of origin despite living in the UK permanently. However, we do not see that this prevents a person from establishing loyalty to, and affinity with, the UK: we think it is possible to be a good citizen of more than one country. That said, we expect those becoming British citizens to take on board the responsibilities, as well as embracing the rights, which British citizenship confers. An individual seeking to register or naturalise as a British citizen is subject to the same requirements whether they intend to surrender their other nationality or not, including where this is required under the laws of that country.</p> <p>2. Please see Q1.</p> <p>3. A child born outside the UK will only acquire British citizenship automatically if either parent is a British citizen otherwise than by descent, or is a British citizen serving outside the UK in service that is closely linked to the work of the UK government There are registration provisions for children of people who are British citizens by descent, where there is evidence of a connection with the UK through a period of residence:</p> <ol style="list-style-type: none"> 1. If the child and both parents return to the UK and live here for a continuous period of three years. 2. If the child's parent is a British citizen by descent, their grandparent is a British citizen otherwise than by descent, and the parent lived in the UK for a

			continuous period of three years at any time before the child's birth. Information on registration of children can be found on the Gov.UK website: https://www.gov.uk/register-british-citizen/children-born-outside-uk .
	Norway	Yes	<p>1. 1. Does the nationality law of your country include loss of nationality by operation of law on account of the voluntary acquisition of the nationality of a third country? YES 1.a If so, under what circumstances does loss of nationality occur by operation of law? Both adults and minors will lose their Norwegian citizenship by the operation of law if the acquisition of the nationality of the other country is acquired voluntarily by application or formal consent. The citizenship will not be lost if the nationality of the other country is acquired by operation of law, e.g. because of marriage to a third country national. 1. b Is a distinction made between adults and minors? Minors will also lose Norwegian citizenship if a child acquires another citizenship (by operation of law) because one of their parents with Norwegian citizenship acquires a nationality of another country; the exception is if the remaining parent still has Norwegian citizenship, then the child keeps their Norwegian citizenship also.</p> <p>2. 2. 2. Does the nationality law of your country include loss of nationality by operation of law on account of the absence of an effective connection between the country and a citizen, in the situation that this citizen is habitually resident abroad and holds the nationality of a third country? YES. 2.a If so, under what circumstances does loss of nationality occur by operation of law? A person who acquired Norwegian nationality by birth, but who has not resided in Norway for a total of two years or in Norway and/or other Nordic countries for a total of seven years, will lose his or her Norwegian nationality upon reaching the age of 22, pursuant to section 24 of the Norwegian Nationality Law. A person who would otherwise lose his or her Norwegian nationality pursuant to this section, may upon application, be given the right to retain it provided that the applicant has sufficient ties with Norway. An application for such retention must be lodged before the person concerned reaches the age of 22. 2. b Is a distinction made between adults and minors? If a person loses his or her Norwegian nationality pursuant to this section, his or her children will also lose their nationality. However, this does not apply if one of the parents is still a Norwegian, or if the child himself or</p>

			<p>herself satisfies the conditions for retaining the nationality. Loss of nationality pursuant to this section will not occur if the person concerned will thereby become stateless.</p> <p>3. 3. 3. Do children born on the territory of a third country acquire the nationality of the parent(s) by operation of law by descent? Please explain. YES: A child born on the territory of another country acquires Norwegian citizenship by descent if its father or mother is a Norwegian citizen when the child is born. 3. a If not, can they in such a case acquire the nationality of their parents by submitting an application or on the basis of registration? N/A 3.b Do different rules apply in case the parent(s) were themselves not born in your country? And if so, what regulation applies? N/A</p>
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