

SUMMARY

Multiple nationality: an exploratory study

In the autumn of 2008, the Advisory Committee on Aliens Affairs (ACVZ) will be issuing recommendations on the issue of multiple nationality. In anticipation of this report, the ACVZ looks at various aspects of the laws and regulations governing nationality as well as elements of the political and public debate on multiple nationality.

The first part of this study is a comparative overview of nationality legislation in a number of countries. As far as European neighbouring states are concerned, the ACVZ has confined itself for practical reasons to six countries – Austria, Belgium, Denmark, France, Germany and the United Kingdom. These were chosen in part from a desire to include both countries that allow multiple nationality and those that seek to restrict it. The study also focuses on three ‘classical’ immigration countries, Australia, Canada and the United States, and the three main countries of origin for immigrants to the Netherlands: Surinam, Turkey and Morocco.

The second part of the paper prepares the ground for the debate by discussing a number of political and social aspects of the issue of multiple nationality. In this section, the ACVZ identifies a number of subjects that are part of the debate, or that should be dealt with in the course of this debate.

It should be noted that this paper seeks merely to present an overview of the facts in this matter; the ACVZ is not adopting any position or making any recommendations at this stage.

1. Nationality law: a comparative overview

The comparison between Dutch nationality law and the law in six European countries and three immigration countries looks at the grounds on which nationality is obtained and the circumstances that may lead to the loss of nationality.

Nationality may be obtained in the following ways:

- *automatically ex lege (generally at birth)*
- *by exercising the right of option*
- *by naturalization*

Acquiring nationality automatically *ex lege* means that it follows directly from the law, without the person concerned needing to take any action. Acquiring nationality by exercising the right of option means that the person acquires nationality immediately, provided certain conditions laid down in regulations are met, if this is explicitly requested. Naturalization is a decision by the government in response to a request to be granted nationality.

Persons may acquire a given nationality at birth in two distinct ways: through the blood line, that is, according to the principle of descent or **ius sanguinis**, or on the basis of the country of birth: the principle of territoriality or **ius soli**.

The comparative study of nationality law reveals that countries on the mainland of Europe (Austria, Belgium, Denmark, France, Germany, the Netherlands) apply the principle of *ius sanguinis*. The countries studied have supplementary regulations making it possible for second or third generation immigrants to acquire nationality either automatically *ex lege* or by exercising the right of option. Countries that apply the principle of *ius soli* (the United Kingdom, Australia, Canada and the United States) have supplementary regulations making it possible for persons born abroad, but whose parents are nationals of the country concerned, to obtain their parents' nationality. The purpose of these supplementary regulations is to safeguard uniformity of nationality within families.

Where naturalization is concerned, the countries studied set similar conditions, although they differ in terms of the number of years' residence required and the obligation to renounce the previous nationality. In this respect, the countries may be divided into three clusters:

- *Classical immigration countries: Australia, Canada and the United States, which allow naturalization after three to five years' residence and which have no obligation to renounce the original nationality;*
- *European countries which have no obligation to renounce the original nationality and which likewise allow naturalization after three to five years' residence: Belgium, France and the United Kingdom.*
- *European countries which impose an obligation to renounce the original nationality and where naturalization is possible after five to ten years' residence: Austria, Denmark, Germany and the Netherlands.*

The policy on whether or not an obligation is imposed to renounce the original nationality as a condition for acquiring a new one reflects the attitude of the country concerned in relation to multiple nationality. The classical immigration countries, along with Belgium, France and the United Kingdom, proceed on the assumption that a person may have a close attachment to more than one country (and nationality). To acquire nationality, the person concerned must pass a 'citizenship test' and must have lived in the country for a set number of years.

The countries that impose on persons seeking naturalization an obligation to renounce their original nationality (Austria, Denmark, Germany and the Netherlands) proceed on the assumption, broadly speaking, that the possession of a nationality is an indivisible qualification, from which both rights and obligations ensue. Even so, these countries too allow for exceptions to the renunciation obligation. It is also noteworthy that the countries that impose this obligation appear to adhere to it more strictly in the case of aliens applying for naturalization than in the case of their own nationals who are seeking to obtain another nationality.

The grounds on which a person may lose or be deprived of his or her nationality differ among the countries included in this comparative study. For Belgium, Denmark, France and the Netherlands, protracted residence abroad may be a possible reason for loss of nationality. In some countries (Australia, Austria, France, Germany, the Netherlands, the United Kingdom and the United States), military service in the armed forces of another state may be grounds for depriving a person of his or her nationality, although the details of this condition are different from one country to the next. For Austria, France and Germany, voluntary military service in the armed forces of another country is in itself sufficient reason to revoke a person's nationality. Australia, the Netherlands, the United Kingdom and the United States revoke nationality only in the case of a person enlisting in the armed forces of a *hostile country*.

Of the three classical immigration countries, the United States has the largest number of grounds for revoking nationality. In Europe, Austria, France and the United Kingdom, as well as Denmark, have a long list of grounds for revocation.

2. Surinam, Turkey and Morocco

Since Surinam, Turkey and Morocco are major countries of origin of immigrants for the Netherlands, the ACVZ has also studied the nationality legislation that applies in these countries.

There are major differences between the nationality legislation of Surinam, Turkey and Morocco. Turkey and Morocco both permit multiple nationality, while Surinam does not. All three countries have a statutory provision allowing their nationals to renounce their nationality upon request, although it should be added that the Moroccan government never grants such requests in practice. This means that it is *de facto* impossible to renounce Moroccan nationality, even if it was acquired in circumstances entirely beyond the control of the person concerned.

Turkey's nationality legislation provides that persons who acquired Turkish nationality by birth and lost it with the consent of the Turkish government retain the same rights in relation to travel and work, inheritance, and the procurement and transfer of movable and immovable property as Turkish nationals. It is noteworthy that these rights also accrue to the descendants of these former Turkish nationals.

It is also noteworthy that Surinam – alone among the countries studied here – applies the principle of *ius sanguinis a patre* (that is, nationality derives from the father) as its primary rule. Children with a Surinamese mother can acquire Surinamese nationality through their mother only if the father is unknown or stateless. Besides the regular nationality legislation, another relevant piece of legislation is the Agreement between Surinam and the Netherlands concerning assignment of nationality (*Toescheidingsovereenkomst*), which entered into effect when Surinam gained its independence in 1975. One of the consequences of this Agreement is that Dutch nationals born in Surinam, and whose habitual or actual residence was in Surinam when the country gained its independence, automatically acquired Surinamese nationality and lost their Dutch nationality at that time.

3. Conventions and international agreements

There is a discernible trend in European countries away from the principle of a single exclusive nationality towards the acceptance of multiple nationality. This follows from the development of international conventions concluded within the Council of Europe:

- *The 1963 Strasbourg Convention, which seeks inter alia to limit cases of multiple nationality, has declined in significance, because some of the original states parties are not, or are no longer, bound by the provisions designed to limit multiple nationality;*
- *The 1993 Second Protocol to the 1963 Strasbourg Convention provides scope for states to create exceptions to the obligation to renounce one's original nationality;*
- *The 1997 European Convention on Nationality, unlike the Strasbourg Convention, adopts a neutral position in respect of multiple nationality. It offers scope for states parties to choose between retaining or relinquishing the original nationality and imposing an obligation to renounce it within the limits set by the Convention.*

4. Issues of political and social interest

The ACVZ has included in this preliminary overview some issues of political and social interest that have arisen in the current debate on nationality, and has added a few others that also need to be addressed. Some of these issues are already the subject of vigorous political and public debate, such as constitutional considerations and the loyalty of new immigrants in Dutch society. Others are topics which have received less attention thus far, but which merit consideration in view of their implications. The ACVZ will discuss in detail the themes mentioned below (to which others may be added in due course) and explain its position on them in the recommendations to be published in autumn. In this study the ACVZ presents merely a list of points requiring attention, presented in an objective manner.

Constitutional aspects

The world order is based on a division into sovereign states that are free to determine which persons they wish to grant nationality with all its attendant rights and obligations. In relation to this principle of sovereignty, two different attitudes are expressed within the Dutch debate.

The opponents of multiple nationality emphasize that a single nationality is an important element in the constitutional order, since the possession of a nationality identifies the – exclusive – society to which a person belongs. They maintain that permitting multiple nationality breaches this exclusivity and creates confusion in the world order. One example given to illustrate this confusion is that of parents with different – sometimes multiple – nationalities, who pass on several nationalities to their children and the subsequent generation. It is argued that adherence to a single nationality creates clarity and prevents conflicts of interest.

Those in favour of allowing multiple nationality argue that pursuing the goal of one exclusive nationality is pointless, since cases of multiple nationality are impossible to prevent in practice. Partly as a result of globalization and the growing frequency of transnational relations, millions of people possess multiple nationality, which is frequently acquired at birth. In addition, to possess multiple nationality is the express wish of many people, who want to keep the nationality of their country of origin or to obtain the nationality of their new country of residence. Furthermore, there will always be states that make it impossible or extremely difficult to renounce their nationality. Those who support the idea of allowing multiple nationality therefore advocate the approach favoured by France: multiple nationality is neither promoted nor opposed, and only the problematic consequences are to be regulated either nationally or internationally.

Equal treatment

The debate on multiple nationality has led to a legal controversy on the scope of the principle of equality laid down in Article 1 of the Dutch Constitution in relation to the prohibition of discrimination in Article 3 of the Constitution. Some argue that Article 1 provides too little protection from discrimination for Dutch nationals who also possess another nationality. They hold that Article 1 is based on a primarily formal approach in which equal cases must be treated equally (and unequal cases differently). This implies that distinguishing between Dutch nationals who do and do not pos-

possess another nationality is not in breach of Article 1 of the Constitution, since Dutch nationals with a single nationality and those with more than one are not equal cases. Some have therefore argued that Article 1 of the Constitution needs to be amended to offer protection from discrimination to Dutch nationals who also possess another nationality.

Others maintain that no such amendment is necessary, however, because the principle of equality laid down in Article 1 of the Constitution and its elaboration in the Equal Treatment Act prohibits discrimination on the grounds of nationality (in the spheres of labour and the movement of goods and services). Distinguishing between two Dutch nationals because one of them also possesses another nationality, while this distinction is not relevant in the case at hand, constitutes unlawful discrimination on the grounds of nationality. Rejecting a job applicant because he possesses a second nationality in addition to Dutch nationality, without advancing grounds in justification for this distinction, therefore constitutes in principle unlawful discrimination.

Another aspect of the principle of equality is that some ascribe a certain universal significance to it. In this view, equality and equal treatment should not only be the norm between nationals of the state in question but should apply to all its residents. This ideal of equality implies that the longer aliens are resident in a state, the more problematic it becomes to continue to treat them unequally and to deny them nationality.

Loyalty and conflicting obligations

Does the possession of multiple nationality constitute an impediment when it comes to choosing in favour of the country in which one lives, or are conflicts of loyalty unavoidable? A broad consensus seems to have grown in the national debate that those who wish to live in the Netherlands on a long-term basis should profess their commitment to Dutch interests and the prevailing values of Dutch society. It may be added that countries that do not oppose multiple nationality take the same view.

When it comes to defining what such a commitment should entail, however, there is no consensus whatsoever. Some suggest that anyone who possesses one or more nationalities in addition to that of the country of residence will adopt a social frame of reference less 'exclusively' oriented to the country of residence. They therefore argue that acquiring Dutch nationality should be accompanied by the renunciation of the original nationality. Others believe that multiple nationality does not adversely affect a person's commitment to the country of residence, and that the possession of a single nationality does not guarantee commitment.

There is another aspect to the question of loyalty. If acquiring Dutch nationality is made strictly conditional on the renunciation of the original nationality, this may lead some people to decide against applying for naturalization. In the long term this could result in growing numbers of permanent residents of the Netherlands who are non-Dutch nationals. Carried to extremes, this could undermine the level of democracy in the Netherlands, given that under current legislation, non-Dutch nationals can only take part in municipal elections.

One argument that is advanced in favour of continuing to impose an obligation to renounce the original nationality arises from the fear of a lack of loyalty to the country of permanent residence if migrants continue to take part in the political life of the country

of origin after acquiring Dutch nationality. It is argued that migrants who continue to take part in the political and public life of their country of origin are demonstrating their loyalty to that country rather than to the country of residence.

Themes such as the position of public servants and holders of political office, and the fulfilment of compulsory military service, are also brought into the debate on loyalty. Those who favour a single nationality believe that public servants and persons holding political office should renounce their 'old' nationality to avoid conflicts of interest. Others do not consider this to be necessary since no such renunciation is required by law and because public servants and the holders of political office express their commitment sufficiently by taking an oath or affirmation of office.

Finally, the question of dual nationals and military service has been raised in the context of this debate. The question that arises here is whether multiple nationality is compatible with the fulfilment of compulsory or voluntary military service in the armed forces of another country.

Aspects relating to criminal law

Someone who possesses another nationality in addition to Dutch nationality may flee to this other country after committing a crime. As a national of that country he would enjoy complete freedom of movement and would therefore have more legal opportunities to remain in hiding. Furthermore, some countries will not extradite their nationals to the country where a crime was committed, or do so only if certain conditions are fulfilled. This applies even if the person concerned also possesses the nationality of the country where the crime was committed.

Problems may also arise the other way around. Agreements have been concluded with some countries making it possible for Dutch nationals sentenced to a term of imprisonment abroad to serve their sentence in the Netherlands, besides which the severity of the penalty is first reviewed by a Dutch court. The scope for 'foreign prison sentences' to be served in the Netherlands is influenced by a person's multiple nationality. If he possesses the nationality of the country where the crime was committed in addition to Dutch nationality, neither of these provisions will in general be granted.

Aspects relating to family law

Some argue that imposing the obligation to renounce the original nationality would promote the applicability of Dutch family law in comparison to a situation in which multiple nationality is allowed. It would prevent a situation arising, for instance, in which the multiple nationality of the person concerned means that the family law of another country may take precedence. This assumption is only partly correct. In many Islamic countries, the Islamic religion takes precedence over nationality. As a result, if one of the parties is a Muslim, the dispute will be settled by Islamic law as applied in the country of the court. Thus, the fact that a person who is originally from Egypt possesses exclusively Dutch nationality is no impediment in Egypt to subjecting him to Egyptian family law.

Re-migration and travelling to the country of origin

Imposing an obligation to renounce the original nationality may lead migrants to decide against applying for Dutch nationality. After all, keeping their original nationality makes it easy for them to travel to their country of origin, for instance to visit relatives or to build up or sustain economic contacts, or for the purpose of re-migration. This point should be assessed in the context of an increasing trend among first and second generation Dutch nationals of non-Dutch origin to choose to migrate or re-migrate to the country of origin.

Although the ACVZ will address these subjects in due course, when it sets out its position on multiple nationality, it wishes to reiterate that in this preliminary overview it has sought merely to enumerate the facts and the different aspects of this issue, without adopting any position on them. In the advisory report to be published in the autumn of this year, the ACVZ will adopt positions and make recommendations on the issue of multiple nationality.