



# Citizenship loss and deprivation in the European Union (27 + 1)

Jules Lepoutre

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GLOBALCIT

Citizenship Loss and Deprivation in the European  
Union (27 + 1)

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European University Institute

**Robert Schuman Centre for Advanced Studies**

Global Governance Programme

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## **Abstract**

Citizenship legislations of the Member States of the European Union are the result of common principles, shared influences and various constitutional identities. Altogether, they revolve around a set of international rules and converge on a general status: European citizenship. Building on this tension between unity and diversity, this report aims to describe the rules regarding loss of citizenship within the Member States (adding the United Kingdom), compare legislations and analyse both recent trends and ancient origins from a legal perspective. The six main categories that this report follows in order to examine citizenship loss in the European Union are divided between voluntary (renunciation) and involuntary loss of citizenship (possession of another nationality; residence abroad; disloyalty or lack of merit; fraud and similar acts; loss linked to family relationship).

## **Keywords**

Citizenship – Nationality – Member States – Loss – Deprivation





## 1. Introduction

This report aims to describe the rules regarding loss of nationality within the Member States of the European Union (EU). Two opposite principles govern these rules. On the one hand, diversity. In the famous Declaration No. 2 on Nationality annexed to the Maastricht Treaty, Member States made clear that “the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned.” On the other hand, unity. Nationality laws of the Member States converge towards a common status: European citizenship. That nationality laws in the EU is fragmented is, thus, only a *prima facie* statement. Together, the legislations of EU Member States are what constitutes the European rules governing loss of European citizenship.

Legislation in the EU Member States is also bound, outside the treatise of the EU, by a common international and European legal framework. In 1930, the Convention on Certain Questions Relating to the Conflict of Nationality Laws laid down the foundation of the international regime of nationality law: “It is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality” (Art.15). This provision perfectly exemplifies not only the principle of sovereignty – which gives each State discretionary power to establish its laws on nationality – but also affirms the legitimacy (if not the primacy) of international law to settle the frontiers and limitations of this discretionary power. In this respect, the 1948 Universal Declaration of Human Rights (UDHR) establishes the strongest principle: “No one shall be arbitrarily deprived of his nationality” (Art. 13). In 1948, international limitations on nationality revocation were urgently needed after the trauma of the Soviet and Nazi deprivations of the 1920s and 30s. It took some time, however, to transform this moral principle into a legal obligation.

The legal and political programme set by the 1948 UDHR prohibiting ‘arbitrary’ deprivation has now been widely implemented. Two leading treaties<sup>1</sup> establish a general constraint on State policies regarding nationality law. First, the 1961 Convention on the Reduction of Statelessness is the first international treaty whose aim is to limit, *inter alia*, the power of States regarding nationality deprivation, on the one hand, by reducing and constraining the different deprivation measures leading to statelessness (mainly articles 7 and 8) and, on the other hand, by generally forbidding revocation of nationality “on racial, ethnic, religious or political grounds” (article 9). This Convention was ratified by 19 + 1 Member States.<sup>2</sup> Second and more recently, the 1997 European Convention on Nationality imposed for the first-time general constraints on the grounds for nationality revocation, regardless of statelessness prevention. This Convention was ratified by only 13 Member States<sup>3</sup> – an indication that the treaty sets a high standard of protection that many Member States are still not willing to reach.<sup>4</sup> The Court of Justice of the EU and the European Court of Human Rights both use these two instruments to explore and control nationality legislation and individual measures among Member States. The Court of Luxembourg notably assesses both the legitimacy of the grounds for revocation and the proportionality of the measure when the loss of European citizenship is at stake (see below 3.2.2. for the *Tjebbes* case, and 3.2.4. for the *Rottmann* case). The Court of Strasbourg, for its part, examines both the arbitrary character and the

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<sup>1</sup> For an exhaustive list, de Groot, G. R. and Vonk, O. W. (2016). *International Standards on Nationality Law. Texts, Cases and Materials*. Oisterwijk: Wolf Legal Publishers.

<sup>2</sup> Austria, Belgium, Bulgaria, Croatia, Czechia, Denmark, Finland, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Romania, Slovakia, Spain, and the United Kingdom. France has signed without subsequent ratification. Cyprus, Estonia, Greece, Malta, Poland, Slovenia, and Sweden have neither signed nor ratified.

<sup>3</sup> Austria, Bulgaria, Czechia, Denmark, Finland, Germany, Hungary, Luxembourg, Netherlands, Portugal, Romania, Slovakia, and Sweden.

<sup>4</sup> Croatia, France, Greece, Italy, Latvia, Malta, and Poland have signed the Convention without subsequent ratification. Belgium, Cyprus, Estonia, Ireland, Lithuania, Slovenia, Spain, and the United Kingdom have neither signed nor ratified.

proportionality of the measure (see below 3.2.3. for the *K2 v. The United Kingdom* case, and 3.2.4. for the *Ramadan v. Malta* case).

This report analyses, from a legal perspective, the diversity of legislation in Member States, and what binds them together, i.e., European and international legal obligations. Previous literature on the same topic includes the report on “Loss of Nationality” in the EU published by Harald Waldrauch in 2006,<sup>5</sup> the report on “Loss of Citizenship: Trends and Regulations in Europe” written by Gérard-René de Groot and Marteen P. Vink in 2010,<sup>6</sup> and the guidelines of the Involuntary Loss of European Citizenship Project (ILEC Guidelines) published in 2015.<sup>7</sup> This report includes the United Kingdom’s legislation and policies. The analysis is mainly based on the GLOBALCIT Database on Modes of Loss of Citizenship. The primary sources of this report consist of legislation of Member States. The aim is to bring together the information provided by the database, and to examine the trends, similarities and differences among Member States. The ambition is not to make recommendations, or to suggest improvements, nor to offer a critique. In this respect, the ILEC Guidelines constitute a persuasive and exhaustive work that this report fully endorses. The six main categories that this report follows in order to analyse nationality loss in the EU are partly based on ILEC Guidelines, and divided between voluntary and involuntary loss: renunciation; possession of another nationality; residence abroad; disloyalty or lack of merit; fraud and similar acts; loss linked to family relationship. The terms ‘citizenship’ and ‘nationality’ are considered synonymous, both referring to the legal bond between a state and an individual.

## 2. Voluntary Loss of Citizenship

### 2.1. Introduction: Allegiance is No Longer Perpetual

#### 2.1.1. Origin of Voluntary Loss

Until the 19th century, nationality law in common law countries was subject to the principle “Nemo Potest Exuere Patriam” – ‘No one can cast off his country.’ Following this principle, allegiance of the subject to the Monarch was supposed to be perpetual; it was therefore impossible to relinquish nationality. The famous *Calvin’s Case* decided in 1608 clearly established that the “natural ligeance” (Ligeantia Naturalis) – “due by nature and birth-right” – is “immutable” meaning perpetual, for the very reason that this link between the King and his subjects comes from the law of nature, and therefore cannot be changed.<sup>8</sup> In the 18<sup>th</sup> century, Blackstone wrote accordingly in his *Commentaries* that “it is a principle of universal law, that the natural-born subject of one prince cannot by any act of his own, no, not by swearing allegiance to another, put off or discharge his natural allegiance to the former.”<sup>9</sup> This

<sup>5</sup> Waldrauch, H. (2006). “Loss of Nationality.” In *Acquisition and Loss of Nationality, Policies and Trends in 15 European Countries, Volume 1: Comparative Analyses*, edited by R. Bauböck, E. Ersbøll, K. Groenendijk, and H. Waldrauch, 183-219. Amsterdam: Amsterdam University Press. See also, on a normative perspective, Bauböck, R., and V. Paskalev (2015). “Cutting Genuine Links: A Normative Analysis of Citizenship Deprivation.” *Georgetown Journal of Immigration Law*, 30(1), 47-104.

<sup>6</sup> De Groot, G.-R. and M., P., Vink, (2010). *Loss of Citizenship. Trends and Regulations in Europe*. EUDO Citizenship Observatory [GLOBALCIT], Comparative Reports, 2010/04. Retrieved from here. See also the Policy Brief based on the report: De Groot, G.-R., M., P. Vink, and I. Honohan (2011). *Loss of citizenship*. EUDO Citizenship [GLOBALCIT], Policy Briefs, 2011/03. Retrieved from here.

<sup>7</sup> Carrera Nuñez, S. and G.-R. de Groot (2015). *European Citizenship at the Crossroads. The Role of the European Union on Loss and Acquisition of Nationality*. Oisterwijk: Wolf Legal Publishers.

<sup>8</sup> *Calvin’s Case* (1608), 77 ER 377, here 383 and 394.

<sup>9</sup> Blackstone, W. (1765-1769). *Commentaries on the Laws of England. Book the First, The Rights of Persons*. Oxford: Clarendon Press, 357.

law of perpetual allegiance applied more particularly to natural-born subjects, i.e., nationals by origin, considered as perpetual members of the people by the sole virtue of their birth within the territory of the Monarch.

Perpetual allegiance was profoundly challenged in the late 18<sup>th</sup> and 19<sup>th</sup> century. The conflict between England and the United States created an opportunity for the American common law system to break with the doctrine of perpetual allegiance. On the ground of perpetual allegiance due to the Monarch, English military authorities forced American citizens born English to join the royal navy, which was one of the factors that triggered the 1812 Anglo-American War. The contractual vision of American citizenship eventually led to the adoption of the 1868 Expatriation Act – which states that “the right of expatriation is a natural and inherent right of all people” – and the adoption of the ‘Bancroft treaties’ between the United States and dozens of countries, which provided for the loss of citizenship of naturalised American citizens relocated to their country of origin. The American common law system thus abandoned the principle of perpetual allegiance and was soon followed by the United Kingdom. The Naturalisation Act passed in 1870 provided, for the first time in British history, the possibility to renounce British nationality in certain circumstances through a “declaration of alienage,” or automatically in case of foreign naturalisation. The principle of perpetual allegiance died in the 19<sup>th</sup> century, with the increase of mobility and the liberal recognition of the individual right of expatriation. By contrast, continental law had never adopted the principle of perpetual allegiance (see *infra*, 3.1.1), and thus allowed individuals to renounce their nationality. In France, for instance, it was possible for individuals, at least since the 19<sup>th</sup> century, to ask for a release of allegiance, pronounced by the government on a discretionary basis.<sup>10</sup>

### 2.1.2. International and European Legal Framework

The right to change one’s nationality was then enshrined in the 1948 Universal Declaration of Human Rights, providing at article 15(2) that “No one shall be arbitrarily deprived of his nationality *nor denied the right to change his nationality*.” (emphasis added) This fundamental right to change one’s nationality is nevertheless not an absolute one. States are still justified in limiting the loss of nationality of their citizens in two special circumstances. The first one is linked to the general prohibition of statelessness. An individual cannot renounce his or her nationality if he or she becomes stateless. The 1961 Convention on the Reduction of Statelessness clearly stated in article 7(1)(a) that “If the law of a Contracting State permits renunciation of nationality, such renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality.”<sup>11</sup>

The second circumstance in which a State can legally refuse the renunciation is when the individual does not reside abroad. Two main reasons support this rule: [1] to avoid individual manipulation of a citizen trying to escape national duties (such as military service) by using a foreign nationality while still residing in the country whose nationality he or she wants to relinquish; [2] to maintain the genuine link principle which links nationality to habitual residence. Article 6 of the 1930 Convention on Certain Questions Relating to the Conflict of Nationality Laws was the first international treaty to formulate in general terms the rule according to which one of two involuntarily acquired nationalities can be renounced with the authorisation of the State, and that “[t]his authorisation may not be refused in the case of a person who has his habitual and principal residence abroad [...]” The 1963 European Convention on the Reduction of Cases of Multiple Nationality generalised this rule stating in article 2 that “(1) A person who possesses the nationality of two or more Contracting Parties may renounce one or more of these nationalities, with the consent of the Contracting Party whose nationality he desires to

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<sup>10</sup> Lepoutre, J. (2020). *Nationalité et Souveraineté*. Paris: Dalloz, 279.

<sup>11</sup> The 1961 Convention provides for an exception when articles 13 and 14 of the 1948 UDHR are at stake, i.e., freedom of movement (especially the right to leave one’s own country) and the right to seek and to enjoy asylum from persecution in other countries. In other words, states shall not use statelessness prohibition as a way to jeopardise the freedom of movement and the right to seek asylum.

renounce. (2) Such consent may not be withheld by the Contracting Party whose nationality a person of full age possesses ipso jure, provided that the said person has, for the past ten years, had his ordinary residence outside the territory of that Party and also provided that he has his ordinary residence in the territory of the Party whose nationality he intends to retain.”

The 1997 European Convention on Nationality summarises this international legal framework by providing both for statelessness prevention and for habitual residence abroad in case of loss of nationality at the initiative of the individual. Article 8 specifies that “(1) Each State Party shall permit the renunciation of its nationality provided the persons concerned do not thereby become stateless. (2) However, a State Party may provide in its internal law that renunciation may be effected only by nationals who are habitually resident abroad.”

To date, there is no European case law connected to the voluntary renunciation of nationality. As the loss of nationality can cause the loss of European citizenship, EU law would certainly apply. However, the voluntary nature of the loss – i.e., the fact that the person is directly at the origin of the loss – would probably prevent any violation of the principle of proportionality. More interesting is the question of the refusal of the national authorities to grant the release to a citizen who would need it to acquire the nationality of another Member State (e.g., a Member State that requires the renunciation as a condition for naturalisation, see below 3.2.1.). Would this situation be considered as an obstacle for EU citizens’ free movement? While no final answer is yet possible, the *Lounes* case ruled by the grand chamber of the Court of Justice in 2017 provides some clues.<sup>12</sup> In this judgement, the Court ruled that “the rights conferred on a Union citizen by Article 21(1) TFEU [...] are intended, amongst other things, to promote the gradual integration of the Union citizen concerned in the society of the host Member State” and that, logically, nationality acquisition is a way to “become permanently integrated in that State.” These words encourage the idea that asking for naturalisation is embedded in free movement rights of European citizens. In this way, the national legislation or governmental decision which would prevent the European citizen from asking for naturalisation in his or her host Member State could be considered as an obstacle to this “gradual integration” and thereby contrary to EU law. This reasoning is nevertheless at risk to be moderated, if not eliminated, when confronted to the principle of state sovereignty in nationality law.

## **2.2. Legislations of Member States Regarding Renunciation (L01)<sup>13</sup>**

### **2.2.1. General Conditions of Renunciation**

All 28 Member States of the EU allow for the voluntary loss of nationality. Thus renunciation is the most widespread mode of loss of nationality. Legislation in every country comes with full statelessness prevention: individuals can only renounce their nationality if they possess another nationality, or have a certain right to acquire another one. In several countries, individuals are allowed to renounce their nationality in the expectation of acquiring another one – in cases where the country of naturalisation does not accept dual nationality. However, in this situation the loss of nationality is always conditional upon the acquisition of the other nationality. In the EU28, individuals cannot relinquish nationality by a sole act of will; statelessness prevention applies in all cases and prevents any risk of being without any nationality, in full compliance with international and European law.

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<sup>12</sup> *Toufik Lounes v. Secretary of State for the Home Department*, ECLI:EU:C:2017:862.

<sup>13</sup> This report uses the GLOBALCIT typology of modes of loss of citizenship, which contains 15 such modes. L01 refers to the first mode, which is voluntary renunciation, L02 to involuntary loss due to residence abroad, etc. See <http://globalcit.eu/loss-of-citizenship>.

The residence-abroad condition is not required in every country's legislation. 15 Member States make it an explicit condition for renouncing nationality.<sup>14</sup> Various standards qualify residence abroad, some being more demanding than others. Bulgaria requires individuals to "permanently reside abroad," the Czech Republic to "permanently live abroad," France or Spain to "habitually reside abroad," and Austria to have "resided continuously abroad for at least five years." The other Member States such as Greece, Ireland, or Italy only require a foreign residence, without imposing any special qualification. For Finland and Sweden, the condition is even negative: individuals must not be domiciled in these countries to renounce their nationality. However, this does not prevent the authority in charge of interpreting the notion of 'residence' to consider that it implies a certain duration, among other things, to distinguish it from a simple 'domicile.'<sup>15</sup>

Legislators generally set other conditions, the most common being related to military obligations: individuals must be free of any military duties to relinquish their nationality. This condition, explicitly included in the legislation of seven Member States,<sup>16</sup> prevents individuals from using renunciation as a means to escape their duties. This condition is, however, biased towards men (only Norway, a non-EU State, makes military service compulsory for both men and women) and seems a bit outdated as many Member States who have implemented it no longer have compulsory military service (among these seven Member States, only Austria and Finland still have compulsory military service). The other wide-spread condition is to be free from criminal prosecution or sentence. This condition is explicitly present in the legislation of seven Member States.<sup>17</sup> In criminal matters, the personal jurisdiction of a state effectively depends on the suspected perpetrator's nationality. Would personal jurisdiction then disappear with the termination of that nationality? The only certainty is that nationality is a required condition at the time of commission of the offence; it is less clear whether this nationality is still required later on to initiate and sustain a prosecution. In any case, forbidding individuals to renounce their nationality while being under criminal investigation prevents any difficulty regarding this matter.<sup>18</sup> Finally, other Member States also specify that individuals must be free of public,<sup>19</sup> or even private<sup>20</sup> debts before being able to renounce their nationality. In these latter cases, renunciation of nationality is implicitly linked with permanent emigration, which makes debt collection more difficult. Generally, as specified in Finland's legislation, renunciation is not suitable "if the aim of the release is to escape an obligation related to Finnish citizenship." In many countries, renunciation is therefore closely linked to a general principle of good faith.

Temporal conditions also exist. Since nationality is closely related to military duties, Ireland, Malta, Spain, the United Kingdom, and Cyprus forbid renunciation in time of war. More standard temporal conditions include an age limit for renouncing. In Slovenia for instance, renunciation by declaration is impossible for individuals over 25 years of age, although older citizens can still be released by the decision of the authorities. Some countries have set a deadline for relinquishing after the acquisition of a foreign nationality: one year in France and 30 days in Latvia.

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<sup>14</sup> Austria, Bulgaria, Croatia, the Czech Republic, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Slovenia, Spain, and Sweden.

<sup>15</sup> Reese, W. L. M. and Green, R. S. (1953). "That Elusive Word, 'Residence.'" *Vanderbilt Law Review*, 6(3), 561-580.

<sup>16</sup> Austria, Croatia, Cyprus, Estonia, Finland, France, and Germany.

<sup>17</sup> Austria, Croatia, Cyprus, Lithuania, Romania, Slovakia, and Slovenia.

<sup>18</sup> In international criminal law, see e.g. Deen-Racsmány, Z. (2001). "The Nationality of the Offender and the Jurisdiction of the International Criminal Court." *American Journal of International Law*, 95(3), 612-618.

<sup>19</sup> Croatia, Latvia, Romania, Slovakia, and Slovenia. Croatia and Latvia charge the individual with an additional "exit tax" to be paid to obtain the renunciation.

<sup>20</sup> Croatia and Slovenia.

### 2.2.2. Degree of Discretion

Beyond these conditions, the key notion regarding the voluntary loss of nationality is the degree of liberty that the individual enjoys in order to relinquish his or her nationality; or conversely the degree of discretion that allows Member States to refuse the repudiation. In that regard, two procedures can be distinguished: declaration and release. The declaration procedure, on the one hand, means that individuals have a *right* to renounce their nationality, i.e., that the Member State enjoys no discretionary power to refuse this act of will – as long as the conditions set by the law are met. The release procedure, on the other hand, means that the Member State has discretionary authority to assess the opportunity of the repudiation, even if the conditions set by the law are fulfilled. It can be difficult, however, to evaluate *in abstracto* the range of discretionary power of the Member States – or the degree of liberty of individuals to renounce their nationality – because the procedure for repudiating one's nationality by declaration can be more difficult than the release procedure, notably when the declaration procedure implies multiple and firm conditions, whereas the release procedure relies on a soft and liberal appreciation by the Member State.

Regarding the degree of liberty of individuals to repudiate their nationalities, we can map four different patterns: (1) a liberal declaration procedure with few or no conditions; (2) a strict declaration procedure with many conditions; (3) a regulated discretionary release procedure with basic standards of appreciation; (4) a broad discretionary release procedure with no standards.

(1) In the first case, individuals can easily renounce their nationality by a sole act of will. This is the case in Luxembourg, the Netherlands, and Portugal where the only condition set by the law is to possess another nationality; apart from that, individuals are free to repudiate their nationality without any other conditions.

(2) In the second case, it is more difficult for individuals to renounce their nationality because of the multiple conditions set by the law for initiating the declaration procedure. In France for instance, renunciation by declaration (except in cases of marriage) is only possible if the individual habitually resides abroad, has performed military service, has acquired a new nationality, and only within a one-year period following this acquisition.

(3) In the third case, individuals do not have the right to repudiate their nationality, but the discretionary power of the Member States to grant this right is limited by general standards set by the law. For instance, in Greece, release is granted if the government is satisfied that the individual has “no connection with the country”; in Slovenia, release can be denied “for reasons of security or defence of the State, or if required for reasons of reciprocity or for other reasons connected with a relationship with a foreign State,” or for reasons related to “the economic, social and national interests of the State.”

(4) In the fourth case, the release procedure is governed by a full discretionary appreciation by the public authority, without any pre-condition set by the law. In Poland for instance, release is granted “upon the consent of the President of the Republic of Poland,” which is a “constitutional prerogative and is thus not subject to administrative or judicial review.”<sup>21</sup> In France, the release decision is “authorised” by a “decree” of the government, without any condition set by the law – case law shows, however, that the judge limits the discretionary power of the government, which can only deny the release when the individual still resides in France.<sup>22</sup>

Finally, legislation in four Member States – Croatia, France, Germany, and Slovenia – allows individuals to renounce their nationality through both a release and a declaration procedure. In these situations, the release procedure imposes few conditions and gives the public authority a wide margin of appreciation, whereas the declaration procedure relies on multiple conditions, particularly residence abroad. In Slovenia for instance, the release procedure is very discretionary, the government being able

<sup>21</sup> Gorny, A, and D. Pudzianowska. *Country report: Poland*, [GLOBALCIT], EUDO Citizenship Observatory, 2010/30, 14.

<sup>22</sup> Lepoutre, J. (2020). *Nationalité et Souveraineté*. Paris: Dalloz, 279-281.

to deny the release on multiple grounds, whereas the declaration procedure, only accessible to born-abroad citizens under the age of 25, implies no discretionary power of the government.<sup>23</sup> Croatian legislation, in the same way, provides for a release procedure on a discretionary basis without any residence condition and for a declaration procedure as a right for individuals but on the condition that they have their main residence abroad. This combination of release and declaration procedures follows a territorial logic: the more established the expatriation of the individual, the less discretionary the power of the Member State to deny the renunciation.

### **3. Involuntary Loss of Citizenship**

#### ***3.1. Introduction: Rapid Expansion in Troubled Times***

##### **3.1.1. Origin of Involuntary Loss**

Involuntary loss of nationality – i.e., at the initiative of the State – originates in continental law, where countries never adopted the principle of perpetual allegiance, enshrined in common law doctrine. Back in the 17<sup>th</sup> century, in France, for instance, an ordonnance published by King Louis XIV clearly stated that the Frenchmen who had “acclimatised” to a foreign land “without any intention of returning” had “forgotten what they owed their birth.”<sup>24</sup> The sanction for this expatriation was both the loss of nationality and the forfeiture of property. Indeed, in the French modern era, voluntary expatriation was condemned as such, and nationality was the price to be paid. In the 18<sup>th</sup> century, Pothier wrote in his *Traité des personnes* that “the Frenchman, having left the realm without any thought of returning, shares almost the same condition as foreigners. There is only one difference between foreigners and the expatriate French, which is that Frenchmen can have their citizenship rights reinstated by returning to the homeland with the intent of settling down.”<sup>25</sup> Allegiance to the French monarch was thus not perpetual; permanent emigration of citizens led to revocation of their nationality by the state.

As previously stated, this is a fundamental difference between the continental and the common law systems regarding the temporal nature of allegiance (perpetual v. revocable). To understand this difference, one must remember that in France, at that time, only citizens had the right to inherit; foreigners had to hand over their property to the King by virtue of the ‘*droit d’aubaine*’. French authorities considered that the risk was too high that the mobility of citizens would cause an outflow of wealth, because emigration would pull the “gold and silver”<sup>26</sup> out of the country. In France, loss of nationality was thus a method for controlling the mobility of the kingdom’s subjects and, most importantly, the mobility of wealth.<sup>27</sup> In England, however, “the crown almost never claimed the prerogative as such of seizing the property of a foreigner who died in the kingdom without native heirs.”<sup>28</sup> Controlling the mobility of wealth was probably a lower priority in England, an island territory, than in continental France. Therefore, the bond of nationality was deemed perpetual in England, whereas in France it was associated with residence within the territory and, therefore, subjected to involuntary loss. In the common law system, however, the principle of perpetual allegiance rendered loss of

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<sup>23</sup> Medved, F. *Country Report: Slovenia*, [GLOBALCIT], EUDO Citizenship Observatory, 2010/21, 15.

<sup>24</sup> Pothier, R.-J. (1778) 1825. *Traité des Personnes*. Reprint in *Œuvres de Pothier*, vol. 8, edited by A. Dupin. Paris: Bechet aîné, 36-37.

<sup>25</sup> Ibid., 37.

<sup>26</sup> Loisel, A. (1607). *Institutes coutumieres*. Paris: Henry le Gras, 9.

<sup>27</sup> Gaven, J.-C. (2017). “La déchéance Avant la Nationalité: Archéologie d’une Déchéance de Citoyenneté.” *Pouvoirs*, 160 (1), 85–98.

<sup>28</sup> Sahlins, P. (2004). *Unnaturally French: Foreign Citizens in the Old Regime and After*. Ithaca: Cornell University Press, 32.



nationality impossible, whether voluntary or involuntary. In the United Kingdom, voluntary loss appeared in the 1870 Naturalisation Act (see above, 2.1.), while involuntary loss of nationality only developed in the early 20<sup>th</sup> century, with the progress of the ‘subjective’ approach.

Two modes of loss should, in effect, be distinguished: ‘objective’ and ‘subjective’ loss. The objective loss of nationality, on the one hand, is based on an objective observation by the state of the individual’s situation: permanent emigration, acquisition of foreign nationality, change in the family situation, and error or fraud in the acquisition process. These situations can all lead to involuntary loss of nationality, but the distinctive factor here is that the state is only drawing conclusions from either the lack of a genuine link with its citizen, or the constitution of a new genuine link with a foreign state. The subjective loss of nationality, on the other hand is enshrined in the loyalty and the merit of the citizen, without any evaluation of the genuine link between the state and the individual. This mode of loss is more recent when considering the long history of nationality. It emerged in the early 20<sup>th</sup> century, appearing especially during the First World War, when the United Kingdom<sup>29</sup> and France<sup>30</sup> enacted new legislation to massively revoke or cancel the British or French naturalisation of ‘enemy subjects,’ mainly from Germany. These laws created the lasting impression that nationality is not only a question of having a genuine link with the state, but also a matter of loyalty and merit. These two modes – objective and subjective – continue to co-exist in all the current legal systems of Member States.

### 3.1.2. Recent Trend: Nationality Revocation in case of Terrorism

The topic of involuntary loss of nationality has recently given rise to a heated debate. In the past few years, 13 Member States have made substantial changes in their legislation.<sup>31</sup> These reforms will be discussed below (see 3.2. ff.), it is nevertheless interesting to put the emphasis here on the major trend which is the extension of nationality revocation to cases of terrorism-related activities, which is a measure that targets both homegrown terrorists, and foreign fighters associated with terrorist groups. Eight Member States have extended or introduced legislation about nationality revocation to (allegedly) better fight terrorism; the United Kingdom, Germany and France are three relevant instances that can be further developed to highlight the characteristics of this trend.

#### *Overview*

Many countries are changing their laws, or adopting new provisions, to facilitate nationality deprivation for individuals related to terrorist activities. Member States are primarily reacting to the rise and collapse of ISIS, and trying to prevent their nationals from returning to European soil by depriving them of their nationality – using revocation as a modern form of exile or banishment.<sup>32</sup> This trend appeared in the 2010s and is now rising rapidly.

Austria implemented a legislative reform in 2015, authorising the government to deprive citizenship from “a citizen who actively and voluntarily participates in an organised armed group fighting abroad in situations of armed conflict.”<sup>33</sup> This provision was first used in 2017 to revoke the nationality of an Austrian who also possessed Turkish nationality and had already been sentenced to three years of prison

<sup>29</sup> Weil, P., and N. Handler. (2018). “Revocation of Citizenship and Rule of Law: How Judicial Review Defeated Britain’s First Denaturalization Regime.” *Law and History Review*, 36(2), 295-354.

<sup>30</sup> Weil, P. (2008). *How to Be French. Nationality in the Making since 1789*. Durham: Duke University Press, 240-241.

<sup>31</sup> Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Finland, Germany, Italy, Lithuania, the Netherlands, Slovakia, Spain, and the United Kingdom.

<sup>32</sup> Macklin, A., Bauböck, R. (eds.) (2015). *The Return of Banishment: Do the New Denationalisation Policies Weaken Citizenship?* EUI RSCAS, 2015/14, EUDO Citizenship Observatory [GLOBALCIT].

<sup>33</sup> Van Waas, L. (2016). “Foreign Fighters and the Deprivation of Nationality: National Practices and International Law Implications.” In *Foreign Fighters under International Law and Beyond*, edited by A. de Guttry, F. Capone and C. Paulussen, 469-487. The Hague: T.M.C. Asser Press and Springer. See also Valchars, G. (11 December 2014). “Bill to Denationalise Austrians Fighting in Armed Conflicts Passed by Parliament.” *Globalcit News*. Retrieved from here.

for terrorist activities.<sup>34</sup> The United Kingdom extended its legislation about nationality revocation in 2014, in order to soften the principle of statelessness prevention when vital interests are at stake (see below, 3.1.2.). The Netherlands also extended its law in 2015 to denationalise “individuals above the age of 16 whose conduct indicates that they have joined a terrorist organisation whilst residing outside the Netherlands,” in order to legally prevent their return on national soil.<sup>35</sup> Reports show that this new provision has been used at least ten times by the government.<sup>36</sup> In 2016, Bulgaria, changed the time period during which the government can issue a deprivation order. From five years, legislators decided to extend it to an unlimited period in case of terrorism to authorise the government to revoke a naturalisation at any time.

This trend is now rapidly spreading, with Member States not only extending their legislation, but also creating laws specifically designed for terrorist activities and foreign fighters. In 2018, Italy created new provisions targeting naturalised citizens convicted for terrorist activities, without any formal prohibition of statelessness.<sup>37</sup> Germany created new rules in 2019 to target its citizens fighting alongside foreign terrorist groups (see below, 3.1.2.). Finland introduced a new case for nationality revocation in 2019, targeting Finnish citizens who are sentenced to five years of imprisonment for treason, high treason, or terrorist crime. Interior Minister Kai Mykkänen pointed out, however, that the plan was not to “prevent the return of nationals who’ve left the country to fight among the ranks of ISIS”; this new law was supposed to send a “signal” without interfering with the repatriation of Finns who fought for ISIS.<sup>38</sup> Finally, Denmark extended its legislation in 2019 to target foreign fighters and change the revocation procedure – from a court decision to a governmental order. Prime Minister Frederiksen clearly stated that this piece of legislation was meant to target disloyal citizens who “are unwanted in Denmark” and that “[t]he government will therefore do everything possible, to prevent them from returning to Denmark.”<sup>39</sup> This legislation has already been used at least twice to revoke Danish nationality of two individuals fighting for ISIS.<sup>40</sup>

### *Three Case Studies: UK, Germany and France*

The policies of three Member States will be analysed further, as they exemplify current trends: the United Kingdom, as the leading country in Europe in the use of banishment through nationality revocation; Germany, as a new country joining the trend, despite a robust constitutional framework against nationality deprivation; France, as the only country where plans to extend nationality revocation failed because of strong opposition that demanded the protection of liberal principles.

The United Kingdom is probably the leading country among liberal democracies to use nationality revocation as a way to banish its citizens suspected of, or convicted for, terrorist activities. This policy is based on two mechanisms. The first one is section 40(2) of the 1981 British Nationality Act (BNA) which states that “[t]he Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good” – section 40(4) providing

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<sup>34</sup> Aghadadashov, J. (27 March 2017). “Austria Firstly Stripped Off Citizenship a Man for ISIS Links.” *Report News Agency*. Retrieved from here.

<sup>35</sup> Boeckstein, T., L. and G. R. de Groot (2019). “Discussing the Human Rights Limits on Loss of Citizenship: a Normative-Legal Perspective on Egalitarian Arguments Regarding Dutch Nationality Laws Targeting Dutch-Moroccans.” *Citizenship Studies*, 23(4), 323.

<sup>36</sup> *Ibid.*, 325.

<sup>37</sup> Vendaschi, A. and C. Graziani (29 January 2019). “Citizenship Revocation in Italy as a Counter-Terrorism Measure.” *VerfBlog*. Retrieved from here.

<sup>38</sup> “Finland Won’t Strip Citizenship from ISIS Fighters, Minister Says.” (20 February 2019). *Yle*. Retrieved from here.

<sup>39</sup> Skydsgaard, N. (14 October 2019). “Denmark to Strip Foreign Fighters of Danish Citizenship.” *Reuters*. Retrieved from here.

<sup>40</sup> “Denmark Strips 2 ISIS Adherents of Citizenship Under New Law.” (26 November 2019). *The Defense Post*. Retrieved from here.

that this order may not be ordered if it would make the person stateless. The second one is section 40(4A) of the 1981 BNA. It targets only naturalised citizens under the same “conducive to the public good” standard – a condition strengthened by the requirement that the individual “has conducted him or herself in a manner which is seriously prejudicial to the vital interests of the United Kingdom.” Notably, this section 40(4A) authorises the Secretary of State to deprive an individual who does not actually possess another nationality, on the condition that the Secretary of State “has reasonable grounds for believing that the person is able, under the law of a country or territory outside the United Kingdom, to become a national of such a country or territory.” Accordingly, the United Kingdom’s legislation, based both on section 40(2) and (4A), empowers the government to target every British citizen – including birthright citizens – on the grounds of vague and discretionary standards – “conducive to the public good” – and is quite soft on statelessness prevention – absolute protection being put aside when “vital interests” are at stake.

The British government has made no secret of its intentions. These powers are meant to prevent the return of suspected or convicted terrorists. In February 2014, James Brokenshire, the Minister for Security and Immigration, clearly assured the House of Commons, which was raising concerns about deprivation occurring while British citizens were abroad, that “the Home Secretary takes deprivation action only when she [Theresa May] considers it is appropriate and that may mean doing so when an individual is abroad, which prevents their return and reduces the risk to the UK.”<sup>41</sup> Data show that there were only a few cases every year based on section 40(2) of the BNA 1981 (e.g., six in 2011; five in 2012; eight in 2013; four in 2014; four in 2015)<sup>42</sup> until the figures exploded from 14 in 2016 to 104 in 2017.<sup>43</sup> The last figures recently disclosed by the Home Office indicate that 21 individuals were deprived of British citizenship in 2018.<sup>44</sup> Following a Freedom of Information Request that I have lodged, the Home Office has specified that it refuses for now to communicate more recent data, that all the deprivation orders previously identified were adopted based on section 40(2) of the 1981 BNA, and that section 40(4A) has not yet been used.

The banishment policy remains current, and the recent case of Shamima Begum demonstrates the use of nationality deprivation as a way to prevent return to British soil. Begum is a British-born citizen, who joined ISIS in 2014 and is now sheltered in a refugee camp in Syria. She was deprived of her British nationality in 2019 on the ground that she “poses a threat to national security.”<sup>45</sup> Confirming this policy, a spokesperson of the Home Office recently declared that “Depriving a dual national of citizenship is just one way we can counter the terrorist threat posed by some of the most dangerous individuals and keep our country safe.”<sup>46</sup>

Germany, following this lead, decided to introduce new provisions regarding the revocation of nationality in case of terrorism. Yet, this country has strong constitutional protection against the loss of nationality. Its 1949 Basic Law specifies: “No German may be deprived of his citizenship. Loss of citizenship may occur only pursuant to a law and, if it occurs against the will of the person affected, only if he does not become stateless as a result.” For a long time, the (amended) 1913 German Nationality Act only provided, in section 28(1), for loss of nationality of the German “who, without the consent of the Federal Ministry of Defence or a body designated by the said Ministry, voluntarily enlists

<sup>41</sup> House of Commons (2014). February 11 Debate (vol 575, col 262WH).

<sup>42</sup> Freedom of Information Request, 2 November 2015: copy on file with the author.

<sup>43</sup> Secretary of State for the Home Department (2018). *HM Government Transparency Report 2018: Disruptive and Investigatory Powers* (Report No. Cm 9609). Retrieved from here.

<sup>44</sup> Secretary of State for the Home Department (2020). *HM Government Transparency Report: Powers 2018/2019* (Report No. CP 212). Retrieved from here.

<sup>45</sup> *Shamina Begum v. SSHD*, 2020 SIAC SC/163/2019, at. 16. Retrieved from here. It was unclear whether Begum possessed Bangladeshi nationality, as the UK government claimed, but the court decided that she did.

<sup>46</sup> Lizzie Dearden (2020, February 9). “Ministers Refuse to Reveal How Many Extremists They Have Stripped of British Citizenship.” *The Independent*. Retrieved from here.

with the armed forces or a comparable armed organization of a foreign State whose citizenship he or she possesses.” This very limited possibility to revoke someone’s nationality for lack of loyalty comes from a firm liberal commitment of the German Federal Republic in the aftermath of the Second World War, during which the Nazi regime massively resorted to nationality revocation.<sup>47</sup> But this liberal and restrictive approach to citizenship deprivation was recently abandoned.

This limited provision for nationality revocation in case of enlistment in a foreign army did not allow German authorities to revoke the nationality of those who engage in terrorist activities with non-state actors. This is why the German government decided to propose the extension of the provisions of the German Nationality Act in order to allow for the revocation of the nationality of disloyal citizens, especially in case of terrorist activities.<sup>48</sup> The legislator amended section 28 of the 2019 Third Act Amending Nationality Law<sup>49</sup> by adding a new paragraph stating that the German citizen “who actively participates in fighting with a terror organization abroad loses German citizenship unless he or she would thereby become stateless.” Similarly to the United Kingdom, it was precisely the intent of the government to use nationality revocation to prevent citizens currently abroad from returning to national soil. The general observations accompanying the bill drafted by the federal government stated explicitly that the loss of nationality was designed to target “fighters [who] are still in the remaining bastions or retreats of IS.”<sup>50</sup> It seems, however, that German authorities have not yet used this new possibility.

Contrary to Germany, France did not succeed in reforming its laws on nationality revocation. France’s legislation already allows the government to revoke the nationality of a citizen who has been convicted of terrorist acts. However, this provision, laid down in article 25 of the civil code, only targets naturalised citizens. In 2015, following the Paris attacks, President Hollande proposed to amend the constitution to authorise the revocation not only of naturalised citizens, but also of birthright citizens, in order to achieve full equality between citizens. Again, following the United Kingdom’s lead, French authorities planned to amplify banishment measures. The government’s observations accompanying the constitutional reform specifically stated that “[t]he extension of French nationality revocation cases will contribute furthermore to reinforce the protection of French society by allowing, inter alia, a long-term removal, through expulsion measures, of persons with a proven dangerous character [...] and to forbid their return to the territory.”<sup>51</sup> This reform, however, did not pass.

The Assemblée Nationale, the French lower chamber, accepted the idea of nationality revocation targeting both naturalised and birthright citizens. The majority considered this reform as a suitable tool to no longer discriminate naturalised citizens in this respect and, consequently, as a major step towards equality among citizens. The majority also refused to provide for any safeguards against statelessness in the constitutional reform, because to do otherwise would have created another inequality, this time between people with dual and single citizenship. To achieve full equality – i.e., not only between naturalised and birthright citizens, but also between individuals with single and dual citizenship – the deputies were thus ready to pass a constitutional law without any formal safeguard against statelessness.<sup>52</sup> The Senate, the French upper chamber, whose agreement is needed to pass a

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<sup>47</sup> A second important protection was the so-called “Inlandsklausel” that was in force until 1999 and did not allow for the revocation of nationality of Germans residing in Germany, see below 3.2.3.(2).

<sup>48</sup> Gärditz, K.-F. and A. Wallrabenstein (16 June 2019). “Staatsangehörigkeit in Geiselhaft.” *VerfBlog*. Retrieved from here.

<sup>49</sup> Drittes Gesetz zur Änderung des Staatsangehörigkeitsgesetzes, Federal German Law Gazette (BGBl), 8 August 2019 I(29), 1124.

<sup>50</sup> Deutscher Bundestag (29 April 2019). Gesetzentwurf der Bundesregierung. Entwurf eines Dritten Gesetzes zur Änderung des Staatsangehörigkeitsgesetzes (Report No. Drucksache 19/9736), 7. Retrieved from here.

<sup>51</sup> Assemblée Nationale (23 December 2015). *Projet de Loi Constitutionnelle de Protection de la Nation. Exposé des Motifs* (Report No. 3381), 6-7. Retrieved from here.

<sup>52</sup> The Prime Minister Manuel Valls promised, in the eventuality of the adoption of the constitutional reform, that the government would launch the ratification process of the 1997 European Convention on Nationality (which fully prohibits statelessness in case of nationality revocation).

constitutional reform, refused this extension. Senators considered that a constitutional reform extending nationality revocation without any prohibition of statelessness was contrary to fundamental principles. As a matter of consequence, it amended the bill to add the prevention of full statelessness. The reform thus no longer achieved formal equality since nationals with only one nationality were protected from deprivation. Because of the inability of the two chambers to reach an agreement, President Hollande abandoned the reform.<sup>53</sup>

This shows the challenge that nationality revocation presents for contemporary liberal democracies. It is indeed impossible to prohibit statelessness while maintaining equality among citizens, as both principles are based on the same fundamental value. On the one hand, restricting revocation to the sole individuals with two (or more) nationalities represents an indirect discrimination based on national origin. On the other hand, authorising nationality revocation for all individuals, regardless of whether they have a single nationality, can lead to statelessness which is prohibited. This liberal impasse cannot be resolved, and every state that allows nationality revocation must make a choice between non-discrimination and statelessness prevention.

### **3.2. Legislations of Member States**

#### **3.2.1. Possession of Another Nationality**

##### *(1) International and European legal Framework*

International law has long regarded dual nationality as an evil of the same nature as statelessness. International and European treaties were therefore designed to authorise, if not encourage, the limitation of dual nationality, especially by providing for the involuntary loss of nationality when a foreign nationality is acquired. From the standpoint of statelessness prevention, this mode of loss is rather unproblematic, since the individual has acquired another nationality, which means that statelessness is in principle not at stake. In any event, the 1961 Convention on Statelessness Reduction clearly states in article 7(2) that “[a] national of a Contracting State who seeks naturalization in foreign country shall not lose his nationality unless he acquires or has been accorded assurance of acquiring the nationality of that foreign country.” The 1963 European Convention on the Reduction of Cases of Multiple Nationality even makes it an obligation for states, as article 1(1) stipulates that “Nationals of the Contracting Parties who are of full age and who acquire of their own free will, by means of naturalisation, option or recovery, the nationality of another Party shall lose their former nationality. They shall not be authorised to retain their former nationality.” Due to the liberal trend towards dual citizenship, the chapter which includes this article 1 has not been ratified or has been denounced by numerous Member States.<sup>54</sup> More recently, the 1997 European Convention on Nationality authorises in article 7(1)(a) “voluntary acquisition of another nationality” as a mode of loss of nationality *ex lege* or by withdrawal (at the initiative of the state), but it cannot lead to statelessness. Moreover, in article 14(1), the Convention allows dual nationality in two instances: first, for children, in case of two nationalities acquired at birth (a); second, for adults, in case of a second nationality automatically acquired through marriage (b). To date, there is no international or European case law directly connected to the loss of nationality in case of voluntary acquisition of another nationality.

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<sup>53</sup> On the matter, see, e.g., Zalc, C. (2018). “La Déchéance de Nationalité: Éléments d’Histoire d’une Révision Constitutionnelle Ratée.” *Pouvoirs*, 166(3), 41-57.

<sup>54</sup> Belgium, Denmark, France, Italy, Ireland, Luxembourg, and Sweden. Only Austria and the Netherlands are bound by the chapter one.

*(2) Legislation Regarding Loss of Nationality of Persons Acquiring a Foreign Citizenship (L05)*

Only nine Member States still possess provisions regarding the loss of nationality after the acquisition of foreign citizenship.<sup>55</sup> This mode of loss of nationality has been losing ground in the last couple of decades, as seven Member States have repealed legislation in this respect.<sup>56</sup> This trend is closely linked to the well-documented increased acceptance of dual nationality.<sup>57</sup>

The vast majority of Member States that provide for this mode of loss base it on the general “acquisition” of a foreign nationality by one of their citizens. Some countries, such as Estonia or Ireland, emphasize the “voluntary” character of this acquisition, or Spain the “free will.” By way of exception, Ireland and Slovakia do not provide for loss of nationality when the foreign nationality is acquired through marriage, and Spain when the individual acquires the nationality of the foreign country where he or she is born and resides, or has resided for five years before coming of age, or is married with a citizen of the country (which are situations where the acquisition could be less of a choice than a normal development). More broadly, Spain only allows for the loss of nationality when the individual habitually lives in a foreign country. Similarly, Germany used to forbid the revocation of nationality of Germans residing in national territory – a legal provision which was called “Inlandsklausel.” It was in force until 1999 and had made possible for Turkish migrants to circumvent the prohibition on dual nationality by reacquiring Turkish nationality after renouncing it in order to be naturalised. After 2000, several tens of thousands of naturalised Germans of Turkish origin were stripped of their nationality because this exception had been removed.<sup>58</sup>

All citizens of these nine Member States – either by naturalisation or by birthright – are subject to this mode of loss, except in Ireland where only naturalised citizens can lose their Irish nationality if another nationality is acquired. Austria, Germany, and Latvia allow individuals to request the permission to retain their nationality, which is granted on a discretionary basis. Spain allows individuals to declare their intention to retain their nationality within the three years following acquisition. The majority of Member States follow a lapse procedure, which means that the nationality is automatically lost, by the sole operation of the law, at the moment of acquisition of a foreign nationality and if other conditions are fulfilled.<sup>59</sup> Only Ireland and Latvia apply a withdrawal procedure, but the Irish government seems to no longer issue deprivation orders on this ground.<sup>60</sup>

Three Member States refrain from applying these provisions when the nationality acquired belongs to a specific State or group of States. Germany does not apply its law when the second nationality acquired belongs to a Member State of the European Union, or Switzerland; Latvia makes even wider exceptions for Member States of the European Union, the European Free Trade Association, NATO on the one hand, and Australia, Brazil, New Zealand, and all countries with dual nationality agreements on the other hand; Spain makes an exception for Latin American countries, Andorra, the Philippines, Equatorial Guinea and Portugal.

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<sup>55</sup> Austria, Estonia, Germany, Ireland, Lithuania, Latvia, the Netherlands, Slovakia, and Spain.

<sup>56</sup> Belgium in 2007, the Czech Republic in 2014, Denmark in 2015, Finland in 2003, Luxembourg in 2009, Malta in 2000, and Sweden in 2001.

<sup>57</sup> See, among many others, Spiro, P. (2016). *At Home in Two Countries: The Past and Future of Dual Citizenship*. New York: New York University Press.

<sup>58</sup> I thank Rainer Bauböck for bringing this to my attention.

<sup>59</sup> Austria, Estonia, Germany, Lithuania, the Netherlands, Slovakia, and Spain.

<sup>60</sup> Handoll, J. *Country report: Ireland*, [GLOBALCIT], EUDO Citizenship Observatory, 2010/22, 15. No revocations seem to have occurred in practice.

*(3) Legislation Regarding Loss of Nationality of Persons Acquiring the Citizenship of their Country by Birth and Retaining Foreign Citizenship (L06) and, Conversely, Persons Acquiring Citizenship of their Country by Naturalisation and Retaining Foreign Citizenship (L10)*

These provisions are designed to encourage individuals to renounce the foreign nationality they have retained, despite the possession (by birth or by naturalisation) of the nationality of the state. In other words, the aim is to ask individuals to make a choice, preferably to renounce their foreign nationality, and, if not, to pronounce some kind of ‘forced release’ from the domestic nationality.

Germany is probably one of the best illustrations of these modes of loss with its “optional model.” This model applies to individuals who acquired German nationality by birth through *ius soli*, and who retain foreign nationality (e.g., through *ius sanguinis*). The 1999 reform of the nationality law, which introduced a conditional *ius soli*, required them to make a choice after the age of 21 by formally declaring whether they want to retain the German nationality or the foreign nationality. If they declared their wish to retain the foreign nationality, the German one was lost *ex lege*. If they wished, on the contrary, to retain the German nationality, they had two years to “furnish proof” that the foreign nationality had been lost; if they were not able to prove their single-nationality situation, the German nationality was also lost *ex lege*. However, since 2014 this optional model no longer applies to children “born and raised” in Germany, i.e., children who have resided in Germany for eight years, attended school in Germany for six years, or completed school or vocational training. Beyond these three criteria, the law also establishes generally that children with “close relation to Germany” are not required to opt for one nationality – appreciation of this criteria is left to the administration which decides “on a case-by-case basis.”<sup>61</sup> Permission to retain German nationality even in case of multiple nationality can also be granted by authorities when “renunciation or loss of the foreign citizenship was not possible or cannot reasonably be expected”. Lithuania possesses a similar system for dual citizenship acquired *iure sanguinis* from parents with different nationalities, but it applies a withdrawal procedure. Germany, however, is the only State to apply this ‘forced release’ or ‘optional model’ to citizenship acquired *iure soli* (L06).

Seven other Member States only apply this mode of loss to individuals who have acquired their citizenship by naturalisation (L10).<sup>62</sup> This is the reverse situation from loss of citizenship after acquisition of foreign citizenship (L05). In this situation, individuals acquire the nationality of the Member State, and are then expected, as a consequence, to renounce their foreign nationality. For instance, in the Netherlands, the government may issue a deprivation order if, after acquiring Dutch citizenship by naturalisation, the individual “has failed [...] to make every effort to divest himself of his or her original nationality.” In Austria, the naturalised citizens have two years to renounce their foreign nationality after acquisition, otherwise the authority may revoke their naturalisation. After six years, however, revocation for this reason is no longer possible. Bulgaria, Estonia, Lithuania and Slovenia follow the same withdrawal procedure, without imposing any time limit on individuals for renouncing their foreign nationality.

### 3.2.2. Residence Abroad

#### *(1) International and European Legal Framework*

Loss of nationality in case of residence abroad links habitual residence on national soil with the preservation of nationality. It is based on the idea that emigrants must not remain forever attached to their country of origin, and that, at a certain point, the ties should be cut to let new links with the country of residence flourish. This mode of loss of nationality is therefore profoundly linked with the right to expatriate, and the right to change one’s nationality. This liberal connection explains why state

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<sup>61</sup> Farahat, A., and K. Hailbronner. *Report on citizenship law: Germany*, [Global Governance Programme], GLOBALCIT, Country Reports, 2020/05, [Global Citizenship].

<sup>62</sup> Austria, Bulgaria, Estonia, Lithuania, Netherlands, Slovenia, and Spain.

obligations were quite light in the initial international framework. Manley O. Hudson, the special rapporteur on nationality including statelessness to the UN International Law Commission in the 1950s, wrote that the withdrawal of nationality based on “prolonged absence abroad [...] may be regarded as giving effect to the national’s desire for expatriation.”<sup>63</sup> Accordingly, articles 8(4) and (5) of the 1961 Convention on the Reduction of Statelessness do not limit the power of States to withdraw nationality, even if it could lead to statelessness, in two cases:

“4. A naturalized person may lose his nationality on account of residence abroad for a period, not less than seven consecutive years, specified by the law of the Contracting State concerned if he fails to declare to the appropriate authority his intention to retain his nationality.

5. In the case of a national of a Contracting State, born outside its territory, the law of that State may make the retention of its nationality after the expiry of one year from his attaining his majority conditional upon residence at that time in the territory of the State or registration with the appropriate authority.”

For the 1961 Convention, expatriation is thus a formal case that could lead to statelessness. These international provisions were adopted under the influence of the British representatives, whose legislation at that time specifically allowed for the revocation of the nationality of naturalised citizens after seven years of residence abroad, and the non-transmission of nationality by descent in case of residence abroad, without any regard for statelessness prevention.

The 1997 European Convention on Nationality now provides for a stronger and wider protection. Article 7(1)(e) states that “A State Party may not provide in its internal law for the loss of its nationality *ex lege* or at the initiative of the State Party except in the following cases: [...] lack of a genuine link between the State Party and a national habitually residing abroad,” and article 7(3) specifies that a State cannot use that mode of loss “if the person concerned would thereby become stateless.” The development of international law on nationality, especially in the European legal order therefore seems to point towards full statelessness prevention in the case of loss of nationality due to residence abroad. The Explanatory Report to the European Convention on Nationality states that one of the aims of this provision is “to allow a State, which so wishes, to prevent its nationals habitually living abroad to retain its nationality generation after generation,” but only when statelessness is not at stake. Therefore, for the writers of the Explanatory Report, “lack of a genuine link” refers primarily to “dual nationals habitually residing abroad [...] for generations”; proof of this lack of a genuine link can be identified through, *inter alia*, the “omission” of “i. registration; ii. application for identity or travel documents; iii. declaration expressing the desire to conserve the nationality of the State Party.”<sup>64</sup>

The European Union legal order has recently improved the protection of individuals against this mode of loss. In the recent *Tjebbes* case, the Court of Justice of the European Union (CJEU) investigated the situation of four women who lost their Dutch nationality, and therefore EU citizenship, after living more than ten years outside the borders of the EU in countries of which they were also nationals (one in Canada, two in Switzerland, and one in Iran).<sup>65</sup> The conclusion of the court, now binding for every Member State of the EU, was first, that “it is legitimate for a Member State to take the view that nationality is the expression of a genuine link between it and its nationals” and, second, that authorities must “[have] due regard to the principle of proportionality so far as concerns the consequences of that loss for the situation of the person concerned and, if relevant, for that of the members of his or her family, from the point of view of EU law.” This principle of proportionality strikes a balance between “the objective pursued by the national legislature” on the one hand, and “the normal development of [the individual’s] family and professional life” on the other hand. The Court also ruled that the assessment of proportionality must take into account the provisions of the Charter of Fundamental

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<sup>63</sup> Hudson, M. O. (1952). “Nationality, Including Statelessness.” *Yearbook of the International Law Commission* (II): 4–24.

<sup>64</sup> Explanatory Report to the European Convention on Nationality, § 69-71.

<sup>65</sup> *M.G. Tjebbes and Others v Minister van Buitenlandse Zaken*, ECLI:EU:C:2019:189.



Rights of the European Union, especially its article 7 protecting the right to respect for private and family life, and article 24 protecting the child's best interests. Even if the court's decision does not directly address the issue, it seems reasonable that residence-based loss of nationality between Member States would eventually inhibit freedom of movement and, therefore, be deemed incompatible with EU law.

(2) *Legislation Regarding the Loss of Nationality in Case of Residence Abroad (L02)*

Only 10 Member States have passed legislation regarding the loss of nationality after long-term residence abroad.<sup>66</sup> Three general models can be distinguished. The first model aims to correct *ex-post* the situation where a naturalised citizen does not reside in his or her new country of nationality.<sup>67</sup> It derives from the 1948 British Nationality Act established half a century ago, which specifies in article 20(4) that “[t]he Secretary of State may by order deprive any person naturalised in the United Kingdom and Colonies of his citizenship of the United Kingdom and Colonies if he is satisfied that that person has been ordinarily resident in foreign countries for a continuous period of seven years.” At that time, the law provided for two exceptions in article 20(4)(a) and (b): if the individual has been “in the service of His Majesty or of an international organisation”; or “register[ed] annually [...] his intention to retain his citizenship of the United Kingdom and Colonies.” This first tradition enshrined in British law (and no longer in force) spread to common law countries in Europe, and is still in force in Cyprus, Ireland, and Malta. Thus, these three Member States may issue a deprivation order against naturalised citizens who have resided abroad for seven years, unless they have registered annually or been in the service of their country. Their laws do not include a prohibition of statelessness, in conformity with the 1961 Convention on Reduction of Statelessness, but in violation of the 1997 European Convention on Nationality – which none of them has ratified.

The second tradition aims to prevent the *ius sanguinis ad infinitum* phenomenon, i.e., the unlimited transmission of nationality to future born-abroad generations.<sup>68</sup> It has origins in various countries, notably in the Nordic ones. In 1949, Norway, Sweden, and Denmark held a joint committee and agreed on common principles for their citizens, which they implemented in national laws in the 1950s (the ‘Nordic agreement’).<sup>69</sup> Denmark and Sweden thus have common principles regarding loss of nationality in case of residence abroad, which provide for automatic loss at the age of 22 of the born-abroad citizen who has never lived in his or her country of origin, or has resided for seven years in one of the Nordic countries. The only way for the citizen to prevent this loss is to ask the minister for an authorisation, which is granted on a discretionary basis. Sweden has an explicit provision against statelessness, while Denmark does not. The other Member States follow the same rationale with respect to born-abroad citizens, which is to cut ties with them if they do not express the wish to retain nationality. Belgian legislation, for instance, provides for the automatic loss of nationality for born-abroad citizens who continually reside abroad from age 18 to 28 and do not declare their will to retain nationality before the age of 28 or ask for civil documents. Belgium fully respects statelessness prohibition in this case. In France, a citizen by descent who has been born abroad loses nationality (after birth) if his or her direct ancestors have resided abroad for more than fifty years, and if he or she does not habitually reside in France and has no “apparent status” (i.e., the individual does not act, subjectively and objectively, as a French citizen). It is up to the judge to decide if and when nationality is lost, with no guarantee against statelessness. Finally, in Spain, the legislation focuses on citizens who are born abroad to parents also born abroad. They automatically lose their nationality at the age of 22 unless they make a declaration to

<sup>66</sup> Belgium, Cyprus, Denmark, Finland, France, Ireland, Malta, the Netherlands, Spain, and Sweden.

<sup>67</sup> Cyprus, Ireland, and Malta.

<sup>68</sup> Belgium, Denmark, France, Spain, and Sweden. This can be extended to Member States which apply conditional born-abroad *ius sanguinis*, i.e., Belgium, Croatia, Portugal, and the United Kingdom.

<sup>69</sup> Midtbøen, A., H., S. R. Birkvad, and M. B. Erdal (2019). *Citizenship in the Nordic Countries. Past, Present, Future*. Copenhagen: TemaNord, 29-30.

retain citizenship within three years of attaining majority, in which case full statelessness prevention applies.

A third and final model refers to all citizens, regardless of their naturalised or born-abroad status and only protects the genuine connection with the state.<sup>70</sup> Finland provides for the automatic loss of Finnish nationality at the age of 22 when the citizen also possesses another nationality and if he or she does not have a “sufficient connection with Finland.” This connection is deemed sufficient if: the individual is born in Finland, and resides there at the age of 22; the individual has resided in Finland (or seven years in a Nordic country) before the age of 22; the individual has made contact with Finnish authorities before the age of 22 (notice given to retain nationality, issue of a passport, or military service). Finally, legislation in the Netherlands refers to every citizen who resides outside its territory – and more broadly outside EU territory – for an uninterrupted period of ten years, without asking for a civil document. Nationality is lost automatically, but full statelessness prevention applies.<sup>71</sup>

### 3.2.3. Disloyalty or Lack of Merit

#### *(1) International and European Legal Framework*

Nationality deprivation in case of disloyalty or lack of merit<sup>72</sup> (i.e., infidelity to the state – sometimes the government – and the moral value of citizenship) was long considered a matter of state sovereignty. The power of states was constrained by very few limitations. The 1961 United Nations Conference on the Elimination or Reduction of Future Statelessness only managed “to ‘freeze’ the present legislative situation” on the proposal of the German representative.<sup>73</sup> Hence, the 1961 Convention on the Reduction of Statelessness had a ‘ratchet effect’: it did not improve the situation regarding statelessness prohibition, but at least it prevented it from worsening. The article 8(3)(a) of the 1961 Convention authorises the state to revoke the nationality of a citizen who acts “inconsistently with his duty of loyalty,” even if it leads to statelessness, on the twofold condition – expressed at the time of ratification – that this possibility is already provided for in the domestic law, and that the state formally specifies its retention of that right. Furthermore, nationality deprivation is allowed on two grounds by articles 8(3)(a)(i) and (ii) when the person:

- (i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or
- (ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State;”

Questions of loyalty within the framework of the 1961 Convention are thus connected not only to the citizen’s relation with a foreign state (expressly prohibited “services” or “emoluments”), i.e., ‘allegiance’ to another state, but also to the relation with the state of nationality when a certain behaviour of the citizen impairs its “vital interests.” Disloyalty is then both an issue of domestic and external policy. However, the 1961 Convention, because of its very nature, does not limit the power of the state to revoke nationality when statelessness is not at stake – apart from article 9 which generally prohibits revocation “on racial, ethnic, religious or political grounds.”

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<sup>70</sup> The Netherlands and Finland.

<sup>71</sup> Following the *Tjebbes* case mentioned above, this automaticity needs to be conciliated with the principle of proportionality. The Dutch Raad van State recently gave guidelines regarding this evolution. See Gerard-René de Groot (18 February 2020). “A Follow-Up Decision by the Council of State of the Netherlands in the *Tjebbes* Case.” *GlobalCit Blog*. Retrieved from here.

<sup>72</sup> The French legal terminology refers to the notion of ‘indignité’, which stands for the absence of dignity. On this notion, see Simonin, A. (2008). *Le déshonneur dans la République. Une histoire de l’indignité 1791-1958*. Paris: Grasset.

<sup>73</sup> UN General Assembly, Conference on the Elimination or Reduction of Future Statelessness, 12<sup>th</sup> plen. mtg., UN Doc. A/CONF.9/SR.12 (24 April 1961). Retrieved from here.

The 1997 European Convention on Nationality notably reduces the scope of authorised grounds. The articles 7(1)(c) and (d) only allow revocation (ex lege or at the initiative of the State) in case of “voluntary service in a foreign military force” or a “conduct seriously prejudicial to the vital interests of the State Party.” In both cases, according to article 7(3), revocation cannot lead to statelessness. This is a very strong constraint on state power, especially when considering the Explanatory Report to the Convention which states that the standard of “vital interest” (shared with the 1961 Convention on the Reduction of Statelessness) “notably includes treason and other activities directed against the vital interests of the State concerned (for example work for a foreign secret service) but would not include criminal offences of a general nature, however serious they might be.” As a consequence, only disloyalty, when properly established, is a ground for deprivation in the 1997 Convention. States are not allowed to protect the ‘merit’ of the status of citizenship by revoking the nationality of a common criminal, for instance.

In the *K2 v. the United Kingdom* case, the European Court of Human Rights ruled in 2017 that an “arbitrary” revocation of citizenship might, “in certain circumstances,” interfere with the “individual’s right to respect for family and private life” (which was an extension of the *Ramadan* case ruled in 2016, see below 3.2.4.[a]).<sup>74</sup> The court, therefore, raised two general questions: one about the “arbitrary” nature of the revocation and the other about the “consequences” of revocation for the applicant. First, the court assessed the arbitrary nature of this deprivation by considering three issues: whether it was carried out in accordance with the law, the diligent and swift action of the authorities and the inclusion of procedural safeguards. Second, as for the consequences of the measure, the court examined the proportionality of the decision, taking into account the applicant’s potential statelessness and private and family life, especially his capacity to live with his wife and children. The court finally did not find any violation of article 8 of the European Convention of Human Rights. Moreover, the complaint under article 14 of the Convention – the principle of non-discrimination – was rejected because it was not raised during the British judicial review proceeding. Questions of discrimination between single and dual nationals, on the one hand, and naturalised and birthright citizens, on the other hand, remain unsettled in European case law. Pending cases involving Belgium, Denmark and France should create new opportunities to rule on this issue in the foreseeable future.<sup>75</sup>

## (2) Legislation Regarding Military or Other Services to a Foreign Country (L03 and L04)

The first of these two modes of loss of nationality relies on the citizen’s disloyalty due to enrolment in the military or civil service of a foreign state. Nationality is effectively frequently considered as implying a certain degree of fidelity to the state (and, to a lesser extent, to the government) which could be considered incompatible with services rendered to a foreign nation. This mode of loss originates in ancient continental law, and is based on the premise that, in periods of frequent war, serving two kings implies betraying one of them. Twelve Member States have legislation implementing this principle and forbidding their citizens to serve a foreign country, either as in the military or as a civil servant.

First, joining the army (L03) is the most frequent operative event, as 11 Member States provide for the loss of nationality in this situation.<sup>76</sup> In the vast majority of countries, the loss affects all citizens, irrespective of the way their acquired nationality. Only Cyprus, Estonia and Spain limit nationality loss in this situation to citizens by naturalisation. Serving in the military forces of a foreign state is frequently sufficient, irrespective of the country where this service is carried out. Some Member States, however, limit the range of countries targeted by this provision, such as Cyprus which limits revocation to countries with which it is at war. Cyprus extends this first case to countries with which it has broken

<sup>74</sup> *K2 v. The United Kingdom*, ECLI:CE:ECHR:2017:0207DEC004238713.

<sup>75</sup> *El Aroud v. Belgium*, No. 25491/18; *Soughir v. Belgium*, No. 27629/18; *Ghoumid v. France*, No. 52273/16; *Charouali v. France*, No. 52285/16; *Turk v. France*, No. 52290/16; *Aberbri v. France*, No. 52294/16; *Ait El Haj v. France*, No. 52302/16; *Adam Johansen v. Denmark*, No. 27801/19.

<sup>76</sup> Austria, Cyprus, Estonia, Germany, France, Italy, Latvia, Lithuania, Netherlands, Romania and Spain.

diplomatic relations, and the Netherlands limits the scope to a “hostile state.” In half of the Member States providing for this mode of loss, it is nevertheless possible to enrol in the military forces of another country, either as long as the Member State does not ask the citizen to resign from the foreign army, such as France and Italy (liberal model), or if the Member State gives its express permission as in the case of Estonia, Germany, Latvia, and Lithuania (preventive model). The procedure is also equally divided between, on the one hand, lapse (i.e., by the sole effect of the law) in Austria, Germany, Italy, Netherlands, and Spain and, on the other hand, withdrawal in Cyprus, Estonia, France, Latvia, Lithuania, and Romania. Only Germany and the Netherlands formally forbid statelessness – Germany stating that the individual has to enrol in the army of a country whose nationality he or she possesses.

Second, other services to a foreign country (L04) – mainly employment as a civil servant – are also a cause for loss of nationality in seven Member States (six of them among the eleven that already provide for the loss in case of military enrolment).<sup>77</sup> Similarly, this mode of loss operates irrespectively of the mode of acquisition, except in Estonia and Spain which only apply this mode of loss to naturalised citizens. Working in the civil service of a foreign country is the operative event that triggers nationality loss in the majority of these Member States. Nevertheless, Spain limits the scope to political offices, Austria to services which “substantially damage [its] interests and reputation,” and Lithuania to an activity which “prejudices the state.” Yet, employment in a foreign state is permitted in France, Greece, Italy and Spain (liberal model) as long as the state does not ask the individual to resign. It is permitted if expressly authorised in Estonia and Lithuania (preventive model). The procedure applied is mainly withdrawal, only Italy and Spain allow for a lapse (i.e., automatic) procedure. There is no formal statelessness prohibition.

### *(3) Legislation Regarding Lack of Merit or Disloyalty to the Country (L07 and L08)*

The second mode of loss of nationality relies on the disloyalty of citizens towards their state of nationality (behaviours related to the broad category of treason), but also on a certain idea of the moral value of citizenship, which causes a state to revoke the nationality of an individual in case of lack of merit (common crime for instance). 18 Member States revoke nationality in these situations.<sup>78</sup>

First, disloyalty (or treason) is the most frequent ground for nationality revocation (L07). This mode of loss is in force in 18 Member States, and this number is fast increasing (see above, 3.1.2.). Half of the Member States potentially target all citizens, regardless of the mode of nationality acquisition,<sup>79</sup> and the other half target naturalised citizens, or more broadly citizens “other than by birth.”<sup>80</sup> This distinction is mainly based on the long-standing idea that the loyalty of naturalised citizens (or even ‘naturalised aliens’) is always questionable (see above, 3.1.1.). Bulgaria and Slovenia, however, limit nationality revocation to dual nationals who habitually reside abroad.

The operative event is crucial in this case: what does disloyalty mean for Member States? There is a clear distinction between administrative standards and criminal standards. An administrative standard is set by the government on the basis of vague notions and poor evidence, whereas a criminal standard means that the revocation is only allowed if the individual is first sentenced by a criminal court for a specific offence connected to the state, based on strong evidence (‘beyond reasonable doubt’). Some Member States such as Belgium and France have a mixed system with both administrative and criminal standards, where nationality revocation is possible both in case of conviction for a serious crime (e.g., terrorism), and in case of serious breach of the duties of a citizen (Belgium) or acts incompatible with the status of citizen (France), which are not related to criminal offences. Some Member States, such as

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<sup>77</sup> Austria, Estonia, France, Greece, Italy, Lithuania and Spain.

<sup>78</sup> Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Malta, the Netherlands, Romania, Slovenia, the United Kingdom.

<sup>79</sup> Denmark, Finland, Germany, Greece, Latvia, the Netherlands, Romania, Slovenia and the United Kingdom.

<sup>80</sup> Belgium, Bulgaria, Cyprus, Estonia, France, Ireland, Italy, Lithuania and Malta.

Bulgaria, Denmark, Finland, Italy, Lithuania, or the Netherlands only rely on criminal conviction – based on the broad category of ‘political offence’ (e.g., terrorism, offences against the independence and safety of the country, and offence against the constitutional or democratic order) – to issue a deprivation order. Finally, other Member States rely on administrative standards to revoke nationality, such as relations with the enemy in time of war, in Cyprus or Malta; fighting for a terror organisation abroad, in Germany; trying to change the constitutional order, in Estonia; acting against the interests of the state, in Greece, Romania, or Slovenia; violently attempting to overthrow the government, to change the political system, or to incite to activities aimed at ending the independence of the country, in Latvia; or the ‘not conducive to the public good’ standard in the United Kingdom.

All of these 18 Member States follow a withdrawal procedure. Some Member States have set a time limitation for engaging the procedure, such as France, which implements a double time period: first, “the acts of which the person concerned is accused [must have] occurred before the acquisition of French nationality or within ten years as from the date of [the acquisition]”; second, the revocation “may be pronounced only within ten years as from the perpetration of those acts.” These two ten-year periods are extended to fifteen in case of terrorism. Eight Member States limit revocation to cases where statelessness is not at stake.<sup>81</sup>

Second, common criminal offences (L08) establishing the ‘lack of merit’ of the citizen are another ground for nationality deprivation in five Member States.<sup>82</sup> This mode of loss is highly questionable, especially within the framework of the 1997 European Convention on Nationality, because no ‘vital interest’ of the state is at stake here. Indeed, in these five Member States, the revocation is based on a criminal conviction which may be for a minor offence. In Cyprus and Malta, the citizen must be sentenced to a term of imprisonment of not less than 12 months. In France and Lithuania, the revocation relies on a specific category of offence (in France, misconduct in public office, e.g., abuse of power, or breach of the duty of probity); in Lithuania, “severe” crime or international mass crimes) without mentioning any minimum term of imprisonment. Belgian legislation also refers to certain offences (e.g., human trafficking, international mass crimes) but with a minimum term of five years. This mode of loss only targets naturalised citizens and operates through a withdrawal procedure, sometimes with a time limitation – ten years after naturalisation in Belgium, seven in Malta, and five in Cyprus. In France, the same double period of ten years as in the case of disloyalty (see above) applies. Belgium, France and Malta forbid statelessness, whereas Cyprus and Lithuania do not.

### 3.2.4. Fraud and Similar Acts

#### *(1) International and European Legal Framework*

At the 16<sup>th</sup> plenary meeting of the United Nations Conference on the Elimination or Reduction of Future Statelessness, in 1961, the Italian representative explained to his colleagues that any international provision regarding loss of nationality in case of fraud was absolutely “unnecessary” because “if the Government of a State discovered that a person had obtained the nationality of that State by fraud it would, as a matter of course, annul the grant of nationality.”<sup>83</sup> Nationality revocation or cancellation can, indeed, be considered as a matter of general administrative nature and public order – the nullification of a status obtained in bad faith – more than a proper nationality regulation. Yet, the 1961 Convention on the Reduction of Statelessness is not silent on this mode of loss. Pursuant to article 2(b), “where the nationality has been obtained by misrepresentation or fraud,” the deprivation can lead to

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<sup>81</sup> Belgium, Bulgaria, Finland, France, Germany, Latvia, Slovenia and the United Kingdom. For the latter, section 40(4A) of the 1981 British Nationality Act establishes exceptions, see above 3.1.2.

<sup>82</sup> Belgium, Cyprus, France, Lithuania and Malta.

<sup>83</sup> UN General Assembly, Conference on the Elimination or Reduction of Future Statelessness, 16<sup>th</sup> plen. mtg., UN Doc. A/CONF.9/SR.16 (16 August 1961). Retrieved from here.

statelessness, without either protection or limitation. This is the only ground where statelessness is unconditionally authorised. Even the 1997 European Convention on Nationality, in articles 7(1)(b) and 7(3), makes “acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant” the only exception where statelessness is authorised.

In the famous *Rottmann* case, ruled in 2010 by the grand chamber of the Court of Justice of the European Union, the judges considered that “it is legitimate for a Member State to wish to protect the special relationship of solidarity and good faith between it and its nationals and also the reciprocity of rights and duties, which form the bedrock of the bond of nationality.”<sup>84</sup> Thus, the Court considered that nationality revocation in case of fraud was absolutely legitimate. However, when nationality deprivation leads to the loss of European citizenship, the withdrawal decision must “[observe] the principle of proportionality,” which means “[to take] into account the consequences that the decision entails for the person concerned and, if relevant, for the members of his family with regard to the loss of the rights enjoyed by every citizen of the Union.” In this respect, the Court states that the assessment of proportionality relies on a threefold test: the severity of the offence, the lapse of time between the naturalisation decision and the withdrawal decision, and the possibility of recovering the original nationality. The court makes no special comment about statelessness prevention, merely noting that, in such a situation, international and European law does not prohibit nationality loss.

Revocation of nationality in case of fraud is also a matter of interest for the European Court of Human Rights. In the *Ramadan v. Malta* case, ruled in 2016, a member of the court confirmed that it had jurisdiction to control a deprivation of nationality: “an arbitrary revocation of citizenship might in certain circumstances raise an issue under Article 8 of the convention because of its impact on the private life of the individual.”<sup>85</sup> The court then proceeded to carry out a two-step assessment. First, the court examined the arbitrariness of the decision on three grounds: whether it was in accordance with the law, whether authorities took diligent and swift action, and whether procedural safeguards were included. Second, the court examined the consequences that the revocation might have under article 8 of the convention, with respect to the protection of the right to private and family life. Finally, the court ruled that there was no violation on the ground of article 8 of the convention. Similarly to the Court of Justice of the European Union, the European Court of Human Rights did not mention the issue of statelessness.

## *(2) Legislation Regarding Individuals Who Have Acquired Citizenship by Fraud (L09)*

Loss of a nationality acquired by fraud is, by far, the most widespread mode of loss among members of the EU: 25 Member States have formal provisions for this mode of loss.<sup>86</sup> Only three Member States – Croatia, Poland, and Sweden – do not have any specific provision for this mode of loss recorded in the GLOBALCIT database. Their situation should however be more carefully considered, as revocation may be possible in these countries in application of the general principles of administrative law.<sup>87</sup> This mode of loss has undergone many changes. It was formally introduced in some States in the 1990s (the Czech Republic and Spain), other States recently extended the time-limit for depriving individuals of their nationality (Germany and Bulgaria), and one other state improved the procedural safeguards around this mechanism (Belgium).

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<sup>84</sup> *Janko Rottman v Freistaat Bayern*, ECLI:EU:C:2010:104.

<sup>85</sup> *Ramadan v. Malta*, ECLI:CE:ECHR:2016:0621JUD007613612.

<sup>86</sup> Austria, Belgium, Bulgaria, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, United Kingdom.

<sup>87</sup> It is also likely that all Member States authorise through general principles of administrative law the revocation or nullification of a nationality acquired in case of error of the administration – i.e., in the good faith of the applicant. In France for instance (art. 27-2 of the civil code) the government can launch the nullification procedure within two years from the acquisition of nationality by the individual.

In all the Member States which provide for the loss of nationality in case of fraud, the operative event for this loss of nationality is similar and generally refers to the bad faith of the applicant: forged documents, wrong information, concealed facts, misleading information, retention of information, etc. In Germany, infringement of the criminal law during the process, such as threat or bribe, is also a ground for nationality deprivation. Member States such as Cyprus, Denmark, and Finland only provide for revocation when the fraud had a “decisive” impact on the naturalisation process. Only two Member States – Bulgaria and Luxembourg – forbid the loss of nationality in case of fraud when statelessness could occur, thus going far beyond the obligations of international law. Belgium leaves individuals a “reasonable period of time” to try to recover, if possible, their nationality of origin.

Most Member States apply their decision by following a withdrawal procedure, whereas others<sup>88</sup> nullify the acquisition decision. These procedures raise two issues. The first issue, in the case of nullification, is to protect the situation of ‘bona fide third parties’ who could be affected by the nullification (i.e., its retroactive effects). Spain thus directly specifies in its law that “third parties in good faith” are protected from any “detrimental effects.” The second issue, for both the withdrawal and the nullification procedure, is to determine when and under which conditions the State should launch the procedure. Nine Member States define a limited time period for launching the procedure after citizenship acquisition, guaranteeing a certain degree of legal certainty. In other words, these Member States have defined a specific period of time during which the procedure can be applied; once the period is over, the individual may under no circumstances be subjected to a withdrawal or nullification decision. In most cases, this period varies from five (Belgium, Finland, and Germany) to ten years (Bulgaria, Hungary, and Latvia), and reaches twelve years in the Netherlands, fifteen in Spain. In Latvia and the Netherlands, these limitations do not apply in the event of a conviction by the International Criminal Court – probably to follow the regime of mass crimes (e.g., crime against humanity) in international criminal law where no statute of limitation applies (*imprescriptibilité*). In France, the government can launch the nullification procedure within two years from discovering the fraud. This is less protective than a time limitation from the acquisition of nationality, but still a better protection than general administrative law where the act obtained by fraud can be nullified at any time.<sup>89</sup> To assess whether it is desirable or not to launch the procedure, the Finnish law establishes that the decision must be “based on an overall consideration of the person’s situation,” especially “the culpability of the act and the circumstances in which it is committed, and of the ties with Finland of the person who has made the application or declaration.” The principle of proportionality is therefore added by design to the procedure, perfectly line with EU law.

### 3.2.5. Loss Linked to Family Relationship

#### (1) *International and European Legal Framework*

For many years, the principle of unity of nationality within the family provided that each family must have only one nationality, mainly based on that of the husband/father. This principle worked both ways regarding loss of nationality: the married woman was supposed to lose her nationality of origin in order to acquire that of her husband; the loss of nationality of the husband was supposed to extend to the other members of the nuclear family. This patriarchal approach, establishing the family as the ‘property’ of the father and husband, was the leading framework during the 19<sup>th</sup> century.<sup>90</sup> This principle of unity of

<sup>88</sup> Austria, Bulgaria, France, the Netherlands, Portugal, Slovakia, Slovenia and Spain.

<sup>89</sup> Article L. 241-2, Code des relations entre le public et l’administration.

<sup>90</sup> See Heuer, J. (2007). *The Family and the Nation. Gender and Citizenship in Revolutionary France, 1789-1830*. Ithaca, London: Cornell University Press. See also Lepoutre, J. (2019). “La Nationalité dans le Couple: Perspectives Historiques.” In *La Nationalité, Enjeux et Perspectives*, edited by A. Dionisi-Peyrusse, V. Parisot, F. Jault-Seseke and F. Marchadier, 253-266. Paris: LGDJ.

nationality, highly discriminatory, has been abandoned through a long process initiated in the 1930s.<sup>91</sup> The prohibition of this principle is clearly established in article 9(1) of the 1979 Convention on the Elimination of All Forms of Discrimination against Women New York:

States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

As for the children, unity of nationality within the family persists (as the child has no legal autonomy from the parents), but without any gender consideration and with broad limitations. The 1997 European Convention on Nationality especially states in article 7(2) that “[a] State Party may provide for the loss of its nationality by children whose parents lose that nationality except in cases covered by subparagraphs c [*voluntary service in a foreign military force*] and d [*conduct seriously prejudicial to the vital interests of the State Party*] of paragraph 1. However, children shall not lose that nationality if one of their parents retains it.” Following the Explanatory Report to the Convention, “the impugned conduct of parents should have no adverse consequences on children”; that is why “voluntary service in a foreign military force” and “conduct seriously prejudicial to the vital interests of the State Party” are not possible grounds to extend the deprivation to the children. More broadly, the report makes clear that “States Parties should in any case be guided by the best interests of the child.”<sup>92</sup> This was solemnly confirmed by the Court of Justice of the European Union in the *Tjebbes* case, where the judges considered that the principle of unity of nationality within the family needs “to meet the child’s best interests as enshrined in Article 24 of the Charter.”<sup>93</sup>

Regarding statelessness prevention, the 1961 Convention on the Reduction of Statelessness clearly established a general prohibition in article 6: “If the law of a Contracting State provides for loss of its nationality by a person’s spouse or children as a consequence of that person losing or being deprived of that nationality, such loss shall be conditional upon their possession or acquisition of another nationality.” The collective effect of the loss must, therefore, not apply when statelessness is at stake.

## *(2) Legislation Regarding the Extension of the Loss to Family Members (L11 and L12)*

The first mode, concerning a person whose parents lose citizenship of a country (L11), can be divided into two situations. The first situation is based on the extension of renunciation of the parents (mode L01, see 2.2.) to the children. Eight Member States formally provide for this mode of loss, meaning that the decision to renounce the nationality of the Member State by the parents will be extended to the children.<sup>94</sup> Of course, if one parent does not renounce the nationality, the loss cannot be extended to the child. Half of these Member States consider that consent of the child is needed once a certain age is reached. In Bulgaria, Romania and Slovenia, the ‘age of consent’ is 14, whereas in Poland it is 16. In these four Member States, this mode of loss (when applied to children who are able to consent) relates to the voluntary renunciation already described above (see 2.2.).

The second situation is based on the extension to the children of the involuntary loss of the parents; this mode of loss is applied by 12 Member States.<sup>95</sup> The most common ground for extension is fraud in the acquisition of the parent’s nationality (L09), which will also cause the loss of the children’s nationality in Austria, Bulgaria, Finland, France, Germany, the Netherlands and Slovenia. In Germany, however, the loss can only occur when the child is under five years of age. Loss of nationality on the

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<sup>91</sup> Knop, K. and Chinkin, C. (2001). “Remembering Chrystal MacMillan: Women’s Equality and Nationality in International Law.” *Michigan Journal of International Law*, 22(4), 523-585.

<sup>92</sup> Explanatory Report to the European Convention on Nationality, § 75.

<sup>93</sup> *M.G. Tjebbes and Others v Minister van Buitenlandse Zaken*, ECLI:EU:C:2019:189.

<sup>94</sup> Belgium, Bulgaria, Croatia, Luxembourg, the Netherlands, Poland, Romania and Slovenia.

<sup>95</sup> Austria, Bulgaria, Denmark, Finland, Germany, France, Greece, Italy, Lithuania, the Netherlands, Slovenia and Sweden.



ground of residence abroad (L02) in Denmark, the Netherlands and Sweden on the one hand, and loss of nationality on the ground of acquisition of foreign nationality (L05) in Austria and the Netherlands are the other modes of loss which can be extended to the children. In Greece, Italy and Lithuania, the legislation or the general principles of administrative law provide that any loss of the parents' nationality can be extended to the children.

The second mode, the extension to the spouse or the registered partner (L12), is highly discriminatory. As the spouse or partner is an autonomous subject of law, no reason can justify the extension of the loss from one spouse or partner to the other. No Member State has maintained such a provision in its law. It remains unclear, however, whether Bulgaria is an exception to this principle. The Bulgarian legislation states, indeed, that "[r]evocation of the naturalisation of one of the spouses shall not revoke the naturalization of the other spouse and of the children, *unless they have obtained Bulgarian citizenship on the grounds of the same false or withheld data or facts*" (emphasis added). The wording of this provision seems to indicate that the same fraud committed by both spouses will result in the same loss, rather than that the fraud of one spouse will be extended to the other spouse. If this interpretation is correct, this piece of legislation must be classified into the mode L09, and does not constitute the only instance of the mode L12 in the EU.

### *(3) Legislation Regarding the Change in the Filiation (L13a and L13b)*

The first mode of loss, following annulment of maternity/paternity (L13a), is likely to be provided by general principles of civil law regarding filiation, such as 'fraus omnia corrumpit' in case, for instance, of fraudulent acknowledgement of paternity. When the mode of loss is specified in nationality law, it is probably to bring some protection to the children and to establish conditions where nationality is not lost. The fact that six Member States have that kind of mode of loss in their legislation is, therefore, not indicative for the degree of diffusion of this mode of loss (which is probably occurring in all Member States), but for the degree of protection of the nationality. In this way, Italy, Luxembourg and the Netherlands indicate that the change in the filiation cannot lead to statelessness; Belgium that the loss can only occur during minority; Germany that the loss can only occur before five years of age; Finnish legislation also provides for time-limitation (five years) and specifies that the assessment of the merits of the deprivation "shall [take into account] the child's age and ties with Finland."

The second mode of loss consists of the loss of nationality following adoption by a foreign citizen (L13b). This mode of loss is quite connected with the deprivation on grounds of possessing another nationality; dual nationality is here at stake. Only six Member States are using this mode of loss.<sup>96</sup> In these Member States, the loss only occurs when the adoptees acquire the nationality of their adoptive parent.

### *(4) Legislation Regarding Children No Longer at Risk of Statelessness (L14)*

Article 1 and 2 of the 1961 Convention on the Reduction of Statelessness and article 6(1) and (2) of the 1997 European Convention on Nationality both require states to give their nationality to, on the one hand, children born in the territory who would otherwise be stateless and to, on the other hand, foundlings found in its territory who would otherwise be stateless. These two mechanisms protect the right to acquire a nationality of the children, enshrined in article 7 of the 1989 Convention on the Rights of the Child. They are, however, contingent on "the absence of proof to the contrary." It means that if the children who have acquired the nationality of the country where they are born (*ius soli*) – or presumptively born for foundlings – are later able to acquire another citizenship on the basis of filiation (*ius sanguinis*), the initial protection against statelessness is no longer necessary. In other words, the establishment of the nationality of a foreign country allows the state to revoke the nationality initially acquired through this special mode of *ius soli*. Twenty-two Member States are implementing this mode

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<sup>96</sup> Belgium, Germany, Greece, Lithuania, the Netherlands and Romania.

of loss of nationality (L14).<sup>97</sup> Seven of them are establishing time limitation. Croatia forbids the withdrawal after the age of 14; Finland the age of five; France, Portugal, Romania, Slovenia the age of 18; the Netherlands within five years after having been found.

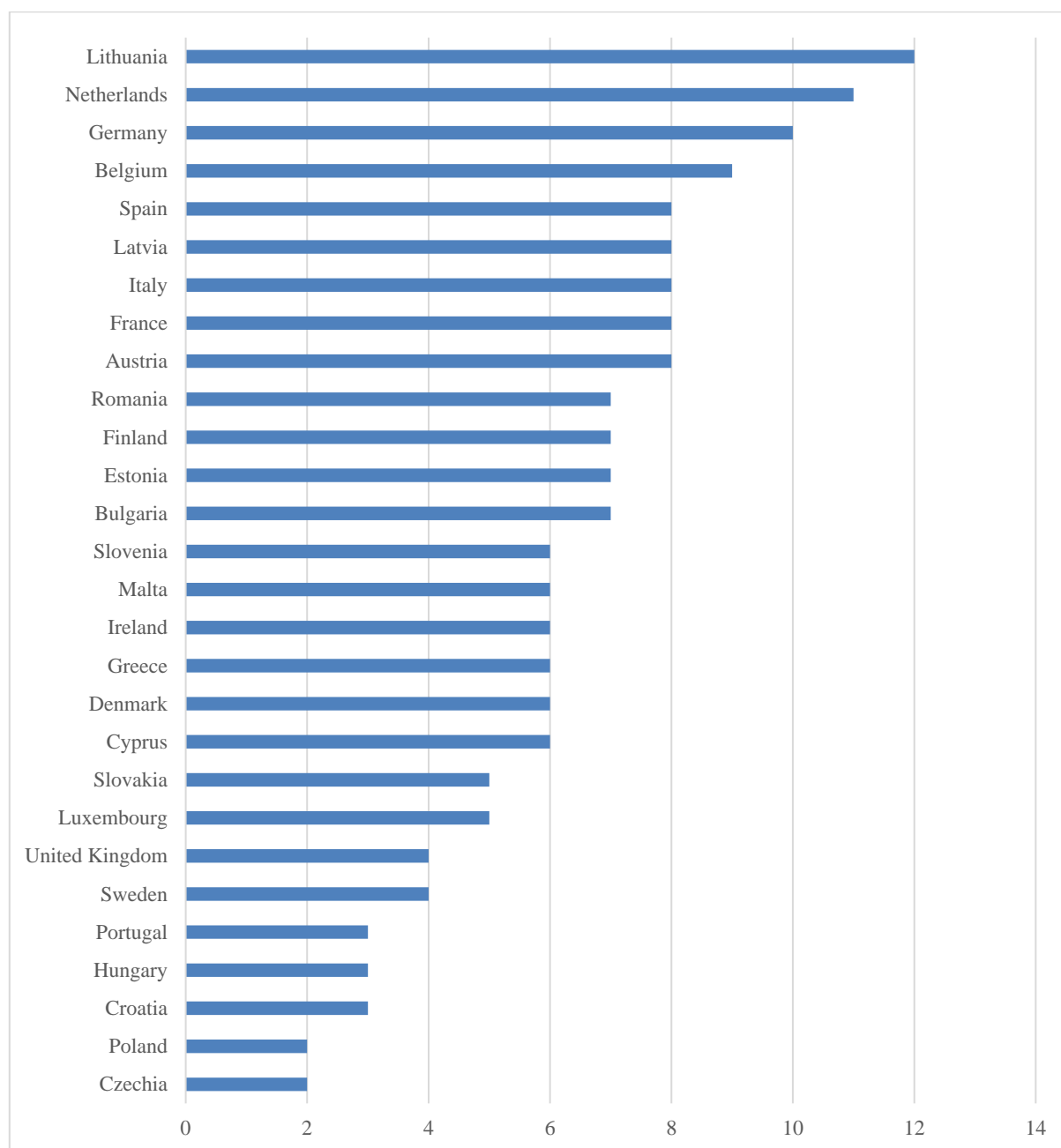
#### **4. Conclusion**

Allegiance is neither perpetual nor secure in the EU. If citizens can renounce their nationality in every Member State, they can also involuntarily lose their nationality in every Member State. A table based on the number of grounds for revocation per Member State maps the extent to which nationality is guaranteed in the European Union – the lower the number, the more secure the nationality. The table shows that two grounds are the minimum (Czech Republic and Poland) and twelve the maximum (Lithuania), out of a theoretical maximum of sixteen. These data, while useful to provide a broad perspective, do not sufficiently indicate the practical degree to which nationality is secure among Member States. The way legislation is implemented also determines the extent to which nationality is protected. The situation of the United Kingdom demonstrates this fact quite well as the country is ranked among the states with lower scores (three grounds), but the way it implements its legislation makes its nationality very fragile (see above 3.1.2.). Moreover, certain grounds like L13a are more a legislative protection against the strict application of civil principles than a clear indication of the uncertainty of the nationality (see above 3.2.5.(2)).

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<sup>97</sup> Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

**Table 1: Number of grounds for loss of citizenship per Member State (source: GLOBALCIT)<sup>98</sup>**



The best provision for safeguarding nationality, regardless of the different grounds specified in the legislation of Member States, lies in European case law. Both legitimacy of legislations of Member States regarding international standards, and proportionality of individual measures of deprivation regarding human rights, are explored and firmly controlled by the Courts of Luxembourg and Strasbourg. European case-law represents, beyond the categories of the legislation and the technical nuances, an established law that binds together European principles and rules on nationality deprivation.

<sup>98</sup> Mode L15 (Loss of other reasons) is omitted for consistency reasons; other modes are updated.

**Author contacts:**

**Jules Lepoutre**

Université Côte d'Azur

Faculté de Droit et Science Politique

Avenue Doyen Louis Troabas

06050 Nice Cedex 1

France

Email: [jules.lepoutre@univ-cotedazur.fr](mailto:jules.lepoutre@univ-cotedazur.fr)



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