PATRIOTS
FOR EUROPE FOUNDATION

WITHDRAWAL AND FORFEITURE OF NATIONALITY IN EUROPE

A study commissioned by the Patriots for Europe Foundation

Contents

Introduction

There has probably never been so much talk about forfeiture of nationality as there has been in the last ten years. While history undoubtedly bears the painful traces of political outbursts over the issues surrounding access to and loss of nationality[1], the contemporary era has seen a fairly profound change in the terms of this debate.

Firstly, and in contrast to the historical circumstances that once saw mass forfeitures from nationality established as public policy, the debates taking place today are taking place at a time when the contemporary state is suffering from acute and growing contestation. For at least thirty years, it has been constantly repeated that the state "*cannot solve real problems such as ecological risks, economic crises, global immigration and the emergence of civil wars on a global scale*".[2] This postulate of the obsolescence of the state form goes hand in hand with a liberal discourse advocating the removal of the state from all economic and social intervention; a discourse denying it any legitimacy to impose collective choices in the name of a post-modernism that supposedly makes the individual the alpha and omega of all governance. The result for both individuals and societies is a widespread loss of reference points, which obviously also affects power and institutions. As everything that once seemed to be "taken for granted" is now being called into question, contemporary societies are becoming anxious about the situation, and many institutions that were once the embodiment of the state are now at odds with these developments: from schools to the workplace, from the armed forces to social protection systems, not to mention political representation, nothing seems likely to function as it did before.

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1 Firstly, in the aftermath of the First World War, the dissolution of the Austro-Hungarian Empire and the redrawing of borders as a result of various treaties led to an increase in the number of cases of collective loss of nationality, resulting in numerous situations of statelessness. Secondly, in France, as part of the policy pursued by the Vichy government from 1940 to 1944, many French nationals were deprived of their nationality (whether of origin or acquired). The laws of 22 and 23 July 1940 (JO of 23 July, p. 4589 and 24 July, p. 4591) introduced two distinct procedures: "*On the one hand, a procedure for the retroactive withdrawal of the acquisition of French nationality (...), which was applied to some 15,000 people, including a large number of Israelis; on the other hand, a specific forfeiture procedure (...) affecting exiles hostile to the regime and primarily resistance fighters of Gaullist persuasion*", A.-C. Decouflé, "La politique de la nationalité dans les chiffres" (Nationality Policy in Figures), in *Droit et politique de la nationalité en France depuis les années 60* (Nationality Law and Policy in France since the 1960s), Edisud, Aix-en-Provence, 1993, p. 91. These measures were cancelled by the order of 9 August 1944 (JO of 10 August 1944, p. 688).

[2] Jacques Chevallier, "L'Etat-Nation" (The Nation-State), RDP, 1980, p. 1291.

At this time of profound change, criticism of the state is becoming ever more acute, and there is today an undeniable "*malaise of the state form, a crisis of the state, an overall pathology that calls it into question as a mode of political organisation, that affects its concept, and not just a few short-term situations? Questions about its legitimacy and its glaring inadequacies are currently plunging the state into an acid bath, [so today] globalist themes (...) are even enjoying a revival, in conjunction with the intensification of exchanges of all kinds. This strengthens the currents traditionally hostile to state sovereignty, which is seen as an empty or dangerous myth whose gradual erosion should pave the way for its radical overthrow*".[3] In addition to these tensions affecting the organisational and political structure of the state, there are others affecting its very organic essence: the body politic; in France, the nation.

The crisis facing the state affects its very identity. Western societies, now fragmented, do not know how to respond to a crisis that has become structural and affects all institutional and social norms. They are also now faced with the presence, over the last twenty to fifty years depending on the country in question, of large minorities of people of foreign origin, some of whom are significant in number and some of whom have expressed a desire to live differently, according to other values (some of which are antagonistic to those of the host societies). Furthermore, the long-term presence of communities of foreign origin on the territory of a state tends to affect the political reality of the nation in terms of the legal mechanisms governing the political entry of individuals into the various national communities.

Whatever the criterion for nationality, it is based on presumptions. Presumption of the transmission of the fundamental values of the country and its culture through heredity and filiation as far as *jus sanguinis* is concerned, presumption of the effectiveness of education and integration resulting from birth and lasting residence on the territory for *jus soli*[4]. However, these presumptions on which the right of access to nationality is based are now in crisis, affected in their very principle by the creation and maintenance on the territory of communities of foreign origin attached to living "here" as they lived "there". As a result, procedures for access to nationality tend to

[3] Serge Sur, "Sur quelques tribulations de l'Etat dans la société internationale" (On Some Tribulations of the State in International Society), RGDIP, 1993, pp. 881-882.
[4] See Bertrand Pauvert, *Entre intégration et assimilation - l'accès à la nationalité en Europe* (Between Integration and Assimilation - Access to Nationality in Europe), Report for the Patriots For Europe Foundation, 2021, pp. 10-12.

become ineffective, operating in part "in a vacuum", creating "*de jure* nationals" in a purely objective manner, without the subjective elements on which the logic of cultural and social assimilation is traditionally based being verified. As a result, legal nationality, however obtained, sometimes tends to be no more than a social, spatial nationality, the result of mere temporal and geographical integration into a given territorial area; a simple administrative criterion covering no reality other than legal.

The reality of this situation is becoming clearer every day in the many demonstrations in which people of foreign origin claim to be closer culturally and emotionally to their country of origin (or their parents' country of origin) than to the European country in which they live and reside, even though they hold the nationality of that country.[5] Whatever the virtual and mythical nature of this claimed membership, it has the effect of making the foreign cultural dimension of the people living in these communities more "visible" and reinforcing it, to the detriment of their official legal national belonging. Furthermore, this situation is reinforced by a form of Islamic identity revival that can be observed at the same time; an Islam that is often idealised and mythologised and that sometimes tends, far from any serious theological knowledge, to become a real "replacement nation". The destabilisation of the Syrian-Iraqi region from 2011 onwards and the ensuing civil war have greatly facilitated the departure of volunteers from European countries to fight in this area.[6] It is particularly revealing that most of these foreign volunteers have the nationality of the European country from which they are leaving.[7]

Furthermore, insofar as the states of departure are politically or even militarily committed against the states of arrival or one of the parties to the conflict, these foreign fighters are likely to be considered traitors, since it is commonly understood that treason is committed by "*the individual who bears arms against their*

[5] We are thinking in particular of attitudes at sporting events – and especially football matches – when the country of origin meets the country of residence, participation in the electoral operations of the country of origin when there is binationality, the display or wearing of the flags of the countries of origin, at celebrations or weddings, etc.

[6] See appendix 4 "Nombre d'habitants partis vers les zones de combat Syro-Irakiennes"(Number of Inhabitants Leaving for Syrian-Iraqi Combat Zones), p. 123.

[7] As far as France is concerned, according to a study by Marc Hecker based on the backgrounds of 137 individuals convicted in France in jihadist cases, 91% of these individuals have French nationality: *137 nuances de terrorisme. Les djihadistes de France face à la justice* (137 Shades of Terrorism. France's Jihadists Face Justice), IFRI Studies, *Focus Stratégique*, Apr. 2018, No. 79, p. 23.

homeland".[8] Consequently, the theme of this study boils down to a simple question: what should be done with these traitors? This question has been reinforced by the sheer scale of the phenomenon[9] and by the fact that this situation, far from being confined to France alone, can be found in almost all European countries, including the Netherlands, Belgium, Denmark and the United Kingdom.

In this context, a public debate has emerged on the merits of extending and renewing decisions to strip these people of their nationality. The concordance between the nation of the heart and that of the law has given rise to reflection on how to deal with the situation of nationals who feel so close to other allegiances that they may go so far as to take up arms against the country in which they have lived most of their lives and whose nationality they also possess. When he was Prime Minister of France, Manuel Valls summed it up simply: "*A legitimate question arises as to the consequences to which you are exposed when you decide to attack the nation to which you belong, either because you were born there or because it welcomed you*".[10]

One of these consequences would therefore be the forfeiture of nationality (or its withdrawal) from nationals who are no longer worthy of it.

Nationality is usually defined as "*the legal and political belonging of a person to the constituent population of a state*"[11]; this formulation simplifies the words used since 1955 by the International Court of Justice, for which: "*Nationality is a legal bond based on a social fact of attachment, an effective solidarity of existence, interests and feelings, combined with reciprocity of rights and duties. It can be said to be the legal expression of the fact that the individual to whom it is conferred, either directly by law or by an act of authority, is in fact more closely*

[8] www.cnrtl.fr/definition/trahison; punishable by law, treason in France is dealt with in Chapter I: *De la trahison et de l'espionnage* (On Betrayal and Spying), of Title 1 of Book 4 of the Criminal Code: art. 411-1 to 11 The various articles of this Chapter all refer to the act of delivering to "*a foreign power, a foreign company or organisation or one under foreign control*" documents, information, etc. that are likely to harm the fundamental interests of the nation; they therefore apply without difficulty to the situation of nationals who have left to fight in the ranks of foreign forces hostile to France.

[9] While it is difficult to put a precise figure on the number of volunteers from European countries who have gone abroad to fight, the most frequently cited figures are around 10,000 from Western countries [Canadian Security Intelligence Service, *Le phénomène des combattants étrangers, la sécurité et les tendances connexes au Moyen-Orient* (The phenomenon of foreign fighters, security and related trends in the Middle East), in Regards sur le monde : avis d'experts, no. 2016-01-01, 2016, p. 71; www.canada.ca/content/dam/csis-scrs/documents/publications/20160129-fr.pdf].

10 "Le Conseil constitutionnel valide une déchéance de nationalité contestée" (The Constitutional Council Validates a Contested Forfeiture of Nationality), *Le Monde*, 23 Jan. 2015

[11] Paul Lagarde, *La nationalité française* (The French Nationality), 3rd edn, Dalloz, 1997, no. 1, p. 3

attached to the population of the state that confers it than to that of any other state".[12] Today, this definition is recognised by all states and the entire legal community.

As such, and by virtue of its definition, nationality by its very nature has a dual dimension. Nationality is a dual issue, involving both the private sphere and public, collective issues. From the point of view of individuals, from their individual and private point of view, nationality is an element of personal status. In this respect, a person is said to possess the nationality of a country; the verb used clearly emphasises the fact that this nationality, in a way, belongs to them. At the same time, and this time from a collective and public point of view, nationality constitutes the legal and political bond linking the state and its citizens. From this point of view, the German vocabulary of nationality law reflects this situation very explicitly, and probably in the clearest possible way, since the term used there to translate "nationality" is Staatsangehörigkeit, which means, in its literal translation: "*situation of belonging to the state*". If nationality is most often considered today only from its primary angle as an element of personal status, this is undoubtedly because of the contemporary movement to extend personal rights, which has led to less attention being paid to the second dimension of nationality. This is undoubtedly regrettable, because this second dimension is no less important; it may even be considered cardinal.

Allowing the state to define who its nationals are, those individuals it recognises as "its own": nationality is an "*essentially political*" concept.[13] Indeed, it is discriminatory by nature in that it distinguishes between people; for the state, saying who its nationals are has the effect, at the same time, of distinguishing them from foreigners. As a result, in both domestic and international law, nationality discriminates between nationals and foreigners, with both enjoying different rights and duties in terms of their personal legal situation[14]. By including some in the national community, nationality consequently excludes all the others; in so doing, nationality goes to the heart of the state, to its core, and touches on the very essence of politics:

[12] International Court of Justice, 6 Apr. 1955, Nottebohm.
[13] François Terré, "Réflexions sur la notion de nationalité" (Reflections on the Concept of Nationality), *Crit. rev.* DIP, 1975, p. 202.
[14] Traditionally, membership of a state has important consequences in terms of conscription, political rights or diplomatic protection, which apply only to nationals or benefit only them. For example, in military matters, a national is bound by allegiance to their state, whereas a foreigner, especially when resident on the territory of the said state, would be subject only to a simple obligation of loyalty....

the ability to distinguish friend from foe.[15] Nationality is therefore the criterion by which a person belongs to a particular group, and as such it is a highly political concept.

As a legal and political bond, nationality is directly linked to the notion of state sovereignty, the only institution capable of transmitting nationality. Moreover, everyone agrees that although the 1948 Universal Declaration of Human Rights stipulates that "*Everyone has the right to a nationality*", implying that possession of a nationality constitutes a human right[16], this aspirational language has no legal effect whatsoever, as no institution can compel the state to recognise a person as one of its nationals.[17] On the contrary, international agreements stipulate that: "*It is up to each state to determine by its legislation who its nationals are*"[18], since the possession of a nationality does not depend solely on the will of the individual. If a person has the nationality of a state, it is because that state agrees to recognise that person as one of its own.

A political concept, nationality also touches on ideology, in that: "*the policy of nationality clearly reflects (...) an ideological conception of national construction*".[19] A political concept that reflects national identity, nationality is also a body of legal techniques, which involves determining the conditions under which the state transmits its nationality. The authorities attribute their nationality according to the criteria that appear to be most likely to facilitate the achievement of their political objectives; nationality law determines the various ways in which a person may acquire nationality and the ways in which they may be deprived of it.

Nationality is thus at the convergence of two wills: that of the individual to join a state[20] (or to remain within it) and that of the state to recognise the individual

[15] Carl Schmitt, *La notion de politique - théorie du partisan* (The Notion of Policy - Partisan Theory), Calmann-Lévy, Paris, 1972.
[16] Art. 15 of the Universal Declaration of Human Rights of 10 December 1948; resolution no. 217-III of the United Nations General Assembly.
[17] Although, in the context of an international dispute, a court may order a state to treat a person as one of its nationals for the purposes of resolving the dispute in question, this cannot have the effect of requiring that state to confer its nationality on that person.
[18] Art. 1 of the Hague Convention of 12 Apr. 1930 concerning certain questions relating to the Conflict of Nationality Laws, *League of Nations Treaty Series*, vol. 179, p. 89.
[19] Jacqueline Costa-Lascoux, De l'immigré au citoyen (From Immigrant to Citizen), La Doc. fr., Paris, 1989, p. 115.
[20] In truth, it is more the desire to join a people, a nation, that is at stake; it is an expression by the individual of their "desire to live together" with the community they are asking to join. As the state personifies the national community, the individual is therefore asking the state to recognise them as one of its own.

as one of its own. The law distinguishes between nationality acquired by attribution and nationality acquired by acquisition. Nationality is attributed when a person receives it at birth; in this case, nationality is sometimes referred to as "original". On the other hand, nationality is acquired when it is obtained by a person after birth. It is in these cases of acquisition of nationality that the presence of the state in the process of access to nationality and the individual's desire to become a national of that state are most clearly apparent, since the granting of nationality constitutes a novation. Whichever method of access to nationality is envisaged, it is the meeting of two wills that will be observed at that precise moment. Either the person asks to acquire nationality, a request that must then be accepted by the state (naturalisation procedure); or, on the contrary, the person declares that they possess nationality, a step to which the state is in a position to object (declaration of nationality procedure). This situation shows that, in any event, the state remains free to recognise its nationals and can never be obliged to do so. It is this situation that explains both the existence of situations of multiple nationality, and the ones of absence of nationality or statelessness.

Just as it can decide who its nationals are, the state can also decide who is not or who is no longer a national. If the meeting of wills defines the bond of nationality, the law of nationality also considers the conditions for establishing the disappearance of the bond between the state and the individual; it is then a question of considering the conditions set by the law for the loss of nationality. The law governing loss of nationality is also dual; it may be initiated by the individual or by the state. This break reflects the desire of one or other of the parties to stop "living together" when the desire to do so no longer exists. The end of the relationship between the national community and one of its members cannot be the result of chance: "*French nationality is never lost by operation of law. It is always lost as a result of a declaration by the person concerned, a decree or a judgment*".[21] The idea that governs the law on loss of nationality lies in the concordance between the reality of a person's life and the effectiveness of their legal link to a state: "*If it is accepted that nationality, in the legal sense of the term, must express membership of a certain community, often referred to as de facto nationality, it follows that de jure nationality must be withdrawn from a person who, having belonged to this*

[21] Mariel Revillard, "Observations sur le droit de la nationalité" (Observations on Nationality Law), Répertoire Defrénois, 1st part, 1997, p. 637.

de facto community, no longer belongs to it".[22] Apart from the case where the legal conditions for acquiring nationality have not been met, nationality may be withdrawn[23], it is possible to distinguish two situations: "*either at their own request, a French national may ask to lose their nationality, or repudiate it; or they may incur the loss of it by their actions. (...). Sometimes, finally, the loss of nationality is a forfeiture*"[24]; what is true in France can be observed in the other countries considered.

Firstly, a person who feels closer to a state other than the one of which they are a national may request to be removed from that first affiliation in order to cease to be recognised as belonging to a given state; depending on the case, this is a genuine right to leave the national community, which the state can only accede to, or a simple request to which the state is free to agree or not. The principle on which these procedures are based is that the emotional and subjective ties that are supposed to unite a person with a given nation have disappeared; the person then has no more than a simple legal link with the state in question, which does not correspond to any lived reality. This situation justifies the dissolution of the legal bond constituted by nationality. In fact, this link can only be understood with regard to the existence of a desire to continue to share a common destiny with the other members of the national community. A person may renounce a nationality because it is not effective, especially if they have another nationality to which they feel more attached. French nationality law[25] provides for this situation in a number of cases; similar situations exist in other states. Apart from the few cases in which a person has a genuine right to abandon a nationality that they possess but which no longer has any meaning for them, and which will not be considered in this study, certain situations give nationals the simple possibility of requesting to be released from their allegiance to a state. In this second hypothesis, it is up to the state to authorise this departure from the national

[22] Henri Batiffol, "Évolution du droit de la perte de la nationalité française" (Developments in the Law on Loss of French Nationality), *Mélanges Marc Ancel*, t. 1, Pédone, 1975, p. 244.
[23] Situation of fraud or error; see below, "Procedural fraud", p. 47.
[24] Jean Fourré, "Le Conseil d'Etat et la nationalité française" (The Council of State and French Nationality), *EDCE*, 1978-1979, no. 30, p. 97.
[25] French nationality may be repudiated by a person born outside France and only one of whose parents is French (art. 18-1 of the Civil Code), by a French person by virtue of the double *jus soli*, if only one of their parents was born in France (art. 19-4 of the Civil Code), by a French person by birth and residence in France (art. 21-8 of the Civil Code) and by a child who has become French following the acquisition of French nationality by one of their parents (art. 22-3 of the Civil Code). The same applies to nationals who possess or acquire another nationality: they may declare that they wish to lose their French nationality (art. 23-2 of the Civil Code) if they have reached the age of majority and habitually reside abroad (art. 23 and 23-5 of the Civil Code), provided that they have fulfilled the obligations imposed by the National Service Code (art. 23-2 of the Civil Code).

community[26], and the release from the bonds of allegiance only occurs when the other nationality held proves, on examination, to be much more effective than the first.

Secondly, and in the same way, the state may initiate the termination of nationality, given that "*the bond of nationality concerns the state as well as the national, and is not merely the result of an individual will; it expresses a reality whose existence can be objectively ascertained*"[27]; this is when the forfeiture or loss of nationality intervenes. In this case, it is the public authorities that choose to withdraw a person's nationality. With the notable exception of Sweden[28], all the states considered in this study have procedures enabling the public authorities to exclude a national from the national community by withdrawing their nationality. Everywhere, these procedures are used to punish a person's behaviour and attitudes, which are deemed to show that the person does not belong to the national community. These procedures for exclusion from the national community penalise a member of that community whose way of life shows that, notwithstanding their legal status and possession of nationality, they behave as if they were a foreigner in law.

Loss of nationality refers to the idea of forfeiture. Although in the sense used in this study, the term evokes the "*legal loss of a right for failure to fulfil the obligations attached to it*"; the word itself dates back to the twelfth century, when it had only a simple moral dimension, taking on the meaning of "deprivation of a right" only later, in the seventeenth century.[29] It was only when the concept of nationality took on its modern meaning, with and after the Revolution, that the hypothesis of a "forfeiture of nationality" was able to take on its contemporary meaning, which consists of a "*sanction consisting*

[26] This is the case when a French national and their ascendants have resided abroad for at least fifty years and no longer possess their nationality other than by descent; if they consider themselves to be more foreign than French, they may apply to be released from their allegiance, by decision of the public authorities (art. 23-6 of the Civil Code). The desire to avoid the artificial possession of nationality by a person with no ties to the country is further demonstrated by article 23-4 of the Civil Code. In the latter case, loss of nationality is effected by decree; the aim is to respond to the request of a French person holding another nationality after examining the reality of residence outside France or the clearly established desire to settle outside the country.

[27] H. Batiffol, *op. cit*, p. 254.

[28] Sweden has only one case of loss of nationality, which concerns only the situation of a Swedish national who, at the age of twenty-two, was born abroad, has never had their domicile in Sweden and has never behaved in such a way as to suggest that they would have a link with Sweden. In any event, by a declaration made before reaching the age in question, such a citizen may be authorised to retain their Swedish nationality: Swedish Nationality Act of 1 July 2001, section 14 (*Lag 2001:82 om svenskt medborgarskap*). This loss of nationality therefore relates more to a situation in which the links between the person and the state of which they are a national have disappeared than to a situation in which the person is stripped of nationality because of bad behaviour that the state wishes to punish; see below, "Social behaviour", p. 41.

[29] Centre national de ressources textuelles et lexicales (CNRTL, National Center of Textual and Lexical Resources): www.cnrtl.fr/definition/decheance.

of depriving an individual of their nationality, because of their unworthy behaviour or behaviour prejudicial to the interests of the state".[30] Before the Revolution, in a dynastic system based on territorial ties and allegiance to the Prince, "*deprivation of regnal status essentially stemmed from a mechanism of objective loss, far removed from any repressive logic*"[31]; it was then because a subject left the kingdom, without any desire to return, that it was deduced that the link previously existing between the subject and the sovereign had disappeared. From this perspective, what was referred to as "*the loss of citizenship status is the legal expression of what is now seen as a de facto non-membership of this community*".[32]

It was with the revolutionary period that the meaning of forfeiture tended to take on its contemporary dimension. However, it should be noted that the idea of "forfeiture of nationality" was initially difficult to distinguish from that of loss of political citizenship, as the concept of "nationality" had not yet taken the form it has today. With this reservation in mind, in the case of France, it was with the Royal Constitution of September 1791 that the hypothesis of a loss of the status of French citizen appeared, which, for the first time, corresponded to the sanctioning of bad behaviour, whether criminal or social.[33] It was in the wake of this first example that the idea that legislation could be used to punish behaviour deemed reprehensible by some of the state's citizens was consolidated and developed. The various Constitutions of the revolutionary period bore witness to this desire to punish "bad" citizens for their behaviour.[34] Throughout this period, the causes justifying the loss of nationality mainly concerned the situation of nationals who left the country with no intention of returning, while it was not until 1795 that a distinction was made between the deprivation and suspension of rights, the first steps towards differentiating between the loss of nationality and the loss of citizenship. With the French Civil Code of 21 March 1804, the

[30] Association Henri Capitant, *Vocabulaire juridique* (Legal Vocabulary), entry "Déchéance" (Forfeiture), PUF, Quadrige, 2000, p. 250.

[31] Jean-Christophe Gaven, "La déchéance avant la nationalité - Archéologie d'une déchéance de citoyenneté" (Forfeiture Before Nationality - Archaeology of a Forfeiture from Citizenship), *Pouvoirs*, 2017, no. 160, p. 85.

[32] *Ibid*.

[33] Under Article 6 of the Constitution of 3 Sept. 1791, "*The status of French citizen is lost (...) 2° By conviction to penalties that lead to degradation of civic status, as long as the convicted person has not been rehabilitated; 3° By a judgment in absentia, as long as the judgment has not been annulled; 4° By membership of any foreign order of knighthood or any foreign corporation that would require proof of nobility or distinctions of birth, or that would require religious vows*".

[34] Articles 5 and 6 of the Constitution of 24 June 1793 provide for the loss of the exercise of "Citizen's Rights", through naturalisation in a foreign country, the acceptance of functions emanating from a non-popular government or through condemnation to infamous or afflictive punishments, until rehabilitation... Articles 12 of the Constitution of 22 August 1795 and 4 of that of 13 December 1799 provide for this loss for reasons similar to those referred to in 1791.

provisions relating to loss of nationality left the Constitution and were enshrined in law[35], in articles 17 *et seq*, which provide for and distinguish between "*deprivation of civil rights*" by loss of French nationality or as a result of judicial convictions. The loss of French nationality is then justified by the long-term residence outside France or the disloyalty of the national.

The modern form of forfeiture of a national's nationality expressly linked to behaviour deemed reprehensible first took shape with the adoption of the decree on the abolition of slavery on 27 April 1848, article 8 of which provided for the loss of French citizenship for any national who was a slave owner.[36] In a way, this measure was intended to protect what appeared to the legislators at the time to be a fundamental dogma of the country: "*In other words, French nationals were no longer deemed worthy of belonging to the national community, even if they were objectively attached to it more than to any other. The loss of nationality therefore no longer reflects a factual abdication demonstrated by expatriation with no desire to return, but an indignity disconnected from any territorial condition. (...) The loss of nationality is thus part of a deterritorialised approach and a subjective value referential*".[37] The idea behind this approach is that a person who engages in slavery is deemed not to be considered French and no longer deserves to be recognised as such.

Since that date, forfeiture of nationality has had a dimension that is, if not always absolutely infamous, at least negative; for as long as it has existed under that name, forfeiture of nationality has always been associated with the idea of a judgment on the conduct of the national. From the first half of the nineteenth century, the idea of social prescription underpinned the measure of forfeiture: the aim was to set apart from the rest of the national community the "bad
citizen" – someone who, through behaviour considered deviant, undermined the harmony of the political community, or even endangered it. This reality is illustrated firstly by the fact that forfeiture decisions are always taken on the initiative of the state and the public authorities, and secondly by the fact that judicial control over these measures has only been built up very slowly and progressively. Even today, it is particularly significant that

[35] This has not changed since then.
[36] "*It is forbidden for any French person to own, buy or sell slaves, and to participate, either directly or indirectly, in any traffic or exploitation of this kind. Any breach of these provisions will result in the loss of the status of French citizen*"; decree abolishing slavery, 27 Apr. 1848, art. 8.
[37] Jules Lepoutre, Nationalité et souveraineté (Nationality and Sovereignty), Thèse Droit, Lille, 2018, p. 314.

in three quarters of the European states considered in this study, the measure of forfeiture of nationality is based on a decision by the public authorities and their administrations, whereas in only a quarter of them is it based on a judicial mechanism and the intervention of a court.[38]

It is important to note, however, that at the time of its legal creation, loss of nationality, then commonly referred to as "forfeiture of nationality", did not yet distinguish, among the nationals to whom it might apply, according to the way in which they had acquired nationality. Forfeiture of nationality was therefore a measure that could be applied both to nationals who had acquired nationality by attribution and to those who had acquired it by acquisition. The legal distinction between a forfeiture measure aimed solely at nationals by acquisition and a withdrawal decision affecting all nationals will only emerge later.

In fact, the creation of a forfeiture measure specifically targeting only those of foreign origin who had acquired nationality was even more recent and had its origins in the rise of a social discourse pronouncing distrust of foreigners, a discourse that was reinforced by the suspicion caused by the existence of war. From that point onwards, the forfeiture of nationality could be seen as a political weapon for expelling "bad" people from the community of citizens. It is important to bear in mind, however, that this measure of "forfeiture" specifically affecting neo-nationals who have acquired the nationality of a state does not replace the measures of withdrawal of nationality which are likely to affect all nationals, whether they possess their nationality by attribution or acquisition, but is additional to them.

From the twentieth century onwards, in the context of loss of nationality decided by a state against one of its nationals, there has been a general regime of withdrawal of nationality that applies to all nationals, to which is sometimes added an additional, special regime of forfeiture of nationality aimed specifically at neo-nationals only.

The general system for withdrawing nationality essentially follows the rules established during the French Revolution, in continuity with the Ancien-Régime. Based on the provisions of the Civil Code, it is first and foremost military service abroad or acceptance of public office conferred by a foreign government that justifies the loss of French

[38] See Appendix 3 "Procedures for implementing the withdrawal and forfeiture of nationality", p. 121.

nationality[39]; these provisions of the 1889 law are repeated almost word for word in the 1927 law[40]. On the eve of the Second World War, a decree-law of 1938 broadened the possibilities for pronouncing the loss of French nationality. Under this decree, the situation of a French national who, while holding the nationality of a foreign country, "*behaves in fact as its national*"[41] was added to the previous cases of loss of nationality. These measures were taken over, virtually unchanged, in the post-war period by the Nationality Code introduced in 1945[42] and have been maintained since that date without any major changes to their wording, and now appear in articles 23-7 and 23-8 of the Civil Code. The history of the special forfeiture regime for neo-nationals is more eventful.

It was with the outbreak of the First World War that the concept of forfeiture of nationality as such appeared in French law. The outbreak of war, even before the notion of "fifth column" was invented, led to the adoption of provisions that particularly affected the nationals of foreign powers with which the country was at war. Supposed to be by nature supporters of the country whose nationality they held, these foreigners were frequently suspected of espionage, and as such were subject to police measures. While these foreign residents were often expelled, as was still the case in 1870[43], in 1914 they saw their rights restricted[44], before being grouped together and collectively interned; similar measures were repeated during

[39] Art. 17 of the French Civil Code, as amended by art. 1 of the Nationality Act of 26 June 1889 (JO of the 28th, p. 2977).
[40] Art. 9 of the law of 10 August 1927 on nationality (JO of the 14th, p. 8697); curiously, the law no longer mentions unauthorised military service abroad.
[41] Art. 9-8° of the law of 10 August 1927, resulting from the decree-law of 12 Nov. 1938 on the situation and police of foreigners (JO of the 12th, p. 12,920), art. 22.
[42] Art. 95 and 96 of the French Nationality Code, resulting from ord. no. 45-2441 of 19 Oct. 1945 on the French Nationality Code (JO of the 20th, p. 6700).
43 A decree dated 28 August 1870 by the Governor of Paris enjoined individuals "*belonging to one of the countries currently at war with France (...) to leave Paris and the Seine department within three days and to leave France or withdraw to one of the departments south of the Loire*", on pain of being handed over to the military courts, JO de l'Empire français (Official Journal of the French Empire), 29 August 1870, p. 1.
[44] Decree of 2 August 1914 on measures to be taken with regard to foreigners stationed in France (JO of the 3rd p. 7084). On their situation within the country, see in particular Jean Signorel, *Le Statut des sujets ennemis. Le Droit français pendant la guerre* (The Status of Enemy Subjects. French Law During the War), Berger-Levrault, 1916. "*For reasons of public order (espionage in the service of the enemy, possible sabotage), the aim is to disable a population a priori suspected of hostility towards France, as well as from a military point of view – by avoiding expulsion – to deprive the enemy of the resources of a mobilisable population, all the more interesting as it is familiar with the country against which the war is being waged (possible source of scouts and personnel for intelligence services)*", writes Jean-Claude Farcy, "Les Camps de concentration de la première guerre (1914-1918)" [Concentration Camps in the First War (1914-1918)], in *Les Cahiers de la sécurité intérieure*, 1994, no. 17, p. 54; see also, by the same author, *Les camps de concentration français de la première guerre mondiale (1914-1920)* [French Concentration Camps of the First World War (1914-1920)], Éditions Anthropos, Paris, 1995.

the Second World War[45]. This approach can be found in all war-torn countries. Everywhere, residents with the enemy's nationality were suspected of being, in essence, the enemy's accomplices. Suspicion was widespread, and far from being confined to foreigners, it also targeted nationals who were feared to be supporting the enemy. The newspaper *L'Action française* denounced the presence in France of foreigners of French nationality, veritable appendages of the enemy, hidden behind a facade of nationality[46].

The war led the government to develop a similar mistrust of former nationals of enemy powers who had acquired French nationality. This led to the adoption in 1915 of a law authorising the government to revoke naturalisation decrees obtained by former subjects of powers at war with France[47]. As this measure proved to have a very limited effect[48], a second law with the same objective was passed on 18 June 1917[49]; although this law was applied more widely, it too only affected a relatively small number of naturalised French citizens. Far from petering out in the aftermath of the war, these exceptional measures were perpetuated in 1927. While the Nationality Act of 10 August 1927 was liberal in many respects, making it easier for foreigners to acquire French nationality, it also stipulated that: "*In the case of a French national who, having acquired French nationality at their own request or at the request of their legal representatives, is declared stripped of that nationality by judgment*" if they have committed acts contrary to the internal and external security of France or has engaged, for the benefit of a foreign country, in acts incompatible

[45] Decree-law of 1 Sept. 1939 relating to prohibitions and restrictions on dealings with enemies (JO of the 4th, p. 11087); see Anne Grynberg, "1939-1940: l'internement en temps de guerre les politiques de la France et de la Grande-Bretagne" (1939-1940: Internment in Wartime the Policies of France and Great Britain), *Vingtième Siècle. Revue d'histoire*, 1997, vol. 54, pp. 24-33.

[46] Ch. Maurras, "Le Midi esclave" (The Enslaved Midi), L'Action française, 1 July. 1907, electronic reprint, 2012, p. 19; www.maurras.net/pdf/maurras_le-midi-esclave.pdf.

[47] The law applies to any foreigner who has been naturalised as a French citizen and who has taken up arms against France or left the country to evade a military obligation or lend any assistance whatsoever to an enemy power. In addition, article 2 of the law establishes the principle of a review of all naturalisation decrees issued between 1 Jan. 1913 and the outbreak of war: law of 7 Apr. 1915 authorising the government to revoke naturalisation decrees obtained by former subjects of powers at war with France (JO of the 15th, p. 238).

[48] In 1917, a press release from the Chancellery noted that 124 withdrawals of naturalisation had been pronounced by decree on the basis of the law of 7 April 1915; see Gérard Légier, "La législation relative à la nationalité française durant la Première Guerre mondiale" (Legislation on French Nationality During the First World War), *Crit. rev. DIP*, 2014, p. 783.

[49] Law of 18 June 1917 amending the law of 7 April 1915, authorising the government to revoke naturalisation decrees obtained by former subjects of powers at war with France (JO of 1 Sept., p. 335); 427 disqualifications were pronounced on the basis of this new law: Patrick Weil, *Qu'est ce qu'un Français* (What is a Frenchman?), 2nd edn, Gallimard, 2005, p. 552, note 61.

with the status of French citizen and contrary to the interests of France"[50]. Mistrust of neo-nationals from states with which a country is in a belligerent situation is not limited to France, and it is worth remembering that, without there having been the slightest decision to revoke nationality as such, after the attack on Pearl Harbor, Presidential Decree 90[66], signed by President Roosevelt on 19 February 1942, allowed the administrative internment in detention camps not only of all Japanese nationals living in the United States, but also of American citizens of Japanese origin[51]!

These measures were part of a climate of mistrust towards naturalised citizens. For a long time, this mistrust was reflected in the fact that the new national, the naturalised foreigner, although fully French, only had access to a lesser political citizenship, reduced in comparison to that of other nationals. The 1889 law on nationality thus stipulated that although naturalised foreigners enjoyed all the civil and political rights attached to the status of French citizen, "*they are not eligible for election to the legislative assemblies until ten years after the naturalisation decree*"[52]. This mistrust was subsequently extended and reinforced, since the 1927 Nationality Act, while extending the disqualification mechanism, also provided that a former foreigner who had been naturalised as a French citizen could not: "*be invested with elective functions or mandates until ten years after the naturalisation decree*"[53]; the ten-year requirement was thus extended to all elective functions, whether political or even professional mandates! The 1945 ordinance establishing the nationality code extended the scope of these provisions even further, adding a further five years to the ten-year period of ineligibility for election before a naturalised person could become a voter, join the civil service or be appointed to a ministerial office[54]. It was not until

[50] Art. 9 of the Nationality Act of 10 August 1927 (JO of 14 August 1927, p. 8,697); Article 10 provides that forfeiture may occur "*within ten years of acquiring French nationality*".

[51] The legality of this measure was recognised in 1944: US Supreme Court, 18 Dec 1944, *Korematsu v. United States*, 323 US 214 (1944). More than 200,000 people were detained until the end of the war, 60% of whom were American citizens (they received $25 compensation on their release). Congress apologised to the survivors in 1988 ($20,000 was awarded to each survivor), after a commission of enquiry convened by President Carter recognised in 1980 that the systematic internment of these people, some of them Americans, was due to "*racial prejudice, war hysteria and failed political leadership*" and not to any real defence needs. Similar measures were also taken in Canada.

[52] Art. 3 of the aforementioned Nationality Act of 26 June 1889. [53] Art. 6 of the aforementioned Nationality Act of 10 August 1927. [54] Art. 81 of the aforementioned Nationality Code.

the law of 9 January 1973[55] and, above all, the law of 8 December 1983[56] that naturalised citizens were immediately granted all the rights of French citizens.

These measures deciding on the loss of a national's nationality are far from neutral. Symbolically, they acknowledge the break between a person and a political community; legally, they have the effect of causing that person to lose their nationality. Consequently, this measure is likely to lead to the statelessness of the person, if they did not possess another nationality, if they did not therefore find themselves in a situation of multiple nationalities. *Apatridie* (statelessness), a term coined in France in 1918 – its authors preferring it to the previously used term *Heimatlos* or "without a homeland" – refers to the situation of a person who is not recognised as a national by any state. The term *apatride* (stateless person) designates "*a person whom no state considers to be its national by application of its legislation*"[57], a person who, as a result, does not benefit from the protection of any state and has no assurance as to the rights they may enjoy. Although statelessness may appear to be a reality as old as nationality, it was in the aftermath of the First World War that this situation developed significantly. The dissolution of the Austro-Hungarian Empire and the redrawing of borders as a result of the treaties ending the First World War led to an increase in statelessness, a trend accentuated by "*the political choices of states, with collective disqualifications for reasons 'of party, class, nationality or religion', which gave the issue its international scope from the 1920s onwards*"[58]. This situation led to a genuine awareness on the part of all states; an awareness which subsequently resulted in the negotiation and adoption of several international conventions. Two United Nations Conventions deal specifically with statelessness. The first, of 28 September 1954, relating to their status, aims to regulate and improve the condition of stateless persons by guaranteeing them the most appropriate treatment by the signatory states[59]; a second Convention, of 30 August 1961, explicitly aims to reduce cases of statelessness, and entered into force

[55] Articles 81 to 82-2 of the Nationality Code, as amended by Law no. 73-42 of 9 Jan. 1973 supplementing and amending the French Nationality Code and relating to certain provisions concerning French nationality (JO of 10 January 1973, p. 467).
[56] Art. 2 of Law no. 83-1046 of 8 Dec. 1983 amending the French Nationality Code and the Electoral Code, and abolishing the temporary disabilities affecting persons who have acquired French nationality.
[57] United Nations Convention of 28 Sept. 1954 relating to the Status of Stateless Persons, Art. 1.
[58] Emmanuel Decaux, "L'apatridie" (Statelessness), *Pouvoirs*, 2017, no. 160, p. 73.
[59] United Nations Convention of 28 Sept. 1954, cited above.

since 13 December 1975[60]. Pursuing similar objectives, the European Convention on Nationality was drawn up within the Council of Europe in 1997; "*wishing to avoid, as far as possible, cases of statelessness*", it lays down as a general principle that "*every individual has the right to a nationality*" and that "*statelessness must be avoided*"[61]. For all that, and despite the desire expressed in these international texts to limit or prohibit statelessness, they nonetheless provide for cases in which it is accepted that states may deprive a national of their nationality, notwithstanding the situation in which this withdrawal of nationality may nevertheless have the effect of leading to the statelessness of the person concerned. Although the states considered in this study have signed or ratified several, and sometimes all, of these Conventions, they have often made reservations to their signatures[62].

Finally, it is sometimes mentioned in academic writings or in support of judicial writings, in order to challenge the very principle of statelessness, that the "right to nationality" mentioned by the Universal Declaration of Human Rights corresponds to the "*right to have rights*", theorised a short time ago by Hannah Arendt[63]. Although this is not the subject of the report, it is nevertheless important to note the incongruity of equating a measure of forfeiture of nationality, the consequence of individual behaviour that runs counter to collective values, controlled by the judge, with the totalitarian policies once implemented by National Socialist Germany and the Soviet Union and rightly denounced by Hannah Arendt[64].

However, despite the risk of statelessness that it may entail, over the last twenty years or so, Europe as a whole has seen an increase in the use of measures to withdraw or forfeit nationality, and even the adoption of laws to allow this. This debate has been fuelled first and foremost by the rise of the phenomenon of "foreign fighters", volunteers who leave their country of residence to take part in armed conflicts in other countries. While this phenomenon of "foreign fighters" has undoubtedly always existed, the last ten years have profoundly changed the issues surrounding this situation. In particular, for a long time the conflict zones likely to mobilise significant

[60] United Nations Convention of 30 August 1961 on the Reduction of Statelessness.
[61] European Convention on Nationality of 6 Nov. 1997, respectively Preamble and art. 4.
[62] See Appendices 1 and 2 "Status of ratifications and reservations" to the United Nations Convention of 30 August 1961 on the Reduction of Statelessness and the European Convention on Nationality of 6 Nov. 1997, pp. 115 and 119. [63] Hannah Arendt, *The Origins of Totalitarianism - Imperialism*, (1951), Fayard, 1982, p. 281.
[64] Furthermore, although statelessness is sometimes the consequence of a nationality stripping measure in our study, it is never its objective.

flows of volunteers were far from Europe[65]; but this situation has changed radically since the so-called "Arab Spring" movement began at the end of 2010.

Since 2011, the destabilisation of the Syrian-Iraqi area and the civil war taking place there have encouraged and greatly facilitated the departure of fighters from European countries to this area. Even if it is very difficult to count the exact numbers and origins of volunteers heading for this combat zone, the most frequently reported figures are around 40,000 fighters[66], including just under 10,000 from Western countries[67].

Examined in detail, these figures reveal significant numbers of volunteers for several European countries. France has the unfortunate distinction of being the country that provided the largest number of foreign volunteers to the Islamic State, with a total of just under 2,000 volunteers, followed by the United Kingdom and the Federal Republic of Germany, each of which sent almost 800 people to the Syrian-Iraqi area. Belgium saw around 500 of its citizens join the Islamic State[68], while Sweden, Austria and the Netherlands had 300 and Denmark around 200. Lastly, while the number of people leaving Luxembourg and Italy was negligible, it is estimated that around one hundred people left Switzerland and Europe to join the combat zones of the Middle East[69]. If we add some of the families and friends of these volunteers and their supporters, there are clearly at least several tens of thousands of European residents who feel closer to radical Islamist doctrines than to the states in which they live, even though, as we have seen, they often hold the nationality of those states. The situation is made all the more serious by the fact that almost all of the countries in question were involved in the coalition against the Islamic State, most often by taking part in military operations...

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[65] The country with the highest number of foreign volunteers arriving to fight during this period was Afghanistan, a country that is quite a long way from Europe and not easy to get to, although not impossible.

[66] According to UN Security Council estimates, around 40,000 foreign fighters have joined the ISIS "Islamic Caliphate"; United Nations (UN) Security Council, 25th report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to resolution 2368 (2017) concerning the Islamic State of Iraq and the Levant (*ISIL/ISIS*), *Al-Qaida* and associated individuals and entities, S/2020/53, 20 Jan. 2020, § 7.

[67] Canadian Security Intelligence Service, *The Foreign Fighters Phenomenon and Related Security Trends in the Middle East*, op. cit. p. 71.

[68] This figure makes Belgium, if we consider the ratio of departures to population, the country whose inhabitants have mobilised most massively in support of the Islamic State.

[69] This situation explains why these countries were chosen for this study; see Appendix 4 "Number of inhabitants leaving for Syrian-Iraqi combat zones", p. 123.

In response to betrayal of the homeland, the idea of stripping these supporters of the Islamic State of the nationality of their state of residence has become widespread. In France, it was in the wake of the terrorist attacks on Paris on 13 November 2015 that the President of the Republic, François Hollande, announced to Parliament, meeting in Congress, that he wanted to extend the forfeiture of French nationality; a constitutional bill for the protection of the nation aimed in particular at "*having certain persons born in France forfeit their French nationality*" was even tabled before Parliament[70]. This issue, far from being confined to France, was at the heart of public discussions and debates in many European countries, and several of them amended their legislation to this effect, sometimes several times. In other countries, the discussion and debate did not lead to any changes in the relevant legislation.

In the United Kingdom, it was as early as November 2002 that the law extended the possibility of ordering the forfeiture of nationality of a citizen whose behaviour "*seriously compromises the vital interests*" of the United Kingdom[71]; the wording was amended in 2006 so that the measure could simply refer to a citizen whose forfeiture of nationality was "*in the public interest*"[72]. The text was then amended a third time to allow nationality to be forfeited, despite the fact that this could lead to certain people becoming stateless[73]. Belgium has also seen a number of revisions to its nationality law in order to increase the circumstances in which a national may be stripped of their Belgian nationality. Two laws (of 4 December 2012 and 20 July 2015) extended the possibility of imposing forfeiture of nationality; previously aimed at citizens who had become Belgians and "*seriously failed in their duties as citizens*", Articles 23/1 and 23/2 extended this measure to Belgians convicted of various offences under the Belgian Criminal Code (including terrorism-related offences) and extended the period during which forfeiture could be imposed[74]. In Italy, it was in 2018 that the law governing access to nationality was amended in the same way so that the nationality

[70] Draft constitutional law for the protection of the nation no. 3381, 23 Dec. 2015. The project was finally abandoned in March 2016 due to the irreconcilable positions of the National Assembly and the Senate.
[71] *Nationality, Immigration and Asylum Act 2002*, in that it amends s. 40 of the *British Nationality Act 1981*.
[72] *Immigration, Asylum and Nationality Act 2006*, insofar as it amends s. 40 of the *British Nationality Act 1981*.
[73] *Immigration Act 2014*, insofar as it amends s. 40 of the *British Nationality Act 1981*; in the latter case, only persons who have obtained nationality by naturalisation may be covered.
[74] Art. 23/1 of the Belgian Nationality Code, stemming from the Law of 4 Dec. 2012 amending the Belgian Nationality Code in order to make the acquisition of Belgian nationality neutral from the point of view of immigration [*Moniteur Belge* (Belgian Official Journal), 14 Dec., p. 79,998]; art. 23/2 of the Belgian Nationality Code, stemming from the Law of 20 Jul. 2015 aimed at strengthening the fight against terrorism (*Moniteur Belge*, 5 Aug., p. 49,326).

of persons who had become Italian and had been convicted of terrorism could be withdrawn[75]. Austria has also amended its nationality law in order to add forfeiture of nationality clauses; this was the case in 2014, when forfeiture of nationality was enshrined in law against a citizen who voluntarily joined an armed group in a conflict abroad[76]. Following the terrorist attack in Vienna in November 2020, the law was amended again the following year to allow nationals convicted of terrorism offences to forfeit their nationality[77]. In Germany, similarly, the Nationality Act will be amended in 2019 to specifically and explicitly target German nationals who have chosen to take part in combat operations with a terrorist organisation abroad[78]. The Netherlands, for its part, made a point of allowing nationals who do not respect the essential values of the national community to forfeit their nationality at a very early stage and on numerous occasions; the *Netherlands Nationality Act 1984* has been amended to this effect three times since 2010, with each of the reforms aiming to extend the possibilities for stripping a Dutch national of their nationality[79]. In Denmark, finally, the law was amended in 2004 to allow nationals convicted of disloyalty to the country or its vital interests, as well as acts of terrorism, to forfeit their nationality.[80]

Despite the debates that took place, other states did not wish to extend recourse to forfeiture of nationality, either because their law did not allow it or because the existing provisions seemed sufficient to the public authorities. While nationality

[75] *Legge 1 dicembre 2018, no. 132*, insofar as it amends art. 10bis of the Law of 5 Feb. 1992, *Nuove norme sulla cittadinanza*.
[76] *Staatsbürgerschaftsgesetz 1985* §33-(2) as it results from the *Bundesgesetz, mit dem das Grenzkontrollgesetz und das Staatsbürgerschaftsgesetz 1985 geändert werden* of 29 Dec. 2014.
[77] *Staatsbürgerschaftsgesetz 1985* §33-(3) as it results from the *Bundesgesetz, mit dem das Staatsbürgerschaftsgesetz 1985 und das Symbole-Gesetz geändert werden* of 27 Jul. 2021.
[78] *Staatsangehörigkeitsgesetz (StAG)* §28.2, as amended by the *Drittes Gesetz zur Änderung des Staatsangehörigkeitsgesetzes* of 28 June 2019.
[79] As early as 2010, the law on nationality was revised to allow Dutch citizenship to be withdrawn from people convicted of crimes that have harmed the essential interests of the state (law of 17 June 2010); in 2016, forfeiture of nationality was extended to binational jihadists convicted of terrorism (law of 5 March 2016). Finally, in 2017, the system was extended to nationals who have taken up arms in the service of a foreign state or, more broadly, who have joined an organisation abroad that constitutes a threat to national security (Act of 10 Feb. 2017).
[80] *Lov 2004-05-05 no. 311 om ændring af indfødsretsloven*, art 8B.

enjoys constitutional protection in Sweden[81], a similar debate took place in Sweden in 2005-2006; however, this debate did not lead to any questioning of the absence of a procedure for forfeiture of nationality as a sanction for conduct. A similar debate, in February 2016, on the initiative of elected representatives of the Swedish radical right, led to the rejection by Parliament of the proposed law aimed at allowing forfeiture of nationality.

Similarly, although the Swiss law on nationality has long allowed Swiss nationals with dual nationality to forfeit their nationality on the grounds of their behaviour if it: "*seriously undermines the interests or reputation of Switzerland*"[82], it has not been amended recently. However, the various initiatives taken by elected members of the National Council with a view to extending the cases in which recourse may be had to forfeiture have opened up a debate on the subject, but these attempts do not seem likely to come to fruition due to the lack of a majority in favour of such reforms.[83] The same was true in the Grand Duchy of Luxembourg, where a minority of the Chamber of Deputies wanted to extend the scope for stripping citizens of their nationality, but their views were not heard and the current political balance does not seem to allow such a development to be envisaged in the short term.[84]

The number of residents of European countries leaving for the Syrian-Iraqi area in support of the Islamic State undoubtedly illustrates the fact that Western societies are becoming increasingly fragmented and divided. Within their populations, there are increasingly frequent and significant discrepancies between legal affiliation and personal affinity. The increase in the number of nationals taking up the cause against the country of which they are nationals by joining forces with the Islamic State attests to the reality of this situation and explains the growing debate on the possibility of forfeiting nationality to such nationals. However, these practices

[81] Under *Regeringsformen*, ch. 2, art. 7 (one of the four fundamental laws forming the Swedish Constitution) a Swedish national domiciled (or formerly domiciled) in the country cannot be deprived of their Swedish nationality.
[82] Art. 42 of the Swiss Nationality Act of 20 June 2014.
[83] Even more recently, in January 2022, the Political Institutions Committee of the National Council (CIP-N) rejected the initiative of Ticino elected representative Piero Marchesi seeking to make it possible to forfeit the nationality of the perpetrators of the most despicable crimes: www.blogs.letemps.ch/yohan-ziehli/category/demographie/.
[84] www.lequotidien.lu/politique-societe/menace-terroriste-et-criminalite-ladr-veut-serrer-la-vis/. It should be noted that although Luxembourg's nationality law only allows for forfeiture of nationality in the event of fraud in order to obtain the said nationality, this measure has only been in force since 2008. Prior to this date, Luxembourg law provided for forfeiture of nationality if the person seriously failed in their duties as a Luxembourg citizen, behaved in law as a foreigner or had been convicted of several serious offences; art. 27 of the law of 22 Feb. 1968 on Luxembourg nationality, as amended by the law of 24 Jul. 2001.

do raise questions. In addition to its strong legal-symbolic dimension, forfeiture may still have a direct impact on the rights of individuals and appears to be in a position to restrict them. There is a strong tension between the right of the state (and its population) to legitimate defence and the fundamental rights of individuals. In particular, it is obviously the question of whether former nationals can remain on the territory of which they were previously nationals that needs to be considered.

If access to nationality transforms a "*de facto national*" into a "*de jure national*", the loss of nationality carries out the symmetrical operation, turning a "*de facto foreigner*" into a genuine "*de jure foreigner*", once it has been established that their nationality and membership of the national community are no longer more than objectively legal and subjectively fictitious. Throughout Europe, the idea that governs the law on loss of nationality lies in the necessary concordance between the reality of a person's life and the effectiveness of their legal link to a state. Now, "*if it is accepted that nationality, in the legal sense of the term, must express membership of a certain community, often referred to as de facto nationality, it follows that de jure nationality must be withdrawn from a person who, having belonged to this de facto community, no longer belongs to it*".[85]

Addressing the issues involved in the withdrawal and forfeiture of nationality means first considering the provisions governing the law on loss of nationality in Europe (I); once this has been done, it will be necessary to consider the effect of loss of nationality, especially in that it could lead to the former national's statelessness, and see whether any special rules would then prevent the state from withdrawing its nationality (II). Lastly, it will be necessary to put these provisions into perspective, with regard to existing practices concerning loss of nationality (III).

Chapter 1 - Loss of nationality

Chapter 2 - Withdrawal of nationality and statelessness

Chapter 3 - European practices regarding the withdrawal of nationality

[85] H. Batiffol, "Évolution du droit de la perte de la nationalité française" (Developments in the Law on Loss of French Nationality), *op. cit.* p. 244.

Chapter 1 - Loss of nationality

As a legal and political link between the state and its nationals, nationality is first and foremost a matter for the state, since without a state, there is no nationality. Thus, to say that a person possesses the nationality of a state is to say that the state agrees to recognise that person as one of its own. In this respect, the state; i.e., the social body as a whole, can cease to consider a person as one of its nationals and, to this end,
"forfeit" their nationality. However clear the term "*déchoir*" (forfeit) may be, it needs to be clarified, as it is true that under the angle of our study three different legal terms come together and deserve to be clearly distinguished, even if their meanings are similar in everyday language.

We will refer to the loss of nationality, because the word "*perte*" (loss) designates the "*fact of being deprived momentarily or definitively, in part or in whole, of a thing or a quality of which one had the enjoyment or possession*"[86] and this is the situation of the person targeted by the measure in question. As soon as the state adopts its decision, the person in question loses their nationality and ceases to be considered by the state as one of its nationals. In addition, the term "*déchéance*" (forfeiture) of nationality is most often used in everyday language relating to the subject of our study. While this term designates the action of forfeiting nationality and the situation, the state, of the person forfeited, it also means the "*legal loss of a right for failure to fulfil the obligations attaching thereto*"[87]; the latter definition applies without difficulty to the situation of forfeiture of nationality, given that the measure is marked by a very strong sanctioning dimension. A third term needs further clarification, that of "*retrait*" (withdrawal); withdrawal means: "*action of withdrawing something*"[88] and designates, especially in public law, "*the action of the Administration which causes a previous administrative act to disappear*".

[86] www.cnrtl.fr/ definition/perte/.
[87] www.cnrtl.fr/definition/déchéance/.
[88] www.cnrtl.fr/definition/retrait/.

These differences between the terms, far from being purely semantic, are of definite interest with regard to the subject of our study, when we wish to consider the law on loss of nationality. Indeed, each of these terms refers to different situations and while legal science undoubtedly needs precision, it appears that French nationality law suffers from a form of over-precision in this area. Indeed, whereas all the other legal systems considered in this study use only the word "*déchéance*" (forfeiture) to refer to all cases of loss of nationality, French law uses two different and complementary technical terms: the "*retrait*" (withdrawal) of nationality and the
"*déchéance*" (forfeiture) of nationality, each of these procedures applying to two different situations.

French law distinguishes between two ways of implementing the decision by the public authorities to exclude one of its nationals from nationality, and thus has a general system for the loss of nationality that applies to everyone, to which is added a second, special system. The decision to lose nationality therefore takes two distinct forms. The general regime applies to all French nationals and may be applied at any time in a person's life, whether that person has acquired nationality by attribution or acquisition[89]: it takes the form of a decree withdrawing nationality. The special regime provided for by French law applies only to some French nationals, those who have acquired their nationality; it is limited in time and takes the form of a decree of forfeiture of French nationality.

When we speak of the "*perte*" (loss) of nationality, we are referring to the two French hypotheses of the "*retrait*" (withdrawal) and the "*déchéance*" (forfeiture) of nationality. However, a strict distinction between the withdrawal of nationality, which affects all nationals, whether they have acquired it by attribution or acquisition, and the forfeiture of nationality, which only affects those nationals who have obtained it by acquisition, would not be appropriate for a comparative study in the sense of French law. Indeed, however clear this distinction may be and even if the foreign legal systems studied also know the material duality of the situation referred to in French law, their legal vocabulary relating to loss of nationality does not necessarily use distinct terms

[89] Under Article 17 of the Civil Code: "*French nationality is conferred*" or "*acquired*". In French law, a distinction is made between "*acquisition (...) which necessarily takes place after birth, [and] implies a change of nationality, (...) operates novation. On the other hand, attribution, which is an investiture at birth, (...) [and] seizes the child at the same time as life*", Raymond Boulbès, *Droit français de la nationalité* (French Nationality Law), Sirey, 1956, p. 44.

to refer to one situation or the other. The various nationality laws considered only refer to the loss or forfeiture of nationality without necessarily specifying or distinguishing according to the mode of access to nationality; thus German law, which in its article on "Loss of nationality following membership of the armed forces or a comparable armed organisation of a foreign state"[90] simply states that the provision applies to "a German"[91], without distinguishing according to the mode of access to nationality...

Without dwelling too long on this terminological issue, it should be noted that, in any event, almost all the states considered in the study have procedures for removing from the national community a national whose behaviour is deemed to demonstrate a break in ties with their homeland and compatriots. As has already been pointed out, nationality has two dimensions: private and public. While from the point of view of the individual, it is an element of their personal situation, of what is known as personal status, the situation is quite different from the point of view of the state.

The state is a political community based on the existence of concord within it; as a result, political debates and oppositions involve adversaries rather than enemies. The social construction of this political community has the effect of rejecting the enemy outside the community. Now, from the moment that some of its citizens exclude themselves from the nation by their behaviour, the nation must no longer recognise them as belonging to it. This should come as no surprise, given that there is no obligation to tolerate the existence in the city of people whose only aim is to destroy the entire social order. Indeed, as this wise lesson of political sociology reminds us, concord "*does not withstand the competition of parties whose conceptions of the meaning of the state and of the Constitution are radically divergent*"[92]. Confronted with the disloyalty of a compatriot, the reaction of the political community embodied by the state is precisely to expel that individual from the national community; this is a measure of social proscription. It should be remembered that when the concept of nationality had not yet been developed, the removal of the individual took the form of banishment, a veritable measure of spatial exclusion accompanying and manifesting in the eyes of all the

[90] *Staatsangehörigkeitsgesetz (StAG)*, art. 28; German Nationality Act of 22 July 1913.
[91] "*Ein Deutscher...*", art. 28 of the aforementioned Act of 22 July 1913.
[92] Julien Freund, *L'essence du politique* (The Essence of Politics), Sirey, 1965, no. 153, p. 661.

political exclusion of the former compatriot who had become, as a result of their behaviour, a being truly alien to the political community.[93] Although such penalties no longer exist in Europe, many states have questioned the need to strengthen or create measures enabling some of their nationals who have committed crimes or openly demonstrated their disloyalty to lose their nationality.

In particular, from the moment that nationals of a state take up arms, directly or indirectly, against it, the question arises of how to treat the individual and their actions. Can they be qualified as traitors and treason? The harsh term is not an exaggeration, since it is commonly understood that treason can qualify: "*the individual who bears arms against their homeland*".[94] Denying nationality to the person in question is undoubtedly the most natural response to such acts, and the need for such a measure, or even for it to be strengthened, has arisen in all the European countries considered in this study. The question of the relevance of this social proscription measure aimed at defending and protecting the political community, far from being confined to France, can be observed in all the European states; without it being necessary to go back over all of them, let us recall that in addition to France, the Netherlands[95], Belgium[96], Germany[97], Austria[98] and the United Kingdom[99] have been confronted with it. Everywhere, the need to reconcile the nation of the heart with the nation of the law, symbolised by the possession of nationality and identity papers, has given rise to reflection on how to deal with the situation of nationals who feel closer to foreign allegiances, and sometimes even so close that they

[93] In France, Article 17 of the Penal Code of 1810 provided for a sentence of banishment, which became deportation in 1850 and was finally repealed in June 1960. Penalties of this kind no longer exist in the various legal systems studied, and the measure most closely resembling them would be deportation, with the difference that this measure applies only to foreigners.

[94] https://www.cnrtl.fr/definition/trahison. Treason, which is punishable under criminal law, is covered in France by Chapter I: *De la trahison et de l'espionnage* (On Betrayal and Spying), from Title 1 of Book 4 of the Criminal Code; art. 411-1 to 11. The various articles of this Chapter all refer to the act of delivering to "*a foreign power, a foreign company or organisation or one under foreign control*" documents, information, etc. that are likely to harm the fundamental interests of the nation; they therefore apply without difficulty to the situation of French nationals who have left to fight in the ranks of foreign forces hostile to France.

[95] As early as 2010, the law on nationality was revised to allow Dutch citizenship to be withdrawn from people convicted of crimes that have harmed the essential interests of the state.

[96] In 2015, Belgium extended the possibility of forfeiting people of their nationality.

[97] In 2019, Germany decided to make it possible to forfeit Germans of their nationality if they have enlisted in foreign armed forces or taken part in terrorist activities.

[98] In 2014, the possibility of forfeiting the nationality of citizens who have voluntarily joined an armed group in a conflict abroad was enshrined in law; in 2021, this measure was extended to Austrians convicted of terrorism.

[99] Since 2002, the United Kingdom has increased the number of forfeitures of nationality and made it easier to make use of them, see pp. 90-91.

go so far as to take up arms against a country in which they live and whose nationality they nevertheless possess.

In this chapter devoted to mechanisms for losing nationality, we shall use the distinction made in French law between withdrawal and forfeiture of nationality, even though not all the states under consideration have a specific legal term for each of the situations referred to. Firstly, therefore, we will look at cases of withdrawal of nationality; i.e., the existence of general measures for the loss of nationality affecting all nationals of a state, regardless of the manner in which they hold that nationality. Secondly, we will look at situations of forfeiture of nationality, measures specifically affecting only new nationals who have obtained this status by acquisition.

Withdrawal of nationality, a measure affecting all nationals (Section I)

Forfeiture of nationality, a measure targeting neo-nationals (Section II)

Section I - Withdrawal of nationality, a measure affecting all nationals

Unlike foreign nationals, who only have an obligation of loyalty towards the host state, the situation of nationals reveals a relationship of allegiance linking them to the state of which they are a national. A distant descendant of the relationship that once bound a vassal to their suzerain, allegiance refers to "*a person's obligation of fidelity and loyalty to the political authority (nation, state, etc.) to which they belong*"[100]. This observation has been widely shared since the Classics, and has not been challenged since. Bodin points out that there is a "*mutual obligation*" between the Prince and his subject; an obligation by virtue of which "*justice, custody and protection*"[101] owed by the Lord come into play in connection with the subject's respect for their "*obedience, aid and knowledge of their Lord*". The idea of loyalty is cardinal in the law of nationality and even more so in the law of loss of nationality.

[100] www.cnrtl.fr/ definition/allégeance/.
101 Jean Bodin, *Les six livres de la République* (The Six Books of the Republic), 1576, reed. Fayard, 1986, Book 4, ch. 6, p. 150.

Withdrawal of nationality reveals the vertical dimension of the legal link between the state and the national that nationality represents. Nationality, far from being merely a matter of personal status, is in fact an expression of the loyalty that the state is entitled to expect from its nationals. Lack of loyalty cuts the individual off from the national community and justifies removing them from it. Withdrawal of nationality therefore sanctions the behaviour of a person who ostensibly cuts themselves off from the morals and the nation of which they are a part, regardless of whether that person's nationality was granted to them from the outset or whether they acquired it subsequently.

Withdrawal of nationality first and foremost sanctions the disloyalty of a citizen whose entire political and social behaviour reveals their real foreignness, behind the mask of nationality and legal membership of a particular political community. The strongest image of this necessity is that of the dead branch evoked in the words of Saint John: "*If anyone does not remain in me, they are thrown out like a dead branch*".[102] Anyone whose behaviour shows disloyalty to the group must be excluded. The various laws envisaged by the European states studied verify this hypothesis and punish both the national's lack of political loyalty to the state and their social behaviour in formal contradiction with the mores of the political community.

A. Lack of political loyalty

The idea that governs the law on loss of nationality lies in the necessary concordance between the reality of a person's life and the effectiveness of their legal link to a state. Now, "*if it is accepted that nationality, in the legal sense of the term, must express membership of a certain community, often referred to as de facto nationality, it follows that de jure nationality must be withdrawn from a person who, having belonged to this de facto community, no longer belongs to it*".[103] The disloyalty of a national is first and foremost manifested in the situation of a person who takes up arms against the country of which they are a national. In fact, almost all of the states studied here provide for the possibility of forfeiting the nationality of anyone who joins the ranks of a foreign army or takes up arms

[102] Saint John 15.6.
[103] Henri Batiffol, "Évolution du droit de la perte de la nationalité française" (Developments in the Law on Loss of French Nationality), in *Mélanges Marc Ancel*, t. 1, Pédone, 1975, p. 244.

against their homeland. Beyond military involvement in the strict sense, it is the fact of participating in terrorist actions that may justify loss of nationality.

§1 - Military involvement

Of the eleven states studied, only Sweden and Luxembourg do not envisage the possibility of withdrawing nationality from a national who has joined a foreign army and is fighting against the interests of the country of which they are a national. While the other states all provide for the possibility of punishing the behaviour of traitors by withdrawing their nationality, the way in which this is done varies from one state to another. Some specifically target the fact of taking part in military service (Germany, Austria, France, Italy and the Netherlands), while others incorporate this into a broader category: behaviour by the individual that is detrimental to the interests of their country (Denmark, the United Kingdom and Switzerland); Belgium only envisages this solution for neo-nationals.

This provision illustrates the principle according to which any person may, as a result of their disloyal acts, incur the loss of their nationality, regardless of the manner in which they possess this nationality, by attribution or acquisition. Like the other states considered, France has this possibility.[104] The guiding principle is that a person who takes up arms either directly against their homeland, or indirectly by fighting against its interests, no longer deserves to be recognised as one of its own. This penalty of loss of French nationality is imposed on anyone who works in an army or, more precisely, "occupies" a job there. Under the terms of article 23-8 of the Civil Code, loss of nationality may be ordered against a French national who "*occupies a post in an army (...) or more generally [provides] assistance to it, and has not resigned their post or ceased their assistance notwithstanding the injunction made to them by the government*".[105] This very old provision is based on the idea "*that for a French citizen to place themselves, against the will of their Sovereign, in the service of a foreign Sovereign, is not only an act of foreign allegiance incompatible with the status of French citizen, but also an offence punishable by loss of French*

[104] Jean Fourré, "Le Conseil d'Etat et la nationalité française" (The Council of State and French Nationality), *EDCE*, 1978-1979, no. 30, p. 97.
[105] Article 23-8 also refers to employment in "*a foreign public service or in an international organisation of which France is not a member*"; this situation, which is less serious in itself than taking up arms, also reflects a form of disloyalty that will be considered later.

nationality".[106] This provision is quite old and essentially dates back to Article 17 of the Nationality Act of 26 June 1889[107]; it has however never been called into question or repealed.

The attitude referred to here is more serious than the simple fact that an individual behaves like the national of a second country whose nationality they also possess; it is evidence of genuine treason on the part of a national when they join a foreign army, *especially* if that army is fighting against France, its nationals or its vital interests. The treason is then confirmed even more, especially if they refuse to comply with an injunction to put an end to the situation. Article 23-8 constitutes a real sanction, especially insofar as it can be applied without the national in question possessing another nationality. A decree withdrawing nationality on the basis of Article 23-8 could have the effect of making an individual, formerly French, stateless[108]. However, the absolute rigour of this provision must be tempered by the fact that it is rarely used by the public authorities: no French nationality seems to have been withdrawn on this basis for at least fifty years.[109]

In addition, the wording used by French law is very interesting in that it does not qualify the type of armed force targeted. In particular, it does not specify whether it is the army of a "foreign state" or a state force, which means that the measure of deprivation of nationality can also take effect if the foreign combatant in question has joined a non-state structure. The wording chosen by France could therefore be of particular interest in the case of a compatriot who engages in a so-called "national liberation" rebellion against another state or, more broadly, within a trans-state structure. The article could therefore be applied to French citizens who have joined ISIS, the self-proclaimed "Islamic State";

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[106] R. Boulbès, *op. cit.*, p. 299.

107 JO of the 28th, p. 2977: loses "*the status of French national*: *(...) 4° A French national who, without Government authorisation, takes up military service abroad*". The 1804 Civil Code already envisaged this measure in Article 21: "*any French person who, without Government authorisation, takes up military service abroad, or joins a foreign military corporation, will lose their status as French*".

[108] See below, "Withdrawal of nationality and statelessness", p. 59.

[109] P. Lagarde, *La nationalité française* (The French Nationality), *op. cit*, no. 233, p. 163; since then, the *Journal officiel* has not mentioned any decree issued on this basis. However, the constitutionality of Article 23-8 remains open to question. With regard to Article 25, the Constitutional Council ruled that its provisions could not *"lead to the person being rendered stateless*" and that there was therefore no breach of the requirements of Article 8 of the Declaration of 1789 (principle of proportionality of offences and penalties): Constitutional Council, 23 Jan. 2015, no. 2014-439 QPC, *M. Ahmed S.*, §19). Would the Council take the same approach to Article 23-8, or would it consider that the seriousness of the acts in question would justify the measure having the effect of rendering a person stateless?

in fact, while the state nature of this structure is politically debated, despite the fact that the classic criteria for the legal identification of a state were indeed met, the fact that French citizens have joined an "army" has never been disputed by anyone.

In addition to France, four other states provide for the loss of nationality of nationals who enlist in a foreign army: Germany, Austria, Italy and the Netherlands. The particular situation of Switzerland should also be considered here, since although it does not have any provisions specifically aimed at military recruitment abroad, it does at least have a measure inspired by it. While the general spirit of all these measures is identical to that governing French legislation, it is interesting to consider their specific features.

The situation is particularly interesting in Germany, where the Basic Law has provided since 1949 that: "*German nationality cannot be withdrawn*".[110] This clear statement appears to be an affirmation of the desire not to see a repeat of the events of the National Socialist period, which saw many German nationals forfeited of their nationality between 1933 and 1945 for political, racial or religious reasons[111]. However, as an exception to this principle enshrined in the Constitution, the law on nationality has long provided for the possibility of a German losing their nationality, without this having the effect of rendering them stateless, if they voluntarily join the armed forces of a foreign state without the agreement of the Federal Ministry of Defence[112]. Germany has also extended the possibility of withdrawing nationality in the event of participation in a terrorist organisation[113].

Since its adoption in 1985[114], the Austrian Nationality Law has provided for the loss of citizenship in the event of voluntary enlistment of an Austrian national in the armed forces of a foreign state[115]. In 2014, the possibility of loss of Austrian nationality was extended

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[110] « *Die deutsche Staatsangehörigkeit darf nicht entzogen werden* », *Grundgesetz für die Bundesrepublik Deutschland*, art. 16(1).
[111] This is in particular in application of the law on the revocation of naturalisation and forfeiture of German nationality of 14 July 1933 (*Gesetz über den Widerruf von Einbürgerungen und die Aberkennung der deutschen Staatsangehörigkeit*).
[112] Or any other comparable military organisation; Art. 28 of the Nationality Act of 22 July. 1913. This provision does not apply in the event of fulfilment of the military obligations legally attached to national service.
[113] See below, "Acts of terrorism", p. 38.
[114] *Staatsbürgerschaftsgesetz* 1985, 30 July. 1985.
[115] "*Einem Staatsbürger, der freiwillig in den Militärdienst eines fremden Staates tritt, ist die Staatsbürgerschaft zu entziehen*", *Staatsbürgerschaftsgesetz* 1985, art. 32.

to include the situation of a citizen who "*voluntarily participates in an organised armed group as part of an armed conflict abroad*".[116]

Italian nationality law contains provisions aimed at depriving disloyal nationals of their nationality that are quite similar, even in their wording, to those of French law. Thus, under the law of February 5, 1992, an Italian national "*loses their citizenship (...) if, while performing military service for a foreign state, they fail to comply, at the set term, with the intimation sent to them by the Italian government to abandon it*".[117] Italian law also envisages the even more serious hypothesis, from the point of view of disloyalty, of the defection of one of its nationals on the occasion of a conflict with another state; thus: "*the Italian citizen who, during the war with a foreign state, has accepted or has not abandoned a job or a public career, or has provided military service to that state without being obliged to do so, or has voluntarily acquired the citizenship [of the said state], loses Italian citizenship*".[118]

The Netherlands, finally, has a number of hypotheses for punishing the disloyalty of one of its nationals; hypotheses that have justified three revisions of its nationality law since 2010. Remarkably, prior to this date, Dutch law did not contain any provisions specifically designed to punish the disloyal behavior of a citizen fighting against the country's interests.[119] In 2010, the law on nationality was revised to allow the withdrawal of Dutch citizenship from people convicted of crimes against the essential interests of the state[120]; this measure was extended in 2016 to specifically sanction the situation of binational jihadists convicted of terrorism.[121] Last but not least, in 2017, this provision was extended to enable the withdrawal of the nationality of a sixteen-year-old who: "*voluntarily enlists in the foreign military service of a state involved in combat activities against the Kingdom or against an alliance of which the Kingdom is a member*"[122]; the same

[116] Staatsbürgerschaftsgesetz 1985, art. 33(2); from Federal Amendment Act no. 104 of 29 Dec. 2014.
[117] Art. 12 para. 1 of Law no. 91 of 5 Feb. 1992, *Nuove norme sulla cittadinanza*. Like France, Italian law also envisages the case of a national who has accepted a public office with a foreign state (or an international organisation to which Italy does not belong); see below, p. 41.
[118] Art. 12 para. 2 of Law no. 91 of 5 Feb. 1992, *Nuove norme sulla cittadinanza*.
[119] *Rijkswet op het Nederlanderschap*, Stb. 1984, 628, Kingdom law of 19 Dec. 1984 on new general provisions concerning Dutch nationality.
[120] *Rijkswet op het Nederlanderschap*, art 14§2, from the Kingdom Act of 17 June 2010.
[121] *Rijkswet op het Nederlanderschap*, art 14§2, from the Kingdom Act of 5 March 2016 amending the Dutch Nationality Act and extending the possibilities of disqualification in the case of terrorist offences.
[122] *Rijkswet op het Nederlanderschap*, art 14§3, from the Kingdom Act of 10 Feb. 2017 amending the Dutch Nationality Act and allowing revocation of nationality in the interests of national security.

law also provided for the possibility of revoking the nationality, of a Dutch person aged sixteen, residing outside the country and whose behavior attests that they have "*joined an organisation (...) placed on a list of organisations that take part in a national or international armed conflict and constitute a threat to national security*".[123]

With regard to the latter four states, it is also interesting to note that all four have amended their legislation to take account of the rise in terrorism and the number of their nationals leaving to join the armed forces of the Islamic State following the "Arab Spring" and the subsequent destabilisation of Syria. The number of citizens of European states leaving the country has multiplied[124] and the states of departure have sought either to give themselves, or to extend, the legal means of combating this movement, the withdrawal of the nationality of nationals engaged in this fighting being one of them.

It is worth considering for a moment the specific situation of Switzerland, where, although Swiss nationality law does not contain any provisions allowing for the direct withdrawal of the nationality of a Swiss national who joins a foreign army, it does allow for the possibility of punishing the disloyalty of a Swiss national. The law on nationality states quite elliptically that Swiss nationality can be withdrawn: "*from a dual national if their behaviour seriously damages the interests or reputation of Switzerland*".[125] On the basis of this provision, it is necessary to consider the content of the ordinance on nationality, which sets out the details of this law and specifies what is meant by "*seriously damaging the interests or reputation of Switzerland*". This includes anyone who "*commits a serious crime in the context of terrorist activities, violent extremism or organised crime*".[126] Under this order, anyone who "*commits a felony or misdemeanour referred to in articles 266, 266bis, 272 to 274, 275, 275bis and 275ter of the Criminal Code*"[127] or "*persistently threatens Switzerland's good relations with a foreign state by insulting that state (article 296 of the Criminal Code)*". However, these various articles of the Swiss Criminal Code are aimed precisely at offences that reflect the disloyalty of the perpetrator of such acts. In particular, Article 266bis criminalises "*foreign undertakings*

[123] *Rijkswet op het Nederlanderschap*, art 14§4, from the Kingdom Act of 10 Feb. 2017, cited above.
[124] It is estimated that around 10,000 volunteer fighters from Western countries have committed themselves to the Islamic State: *Canadian Security Intelligence Service, The Foreign Fighters Phenomenon and Related Security Trends in the Middle East*, no. 2016-01-01, 2016, p. 71.
[125] Art. 42 of the Swiss Nationality Act of 20 June 2014.
[126] Art. 30.1.b of the Ordinance on Swiss nationality of 30 June 2016.
[127] Art. 30.1.a of the Nationality Ordinance of 17 June 2016.

and actions against the security of Switzerland", while Articles 272 to 274 are intended to punish espionage for the benefit of a foreign power.

By taking up arms against their homeland and its interests, nationals may be deprived of their nationality; the aim is to punish behaviour that no longer conforms to what can legitimately be expected of a member of the national community and whose actions bear witness to treason. Over and above military involvement as such, several of the states studied consider that participation in terrorist actions demonstrates a national's disloyalty to their homeland.

§2 - Acts of terrorism

Defining terrorism is quite difficult and arduous[128], but its appearance in human history can be more easily dated. While political violence has always punctuated history, terrorism – as we know it – was born with modernity. The word, which does not refer to a specific modus operandi, now designates any violent action intended to spread terror: bombing, hijacking, murder, etc. The aim of these deadly acts, which are publicised in the media, is to make an impression on public opinion in order to achieve a political result: to put pressure on a civilian population in order to obtain the submission of a state to the objectives of the perpetrator or instigator of the terrorist act. There is no need here to dwell on the definitions of terrorism or its purpose, but everyone will agree on the profoundly anti-social nature of acts of this kind. It is the violence, brutality and, more generally, the unacceptable nature of acts of terrorism that has led many states to enshrine in their law the possibility of withdrawing their nationality from those of their nationals who have committed such acts; Germany, Austria, Denmark, Italy, the Netherlands and Switzerland have chosen this path.

Contrary to the constitutional assertion that "*German nationality may not be withdrawn*"[129], which was intended to counter the National Socialist policy, the seriousness of the damage to the social pact resulting from participation in terrorist acts has led to the public authorities being given the option of withdrawing the nationality of Germans

[128] See especially Alex P. Schmid and Albert J. Jongman, *Political Terrorism: A New Guide To Actors, Authors, Concepts, Data Bases, Theories, And Literature*, Transaction Publishers, Piscataway, 1988. For a definition of terrorism, see David Cumin, "Tentative de définition du terrorisme à partir du *jus in bello*" (An attempt to define terrorism in terms of jus in bello), RSC, 2004, pp. 11-30.

[129] « *Die deutsche Staatsangehörigkeit darf nicht entzogen werden* », *Grundgesetz für die Bundesrepublik Deutschland*, art. 16(1).

who have chosen to fight in terrorist organisations abroad. The debate on the merits of allowing such a measure arose because of the significant number of German citizens, often with dual nationality, who voluntarily joined the Islamic State in Syria to fight alongside it. In 2019, following a wide-ranging public debate, Parliament will amend the law on nationality to allow Germans taking part in combat on behalf of terrorist organisations abroad to lose their German nationality. Symbolically extremely powerful in view of Germany's past, this provision is based on the idea that the conduct of such Germans is absolutely disloyal and seriously prejudicial to Germany's vital interests, thereby justifying exclusion from the political community. In view of the aforementioned provisions of Article 16 of the Basic Law prohibiting the loss of nationality, this withdrawal of German nationality is only possible if the person concerned possesses another nationality, so that this measure cannot have the effect of rendering them stateless. Under the terms of its reform, the law only covers the situation of a German who is "*specifically involved in the combat operations of a terrorist association abroad*"[130], with the words "*specifically involved*" making it possible, where necessary, to limit the scope of the measure.

In addition to Germany, Austria has amended its legislation to allow for the withdrawal of the nationality of any of its citizens who may have taken part in terrorist activities. Unlike Germany, which took this step in order to punish some of its many nationals who had actually joined terrorist organisations abroad, Austria adopted this measure following the attack in Vienna on 2 November 2020[131]. Adopted in 2021, the amendment to the law applies to any Austrian convicted of terrorist offences under sections 278b to 278g and 282a of the Austrian Criminal Code[132]; the law also specifies that the conviction of an Austrian for the same offences by a foreign court is considered equivalent, provided that it was carried out in accordance with the provisions and principles of Article 6 of the European Convention on Human Rights.[133]

[130] *Staatsangehörigkeitsgesetz*, art. 28, as amended by the Law of 9 August 2019.
[131] A 20-year-old Austrian, already convicted of attempting to join the ranks of the Islamic State, killed four people and injured twenty-three.
[132] Including for a suspended sentence.
[133] *Staatsbürgerschaftsgesetz* 1985, art. 33(3); amended by Federal Law no. 104 of 15 July 2021.

In the Netherlands, the Nationality Act was revised in 2016 to allow the withdrawal of nationality from dual nationals convicted of terrorism[134]. The law refers to the provisions of the Dutch Criminal Code and thus covers the situation of a national who has been convicted on the basis of Article 83 of the Code, which covers the commission of terrorist acts[135]; the law also refers to convictions on the basis of Article 134 of the Code, which covers the mere assistance or preparation of such terrorist offences.[136] The Danish system in this area is virtually identical. Under the Nationality Act, the conviction of a Dane on the basis of one of the provisions of Chapters 12 and 13 of the Danish Criminal Code may lead to the withdrawal, by judgment, of a national's Danish nationality[137]; Chapter 13 of the Criminal Code, to which the Act refers, covers terrorism.[138] The law also provides that a conviction handed down abroad on these grounds may also serve as justification for the withdrawal of Danish nationality.

Like these countries, Italy amended its nationality legislation in 2018 to allow the nationality of a person convicted of terrorism to be withdrawn, but the measure only applies to Italians by acquisition and not to all Italians.[139] Finally, with regard to Switzerland, the law provides that the State Secretariat for Migration may, with the consent of the authority of the canton of origin, "*withdraw Swiss nationality and cantonal and communal citizenship from a dual national if their conduct seriously damages the interests or reputation of Switzerland*"[140]. In application of this provision, the ordinance on nationality specifies that anyone who "*commits a serious crime in the context of terrorist activities, violent extremism or organised crime*"[141] seriously damages the interests or reputation of Switzerland.

A national's lack of political loyalty is therefore quite logically manifested through the behaviour and actions of a person who takes up arms against the country of which they are a national, whether through direct recruitment into a foreign army or

[134] *Rijkswet op het Nederlanderschap*, art 14§2, from the Kingdom Act of 5 March 2016 amending the Dutch Nationality Act and extending the possibilities of disqualification in the case of terrorist offences.
[135] *Rijkswet op het Nederlanderschap*, art 14(2)(b).
[136] *Ibid*.
[137] *Lov om dansk indfødsret*, art.8 B.
[138] It also covers acts against the Constitution, the King, the Government, the Danish Parliament or the country's High Courts; acts attesting to the disloyalty of the national.
[139] *Nuove norme sulla cittadinanza*, art. 10[bis]; issued by Decree-Law no. 113 of 4 Oct. 2018 (Law no. 132 of 1 Dec. 2018).
[140] Art. 42 of the Swiss Nationality Act of 20 June 2014.
[141] Art. 30.1.b of the Ordinance on Swiss nationality of 30 June 2016.

participation in terrorist activities. In addition, this lack of loyalty may also be deduced from the social behaviour of a national who appears to be in formal contradiction with the mores of the political community whose nationality they possess.

B. Social behaviour

A perusal of the various laws on nationality reveals the existence of numerous provisions aimed at allowing the withdrawal of nationality from nationals whose social behaviour attests to their lack of political loyalty; no fewer than seven states envisage this measure. In addition to France, Austria, Denmark, the Netherlands, the United Kingdom, Switzerland and Sweden all have this possibility. Among the existing provisions, when a lack of political loyalty is deduced from an individual's social behaviour, this is most often the result of the existence of serious criminal convictions. Contrary to this requirement of dangerousness objectively ascertained by the criminal courts, other states choose not to prescribe in advance the behaviour justifying the withdrawal of their nationality, and it is then the very way of life of the individual that attests to their disloyalty.

§1 - Way of life

Behind the reference to a "way of life", legislation envisaging the loss of nationality on the basis of this situation can be distinguished according to whether this concept refers to behaviour that is detrimental to the interests of the country as such or to the social life of the individual as a whole; Austria, the United Kingdom and Switzerland fall into the first category, France into the second. Before considering them, the situation in Sweden must be mentioned and set aside, as the possibility of loss of nationality that it provides for in this area differs from the provisions existing in the other states under consideration. The only case of loss of nationality that exists in Sweden concerns the situation of a national who, at the age of twenty-two, born abroad and never having been resident in Sweden, has never behaved in such a way as to indicate that they have any connection with Sweden. In the final analysis, therefore, it is more a question of loss of nationality through obsolescence and the established disappearance of links between the person and the state of

which they are a national, rather than genuine withdrawal as a sanction[142]; another Nordic country, Denmark, has an identical provision.[143]

The desire to punish certain nationals on the basis of such a subjective set of values permeates French law on the withdrawal of nationality. In addition to the situation already mentioned of French nationals enlisting in foreign armed forces, article 23-7 of the Civil Code is designed to punish the behaviour of French nationals lacking loyalty to their homeland. Exclusion from the national community will therefore affect anyone whose behaviour shows that, despite their French nationality, they are in fact behaving as if they were a foreigner in law. Under the terms of article 23-7 of the French Civil Code, French nationality may be withdrawn from a French person: "*who behaves in fact like the national of a foreign country*". When the behaviour of a French citizen is in fact that of a foreigner, the Government may withdraw their nationality, after receiving the assent of the Conseil d'État (Council of State). By this decree, the person is declared to have "*lost the status of French citizen*".[144] The neutrality and plainness of the terms used cannot hide the profound brutality of the measure and the situation it targets. The aim here is to strictly sanction the active exercise of a foreign nationality by a national. In the situation referred to in Article 23-7, the withdrawal of nationality is not limited to establishing that a dual national: "*who possesses, at the same time as French nationality, that of another country, usually practices the latter nationality, which they make take precedence over the former*"[145]; it also has a strong repressive dimension. This dimension is revealed by the fact that this measure applies: "*to individuals who continue to claim French nationality but who, at the same time, maintain relations with another country that the French government considers inadmissible on the part of one of its nationals. The decree declaring the loss of French nationality does more than simply prune a dead branch. It cuts deep. It is a real sanction, based on a lack of loyalty to France*".[146] It is indeed the national's disloyalty that is sanctioned when nationality is withdrawn; just as a national may abandon their French nationality

[142] This is evidenced by the fact that, if the person concerned makes a declaration before reaching the age of 22, they may be allowed to retain Swedish nationality: Swedish Nationality Act of 1 Jul. 2001, section 14 (*Lag 2001:82 om svenskt medborgarskap*).
[143] *Lov om dansk indfødsret*, art. 8; Danes born and residing abroad, who have not resided in the country and whose lives do not show an attachment to Denmark lose their nationality, unless this renders them stateless; seven years of living in a Nordic country counts as residence in Denmark.
[144] Art. 23-7 of the Civil Code.
[145] J. Fournier, concl. on CE (Council of State), 4 Feb. 1966, *Godek, Crit. rev DIP*, 1967, p. 684.
[146] *Ibid*.

when they feel closer to another homeland[147], the state may also cease to recognise a person as one of its nationals.

Where the behaviour of a French citizen is in fact that of a foreigner, the Government may withdraw their nationality, after receiving the assent of the Council of State. To be more precise: "*the decision does not pronounce the loss of nationality, **it establishes it**. The French citizen is not declared to lose their allegiance, but to have de facto lost it already*".[148] Article 23-7 of the Civil Code aims to ensure that the legal allegiance is consistent with the reality of the situation, as Professor Batiffol has written: "*In a sense, it is the objective finding that the individual is not or is no longer de facto French*".[149] Under the terms of Article 23-7, however, this procedure is subject to the fact that the French person in question holds the nationality of the country of which they behave as a national; beyond that, their behaviour must reflect not only greater effectiveness of the second affiliation but also a certain disloyalty: "*without being frankly incompatible with the status of French person, the activity of the dual national must at the very least be disloyal*".[150]

Very rarely[151], the decree declaring the loss of nationality sanctions the action of a person who ostensibly cuts themselves off from French morals and the French nation[152], this measure: "*implies the existence, between the individual it affects and a foreign country, not only of the purely legal link that nationality creates, but also of the de facto link that behaviour materialises*"[153]. When a person no longer has anything more than a legal attachment to the country that was once theirs, it is in the nature of things that this legal link is severed; the withdrawal of nationality then brings the law into line with the fact. The national's

[147] Art. 23 of the Civil Code.
[148] R. Boulbès, *Droit français de la nationalité* (French Nationality Law), Sirey, Paris, 1956, p. 296. The passages underlined are the author's own.
[149] H. Batiffol, *op. cit*, p. 255.
[150] P. Aymond, note under CE (Council of State), 20 March 1964, *Konarkowski*, Rec. p. 197, *JCP*, 1964, II, 13755.
[151] In the reply to a question from a Member of Parliament, it is stated that "*the Interior Minister is not aware that Article 23-7 of the Civil Code has been applied since it came into force and Article 96 of the French Nationality Code* [which it succeeds] *has been used only very rarely*" – reply from the Ministry of the Interior to question no. 4097 from Mr Robert del Picchia, JO Sénat (Official Journal, Senate), 11 Apr. 2013, p. 1191.
[152] On the nature of the acts that reflect conduct manifestly incompatible with French nationality, reference should be made to the conclusions of Commissaire Fournier in the *Godek* case (*Crit. rev* DIP, 1964, pp. 683 et seq.) However, it may be noted that the observation, in the context of associations, of folk traditions and customs from the country of origin: "*is not necessarily foreign behaviour, even if these manifestations slow down, or at least do not encourage, the assimilation of foreigners living in France, which is desirable*" *AJDA*, 1964, p. 498, note H. A. under CE (Council of State), 20 March 1964, Konarkowski; this is especially true when it is not proven: "*that within these associations the applicant had carried out an activity tending to maintain the particularism of Polish immigrants in France*", CE (Council of State), 20 March 1964, *Konarkowski*, Rec. p. 197. [153] Jacques Fournier, concl. on CE (Council of State), 4 Feb. 1966, *Godek, Crit. rev DIP*, 1967, p. 697.

disloyalty is further demonstrated when they hold a job in "*a foreign public service or in an international organisation to which France does not belong*" and does not terminate it despite being ordered to do so by the public authorities.[154] The disloyalty inferred from the way of life results here from the fact that the person does not comply with France's requests.

Austria, the United Kingdom and Switzerland, for their part, do not go into further detail in their legislation, but allow for sanctions to be imposed on a national whose behaviour is alleged to be detrimental to the country's interests. Austrian law provides for the loss of nationality of one of its nationals if they are "*in the service of a foreign state* [and] *damage, by their conduct, the interests or image of the Republic of Austria*".[155] This article of the law also specifies that it is intended to apply subsidiarily to the provisions of article 32, which has already been considered and which only covers the case of a person's voluntary integration into the armed forces of a foreign state. As regards Switzerland, we have seen that a national's nationality may be withdrawn "*if their conduct seriously damages the interests or reputation of Switzerland*".[156] The Ordinance on Swiss nationality clarifies this concept, stating that it is fulfilled by the action of anyone who "*commits a crime or an offence referred to in articles 266, 266bis, 272 to 274, 275, 275bis and 275ter of the Criminal Code (CC)*"[157]; one of the offences referred to is endangering the constitutional order[158]; i.e., ultimately, the Swiss economic and social way of life.

The question of the withdrawal of a United Kingdom national's nationality must be seen in the light of the idea of allegiance and loyalty to the Sovereign. However, it was during the First World War that this possibility was enshrined in law in order to punish British nationals with ties to the enemy at the time. This possibility is still enshrined in law, but in a neutral formulation that makes it easier to implement. The *British Nationality Act* 1981 states that the minister responsible for such matters "*may deprive a person of their nationality if they are satisfied that the measure is conducive to the public good*".[159] This wording thus makes it possible to target any national whose behaviour would demonstrate the individual's disloyalty to the Crown, whether this involves military engagement against the United Kingdom, recourse to terrorism or any

[154] Art. 23-8 of the Civil Code.
[155] *Staatsbürgerschaftsgesetz 1985*, art. 33(1).
[156] Art. 42 of the Swiss Nationality Act of 20 June 2014.
[157] Art. 30.1.a of the Swiss Nationality Ordinance of 17 June 2016.
[158] Art. 275, 275bis and 275ter of the Swiss Criminal Code.
[159] *British Nationality Act 1981*, section 40(2).

other offence; it is "sufficient", as it were, for the public authorities to be convinced of the public need for the said measure. Under the judge's control, of course.

Unlike the United Kingdom, other states base the withdrawal of their nationality on the existence of a certain number of criminal convictions.

§2 - The existence of criminal convictions

Three states make reference in their nationality legislation to a person's behaviour in order to allow nationality to be withdrawn on the basis of criminal behaviour: Denmark, the Netherlands and Switzerland. While these are sometimes convictions for offences linked to the national's disloyalty, they may also involve ordinary criminal behaviour with no direct and immediate link to it.

In addition to the criminal offences already mentioned, Swiss nationality law also allows the nationality of one of its citizens to be withdrawn if the latter has participated in genocide, a crime against humanity, a serious breach of the Geneva Conventions of 12 August 1949 or another war crime.[160] Switzerland also provides that nationals may be stripped of their nationality if they: "*pose a lasting threat to Switzerland's good relations with a foreign state by committing an offence against that state*".[161]

The Netherlands has progressively tightened its nationality law and extended the circumstances in which a national can be stripped of their nationality. In addition to the offences relating to the commission of acts of terrorism already mentioned, the Act also covers "*conviction for conduct seriously prejudicial to the essential interests of the Netherlands*".[162] On the basis of this article, the law refers to the person's conviction for various offences covered by Titles I to IV of Book 2 of the Dutch Criminal Code[163]; the law requires that the person in question has been convicted for a period of at least eight years. Title I covers crimes against state security, and in particular the act of undermining the Sovereign (art. 92) or seeking to bring the Kingdom under foreign domination (art. 93). Title II deals with offences against

[160] Art. 30.1.c of the Swiss Nationality Ordinance of 17 June 2016.
[161] Art. 30.1.c of the above-mentioned Ordinance on Swiss nationality; offence covered by art. 296 of the Criminal Code.
[162] *Rijkswet op het Nederlanderschap,* art. 14.2.
[163] *Rijkswet op het Nederlanderschap,* art. 14.2.a.

royal dignity (art. 108) and Title III with crimes against the heads of allied states. Finally, Title IV deals with offences against the functioning of the state. Finally, in addition to the direct commission or preparation of acts of terrorism, the law also makes it possible to withdraw the nationality of any Dutch national who, without leaving the Netherlands, has participated in the recruitment of persons to fight abroad or, more generally, to carry out military activity[164]; this offence is covered by the law without taking into account the length of the sentence to which the Dutch national has been sentenced.

The situation is similar in Denmark. The Nationality Act provides that the conviction of a Dane on the basis of one of the provisions of Chapters 12 and 13 of the Danish Criminal Code may lead to the withdrawal, by judgment, of a national's Danish nationality.[165] The offences referred to in Chapter 12 of the Criminal Code are those involving treason by Danes against their homeland; those mentioned in Chapter 13 concern terrorism, but also crimes against the Constitution, the King, the Government, the Danish Parliament and the country's High Courts. The same article of the law also stipulates that a Dane convicted abroad of the same type of offence may also have Danish nationality withdrawn.

However, whether they are decided by the public authorities or result from a court decision, these measures sanction the fact that a person's attitude and behaviour are objectively disloyal and therefore no longer conform to what is legitimately expected of a member of the national community. This type of sanction is also present in the provisions providing for forfeiture of nationality, but this time only in the case of new nationals.

Section II - Forfeiture of nationality, a measure targeting neo-nationals

In addition to the measure of exclusion from the national community that punishes a national whose behaviour shows that they are in fact behaving as if they were a foreigner in law, the decision to withdraw nationality may also constitute a specific measure aimed only at neo-nationals, those who have acquired this nationality. In

[164] *Rijkswet op het Nederlanderschap,* art. 14.2.b referring to art. 205 of the Dutch Criminal Code.
[165] *Lov om dansk indfødsret*, art. 8B.

French law, this measure alone is known as "*déchéance de la nationalité*" (forfeiture of nationality), even though this term is used in everyday language to refer to all cases where nationality is withdrawn by decision of the public authorities. Forfeiture may thus sanction both the neo-national's political disloyalty and that associated with their deviant social behaviour.

A. A. The neo-national's political disloyalty

The case of disloyalty on the part of a person who has acquired nationality justifies, quite naturally, the withdrawal of that nationality: by showing disloyalty to their adopted country, the person is removed from it. Such a situation arises above all where a person has resorted to fraud to obtain that nationality, a principle on which all the legislations considered agree. Beyond that, disloyalty may be established and deduced from acts that are prejudicial to the host country.

§1 - Procedural fraud

It is a general principle of law, valid in both private and public law, as well as in all countries, that *fraus omnia corrumpit*; it justifies that fraudulent manoeuvres cannot allow a right to be acquired and the person loses the nationality fraudulently acquired. While access to nationality is the legal expression of a foreigner's desire to join a national community that they wish to make their own, fraud in order to gain access to this nationality seriously perverts the meaning attached to this process. A "*Daughter of Hell and Night*", as the *Encyclopédie*[166] poetically describes it, fraud taints the alleged desire to acquire nationality and attests to a lack of loyalty on the part of the foreigner, alienating them from the community of destiny they fraudulently claim to join. Nationality then tends to be sought only from a utilitarian point of view, for simple personal convenience, and the upsurge in such manoeuvres denatures nationality, transforming it into a mere legal fact devoid of any social, emotional or psychological effectiveness.

Although there may be many cases of fraud or deception, which may affect all the criteria, they always involve a voluntary act on the part of the person, which must

[166] Diderot and d'Alembert, *Encyclopédie* (Encyclopaedia), 1751-1772, entry "Fraude" (Fraud).

also have influenced the decision taken.[167] The judge thus takes into account the intrinsic seriousness of the offending act and a foreigner who: "*knowingly made a false declaration, presented an erroneous document or used fraudulent manoeuvres in order to obtain naturalisation*"[168] may have their naturalisation decree withdrawn or the registration of their declaration contested. Case law provides a long, laundry list of the various types of fraud likely to mar the process of obtaining nationality[169]; examples of the same nature are repeated *ad infinitum* in all the states covered by this study.

In France, the cases of fraud and their consequences are set out in two articles of the Civil Code. Article 26-4 deals with declarations of nationality that have been made and whose "*registration may be contested by the public prosecutor if the legal conditions are not met*", within two years of the said registration and above all "*in the event of lies or fraud within two years of their discovery*"[170]; then, and this time concerning naturalisations, the same mechanism is provided for, by Article 27-2 of the Civil Code.[171] Identical provisions are found in all the other countries studied.

In Germany, this is provided for in Article 35 of the Nationality Act.[172] In the Kingdom of Belgium: "*Belgians who did not derive their nationality from a Belgian on the day of their birth and Belgians who were not granted their nationality by virtue* [of their birth in Belgium] *may be stripped of Belgian nationality: if they have acquired Belgian nationality as a result of fraudulent conduct, through false information, forgery and/or the use of false or falsified documents, identity fraud or fraud in obtaining the right of residence*".[173] The same is true in Denmark, where the law similarly provides that nationality obtained fraudulently may be withdrawn;

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[167] CE (Council of State), 4 Jan 1957, *Sieur Lévy*, Rec. pp. 8 and 9.
[168] CE, 24 Apr. 1953, *Époux Bem*, Rec. p. 186.
[169] Attempted bribery of civil servants: CE, 21 Oct. 1953, *Époux Fina*, Rec. p. 447; false declaration relating to the existence of criminal convictions abroad: CE, 20 Jan. 1956, *Sieur et Dame Piette*, Rec. pp. 26 and 27; omission of the existence of a wife residing abroad: CE, 6 Feb. 1995, *M. Chennangattu*, req. no. 135.387; concealment of a marriage contracted abroad: Cass, 1st Civil Court, 19 March 1996, *M. Arabat.*
[170] Art. 26-4 para. 3 of the Civil Code; aimed specifically at combating the use of "sham marriages", the article adds that "*the cessation of cohabitation between the spouses within twelve months of registration of the declaration (...) constitutes a presumption of fraud*".
[171] "*Decrees on acquisition, naturalisation or reinstatement may be revoked with the assent of the Council of State within two years of their publication in the Official Journal if the applicant does not meet the legal conditions; if the decision was obtained by deceit or fraud, these decrees may be revoked within two years of the discovery of the fraud*".
[172] *Staatsangehörigkeitsgesetz (StAG)*, art. 35; German Nationality Act of 22 July 1913.
[173] Belgian Nationality Code, art. 23§1-1°.

it is specified, however, that the fraud must have been a determining factor in obtaining nationality.[174] In Luxembourg, the law similarly provides that: "*anyone who has obtained Luxembourg nationality following a naturalisation, option or recovery procedure shall be stripped of Luxembourg nationality by an order issued by the Minister: if they have obtained Luxembourg nationality by making false statements, by fraud or by concealment of material facts or if they have obtained Luxembourg nationality on the basis of a forgery or the use of a forgery, usurpation of name or marriage of convenience, provided that the person concerned has been found guilty, in the Grand Duchy of Luxembourg or abroad, of one of these offences by a court decision having the force of res judicata*"[175]; this is the only case in which Luxembourg law provides for loss of nationality. In the Netherlands, in the case of a nationality obtained fraudulently, through false information or concealment of a relevant fact on the part of the applicant, may lead to the withdrawal of said nationality; this withdrawal must, however, take place within twelve years of it being obtained.[176] In the United Kingdom, the public authorities may order that a British subject be deprived of their acquired nationality if "*the registration or naturalisation was obtained by fraud, misrepresentation or concealment of a material fact*".[177] In Switzerland, naturalisation obtained through misrepresentation or concealment of essential facts may be annulled "*within two years (...) but at the latest eight years after the granting of Swiss nationality*".[178]

In Austria, such a provision does not appear in the Nationality Act itself, but, as the same causes produce the same effects, the principle of punishing fraud and deception is a general principle of law applying to all administrative procedures and is therefore included in the provisions of the Code of Administrative Justice.[179]

Even though the extent of fraud remains difficult to quantify, the use of fraud to obtain nationality discredits all those who loyally observe the procedures for access to nationality. Thus, the authorities deduce from such behaviour a presumption of a lack of loyalty which leads to the exclusion from nationality

[174] *Lov om dansk indfødsret*, art. 8A.
[175] Art. 62(1) of the Law of 8 March 2017 on Luxembourg nationality.
[176] *Rijkswet op het Nederlanderschap*, art. 14.1.
[177] *British Nationality Act 1981*, section 40(3).
[178] Art 36 of the Swiss Nationality Act of 20 June 2014.
[179] *Allgemeines Verwaltungsverfahrensgesetz* (AVG), art. 69.

of the foreigner who has used such methods. However, a lack of loyalty cannot be limited solely to the use of deceptive or fraudulent methods; it can also be inferred from the entire attitude towards French institutions, in short, from their social life.

§2 - Acts detrimental to the host country

Forfeiture of nationality is, without a doubt, a sanction imposed on the attitude of a person who has become French; it "*consists of withdrawing French nationality from an individual who has acquired it, on the grounds of their unworthiness or lack of loyalty. Compared to other cases of loss of French nationality, its characteristic feature is therefore that it can only affect French nationals by acquisition*".[180] First introduced at the beginning of the 20th century[181], forfeiture of French nationality is effected in France by decree issued after the assent of the Conseil d'Etat (Council of State)[182] and can take place: "*only if the acts of which the person concerned is accused and referred to in Article 25 occurred within ten years of the date of acquisition of French nationality. It may only be pronounced within ten years of the commission of the said acts*".[183] These provisions allow for the forfeiture of a French national's nationality for a period of twenty years from the date of acquisition[184] and can be analysed as a measure to defend the community against a person unworthy of French nationality: "*As we can see, the real basis of the concept of forfeiture has remained essentially practical and political in the Greek sense. Forfeiture is a reaction, a legitimate defence*".[185]

Under the terms of Article 25 of the Civil Code, forfeiture of nationality may occur against an individual: "*if they have committed acts for the benefit of a foreign state that are incompatible with French nationality and prejudicial to the interests of France*"; for example, a decree forfeiting the nationality of a couple was deemed legal in view

[180] P. Lagarde, *La nationalité française* (The French Nationality), 3rd edn, Dalloz, Paris, no. 1997, p. 163. This measure may be applied regardless of the method of acquisition: naturalisation, declaration, expression of will or reinstatement.
[181] The decree of forfeiture of nationality originated during the First World War and was authorised by the law of 7 April 1915: "*authorising the Government to revoke decrees of naturalisation obtained by former subjects of powers at war with France*" (JO of 8 Apr. 1915, p. 1948).
[182] Art. 25 of the Civil Code.
[183] Art. 25-1 of the Civil Code.
[184] However, acts committed before nationality was acquired cannot be used as a pretext for forfeiture of nationality; they can only give rise to a challenge to nationality by the public prosecutor, pursuant to Art. 26-4 of the Civil Code. Or, if nationality is acquired by virtue of an administrative decision, to the report of the decree pursuant to the conditions set out in Art. 23-7 of the Civil Code.
[185] R. Boulbès, *op. cit.*, p. 307.

of their behaviour during the occupation of France.[186] The law thus envisages the various types of conviction for which a new national could be deprived of their French nationality. The convictions considered by Article 25 are marked by the idea of disloyal behaviour on the part of the person, which is deduced from their deviant and criminally sanctioned social behaviour. Forfeiture of nationality is thus incurred where the French national by acquisition has been convicted "*of an act classified as a crime or offence constituting an attack on the fundamental interests of the Nation*"[187], but also: "*if they are convicted of an act classified as a crime or offence provided for and punishable under Chapter II of Title III of Book IV of the Criminal Code*".[188] Article 25 also provides that new nationals convicted of acts that are objectively disloyal to their new homeland are subject to the same forfeiture measure: for example, failure to comply with the obligations arising from the National Service Code or engaging in acts on behalf of a foreign state that are incompatible with the status of French national and prejudicial to the interests of France. Apart from France, only Belgium provides for a similar penalty for new nationals.[189]

Belgium's nationality law is extremely severe with regard to persons who have become Belgians if they did not acquire this nationality as a result of their birth and residence in Belgium. First of all, the Nationality Code provides that such persons may forfeit Belgian nationality "*if they seriously fail in their duties as Belgian citizens*"[190], without giving any indication as to the nature of these serious failings.[191] This means that a person may be deprived of their acquired nationality solely as a result of their behaviour, even if this behaviour has not been the subject of a criminal sanction. The apparent seriousness of this wording must, however, be tempered: firstly, forfeiture is ordered by a judge, so the decision cannot be suspected of being arbitrary, and secondly, the following article of the Nationality Code lists a very long list of offences for which a national's conviction justifies the loss of acquired nationality, a list to which the judge could

[186] CE, 10 Dec. 1952, *Époux Pinton*, Rec. p. 567.
[187] Under this heading, the Criminal Code covers treason, espionage, offences against the institutions of the Republic or the integrity of national territory, and offences against the secrecy of national defence.
[188] The offences in this chapter relate to offences against the public administration committed by persons exercising a public function (abuse of authority, breach of the duty of probity – such as extortion, corruption, influence peddling, misappropriation of funds, etc.).
[189] As we have seen, most other countries do not reserve this penalty for new nationals alone, but provide for it for all nationals.
[190] Belgian Nationality Code, art. 23§1-2°.
[191] Bernadette Renauld, "La déchéance de nationalité : qui, pour quoi, comment ?" (Forfeiture of Nationality: Who, for What, How?), *www.justice-en- ligne.be/La-decheance-de-nationalite-qui*, 23 Jan. 2017.

refer. Under article 23/1 1° and 2° of the Nationality Code, "*forfeiture of Belgian nationality may be ordered by the judge at the request of the public prosecutor in respect of Belgians [...] if they have been sentenced, as perpetrator, co-perpetrator or accomplice, to an unsuspended term of imprisonment of at least five years for an offence referred to in Articles 101 to 112, 113 to 120bis, 120quater, 120sexies, 120octies, 121 to 123, 123ter, 123quater, paragraph 2,*
124 to 134, 136bis, 136ter, 136quater, 136quinquies, 136sexies and 136septies, 331bis, 433quinquies to 433octies, 477 to 477sexies and 488bis of the Criminal Code and articles 77bis, 77ter, 77quater and 77quinquies of the Aliens Act". The measure only applies to people who have become Belgians and were born outside Belgium, provided that the offences were committed within ten years of acquiring Belgian nationality. Among the convictions covered are those resulting from offences described in the Criminal Code as "*attacks and plots against the king, the royal family and the form of government*"[192],
"*crimes and offences against the external security of the state*"[193] and "*crimes against the internal security of the state*".[194]

In France and Belgium, there is a clear desire to punish new nationals for acts carried out after their entry into the national community that prove political disloyalty resulting from behaviour that is seriously prejudicial to the country that welcomed them and conferred their nationality. Disloyalty may also result from social behaviour as a whole.

B. The disloyalty in social behaviour

Having become a national, the former foreigner who has acquired nationality goes on with their life, like the other members of the national community. For a long time, however, they remained suspect, which explains why their status as former foreigners sometimes resulted in limited enjoyment of their rights; in France, for example, naturalised foreigners, although fully French, had only limited access to political citizenship.[195] This mistrust still exists and is borne out by a study of the law on loss of nationality, since, in addition to the hypotheses already considered, many states have provisions in their

[192] Belgian Criminal Code, arts. 101 to 112.
[193] Belgian Criminal Code, arts. 113 to 123quater, para. 2.
[194] Belgian Criminal Code, arts. 124 to 134.
[195] The Nationality Act of 1889 was the first to restrict the civil and political rights of French citizens by acquisition, a measure that was accentuated in 1927 and 1945. These measures disappeared between 1973 and 1983; see above, p. 16.

legislation that specifically punish the bad social behaviour of those who have acquired their nationality. These measures can be grouped around two themes: firstly, the general attitude of the national can reveal the disloyalty of their allegiance and, secondly, sometimes it is their criminal behaviour that attests to this.

§1 - The disloyalty of allegiance

In addition to the types of behaviour discussed above, the disloyalty of allegiance of a person who has acquired the nationality of a state may be observed in several situations. Firstly, a number of states that are reluctant to allow holding multiple nationalities consider it disloyal if a person who has acquired their nationality retains their original nationality, despite their undertaking to do everything possible to lose it. This disloyalty can also be inferred from the fact that the new national has shirked some of the obligations incumbent upon them after obtaining nationality, especially swearing an oath to their new homeland.

Austria and the Netherlands are two states in which nationality legislation is extremely reticent to allow a national to hold multiple nationalities. In the Netherlands, for example, when a person acquires Dutch nationality, whether through the option procedure or through naturalisation, they must undertake to renounce their original nationality. However, the law provides that if that person has not made every effort to give up their original nationality after acquiring Dutch nationality, the latter may be revoked.[196] Similarly, Austrian legislation also contains a provision allowing the withdrawal of Austrian nationality if the person concerned has retained their foreign nationality for their own reasons.[197] However, the same article restricts the possibility of withdrawing Austrian nationality within fairly strict time limits: on the one hand, the procedure for withdrawing Austrian nationality must take place within two years of acquiring this nationality and, on the other, the withdrawal must be confirmed "*without unnecessary delay*". The law specifies that after six years Austrian nationality can no longer be withdrawn in this situation.[198]

[196] *Rijkswet op het Nederlanderschap*, art. 15.1.d and 15.1.e.
[197] *Staatsbürgerschaftsgesetz 1985*, art. 34.
[198] *Staatsbürgerschaftsgesetz 1985*, art. 34(3).

Italy has another situation in which the nationality granted to a foreigner may be withdrawn as a result of conduct that may be construed as a form of disloyalty, namely failure to swear an oath of loyalty to the Republic. Indeed, the acquisition of Italian nationality only becomes definitive once the foreigner has taken such an oath; if the oath is not taken before the civil registrar of the commune of residence within six months of notification of the acquisition decision, the person concerned loses their Italian nationality.[199]

In these various states, it is held that the former foreigner's lack of eagerness to comply with all the procedures required of them attests to the disloyalty of their allegiance and to the fact that their behaviour within society does not conform to what one is entitled to expect from a new national. This discrepancy between expected and actual behaviour further justifies the fact that some new nationals may lose their acquired nationality because of criminal convictions.

§2 - Criminal convictions

This latter hypothetical is relatively limited, since most of the criminal convictions justifying loss of nationality are linked to a lack of political loyalty on the part of the person who has acquired nationality[200], while the various legislations prefer to retain this possibility in respect of all nationals and not just those who have acquired nationality.[201] Having said this, it should be noted that three of the states under consideration make specific provision for the existence of certain criminal convictions to justify forfeiture of acquired nationality; this is the case in France, Belgium and Italy.

As far as France is concerned, two provisions need to be considered. Firstly, and even if this provision is no longer in force, it should be noted that for a long time the conviction of a new national to a sentence of at least five years' imprisonment for an act classified as a crime could justify the loss of nationality.[202] Secondly, French nationality law provides that if a person who has acquired nationality is convicted of

[199] Art. 10 of Law no. 91 of 5 Feb. 1992, *Nuove norme sulla cittadinanza*.
[200] See above, "Acts detrimental to the host country", p. 50.
[201] See above, "Lack of political loyalty", p. 28.
[202] This provision no longer exists. It constituted Art. 25(5) of the Civil Code; provision deleted by Art. 23(II) of Law no. 98-170 of 16 March 1998 on nationality (JO of 17 March 1998, p. 3935).

"*a felony or misdemeanour constituting an act of terrorism*"[203], the period during which they may be stripped of nationality is extended to fifteen years instead of the usual ten.[204] The seriousness of the acts in question explains the long period during which nationality can be withdrawn: thirty years! The acts must have occurred before the acquisition of nationality or within fifteen years of acquiring it, in which case nationality may be withdrawn within fifteen years of these acts. In 1996, this additional provision allowing for forfeiture of nationality was adopted[205] and the seriousness of the breach of the social pact explains the rigour of this procedure: "*By aiding and abetting terrorism (...), such people demonstrate both their hostility to France, that welcomed them and granted them its nationality, and their total lack of integration into French society. In a way, the republican pact has been broken. (...), since they have betrayed France, that trusted them, they no longer deserve to be French*".[206]

Italy has a similar provision regarding foreigners who have acquired Italian nationality and who may be deprived of it. The Italian Citizenship Act thus provides that acquired Italian nationality is revoked in the event of a final conviction for the crimes referred to in Articles 407.2(a)(4) of the Code of Criminal Procedure or 270-ter and 270-quinquies.2 of the Criminal Code.[207] Italy has a final case of loss of nationality. This concerns the situation of a nationality acquired by a foreign minor who has been found guilty of criminal behaviour towards the adopter or their spouses. This misconduct, which was particularly horrific towards those who had nurtured them, therefore justifies their Italian nationality being withdrawn; for the forfeiture to occur, the adopted person must possess another nationality or recover one.[208]

Lastly, Belgium should be mentioned, which, as we have seen, has a very long list of acts constituting crimes and offences for which any Belgian by acquisition, if sentenced to five years' imprisonment without probation, may be stripped of their nationality.[209] The alleged offences must have been committed within ten years of the date on which Belgian

[203] Art. 25.1° of the Civil Code.
[204] Art. 25-1 para. 3 of the Civil Code.
[205] Law no. 96- 647 of 22 July 1996 (JO of the 23rd, p. 11.104).
[206] Denis Richard, "Le Conseil constitutionnel face au renforcement de la répression du terrorisme" (The Constitutional Council and the Strengthening of the Repression of Terrorism), *Gazette du Palais* 1997-1, doctrine, p. 2.
[207] Art. 10bis of Law no. 91 of 5 Feb. 1992, *Nuove norme sulla cittadinanza*. The provisions of these codes refer to offences connected with terrorism.
[208] Art. 3.3 of Law no. 91 of 5 Feb. 1992, *Nuove norme sulla cittadinanza*.
[209] Belgian Nationality Code, art. 23§1-1°.

nationality was obtained. While most of the offences covered are crimes against the external or internal security of the state, as well as crimes against the sovereign and the form of government, the list also includes other offences. In particular, any person convicted of serious violations of international humanitarian law is subject to forfeiture of nationality[210] and the same applies to any person convicted of offences relating to the use of nuclear material[211] or trafficking in human beings.[212] The Belgian Nationality Code also provides for the possibility of stripping new nationals of their Belgian nationality if they have been convicted: "*as perpetrator, co-perpetrator or accomplice to an unsuspended five-year prison sentence for an offence the commission of which was manifestly facilitated by the possession of Belgian nationality, provided that the offence was committed within five years of the date of obtaining Belgian nationality*".[213]

[210] Art. 136 bis, ter, quater, quinquies, sexies and septies of the Belgian Criminal Code relating to war crimes, genocide and crimes against humanity and referred to in Art. 23§1-1° of the Belgian Nationality Code; for these offences, there is no time limit as to the date on which they were committed after the acquisition of nationality.
[211] Art. 331 bis, 477 to 477 sexies and 488bis of the Belgian Criminal Code concerning these offences and mentioned in Art. 23§1-1° of the Belgian Nationality Code.
[212] Art. 433 quinquies to octies of the Belgian Criminal Code and Art. 77bis, ter, quater and quinquies of the Aliens Act; offences referred to in Art. 23§1-1° of the Belgian Nationality Code.
[213] Belgian Nationality Code, art. 23§1-2°.
[213] Belgian Nationality Code, art. 23§1-2°.

Conclusion of Chapter 1

With the notable exception of Sweden, all the states considered have procedures for withdrawing their nationality from nationals whose behaviour is deemed to be treasonous towards their country. While the details of the various laws necessarily differ, what they have in common is that they reflect a very concrete reality: the possibility for the national community to exclude from its ranks one of its offspring, even if adopted, when their behaviour, deemed unworthy and disloyal, betrays the community as a whole and the nation. The theoretical severity of these texts, which establish broad possibilities for excluding people who have acquired nationality, is mitigated, however, by the fact that "*in practice, forfeiture measures are exceptional*".[214]

The differences between the legislations, which are minimal, essentially concern a number of points that can be quickly noted. Firstly, whether these measures apply to all nationals or only to those who have acquired their nationality. Secondly, whether the decision to withdraw nationality is taken by an administrative authority or by a court, following a trial. There is also the question of the exact list of facts likely to justify such a measure, the details of which may differ significantly from one state to another. Finally, the last point of difference between states concerns whether the decision to withdraw nationality may or may not result in the statelessness of the former national.

[214] P. Lagarde, *op. cit.* p. 167; in relation to France, but the situation is similar in the other states considered, see below, "European practices of withdrawal of nationality", p. 79.

Chapter 2 - Withdrawal of nationality and statelessness

Since nationality can be defined as "*the legal and political belonging of a person to the constituent population of a state*"[215], anyone who does not come under the jurisdiction of any state therefore does not have a nationality. Such a situation is not, as such, recent, as there may have been, particularly long ago, persons who did not come under any higher political authority. However, with the widespread establishment of sovereign states around the world, this situation must now be seen in a different light. Statelessness thus refers to the situation of "*a person whom no state considers as its national by application of its legislation*"[216]. In law, a stateless person is therefore someone "whom no one wants", a person who is not recognised by any state as belonging to its population.

While the concept is ancient, its contemporary meaning is much more recent, dating back only a century. Appearing in the Larousse dictionary in 1928[217], the French word for statelessness, "*apatridie*", consists of a privative "*a*" preceding a derivative of the root "patrie", meaning "*land of the ancestors, native country*".[218] This neologism was created by French jurists in the aftermath of the First World War to replace those previously used: "*The words Heimatlos and Heimatlosat are of Germanic origin. In January 1918, a lawyer at the Paris Court of Appeal, Mr Charles Claro, proposed replacing them with these expressions taken from Greek: apatride et apatridie*".[219] In the aftermath of the conflict, hostility towards the German language helped make "*apatridie*" the more popular term; Anglo-Saxons, for their part, rather used the term "statelessness" (lit. "without a state"). However, even if we can understand the reasons that led the French to coin their own term, it should be noted that the literal translation of the German; i.e.: "*who has lost their homeland*", is undoubtedly much more in tune with the historical circumstances that led to the creation and widespread use of this word.

[215] Paul Lagarde, *La nationalité française* (The French Nationality), 3rd edn, Dalloz, 1997, no. 1, p. 3
[216] United Nations Convention of 28 Sept. 1954 relating to the Status of Stateless Persons, Art. 1.
[217] www.cnrtl.fr/etymomogie/apatride/.
[218] www.cnrtl.fr/definition/patrie/.
[219] Paul Fauchille, *Traité de droit international public* (Treatise on Public International Law), Rousseau, Paris, 1922, t. 1, part I, p. 843.

The peace treaties signed between 1919 and 1923 to put an end to the First World War[220] resulted in major changes to the borders of Europe, reducing the territory of several states, abolishing some and creating new ones. In particular, the dissolution of the Austro-Hungarian Empire, the reorganisation of the former Romanov Empire and the reduction of the German Empire to the Weimar Republic led to the redrawing of borders in order to create numerous new states[221] which often had nothing to do with the principle of nationality, even though it was supposed to underpin the reconstruction of the European order. Furthermore, in the new states created, "*practices of forced and automatic forfeiture of nationality for ideological and political reasons [led] to an increase in the number of people without nationality who were forced to flee*".[222] From the 1920s onwards, the scale of this phenomenon gave this issue considerable resonance in Europe, and it was within the newly formed League of Nations, created by the Treaty of Versailles, that negotiations led, on the initiative of the Norwegian Fridtjof Nansen, to the creation of a passport for refugees and stateless persons, named after him.[223] This passport, introduced in 1922, was the first stage in the creation of a status for stateless people; it is estimated that almost 450,000 of these passports were distributed between the wars. In the aftermath of the Second World War, and following on from the discussions and achievements of the inter-war period, all states became genuinely aware of the issue, leading to the adoption of several international conventions aimed at promoting the consideration of stateless persons and preventing this situation from arising in the first place.

However, although the political dimension of statelessness emerged in the aftermath of the First World War, fuelled by certain practices of collective forfeiture of nationality targeting entire groups, it is not limited to this dimension. Statelessness can also occur as a consequence of the individual sanction of a national whom a state no longer accepts as one of its own. States often consider that,

[220] Treaties of Versailles between the Allies and the German Empire (1919), of Saint-Germain-en-Laye between the Allies and Austria (1919), of Neuilly between the Allies and Bulgaria (1919), of Trianon between the Allies and Hungary (1920), of Sèvres between the Allies and the Ottoman Empire (1920). Not to mention the Treaty of Riga between Latvia and Russia (1920) and the Treaty of Lausanne between the Allies and Turkey (1923, amending the Treaty of Sèvres). [221] The states of Finland, Lithuania, Estonia, Latvia, Poland, Czechoslovakia, Yugoslavia and Romania were thus created.

[222] French Office for the Protection of Refugees and Stateless Persons; https://ofpra.gouv.fr/fr/histoire-archives/actualites-et- events/ statelessness

[223] Fridtjof Nansen was the first High Commissioner for Refugees of the League of Nations; he was behind the creation of this passport, initially intended for the many refugees from the new Soviet Russia, who became stateless following the decision by the Soviets to revoke the Russian nationality of all emigrants in December 1921. Nansen was awarded the Nobel Peace Prize in 1922 for this creation, and the Nansen International Office for Refugees received it in 1938.

as they are free to determine who their nationals are, they are entitled to stop recognising a person as part of the national community that they embody. However, as soon as a state decides to withdraw its nationality from one of its citizens, the latter runs the risk of becoming stateless, if they did not have multiple nationalities in the first place. Statelessness is therefore the result of the loss of a nationality, often as a consequence of a national's disloyalty; it has no collective dimension, unlike the situation after the First World War.

Consequently, while states are almost unanimous in rejecting the practice of collective withdrawal of nationality on the grounds that it could lead to an increase in statelessness, a majority of them do not wish to deprive themselves of the possibility of punishing disloyal nationals individually by withdrawing their nationality, notwithstanding the hypothesis that this could have the effect of rendering them stateless. This issue is at the heart of current thinking on the loss of nationality as a sanction for nationals of a state who have been disloyal to their homeland. Thus, despite the risk of statelessness that it may entail, over the last twenty years or so in Europe there has been an increase in the use of measures to withdraw or forfeit nationality, and even the adoption of laws to allow this, even if this sometimes means rendering the people affected stateless.

It can therefore be seen that, since the Second World War, the affirmation of several international conventions aimed at controlling, reducing or even prohibiting the possibility of rendering people stateless has been matched, then as now, by the permanence – or even the extension – of national provisions that continue to assert the sovereignty of the state and its full freedom to determine who its nationals are, even at the price of rendering the persons concerned stateless. These two points should be considered in turn.

International provisions relating to statelessness (Section I)

National provisions relating to statelessness (Section II)

Section I - International provisions relating to statelessness

Although the League of Nations was the first international organisation with a global and political vocation, its limitations did not allow it to propose major international agreements, especially on the subject of statelessness. While it did manage to organise the introduction and distribution of the Nansen passport in an emergency, it should be remembered that the main aim at the time was to take care of refugees who had no identity papers, and not to deal with issues of statelessness as such: "*One of the first tasks of the International Nansen Refugee Office was to issue identity certificates and travel documents in lieu of passports*".[224] It is estimated that around 450,000 of these passports were issued between 1922 and 1945 by the League of Nations and disappeared with the advent of the United Nations, which, after 1945, introduced other provisions in favour of refugees.

As far as statelessness itself is concerned, it was after the Second World War that the need arose to take this phenomenon into account in a global way and not just through the prism of the refugee issue. It was also within the framework of the United Nations that an international law on statelessness was drawn up to protect the situation of people without nationality. These provisions of international law offered for signature by all the states of the world were followed by the adoption of local rules within the European continent. After studying the stipulations resulting from international law, we will consider those arising from European law.

A. International law

During the inter-war period, the protection afforded to stateless persons was based solely on their primary status as refugees, and it was for this reason that the Nansen International Office for Refugees endeavoured to provide them with identity documents. Although consideration was then given to the introduction of technical provisions to prevent the spread of statelessness, "*these technical compromises satisfied no one*".[225]

[224] Giulia Bittoni, *L'apatride en droit international et européen* (Statelessness in International and European Law), Thèse Droit, Dijon, 2019, p. 169.

[225] Emmanuel Decaux, "L'apatridie" (Statelessness), *Pouvoirs*, 2017, no. 160, p. 78: "*the League of Nations endeavoured to develop rules of prevention within the framework of the 1930 Conference for the Codification of International Law at The Hague, through a convention relating to conflicts of nationality laws – Articles 14 and 15 of which deal with filiation – accompanied by a 'protocol relating to a case of statelessness' which entered into force in 1937*"; ibid, p. 77.

It was in the aftermath of the Second World War that things began to change. Firstly, the Universal Declaration of Human Rights symbolically condemned statelessness and the measures of "denationalisation" or "denaturalisation"
introduced during the inter-war period, laying down the principles that "*everyone has the right to a nationality*" and that "*no one shall be arbitrarily deprived of their nationality nor denied the right to change their nationality*".[226] Although this Declaration has no direct practical effect, it nonetheless reveals the state of mind governing states in the aftermath of the war. Although refugees were the first to benefit from specific protection[227], the United Nations very quickly endeavoured to build a body of law aimed first at preventing the effects of statelessness, and then statelessness as such. Two United Nations Conventions were successively adopted which specifically address statelessness. The first, of 28 September 1954, relating to their status, aims to regulate and improve the condition of stateless persons by guaranteeing them the most appropriate treatment by the signatory states[228]; the second convention, of 30 August 1961, explicitly aims to reduce the number of cases of statelessness.

§1 - United Nations Convention of 28 Sept. 1954 relating to the Status of Stateless Persons

In line with previous texts and practices within the framework of the League of Nations, the 1951 Convention Relating to the Status of Refugees did not address the situation of statelessness and stateless persons, since the protection it aimed to offer to refugees applied without any condition of nationality. However, despite the protection offered by refugee status, it very quickly became apparent that an instrument of international law was needed to deal specifically with the situation of stateless persons. The Preamble to the 1954 Convention recalls the reasons for this need: "*Whereas only stateless persons who are also refugees may benefit from the Convention of 28 July 1951 relating to the Status of Refugees and there are many stateless persons to whom the said Convention does not apply*".[229] Moreover, the 1954 Convention explicitly states

[226] Art. 15 of the Universal Declaration of Human Rights of 10 December 1948; resolution no. 217-III of the United Nations General Assembly.
[227] Convention relating to the Status of Refugees of 28 July 1951 adopted pursuant to General Assembly resolution 429 (V) of 14 Dec. 1950.
[228] United Nations Convention of 28 Sept. 1954 relating to the Status of Stateless Persons.
[229] United Nations Preamble Convention of 28 Sept. 1954, cited above. The Convention was adopted by the United Nations Conference on the Status of Stateless Persons convened pursuant to Resolution 526 A (XVII) of 26 April 1954 adopted by the UN Economic and Social Council.

that it applies only to stateless persons who would not benefit from any United Nations protection as refugees.[230]

In line with the Universal Declaration of Human Rights proclaimed in favour of all individuals and affirming their rights without reference to their nationality, the content of the Convention adopted in 1954 is marked by the United Nations' concern to ensure that stateless persons enjoy the widest possible exercise of human rights and fundamental freedoms. While the text obviously recalls the obligation of stateless persons "*to comply with laws and regulations as well as with measures taken for the maintenance of public order*"[231], it above all contains a set of provisions aimed at enabling stateless persons to have a life that is as ordinary and "normal" as possible. In this respect and in general, the Convention affirms the right of stateless persons to be treated at least like aliens lawfully resident on the territory of a state[232] and at best like the nationals of the state themselves[233]; to this end, the Convention lists a whole series of rights to which stateless persons lawfully resident on the territory of a state must have access without discrimination. The Convention covers all rights in this way. Ultimately, the aim is to enable stateless persons to benefit from the rights they need to live a stable life, which they would not be able to enjoy in the absence of official recognition of their situation by the states in which they reside.

Signed on 28 September 1954, the Convention entered into force on 6 June 1960 and 96 states are now parties to it.[234] It should be noted, however, that the Convention suffers from one limitation, namely the fact that: "*no direct or indirect, individual or collective obligation rests on a state to grant stateless status to a stateless person! The 1954 Convention defines the parameters of a protective status, without specifying the conditions of access to the status*";[235] this explains why it does not contain any provisions aimed at preventing statelessness, unlike the 1961 Convention, the very purpose of which is to prevent statelessness.

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[230] Art. 1.2 of the Convention of 28 Sept. 1954, cited above.
[231] Art. 2 of the Convention of 28 Sept. 1954, cited above.
[232] "*Each Contracting State shall grant to stateless persons the same treatment as it grants to aliens generally*", Art. 7.1 of the Convention of 28 Sept. 1954, cited above.
[233] This is particularly the case with regard to access to food (especially where rationing measures exist: Art. 20), access to basic education (for primary education: Art. 22.1), public assistance (Art. 23), labour law and social protection (Art. 24) and taxation (Art. 29).
[234] As of 31 March 2022.
[235] E. Decaux, "L'apatridie" (Statelessness), *Pouvoirs*, 2017, no. 160, p. 81.

§2 - United Nations Convention of 30 August 1961 on the Reduction of Statelessness.

While the 1954 Convention aims to limit or mitigate the effects of statelessness, the 1961 Convention aims, on the contrary, to eradicate its causes – as its very title attests – and as such, it is the only one directly related to the subject of this study. Its preparation, moreover, began immediately after the adoption of the first, since it was the day after the latter was signed, on 28 September 1954, that the United Nations General Assembly adopted a resolution in December of the same year requesting its Secretary-General "*to convene an international conference of plenipotentiaries with a view to concluding a convention for the reduction of the number of cases of statelessness in the future or for the elimination of statelessness in the future*".[236] This international conference then held two sessions, in March-April 1959, then in August 1961, until the Convention was signed on 30 August 1961; it entered into force on 13 December 1975[237] and 78 states are party to it.[238]

The Convention of 30 August 1961 therefore explicitly sets itself the goal of reducing statelessness and, to this end, invites the signatory states to do everything possible to achieve this objective. The process for achieving this objective is fairly logical: on the one hand, it is a matter of preventing birth from creating new stateless persons and, on the other, of ensuring that laws do not allow new ones to be created. The law of nationality is called upon to achieve the first objective: the signatory states must widely attribute their nationality in order to avoid creating stateless persons.[239] In addition, and this time from a clearly political perspective, signatory states are asked not to create new stateless persons, whether as a result of collective measures, as was previously the case[240], or individual decisions.[241] It is in the same perspective that the Convention's flagship measure comes into play, whereby individual measures of forfeiture of nationality may not have the effect of rendering a national stateless.

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[236] Resolution no. 896 (IX) of the United Nations General Assembly of 4 Dec. 1954, point 2.
[237] United Nations Convention of 30 August 1961 on the Reduction of Statelessness. On the issues involved in the negotiation and adoption of this Convention, see Gustave Peiser, "La conférence de Genève sur l'apatridie" (The Geneva Conference on Statelessness), *Annuaire français de droit international*, 1959, vol. 5, p. 504.
[238] As of 31 March 2022.
[239] In particular through the application of *jus soli* ("right of soil"): arts. 1, 2 and 3 of the above-mentioned Convention of 30 August 1961.
[240] In view of the measures taken during the inter-war period, Article 9 of the Convention prohibits such practices: "*the Contracting States shall not deprive any individual or group of individuals of their nationality on racial, ethnic, religious or political grounds*".
[241] In particular, states are required to withdraw their nationality from one of their nationals *only* if that person has another nationality: art. 5 et seq. of the above-mentioned Convention.

Far from being purely symbolic, this issue was one of the main stumbling blocks in the discussions: "*one of the main difficulties encountered by the negotiators concerned the question of loss of nationality, which could lead to new cases of statelessness*".[242] The text of the Convention illustrates the technical compromise reached between the states, for while the principle of the prohibition of forfeiture of nationality with the effect of rendering a person stateless is indeed enshrined, it is immediately accompanied by the possibility offered to the state of depriving an individual of their nationality notwithstanding the consequence that this may render the latter stateless in certain duly enumerated circumstances, and particularly in the event of a lack of loyalty on the part of the national:

> "*1. The Contracting States shall not deprive any individual of their nationality if such deprivation would render them stateless.*
> *2. Notwithstanding the provision of the first paragraph of this Article, an individual may be deprived of the nationality of a Contracting State;*
> *a) In cases where, by virtue of paragraphs 4 and 5 of Article 7, it is permitted to prescribe the loss of nationality;*
> *b) If they have obtained this nationality by means of a false declaration or any other fraudulent act.*
> *3. Notwithstanding the provision of paragraph 1 of this Article, a Contracting State may retain the right to deprive an individual of its nationality if, at the time of signature, ratification or accession, it makes a declaration to that effect specifying one or more of the grounds provided for in its national legislation at that time and falling within the following categories:*
> *a) If an individual, under conditions implying on their part a lack of loyalty towards the Contracting State;*
> *i) Has, in defiance of an express prohibition of that state, rendered or continued to render assistance to another state, or received or continued to receive emoluments from another state, or*
> *ii) Has behaved in such a way as to cause serious prejudice to the essential interests of the state;*
> *b) If an individual has sworn allegiance, or has made a formal declaration of allegiance to another state, or has manifested in a manner not open to doubt by their conduct their determination to repudiate their allegiance to the Contracting State.*
> *4. A Contracting State shall not exercise the power to deprive an individual of its nationality under the conditions set forth in paragraphs 2 and 3 of this Article except in accordance with the law, which shall include the opportunity for the person concerned to present their case before a court or other independent body.*
> ".[243]

The desire to combat statelessness has also been expressed in Europe.

[242] E. Decaux, "L'apatridie" (Statelessness), *Pouvoirs*, 2017, no. 160, p. 81.
[243] Art. 8 of the above-mentioned Convention.

B. European law

It was first within the framework of the Council of Europe, an intergovernmental organisation for political cooperation in Europe, that the issues and effects of multiple nationalities and statelessness were discussed. In addition to the law developed within the framework of the Council of Europe on the prevention of statelessness, this issue will also arise within the European Union, albeit more recently and often indirectly. The situations within these two organisations must be considered one after the other.

§1 - Council of Europe law

The Council of Europe developed its thinking on nationality very early on. With regard to the Council's aim of achieving a closer union between its members, it was first of all easy to see that multiple nationalities were a source of difficulties in relations between States and that joint action should be taken to limit them; thus, as early as 1963, a Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality[244] was adopted. While this text settled certain specific and technical difficulties arising from the plurality of nationalities, it soon became apparent that it was the question of nationality as a whole that needed to be coordinated: "*Since then, however, it has been increasingly recognised that many problems concerning nationality, in particular those relating to multiple nationality, have not been sufficiently taken into account by this Convention*".[245] This led the Member States of the Council of Europe to commit themselves to negotiating and drafting a Convention dealing with the effects of nationality in a comprehensive manner; the European Convention on Nationality of 6 November 1997 was the product.

Signed on 6 November 1997, the Convention entered into force less than three years later, on 1 March 2000; to date, twenty-one States have ratified it. While it is in line with the various international instruments concerning nationality, multiple

[244] Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality of 6 May 1963.
[245] Explanatory Report on the European Convention on Nationality, Council of Europe, 6 Nov. 1997, p. 1; www.rm.coe.int/16800cce80.

nationality and statelessness, on the latter point it expresses in particular the desire of States Parties to seek to "*avoid, as far as possible, cases of statelessness*" and establishes as a general principle that "*everyone has the right to a nationality*" and that "*statelessness shall be avoided*".[246]

With regard to statelessness, it is easy to see that the negotiators of the Convention were faced with difficulties similar to those previously encountered by the diplomats who negotiated the 1961 United Nations Convention on the Reduction of Statelessness. The content of Article 7 on "*Loss of nationality ipso jure or at the initiative of a State Party*" illustrates the difficulty of reaching a consensus on this issue. Although Article 7.3 of the Convention aims to prohibit a state from depriving one of its nationals of their nationality, if this measure would have the effect of rendering the person stateless: It states that "*a State Party may not provide in its internal law for the loss of its nationality by virtue of paragraphs 1 and 2 of this article if the person concerned thereby becomes stateless*", while at the same time reserving the possibility that the state may nevertheless take this measure in the "*cases mentioned in paragraph 1, sub-paragraph b, of this article*"...

> "*Article 7 - Loss of nationality ipso jure or at the initiative of a State Party 1 A State Party may not provide in its internal law for the loss of its nationality ipso jure or at its initiative, except in the following cases:*
> *A voluntary acquisition of another nationality;*
> *B acquisition of the nationality of the State Party as a result of fraudulent conduct, false information or concealment of a relevant fact on the part of the applicant;*
> *C voluntary enlistment in foreign military forces;*
> *D conduct seriously prejudicial to the essential interests of the State Party;*
> *E absence of any effective link between the State Party and a national habitually resident abroad;*
> *F where it is established, during the minority of a child, that the conditions laid down by internal law which led to the acquisition of the nationality of the State Party ipso jure are no longer fulfilled;*
> *G adoption of a child where the child acquires or possesses the foreign nationality of one or both of the adoptive parents.*
> *2 A State Party may provide for the loss of its nationality by children whose parents lose its nationality, except in cases covered by sub-paragraphs c and d of paragraph 1.*
> *However, children shall not lose their nationality if at least one of their parents retains that nationality.*

[246] European Convention on Nationality of 6 Nov. 1997, respectively Preamble and art. 4.

3 A State Party may not provide in its internal law for the loss of its nationality by virtue of paragraphs 1 and 2 of this article if the person concerned thereby becomes stateless, except in the cases mentioned in paragraph 1, subparagraph b, of this article".

Unlike the situation of the Council of Europe, whose action to reduce statelessness is a direct result of the provisions of the Convention adopted, European Union law will have to take this issue into account indirectly.

§2 - European Union law

A reading of the European Treaties attests to the fact that statelessness is not one of the Union's primary themes. The words statelessness and stateless persons do not appear in the Treaty on European Union; similarly, the Treaty on the Functioning of the European Union only refers to the issue to stipulate that: "*Stateless persons are treated in the same way as third-country nationals*"[247] and yet this point is only included among the general provisions governing the operation of the area of freedom, security and justice... As Ms Giulia Bittoni points out, "*generally speaking, at European Union level, there are no specific regulations on statelessness*"[248]; however, it is easy to see that, moving down the hierarchy of Union law, various instruments of secondary legislation, regulations or directives, mention the situation of stateless persons with regard to the benefit of one or other Union regulation. This situation could not be more logical, given that, strictly speaking, the question of granting or withdrawing nationality is a matter for the Member States alone. This is confirmed by the case law of the Court of Justice of the European Union, since: "*Exclusive state competence is regularly reaffirmed in Europe, including by the European courts*".[249]

It is through the prism of citizenship of the Union that the Court will gradually assert its – indirect – jurisdiction over national decisions taken in matters of nationality, since citizenship of the Union is superimposed on the nationality of a Member State, of which it is the consequence: "*Citizenship of the Union is hereby established. Any person having the nationality of a Member State shall be a citizen of the Union. Union citizenship is*

[247] Article 67.2 of the Treaty on the Functioning of the European Union (TFEU).
[248] Giulia Bittoni, *L'apatride en droit international et européen* (Statelessness in International and European Law), Thèse Droit, Dijon, 2019, p. 41.
[249] Etienne Pataut, "La nationalité étatique au défi du droit de l'Union" (State Nationality and the Challenge of Union Law), *Revue Européenne du Droit*, 2021, no. 3; https://geopolitique.eu/articles/la-nationalite-etatique-au-defi-du-droit-de-lunion/.

additional to national citizenship and does not replace it".[250] The Court will in fact gradually come to examine the proportionality of a national decision to withdraw nationality leading to statelessness, considering that such a decision, insofar as it has the secondary effect of causing a person to lose their status as a citizen of the Union, "*falls, by its nature and consequences, within the scope of Union law*".[251] Although the effects and scope of this decision have not yet been fully defined, they nevertheless illustrate the way in which the European Union, through its courts, tends to interfere in an exclusive national competence, that of the state to recognise who its nationals are.[252]

However, despite this last point, a study of the international provisions in force shows that the desire to limit or prohibit statelessness that they express comes up against the freedom of the state to choose its own nationals. In particular, the fact that international conventions prohibit statelessness, while allowing States the possibility of causing it, illustrates the tensions surrounding this issue; these conventions merely "*take note of the diversity of national situations, reasoning on the basis of constant law, without succeeding in establishing common principles*".[253] Although the States considered in this study have signed or ratified several, and sometimes all, of these Conventions, they have often accompanied their signature with a number of reservations.[254] The fact is that an examination of the international stipulations aimed at limiting or prohibiting statelessness reveals the permanence and pre-eminence of national provisions in this area.

Section II - National provisions relating to statelessness

The relevant national provisions relating to statelessness result from the combination of provisions of national law, where they exist, and the scope of international stipulations, where the state is a party to one or other of them. Among the eleven states considered in this study, some prohibit statelessness while others do not explicitly prohibit it.

[250] Article 20.1 of the Treaty on the Functioning of the European Union (TFEU).
[251] CJEU, 18 Jan 2022, *JY v. Wiener Landesregierung*, Case C-118/20, §44.
[252] See below, "Review of forfeiture of nationality", p. 92 and spec. pp. 96-99.
[253] E. Decaux, "L'apatridie" (Statelessness), *Pouvoirs*, 2017, no. 160, p. 82.
[254] See Appendices 1 and 2 "Status of ratifications and reservations" to the United Nations Convention of 30 August 1961 on the Reduction of Statelessness and the European Convention on Nationality of 6 Nov. 1997, pp. 115 and 119.

A. Prohibition of statelessness

As long as a national is not in a situation of multiple nationality, any state measure withdrawing their nationality would have the effect of rendering them stateless; it is possible to extend to this situation the hypothesis in which a national who loses their nationality could usefully recover another that had previously been theirs. However, a study of the laws applicable in this area reveals the tension revealed by the international conventions aimed at limiting statelessness. There is tension within states themselves between their desire not to render a former national stateless and their desire to be free to determine who their nationals are, notwithstanding the effect of this decision. Thus, among the states studied, it is possible to distinguish between those which explicitly prohibit any possibility of rendering a person stateless, and those which, while prohibiting the principle of statelessness, nevertheless recognise the possibility that one of their decisions on nationality may nevertheless produce this effect. Both situations can be observed in the panel of states selected.

§1 - Absolute prohibition of statelessness

Four of the States studied fall into this category to varying degrees: Germany, Denmark, Luxembourg and Sweden. They must be considered successively, none being in exactly the same situation with regard to the relevant provisions of domestic law and their acceptance of international stipulations. The situation of the Federal Republic of Germany will be considered last in that it is similar to that of States for which the prohibition of statelessness is only relative.

Denmark, Luxembourg and Sweden are in very similar situations. These three States are parties to the two international conventions aimed at avoiding statelessness, the United Nations Convention on the Reduction of Statelessness of 30 August 1961 and the European Convention on Nationality of November 1997. Therefore, although sections 8A and 8B of the Danish Nationality Act allow a Danish national to be stripped of their nationality, the measure cannot have the effect of rendering them stateless. As far as Luxembourg is concerned, the situation is identical. Moreover, on the one hand, there is no procedure for forfeiture of nationality and, on the other hand, the loss of Luxembourg nationality acquired by fraud

explicitly reserves this hypothesis of statelessness: "*forfeiture of Luxembourg nationality is not permitted where it results in the person concerned becoming stateless*".[255] Lastly, although Sweden's law, based on constitutional provisions, does not provide for a procedure to deprive its nationals of their nationality, the loss of nationality by obsolescence resulting from Article Fourteen of its law cannot have the effect of rendering the former national stateless.

The situation of the Federal Republic of Germany is similar to that of states for which the prohibition of statelessness is only relative. Although Germany has ratified these two Conventions without making any reservations with regard to forfeiture of nationality[256], its law seems to allow nationality to be withdrawn if it has been acquired by fraud, notwithstanding the fact that this has the effect of rendering the former national stateless. There is a distortion here between the national provisions that appear to allow statelessness and the scope of the provisions of the two international conventions to which the Federal Republic is a party.

§2 - Relative prohibition of statelessness

Such a situation results from the existence of distortions between the provisions of national law and the stipulations of international agreements; this is the case with Austria, Belgium, Italy, the Netherlands and the United Kingdom.

While Austria has ratified the 1961 and 1997 Conventions, it has entered reservations on the scope of its signature in order to retain the possibility of withdrawing the nationality of one of its nationals, notwithstanding the fact that such a decision may have the effect of rendering the person stateless. With regard to the United Nations Convention on the Reduction of Statelessness, Austria stated that it would retain: "*the power to deprive an individual of their nationality where that individual freely enters the military service of a foreign state*", as well as the power "*to deprive an individual of their nationality where that individual, being in the service of a foreign state, engages in conduct likely to seriously prejudice the interests or prestige of the Republic*

[255] Art. 62(2) of the Law of 8 March 2017 on Luxembourg nationality.
[256] Although Germany made a reservation to its accession to the European Convention on Nationality of 6 Nov. 1997, it does not refer to the effect of forfeiture of nationality; cf. below, Appendix 2, "Status of ratifications and reservations to the European Convention on Nationality of 6 December 1997", p. 119.

of Austria".[257] Similar reservations have also been made, and were recorded in Austria's instrument of ratification of the European Convention on Nationality, deposited on 17 September 1998.[258]

The Kingdom of Belgium finds itself in a situation very similar to that of Austria, with the sole reservation that it is a party to only one of the two Conventions, that of the United Nations, having not signed, let alone ratified, that of 1997. At the time of its accession to the Convention, Belgium made a declaration in relation to Article 8, stipulating that "*the Contracting States shall not deprive any individual of their nationality if such deprivation would render them stateless*"; using the stipulations of article 8§3, it declared that it reserved "*the right to deprive of their nationality*" a national who had committed the acts referred to in article 23/1 of the Belgian Nationality Code.[259]

Italy's situation is identical. It has not signed the 1997 European Convention on Nationality, and if it has acceded to the United Nations Convention on the Reduction of Statelessness, it has done so subject to the same reservation, an option provided for in article 8(3) of the Convention. Consequently, an Italian who voluntarily enlists in armed forces outside Italy or acts on behalf of a state with which Italy is at war could have their nationality withdrawn and possibly become stateless. For other cases where nationality is withdrawn, Italian legislation provides that this measure may not have the effect of rendering the person concerned stateless. The situation in the United Kingdom is identical to that in Italy. The United Kingdom has not acceded to the European Convention on Nationality and, if it has accepted the 1961 United Nations Convention, it has also made an explicit reservation with regard to the stipulations of Article 8, which could lead to the United Kingdom being deprived of the possibility of stripping a national of their nationality, if such a measure rendered them stateless: "*The Government, in accordance with paragraph 3 (a) of Article 8 of the Convention, declare that, notwithstanding the provisions of paragraph 1 of Article 8, the United Kingdom retains the power to deprive a naturalised person of their nationality*".[260] The reservation made is aimed specifically at the situation in which a lack of loyalty on the part of the national would justify stripping them of

[257] See the declaration made by Austria: below, Appendix 1, "Status of ratifications and reservations to the United Nations Convention on the Reduction of Statelessness of 30 August 1961", p. 115.
[258] See the reservations made by Austria: below, Appendix 2, "Status of ratifications of and reservations to the European Convention on Nationality of 6 December 1997", p. 119.
[259] See the declaration made by Belgium: below, Appendix 1, "Status of ratifications of and reservations to the United Nations Convention on the Reduction of Statelessness of 30 August 1961", p. 115.
[260] Reservation made by the United Kingdom: below, Appendix 1, "Status of ratifications and reservations to the United Nations Convention on the Reduction of Statelessness of 30 August 1961", p. 115.

nationality. United Kingdom legislation still allows nationality acquired by fraud to be withdrawn, even though this could have the effect of rendering the person stateless.[261]

As far as the Netherlands is concerned, there is a final hypothesis of distortion between the different rules. If both Conventions apply in the Kingdom[262] and if, as a result, a measure of forfeiture of Dutch nationality cannot have the effect of rendering a former national stateless, the withdrawal of nationality obtained by fraud remains possible during the twelve years following the date of acquisition of this nationality and it then seems that this could have the effect of rendering the person concerned stateless. If the question were to be put to the court, however, it is conceivable that it would apply the stipulations of the two conventions, by application of the *pacta sunt servanda* rule.

Unlike these eight states, the other three considered in this study explicitly allow their nationality decisions to have the effect of creating stateless persons.

B. Non-prohibition of statelessness

The two states still to be considered, France and Switzerland, have in common the fact that they are not parties to either of the two international conventions whose stipulations aim to prohibit statelessness. However, it is not sufficient to refer to the absence of accession to the two international conventions referred to above in order to deduce explicit authorisation to take a measure of forfeiture of nationality which would have the effect of rendering the former national stateless. Relevant provisions of domestic law may also prevent such a situation from arising. It is from this point of view that the Swiss and French provisions diverge, because while Swiss nationality law does not necessarily seem to allow statelessness, the same is not true of French nationality law. Therefore, while in one case there is a virtual prohibition of statelessness, in the other, it is the authorisation that must be established.

[261] *British Nationality Act 1981*, section 40(3).
[262] Only one reservation has been made by the Netherlands, in relation to the 1997 Convention, although it does not concern a question related to this study.

§1 - The virtual prohibition of statelessness

In view of its asserted political neutrality, the Swiss Confederation may for a long time have appeared to be a relatively timid state with regard to overly restrictive provisions of international law. This partly explains why Switzerland did not join the United Nations until September 2002, having been content for almost sixty years with its simple observer status with the Organisation, without this in any way harming its position.

Switzerland has therefore signed neither the United Nations Convention on the Reduction of Statelessness of 30 August 1961, nor the Council of Europe Convention on Nationality of 6 November 1997; nevertheless, Swiss nationality law includes provisions on statelessness. In particular, although Swiss legislation on nationality allows the Confederation, through the intervention of the State Secretariat for Migration, to withdraw the nationality of a national whose conduct is seriously prejudicial to the interests or reputation of Switzerland, the law states that this provision applies only to "*dual nationals*".[263] Consequently, the measure of forfeiture of Swiss nationality cannot lead a former national to become stateless, since the law is specifically aimed only at nationals in a situation of multiple statelessness.

Notwithstanding this provision relating to the possibility of an individual's nationality being forfeited on the basis of their conduct, Switzerland seems to allow one of its nationality decisions to lead to the former national's statelessness. This applies to anyone who has acquired Swiss nationality by fraud. Although naturalisation obtained in this way may be annulled "*within a period of two years (...) but no later than eight years after Swiss nationality was granted*"[264], the article specifies that, as a collective effect of the measure, annulment "*shall result in the loss of Swiss nationality of the children who acquired it by virtue of the annulled decision*", with the exception of "*children who would become stateless as a result of the annulment*"[265]. If this is specified for children, we feel that it should be inferred that, conversely, this would not be the case for adults, who could become stateless. This is also possible in France.

[263] Art. 42 of the Swiss Nationality Act of 20 June 2014.
[264] Art 36 of the Swiss Nationality Act of 20 June 2014.
[265] Art 36.4.b of the Swiss Nationality Act of 20 June 2014.

§2 - Authorisation of statelessness

France is in a similar situation to Switzerland, not being a party to either of the two Conventions. Moreover, although France did sign – but did not ratify – the 1961 Convention, it attached a reservation to its signature to allow it to take a decision to withdraw nationality that could render a French national stateless.[266] While two of the existing procedures cannot be used if they would have the effect of rendering the nationals concerned stateless, this is not the case for the last procedure.

As we have seen, forfeiture of nationality only applies to French nationals by acquisition. However, Article 25 of the Civil Code specifies that this measure can only be pronounced on the express condition that the person concerned possesses another nationality: "*A person who has acquired French nationality may [...] forfeit their French nationality, unless the forfeiture results in the person becoming stateless*".

Under articles 23-7 and 23-8 of the Civil Code, French nationality may be withdrawn from any French national. As in the case of forfeiture, recourse to the Article 23-7 procedure is subject to the French national in question possessing another nationality: "*A French person who in fact behaves like the national of a foreign country may, <u>if they have the nationality of that country</u>, be declared (...) to have lost French nationality*".[267] Therefore, here again, no statelessness could result from the implementation of the withdrawal of nationality.

The situation envisaged by Article 23-8 is quite different. In contrast to the previous situation, the article takes care not to require the national in question to possess another nationality. This is a real sanction and a decree withdrawing nationality on the basis of Article 23-8 could have the effect of making the individual, formerly French, stateless. An examination of the texts applicable in France in relation to nationality therefore shows that, contrary to what is intuitively thought, it is indeed possible to punish the disloyal behaviour of a compatriot, even if it means rendering them stateless.

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[266] "*At the time of signing this Convention, the Government of the French Republic declares that it reserves the right, when depositing its instrument of ratification, to avail itself of the option provided for in Article 8, paragraph 3, under the conditions laid down in that provision"*; see below, Appendix 1, "Status of ratifications and reservations to the United Nations Convention on the Reduction of Statelessness of 30 August 1961", p. 115.
[267] Emphasis added.

Conclusion of Chapter 2

The cruel history of statelessness has left its mark on the international conscience, and a study of the legislation of all the countries under consideration shows, at the very least, a reluctance to accept the principle of statelessness. The fact that nine of the eleven states whose legislation is examined here were keen to ratify the United Nations Convention on the Reduction of Statelessness of 30 August 1961 bears witness to this situation; this is further confirmed by the fact that the two remaining states have provisions in their domestic law aimed, if not at prohibiting, at least at reducing statelessness.

However, this is only a semblance of unanimity, since most of these same states, while declaring themselves hostile to the creation of stateless persons, reserve the right to adopt measures to forfeit their nationality which could result in the statelessness of their nationals targeted by such measures. This situation illustrates the tension that exists between nationality as an element of a person's status and nationality as evidence of legal and political membership of a state's constituent population. Withdrawal of nationality is unquestionably linked to the second dimension, with the state remaining in any event the sole arbiter of who its nationals are or remain. With this in mind, it is now time to consider the practice of the European states covered by this study with regard to the withdrawal of their nationality.

Chapter 3 - European practices regarding loss of nationality

At this stage of the study of procedures for withdrawing nationality, we have noted that they exist throughout Europe, with the exception of Sweden. As soon as a national of a state demonstrates treason towards their homeland through disgraceful and disloyal behaviour, the national community has the possibility of excluding one of its own from its ranks. It even seems possible to compare the withdrawal of nationality from a disloyal national to a social defence measure enabling a political community to exclude from its sphere of influence anyone who does not respect the most fundamental, objectively structuring values of that community. In light of this cardinal dimension, which has been verified everywhere, the differences between the various laws under consideration appear to be relatively minimal, essentially technical and detailed, and therefore not essential in the strict sense of the term.

Secondly, a significant point of difference between the states considered concerns whether or not the decision to withdraw nationality may have the effect of rendering the former national stateless. Here, a study of the legislation of all the countries considered clearly shows a form of ambivalence. While there is indeed a general reluctance to accept that a national measure withdrawing nationality may have the effect of rendering the former national stateless, there is nevertheless a clear desire on the part of states to be able to maintain the possibility of excluding the national from the national community when their actions seriously undermine national cohesion.

With these various elements in mind, it is now a matter of examining and putting into perspective these provisions allowing for the withdrawal of nationality, with regard to existing practices concerning the loss of nationality. Specifically, it is now necessary to consider the contemporary practice of the states covered by this study with regard to the withdrawal of their nationality. From this point of view, if it is indeed the extension of recourse to forfeiture of nationality that can be observed in almost all the states considered – and this is true both

in terms of the theoretical possibilities for doing so and from a practical point of view – it is the actual scope of these measures that needs to be addressed. Beyond this, a second point needs to be considered, namely the practical consequences of measures of forfeiture of nationality: forfeiture naturally has the effect of causing a person to lose their nationality, but what are the wider consequences of this measure of forfeiture in terms of fundamental rights or presence on the territory?

The scope of the extension of forfeiture of nationality (Section I)

The effects of forfeiture of nationality (Section II)

Section I - The scope of the extension of forfeiture of nationality

Since the early 2000s, Europe has been grappling with the question of how to punish the conduct of nationals who are disloyal to their homeland; this has led to major public debates in all the states concerned, albeit with varying degrees of intensity. The consequences of these discussions also varied, sometimes leading to the creation or even the extension of the possibility of forfeiting disloyal nationals' nationality (sometimes on several occasions), sometimes leading to no change in the provisions in force.

It was in the United Kingdom that the debate was the earliest, since in response to the growing number of Britons taking up arms against the interests of the Kingdom, the law on nationality was amended three times – first in 2002[268], then in 2006[269] and 2014.[270] On each occasion, these amendments were aimed at extending the possibility of forfeiting citizens' nationality, where such a measure appeared to be in the public interest. It was around the same time that, following a similar debate, Denmark took the decision in 2004 to allow nationals convicted of disloyalty to the country or acts of terrorism to forfeit their nationality.[271] A little later, it was the turn of the Netherlands to allow nationals who do not respect the essential values of the national

[268] *Nationality, Immigration and Asylum Act 2002*, in that it amends s. 40 of the *British Nationality Act 1981*.
[269] *Immigration, Asylum and Nationality Act 2006*, insofar as it amends s. 40 of the *British Nationality Act 1981*.
[270] *Immigration Act 2014*, insofar as it amends s. 40 of the *British Nationality Act 1981*; in the latter case, only persons who have obtained nationality by naturalisation may be covered.
[271] *Lov 2004-05-05 n° 311 om ændring af indfødsretsloven*, art 8B.

community to forfeit their nationality: the Netherlands Nationality Act 1984 has thus been amended three times since 2010, each time to extend the possibilities for stripping Dutch nationals of their nationality.[272]

The rise of terrorism in the world and the participation of many European nationals in these actions after 2010 has led to renewed debate in other countries about the value of stripping their nationals who have taken part in these actions of their nationality. Indeed, following the destabilisation of the Syrian-Iraqi area in 2011 and the civil war taking place there, the number of European nationals leaving for these combat zones and joining terrorist groups increased, prompting several European states to punish their nationals taking part in this movement by withdrawing their nationality. First of all, Belgium has twice, in 2012 and again in 2015, extended the possibility of stripping Belgian nationals of their Belgian nationality if they "*seriously fail in their duties as citizens*".[273] Austria adopted a similar measure in 2014 to allow the forfeiture of nationality of a citizen who has voluntarily joined an armed group in a conflict abroad[274] and Italy did the same in 2018.[275] Lastly, even Germany, which had long resisted any forfeiture of nationality following the measures taken by the National Socialist regime, also went down this path in 2019.[276]

Conversely, the debates on this issue have had no impact in several other European states. While Sweden saw this issue come to the political fore in 2005-2006, this did not lead to any questioning of the absence of forfeiture of nationality as a sanction for conduct[277]; the same was true in Luxembourg. In Switzerland there has been some debate, but the provisions in force appear to be sufficient to cover cases of disloyal behaviour, since forfeiture of nationality is permitted if a Swiss person causes "*serious harm to the*

[272] In 2010, the law was revised to allow citizenship to be withdrawn from nationals convicted of crimes detrimental to the essential interests of the state (Act of 17 June 2010); forfeiture will be extended to dual nationals convicted of terrorism (Act of 5 March 2016) and to those who have taken up arms in the service of a foreign state (Act of 10 Feb. 2017).
[273] Art. 23§1-2° of the Belgian Nationality Code; Laws of 4 Dec. 2012 and 20 Jul. 2015
[274] *Staatsbürgerschaftsgesetz 1985* §33-(2) as it results from the *Bundesgesetz, mit dem das Grenzkontrollgesetz und das Staatsbürgerschaftsgesetz 1985 geändert werden* of 29 Dec. 2014. In 2021, a further amendment to the law will allow nationals convicted of terrorism offences to forfeit their nationality.
[275] *Legge 1 dicembre 2018, no. 132*, insofar as it amends art. 10bis of the Law of 5 Feb. 1992, *Nuove norme sulla cittadinanza*.
[276] The law on nationality is amended to punish Germans who have chosen to take part in terrorist combat operations abroad: *Staatsangehörigkeitsgesetz (StAG)* §28.2, as amended by the *Drittes Gesetz zur Änderung des Staatsangehörigkeitsgesetzes* of 28 June 2019.
[277] A new debate in 2016 saw the Parliament reject a bill aimed at allowing forfeiture of nationality.

interests or reputation of Switzerland".[278] A similar debate took place in France in 2015, when, following the terrorist attacks in Paris, the then President of the Republic, François Hollande, announced before a meeting of Parliament in Congress that he wanted to extend the forfeiture of French nationality; the bill to achieve this objective was tabled in Parliament[279] before being abandoned in the spring of 2016, due to a lack of political consensus on the issue.

In the light of these extended possibilities to proceed with forfeiture of nationality in many European states, it is important to consider the different practices for implementing the measure of forfeiture of nationality. To this end, we will first look at the practical arrangements – i.e., the question of the authority responsible for carrying out the nationality revocation procedure – and then attempt to draw up a statistical overview of the practice of the European states studied with regard to forfeiture of nationality.

A. The authority withdrawing nationality

It is quite natural that the eleven states covered by this study vary considerably in terms of the implementation of procedures leading to the forfeiture of nationality. For all that, and despite the differences between the states considered, all these procedures can be grouped into two categories according to the framework in which the forfeiture of nationality is organised.

More often than not, forfeiture of nationality is left entirely in the hands of the administration and political authorities. Over and above the legal traditions of the state in question, this method of proceeding emphasises the vertical dimension of the bond of nationality, testifying to an individual's legal and political membership of the constituent population of a state. Placed in the hands of the administration and the executive, the procedure unquestionably reveals this dimension, with the state always remaining alone and free to determine who its nationals are or remain; this is obviously under the control of the judge, as befits a state governed by the rule of law. In this case, the decision to have recourse to forfeiture of nationality is decided or established by the political authority.

[278] Art. 42 of the Swiss Nationality Act of 20 June 2014.
[279] Draft constitutional law for the protection of the nation no. 3381, 23 Dec. 2015.

Conversely, some European states choose to make the judicial institution as such the ordinary framework for the implementation of forfeiture of nationality procedures, entrusting the judge with the task of examining whether or not the conditions for pronouncing forfeiture have been met.

§1 - Withdrawal of nationality by administrative decision

Placing in the hands of the administration and the political authorities of the country the task of carrying out the investigation and the decision to proceed with the forfeiture of nationality is the most frequent situation among the European states considered, since nine of the eleven states envisaged provide for this. These are Austria, France, Germany, Italy, Luxembourg, the Netherlands, Sweden, Switzerland and the United Kingdom. It is worth briefly considering the advantages and disadvantages of this choice, then presenting the existing procedure in France before returning to some specific national features.

The great advantage of entrusting the administration, under the direction of the public authorities, with the task of investigating and preparing cases of deprivation of nationality lies indisputably in the unity and diligence of the procedure followed. Particularly where the disloyalty of a national is concerned, it seems relatively easy in principle for the intelligence and police services to inform the authorities of the situation of nationals taking up the cause or acting against the interests of the state. From this point onwards, the administration can easily prepare forfeiture of nationality cases for the political authorities responsible for taking the decision. Once the forfeiture has been pronounced, the persons concerned will of course be able to challenge the measure before the competent courts. However, this relative ease of the procedure may in fact appear to be its main drawback, as it is true that the administration may then appear in this situation to be "judge and party" – and as such lacking both impartiality towards the national concerned and independence towards the political authorities initiating the measure adopted.

However, it should be noted that in all the states in question, the procedure, which in most cases results in "*an initiative by the administration leading ultimately to a positive act of withdrawal or annulment of nationality, is contradictory, in application of the principles of administrative procedure under ordinary law, the right to proper*

administration and an effective appeal".[280] In most cases, this means that the person concerned is informed in advance of the complaints against them and the measures envisaged, and is provided with the details of the procedure concerning them, as well as the opportunity to submit observations and even to be heard orally.

Moreover, the three French procedures for the withdrawal or forfeiture of nationality (Articles 23-7, 23-8 and 25 of the Civil Code) are subject to the adoption of a decree by the Council of State. However, far from being a mere formal step, the requirement of such an assent constitutes an important guarantee for the nationals concerned by the measure, since it is well known that in this area, the requirement of such an opinion on the part of the High Assembly tends to transform the nature of its intervention, tending to make it a quasi-judicial decision. The conditions for implementing each of these articles[281] are set out in detail in a 1993 decree and are extremely similar[282].

A few national specificities may be noted. In Italy, for example, loss of nationality for joining foreign armed forces or serving a foreign government begins with notification to the national concerned of a decree issued by the Minister of the Interior ordering them to leave the functions in question within a given period, failing which they lose their nationality. The advantage of this procedure lies in the clarity of the state's action and the predictability for the person concerned of the consequences of their behaviour. In Luxembourg, the withdrawal of nationality (possible only where it has been obtained by fraud) is carried out by ministerial decree, stating the reasons, and must be transcribed either in an *ad hoc* register or in the register of birth certificates by the civil registrar of the last place of residence in the Grand Duchy[283]; this decision may be the subject of an informal appeal and a contentious appeal.

Lastly, it is interesting to note that while the Dutch Nationality Act provides for an ordinary law procedure offering important guarantees to nationals subject to a nationality forfeiture measure, these guarantees are mitigated when the forfeiture occurs on the grounds of participation in a terrorist group. The general regime provided for by the Act requires the Ministry of Justice to notify the person concerned in writing of the intention to

[280] Court of Justice of the European Union, *Conditions and procedures relating to involuntary loss of nationality*, Research and Documentation Directorate, Apr. 2018, no. 57, p. 22.
[281] Decree no. 93-1362 of 30 Dec. 1993 on declarations of nationality and decisions on naturalisation, reintegration, loss, forfeiture and withdrawal of French nationality (JO of 31 Dec. 1993, p. 18,559).
[282] See below, "Review by national courts", p. 93.
[283] Art. 15, 16 and 21 of the Law of 23 Oct. 2008 on Luxembourg nationality; or, in the absence of residence in the Grand Duchy, in the commune of Luxembourg.

deprive them of Dutch nationality, stating the reasons justifying the measure, inviting them to make observations, and giving the person concerned the opportunity to request that the procedure followed remain anonymous. Above all, the law stipulates that the authorities must ensure that individual interests are weighed against the national interest in the decision in question; this obliges "*the competent authority to take due account of the nature and seriousness of the act, the possibility of becoming stateless after the withdrawal of Dutch nationality, (...) the consequences of the possible loss of European Union citizenship, the possible minority of the person concerned and relevant personal factors*"[284]. The decision must be taken no later than sixteen weeks after written notification of the intention to withdraw; it may be appealed. On the other hand, where the protection of national security is at stake[285], the legislator has taken the view that the urgency of the situation in the event of an immediate threat to national security justifies dispensing with the obligation of prior notification of the national concerned.[286] However, in this situation, it is provided that if the national does not appeal against the forfeiture measure, the procedure is automatically triggered and an appeal in law is lodged in order to allow judicial review.

Other states have recourse to a judicial procedure in order to implement forfeiture of nationality.

§2 - Withdrawal of nationality by judicial decision

Reflecting their particular history, the Kingdoms of Belgium and Denmark entrust the judicial authorities with the task of forfeiting the nationality of their disloyal nationals.

At first glance, the main justification for resorting to the courts to deal with these issues is that nationality has always been considered to be a factor relating to the status of individuals, and it was therefore logical that the natural judge of individuals, the courts,

[284] CJEU, *Conditions and procedures relating to involuntary loss of nationality*, *op. cit.* p. 115.
[285] Hypothesis of the participation of a disloyal national who is a member of an organisation taking part in an armed terrorist conflict: *Rijkswet op het Nederlanderschap*, art 14§4.
[286] However, the other obligations incumbent on the authorities remain in force: balancing of individual and collective interests, proportionality of the forfeiture measure, possibility of investigating, prosecuting and sentencing the person in the Netherlands, possibility of serving a custodial sentence, consequences resulting from the possible loss of European Union citizenship, possible minority and any other relevant elements of a personal nature.

should be seized of any issue relating to their status. This theoretical justification may be supplemented by the fact that the issue of forfeiture of a national's nationality is, by its very nature, highly sensitive from a political and social point of view, and the judge, by virtue of their very status, would possess the independence and even impartiality required by such an issue. The judicial procedure would also be particularly well suited to meeting the requirement of a strictly individual examination of the case and the implementation of a genuinely adversarial procedure. However, these advantages of having recourse to forfeiture of nationality by the courts do not necessarily appear to outweigh the undeniable disadvantages of such a solution. From this point of view, the main disadvantage undoubtedly lies in the necessarily long period of time that recourse to legal proceedings entails. Indeed, the procedure is in the hands of the parties, who are in a position to use all the tricks and techniques offered by the procedural codes to effectively slow down the progress of the proceedings. Furthermore, this decision will obviously be subject to appeal, or even cassation, and it is even possible to imagine an appeal to supranational courts... So much time spent will render the decision of forfeiture of nationality inapplicable as long as there is a possibility of appeal.

In Denmark, the forfeiture procedure will therefore be carried out under the supervision of the judge. Thus, in the case of nationality acquired by fraud, it will be the minister responsible for foreigners who will ask the public prosecutor's office to submit an application for withdrawal of nationality to the territorially competent court (in principle that of the domicile of the person concerned)[287]; this means that while it is indeed the judiciary that pronounces the forfeiture of nationality, it does so only at the request of the executive. This is a criminal trial in which the public prosecutor must provide proof that the conditions laid down by law for withdrawal in the event of fraud have been met. Withdrawal of Danish nationality as a result of conviction for treason against the country or its institutions or for terrorism is also a criminal trial initiated by the Public Prosecutor's Office. In any event, even though the letter of the law requires the courts, in principle, to order the withdrawal of nationality, it appears that they "*are called upon to make an overall assessment of all the circumstances of the case. In this respect, they must in particular assess the consequences of a withdrawal of nationality for the person concerned and verify whether such a withdrawal is justified by the seriousness of the offence in*

[287] *Lov om dansk indfødsret*, art. 8D.

question"[288]. It is therefore by means of a ruling that nationality may be withdrawn at the end of the trial.

In Belgium, the situation is slightly different, as forfeiture of nationality may be requested by either the civil or criminal courts. Indeed, "*Article 23 of the CNB* [Belgian Nationality Code] *provides for the possibility for the public prosecutor to request forfeiture of nationality before the court of appeal sitting in civil matters*"[289], when Belgian nationality has been acquired by fraud and when the person concerned has seriously failed in their duties as a Belgian citizen. As they are judged directly by the Court of Appeal, the decisions in question cannot therefore be appealed, as the appeal in cassation is subject to specific and restrictive rules of admissibility. Secondly, in the case of forfeiture of nationality on the basis of articles 23/1 and 23/2 of the Belgian Nationality Code – i.e., due to the existence of specific criminal convictions – it is then up to the criminal court to forfeit Belgian nationality; it is then the court of first instance sitting in criminal matters, on the application of the public prosecutor, that will pronounce the forfeiture. However, "*decisions handed down by a court of first instance are subject to appeal. Appeals to the Court of Cassation against final decisions based on this provision are governed by the rules of ordinary law*"[290]; this is obviously likely to delay the outcome of the proceedings and the actual pronouncement of the forfeiture.

With these points in mind, it is now important to look at the practices of the various states with regard to forfeiture of nationality. Is there an increase in measures of forfeiture of nationality, just as there has been an increase in the number of legislative amendments designed to make this possible?

B. The practice of forfeiture of nationality verified by the figures

Whether or not national legislation has been amended to this effect, it is a fact that ten of the eleven states considered in this study have the possibility of depriving of their nationality those of their nationals whose behaviour has shown them to be disloyal. We also know that there has been considerable public debate about the

[288] CJEU, *Conditions and Procedures Relating to Involuntary Loss of Nationality*, op. cit, no. 35, p. 71.
[289] Christelle Macq, "Contours et enjeux de la déchéance de la nationalité" (Scope and Issues of Forfeiture of Nationality), *Courrier hebdomadaire du CRISP*, 2021/30-31, p. 5, no. 24.
[290] *Ibid.*, no. 42.

fact that many nationals, often of foreign origin, have taken up arms – in one way or another – against the interests of the country of which they are nationals. It should also be noted that these debates have sometimes given rise to certain fears, and in 2019 the Parliamentary Assembly of the Council of Europe adopted a resolution questioning the compatibility with human rights of the use of forfeiture of nationality as a measure to combat terrorism. In particular, the Assembly feared that "*such procedures violate the constituent elements of the rule of law*" and was "*also concerned that deprivation of nationality is often used for the sole purpose of allowing the expulsion or refusal of readmission of a person who has or may have taken part in terrorist activities*".[291]

Does the practice of the various states under consideration match the Assembly's concerns? The question is whether there has been a quantitative extension of measures to forfeit the nationality of disloyal nationals over the last twenty years. After looking first at practices and whether or not forfeiture of nationality is actually used, we will then look at the direct legal effects of forfeiture of nationality.

§1 - Recourse to forfeiture of nationality

An examination of the situation in the various states shows that there has been a significant increase in measures of forfeiture of nationality aimed at disloyal nationals. However, while the percentage increase may seem high, it is only in view of the fact that the number of such forfeitures was virtually non-existent until the early 2000s in all the countries under consideration. This is true everywhere. Furthermore, it is very difficult to give an exhaustive presentation of the measures taken, as it is true that states hardly communicate on these decisions, preferring to consider that there is no need to go into detail on individual administrative decisions. Similarly, Members of Parliament are not always eager to find out the exact situation in their country by questioning the Government on the subject. The situation in each of the states will be considered, before concluding with a presentation of the situation in the United Kingdom, since it is the state with the most proactive policy of the eleven states considered with regard to forfeiture of nationality.

[291] Parliamentary Assembly of the Council of Europe, *Withdrawing nationality as a measure to combat terrorism: a human-rights compatible approach?*, Resolution No. 2263 (2019), 25 Jan. 2019, no. 5, p. 2.

In Belgium, "*forfeiture of nationality fell into disuse until the late 2000s. In 2003, when questioned on this subject in the House of Representatives, the Minister of Justice stated that no more forfeiture of nationality had been pronounced since the forfeitures that had been pronounced directly after the Second World War*".[292] Since then, the *Moniteur belge* has recorded 21 forfeitures of nationality handed down by the Brussels Court of Appeal, a 22nd having just been handed down in April 2022.[293] In the Netherlands, the national coordinator for counter-terrorism and security reported that between December 2017 and April 2019, the Dutch Minister of Justice had revoked the nationality of 13 nationals, with 6 others awaiting a decision.[294]

In Germany, although the law was amended in 2019, it does not appear to have been applied to date. This is understandable in view of the Government's decision to interpret the law in a neutralising way and not to apply it to situations that arose before the law came into force.[295] In Austria, forfeiture measures are few and far between, and the media reported the first revocation of Austrian citizenship, in 2017, against a national involved with the Islamic State.[296] Similarly, although Denmark amended its law on nationality in 2004 to allow forfeiture of nationality for its disloyal nationals, it would appear that fewer than five forfeiture orders have actually been issued! A report on forfeiture of nationality notes in its chapter on Denmark: "*We are not aware of any comments in the literature on the practical application of withdrawal of nationality*".[297] The situation is similar in Italy, where the first forfeiture of nationality appears to have occurred in 2019 following the legislative amendment of 2018.[298] Lastly, the situation in Switzerland is hardly any different, since the first contemporary withdrawal of nationality took place in 2019.[299]

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[292] Christelle Macq, "Contours et enjeux de la déchéance de la nationalité" (Scope and Issues of Forfeiture of Nationality), *op.cit.*, no. 289.
[293] Laurence Wauters, *Le Soir*, 20 Apr. 2022, "12 ans d'emprisonnement prononcés à Liège contre un décapiteur présumé de Daesh" (Alleged Daesh Beheader Sentenced to 12 Years' Imprisonment in Liège); www.lesoir.be/437071/article/2022-04-20/.
[294] Nationaal Coördinator Terrorismebestrijding en Veiligheid, *Rapportage Integrale aanpak terrorisme*, p. 11; www.nctv.nl/binaries/nctv/documenten/rapporten/2019/04/18/rapportage-integrale-aanpak-terrorisme/Rapportage+integrale+aanpak+terrorisme.pdf
[295] This typically means joining the ranks of the Islamic State, a situation that justified the adoption of the possibility of forfeiting a national of their German nationality...
[296] www.kurier.at/chronik/wien/is-mann-muss-oesterreichischen-pass-abgeben/254.487.417.
[297] Swiss Institute of Comparative Law, *La déchéance de Nationalité* (Forfeiture of Nationality), E-Avis ISDC 2019-14, 15 August 2019, p. 94.; translated by us. www.isdc.ch.
[298] www.lecconews.news/lecco-citta/via-la-cittadinanza-a-moutaharrik-il-pugile-dellisis-lo-propone-il-viminale-e-una-prima-volta-246690/#.YmsDyn7P2po.
[299] www.letemps.ch/suisse/premier-doublenational-dechu. There are also fewer than five.

As far as France is concerned, it is difficult to find a figure on which to agree! It seems that from the early 1970s to 2015, forfeiture of nationality was resorted to on only around ten occasions.[300] On the other hand, on 30 April 2022, the *Journal officiel* (Official Journal) showed only 16 forfeitures of nationality since 1980: 12 since 2019, 1 in 2006, 1 in 2002, 1 in 1992 and finally 1 in 1990. Furthermore, Professor Paul Lagarde, the French specialist in nationality law, notes that with regard to procedures for withdrawing nationality based on Articles 23-7 and 8 of the Civil Code, it seems that no French nationality has been withdrawn on their basis for at least forty years![301] That makes a total of no more than thirty measures taken.

The situation in the United Kingdom is the most interesting and quantitatively the most significant. In 2016, in response to a journalist's question, the *Home Office* reported that 81 forfeitures had been carried out between 2006 and 2016[302]; more than a hundred were then carried out in 2017, an increase of almost 600%.[303] The political explanation for this significant increase was correlated with the situation in the Syrian-Iraqi combat zone, since for the British authorities: "*Deprivation of nationality is particularly important in helping to prevent the return to the United Kingdom of certain British citizens with dual nationality who are involved in terrorism-related activities in Syria or Iraq*".[304] Indeed, it appears that almost ¾ of the forfeiture measures taken were against individuals who were outside the UK at the time of the decision. After the significant rise in 2017, the figures for forfeiture orders issued have fallen back to levels similar to those of previous years[305]; the UK Government claims responsibility for this practice and justifies it on the grounds that it: "*considers the revocation of*

[300] Thierry Mariani, report no. 2814 on the bill on immigration, integration and nationality, National Assembly, 16 Sept. 2010, p. 133. The former Minister of the Interior, Bernard Cazeneuve having declared in 2014 before MPs: "*Over the last ten years, very few forfeitures of nationality have been handed down. When you were in charge, between 2007 and 2011, there were none at all. Since 2012, only one has been handed down, but not for acts of terrorism*", National Assembly, verbatim report, 16 Sept. 2014; www.assemblee-nationale.fr/14/cri/2013-2014-extra2/20142010.asp.

[301] Paul Lagarde, *La nationalité française* (The French Nationality), 3rd edn, Dalloz, 1997, no. 233, p. 163.

[302] Answer available on the website www.whatdotheyknow.com; this site provides official answers from the Government and public bodies. Answer by letter from the Home Office, no. FOI 38734 to the question "Citizenship deprivations for the last 10 years", asked by Mr Colin Yeo, 20 June 2016.

[303] HM Government, *Transparency Report 2018*: *Disruptive and Investigatory Powers*, July 2018, §.5.9, p. 27.

[304] "*Deprivation is particularly important in helping prevent the return to the UK of certain dual-national British citizens involved in terrorism-related activity in Syria or Iraq*"; HM Government, *Transparency Report* 2018: *Disruptive and Investigatory Powers*, July 2018, point 5.9, p. 26.

[305] There were 21 in 2018, 27 in 2019 and 10 in 2020; HM Government, *Transparency Report 2018/19*: *Disruptive Powers*, March 2020, §.5.9, p. 22 and *Transparency Report 2020*: *Disruptive Powers*, March 2022, §.4.9, p. 27.

citizenship to be a serious measure, which is not taken lightly. This is reflected in the fact that the Home Secretary personally decides whether it is in the public interest to deprive an individual of British citizenship".[306] This makes the United Kingdom the state that makes the most extensive use of deprivation of nationality against its disloyal nationals.

The sum of the forfeiture of nationality measures taken by each of the states in question gives a maximum total of approximately 350 nationals who have been deprived of nationality because of their disloyalty, including more than 250 as a result of action by the United Kingdom alone.

§2 - Direct legal consequences of loss of nationality

Once taken, the measure of forfeiture of nationality has only one direct effect, that of causing the person concerned to lose their nationality. This simply means that the former national can no longer, on the effective date of deprivation of nationality, be considered as belonging politically and legally to the constituent population of the state in question. As soon as the state ceases to recognise a person as one of its nationals, that person becomes, by that very fact, a foreigner in its eyes. There are two possible situations, depending on whether the person holds multiple nationalities or just one.

If a person holds several nationalities, they will retain the benefit of the other nationality – or nationalities – that they hold. The state that stripped them of their nationality will regard them as a foreigner and they will no longer be able to rely on this former nationality for their personal situation. They will therefore only be able to have identity documents or a passport as a national of the other state whose nationality they still hold.

Where the national stripped of their nationality had only one nationality, the measure will therefore necessarily have the effect of rendering them stateless, insofar as the applicable domestic provisions allow.[307] However, their personal situation would not be directly and seriously affected by their statelessness. In fact, all the states considered in this study are party to the United Nations Convention of 28 September

[306] HM Government, *Transparency Report 2020*: *Disruptive Powers*, March 2022, §.4.9, p. 26.
[307] See above, "National provisions relating to statelessness", p. 70.

1954 relating to the Status of Stateless Persons.[308] As such, the individual status of these "newly" stateless persons would not be affected by the withdrawal of their nationality since they would then be governed: "*by the law of the country of their residence*"[309]; moreover, the Convention also provides that states receiving stateless persons will issue them with identity documents[310] and that the latter must be treated, without any discrimination, in the same way as nationals.

In addition to this direct and immediate consequence of the loss of nationality, there are potential indirect effects that should be considered.

Section II - Consequences of forfeiture of nationality

Forfeiture of nationality has the direct and primary, if not sole, effect of turning a former national into a foreigner. However, this act opens the door to a whole series of consequences. Firstly, the act may be contested and reviewed by the courts; secondly, since the person has become a foreigner, the question of their continued presence in the country must be considered.

A. Oversight of forfeiture of nationality

Once a national has been stripped of their nationality, they are in a position to challenge this decision, just like any other citizen. This challenge may take the form of an informal appeal or a contentious appeal; it is then that, in addition to the administrative controls surrounding the forfeiture, the matter will be referred to the courts. The national judge will be called upon to review the measure taken against the former national. The situation is obviously different where the forfeiture of nationality is ordered by the court, as is the case in Italy and Denmark, since it is then directly during the court proceedings that the applicant threatened with loss of nationality will be able to challenge it – and therefore before it takes place – by presenting their arguments of fact and law to the court.

[308] The eleven states considered in the study are all parties to the Convention.
[309] Art. 12 of the United Nations Convention of 28 Sept. 1954 relating to the Status of Stateless Persons.
[310] Art. 27 of the United Nations Convention of 28 Sept. 1954, cited above.

Although review of the measure was initially the sole responsibility of the national courts, recent years have seen the development of external, sometimes indirect, review, this time by supranational courts.

§1 - Oversight by national courts

In principle, the oversight carried out by the national courts does not differ from the judicial oversight ordinarily carried out by the courts and respects the ordinary law of the trial. In particular, the procedural requirements resulting from the stipulations of article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms apply in all the states considered in this study; they do not therefore need to be specifically recalled here. It will be appropriate to present the procedure applicable in France and the judge's control over the measure of forfeiture of nationality before seeing how, abroad, certain court decisions have been able to closely supervise the action of the public authorities with regard to forfeiture of the nationality of their disloyal nationals.

For the withdrawal of nationality pursuant to Article 23-7 of the Civil Code, Article 59 of the Decree requires the Government to notify the national concerned, "*in administrative form or by registered letter with acknowledgement of receipt, of the legal and factual grounds justifying that they may be declared to have lost French nationality*". If the domicile of the person concerned remains unknown, which is perfectly conceivable, since it is quite possible that a French person "*who in fact behaves like the national of a foreign country*" has chosen to leave the country of which they are still a national with no intention of returning, the decree requires an informative notice to be published in the *Journal officiel de la République française* (Official Journal of the French Republic). At this point, the person concerned has a period of one month in which to send the Minister responsible for naturalisation their observations in defence (documents, briefs, expert opinions, etc.). Once this period has expired, the Government may declare that the person concerned has lost their status as a French citizen, by adopting a decree stating the reasons for the decision, with the assent of the Conseil d'État (Council of State). With regard to forfeiture of nationality strictly speaking, as it results from Article 25 of the Civil Code, the procedure is exactly identical to that provided for in the case of Article 23-7.[311]

[311] Art. 61 of Decree no. 93-1362 of 30 December 1993, cited above.

With regard to the withdrawal of nationality on the basis of Article 23-8 of the Civil Code, the procedure begins with an injunction issued by the Government to the national to terminate their employment in the foreign armed forces or public service[312] or to assist them; when issuing this injunction, it specifies the legal and factual grounds justifying it[313]; the injunction is served under the same conditions as in the previous case. As stipulated in Article 23-8, the time limit given to the national may not be less than fifteen days or more than two months. Finally, on expiry of the time limit set by the injunction, the loss of French nationality may be declared by reasoned decree, with the assent of the Council of State. In the case specifically referred to in Article 23-8, it is important to note that a negative opinion issued by the Council of State would not necessarily have the effect of preventing the adoption of the decree withdrawing nationality, as this possibility is provided for: "*where the opinion of the Council of State is unfavourable, the measure provided for in the previous paragraph may only be taken by decree in the Council of Ministers*".[314] However, the constitutionality of Article 23-8 remains open to question. In reviewing the constitutionality of the forfeiture of nationality resulting from Article 25 of the Civil Code, the Constitutional Council noted that its provisions could not "*lead to the person being rendered stateless*" and that this therefore led to the rejection of the complaint that the requirements of Article 8 of the Declaration of 1789[315] had been disregarded. Would the Council now take the same approach to Article 23-8, or would it consider that the seriousness of the acts in question would justify the measure having the effect of rendering a person stateless? The absolute rigour of this provision must, however, be tempered by the fact that it is rarely used by the public authorities: no French nationality has been withdrawn on this basis for at least fifty years.

Finally, it should be noted that in several of the countries studied, judicial intervention has led, if not to neutralising the scope of provisions adopted to promote the possibility of recourse to forfeiture of nationality, at least to restricting it significantly. Thus, in the Netherlands, the Dutch Council of State was able to annul in 2019 two forfeitures of nationality pronounced in 2017, on the grounds that in pronouncing them, the Administration had relied on facts prior to the entry into force of

[312] Or in an international organisation to which France does not belong.
[313] Art. 60 of Decree no. 93-1362 of 30 December 1993, cited above.
[314] Art. 23-8 of the Civil Code.
[315] *Conseil constitutionnel* (Constitutional Council), 23 Jan. 2015, no. 2014-439 QPC, *M. Ahmed S*, §19.

Article 14§4, on which it was based.[316] The Dutch *Raad Van Staate* thus considered that this was a retroactive application of the provision in question that violated the principle of legal certainty.[317] For the same reasons, in Germany, the Government stated in advance that the 2019 law would not apply to German fighters who had joined the Islamic State, since this law could not apply to past acts, any other solution being in clear contradiction with the current case law of the Federal Constitutional Court.

A particular point should be mentioned in relation to the United Kingdom, since it is the only one of the states considered in which the judicial review of the decision to forfeit nationality is, in certain cases, examined by an *ad hoc* judge. Where forfeiture of nationality is based on reasons "in the public interest", British law provides that the person concerned must refer the matter to a specialised court, the *Special Immigration Appeals Commission*[318], whose decisions may in turn be challenged by the ordinary courts.

In addition to review by national courts, intervention by supranational courts is still possible.

§2 - Oversight by supranational courts

This review was initially carried out by the European Court of Human Rights (hereinafter the ECtHR) before the European Union developed its own original case law, the potential of which needs to be assessed. The jurisdiction of these courts is open to question, given that the question of granting or withdrawing nationality is a matter for the states alone and that it is generally accepted that "*exclusive state jurisdiction is regularly reaffirmed in Europe, including by the European*

[316] *Rijkswet op het Nederlanderschap*, art 14§4, from the Kingdom Act of 10 Feb. 2017. This provision, adopted in the wake of the conflict in Syria and the departure of Dutch nationals to combat zones, makes it possible to revoke the nationality of a sixteen-year-old Dutch national residing outside the country whose behaviour shows that they have "*joined an organisation (...) placed on a list of organisations that take part in a national or international armed conflict and constitute a threat to national security*".
[317] Raad Van Staate, 17 Apr. 2019, *B v State Secretary of Justice and Security*, 201806104/1/V6. It should be noted that of the eleven forfeitures of nationality pronounced at the same time in 2017, only two of the persons concerned had referred their forfeiture of nationality to the judge for review; both were annulled.
[318] The derogatory nature of this procedure has been validated by the European Court of Human Rights, despite the fact that confidential documents cannot be examined directly by the applicant or their lawyer, but through the intermediary of an ad hoc lawyer other than that of the applicant: ECtHR, 7 Feb. 2017, *K2 v. the United Kingdom*.

courts".[319] However, insofar as forfeiture may have effects on the family life of the person concerned, the ECtHR will take an interest in this. Similarly, it is through the prism of the question of Union citizenship that the Court of Justice will assert a form of – indirect – jurisdiction over national decisions taken in matters of nationality.

For a long time, the ECtHR rejected applications for loss of nationality on the grounds that they were incompatible with the provisions of the European Convention on Human Rights (hereinafter the ECHR), which do not guarantee a right to nationality. However, insofar as "*it cannot be ruled out that an arbitrary refusal of nationality might, in certain conditions, raise a problem with regard to respect for rights protected by the Convention*"[320], it has developed an indirect review of the Convention. In the case of forfeiture, the Court thus carries out a "*two-stage review of the measure's compliance with Article 8 of the ECHR: firstly, it examines whether the measure is arbitrary and, secondly, it analyses the consequences of the measure on the foreign national's private and family life*".[321] However, it is clear from all the Court's case law on the withdrawal of nationality that it carries out a minimum level of control over the impact of these measures on the private lives of applicants, admitting in particular that, in terrorism cases, "*a state may take a more rigorous approach to assessing the bond of loyalty and solidarity existing between itself and persons previously convicted of a crime or offence constituting an act of terrorism*".[322] Accordingly, states have considerable leeway when it comes to forfeiture of nationality for their disloyal nationals, provided that the facts have been carefully examined by the authorities and that a fair balance has been struck between the applicant's personal interests and the general interest. In addition, the Court also ruled that even if a forfeiture measure resulted in the former national's statelessness, this would not necessarily be contrary to Article 8 of the ECHR.[323]

As far as the Union is concerned, it is clear that the granting or withdrawal of nationality is a matter for the Member States alone and not for the Union; however, as Union citizenship is superimposed on the nationality of a Member State, a national measure depriving a national of their nationality could have the effect of causing them to lose

[319] Etienne Pataut, "La nationalité étatique au défi du droit de l'Union" (State Nationality and the Challenge of Union Law), *Revue Européenne du Droit*, 2021, no. 3; www.geopolitique.eu/articles/la-nationalite-etatique-au-defi-du-droit-de-lunion/.
[320] ECtHR, 21 June 2016, *Ramadan v Malta*, §84.
[321] Christelle Macq, "Contours et enjeux de la déchéance de la nationalité" (Scope and Issues of Forfeiture of Nationality), *op. cit*, no. 181; ECtHR, 7 Feb. 2017, *K2 v. United Kingdom*.
[322] ECtHR, 25 June 2020, *Ghoumid et a. v. France*, §45.
[323] This was insofar as the withdrawal of nationality did not, *per se*, lead to a ban on entry, as the person in question had a residence permit: ECtHR, 21 June 2016, *Ramadan v Malta*, §91.

Union citizenship. The Court of Justice will thus develop a form of indirect review of the national forfeiture measure. The Court thus took the liberty of examining the proportionality of a national decision to withdraw nationality leading to statelessness, considering that such a decision, insofar as it has the secondary effect of causing a person to lose their status as a citizen of the Union, "*falls, by its nature and consequences, within the scope of Union law*".[324] Although the effects and scope of this decision have not yet been fully defined, they nevertheless illustrate the way in which the European Union, through its courts, tends to interfere in an exclusive national competence, that of the state to recognise who its nationals are.

The Court worked very gradually. The first case in which it had an opportunity to rule was that of an Austrian who had become German and, living in Germany, lost his original Austrian nationality as a result. However, it later transpired that Germany withdrew his German nationality, considering that it had been acquired by fraud, the person having concealed the existence of criminal proceedings against him in Austria. As a result, Mr Rottman became stateless and thereby lost the status of citizen of the Union which he had enjoyed until then by virtue of his status as a national of a Member State. Was this situation compatible with EU law? When the German authorities brought an action for interpretation before the Court, the latter held that "*Union law, in particular Article 17 of the ECHR, does not preclude a Member State from withdrawing from a citizen of the European Union the nationality of that Member State acquired by naturalisation where it was obtained by fraud, provided that such a withdrawal decision complies with the principle of proportionality*"[325]; it concluded: "*according to settled case law, the definition of the conditions for the acquisition and loss of nationality falls, in accordance with international law, within the competence of each Member State*".[326]

Consequently, "*the division of competences is therefore very clear: it is up to each state to determine its own nationals; it is up to Union law to draw the consequences for citizenship of the Union. The European solution does not therefore appear to have any specificity in relation to the principle of exclusive state competence in matters of nationality laid down by public international law, which the Court of Justice*

[324] CJEU, 18 Jan 2022, *JY v. Wiener Landesregierung*, Case C-118/20, §44.
[325] CJEU, 2 March 2010, *Rottmann v. Freistaat Bayern*, Case C-135/08.
[326] *Ibid.*, §39.

has already had occasion to transpose to Europe".[327] Behind the clarity of the demonstration by which the Court confirmed the competence of the Member States to confer their nationality, the wording chosen opened up the possibility of a review of the national measure taken in matters of nationality.

The assertion of exclusive state competence in nationality matters was tempered by the Court's assertion that the decision to withdraw nationality had to comply with the principle of proportionality, a principle that the Court gave itself the power to enforce. While the competence of each state in matters of nationality is not called into question as such, it is the simultaneous application of the two rights that could have effects on the person in question, in particular by causing them to lose European citizenship. The Court could then be called upon to rule on whether or not the grounds justifying the withdrawal of nationality were proportionate in view of their effects; i.e., the loss of Union citizenship and, ultimately, statelessness... This is what the Court has just begun to do, in its recent decision of 18 January 2022, delivered by the Grand Chamber.[328]

The facts of the case should be mentioned briefly. An Estonian national living in Austria wanted to acquire Austrian nationality. Since Austria prohibits dual nationality, the authorities told her that she would be granted Austrian nationality if she provided proof, within two years, that she had lost her Estonian nationality. Although this was done within the prescribed time limit – the person became stateless – Austria refused her naturalisation on the grounds that she had committed serious administrative offences[329] and no longer fulfilled the conditions for granting nationality laid down by law. The Austrian court questioned the compatibility of this decision with EU law and referred the matter to the CJEU for a preliminary ruling. In line with its previous case law, the Court held that the loss of Union citizenship entailed was "*by its nature and consequences a matter of Union law*"; above all, it reviewed the proportionality of the decision and held that "*the national courts of the host Member State are required to ascertain whether the decision (...) which renders definitive the loss of Union citizenship status for the person concerned, is compatible with the principle of proportionality*

[327] Etienne Pataut, "La nationalité étatique au défi du droit de l'Union" (State Nationality and the Challenge of Union Law), *op. cit*.
[328] CJEU, 18 Jan 2022, *JY v. Wiener Landesregierung*, Case C-118/20.
[329] The offences in question were the failure to affix a roadworthiness sticker to her vehicle and driving a motor vehicle while under the influence of alcohol, which are simple administrative breaches of the highway code that, under Austrian law, carry a simple fine.

in the light of the consequences it has for that person's situation".[330] In this case, the Court considered the decision to be disproportionate in its effects.

Although the CJEU's decision does not have *erga omnes* effect and applies only to the parties to the case, it is nonetheless part of a line of case law that has the effect of limiting the prerogatives of the state in matters of nationality. Relying on the consideration that the person concerned "*finds themselves in a situation in which it is impossible for them to continue to assert the rights deriving from their status as a citizen of the Union*"[331], the Court substantially restricts the state's power to withdraw their nationality, at least where the effect of the measure is to cause them to lose their status as a citizen of the Union...

In so doing, by holding that the revocation of an assurance of naturalisation must comply with the principle of proportionality, the Court interferes with the state's right to decide who its nationals are. Further developments in the Court's case law will undoubtedly be followed closely.

Over and above the question of judicial review of forfeiture of nationality, one of the key issues at stake in this measure is that it turns a national into a foreigner, thereby opening up the possibility of ending their presence in the country.

B. The question of presence on the territory

As soon as a former national's nationality is withdrawn, they *ipso facto* become a foreigner. This decision, as such, has no other direct effect on the person's situation and the measure does not affect the former national's family, nor does it have any consequences for their presence on national territory or their residence. However, as they are no longer nationals, they no longer have the right to reside in the country that they derived from this status.

In theory, there are several possible scenarios, depending in particular on the person's place of residence. If the person who has become a foreigner is outside the national territory, it is legally possible to prohibit them from entering or returning to that territory; conversely, if they are still on the territory of the state whose

[330] CJEU, 18 Jan 2022, *JY v. Wiener Landesregierung*, Case C-118/20, §75.
[331] CJEU, 18 Jan 2022, *JY v. Wiener Landesregierung*, Case C-118/20, §39.

nationality they have been forfeited, they may, as foreigners, be expelled from that state to another state whose nationality they hold or to any other state that accepts them for residence. The situation would be different still if the former national had become stateless as a result of the withdrawal of their nationality, in which case they would have no legal ties with any state... In any event, all decisions of this nature would be open to appeal by the person concerned; appeals possibly based on the infringement that the measure would have on their right to lead a normal family life and to respect for their private life. Over and above the principle of banishment itself, which we will review first, we will look at the scope and details of the case law on inadmissibility from the point of view of the right to lead a normal family life and to respect for private life.

§1 - From banishment to inadmissibility

The state constitutes a political community based on harmony within it; a situation that has the effect of rejecting the enemy outside the community. As soon as certain people have excluded themselves from the political community represented by the state through their behaviour, the state may choose to no longer recognise them as part of its own, to no longer see them as its nationals. This should come as no surprise, as there is no reason to tolerate the existence within the community of people whose aim is to destroy the social order, given that harmony "*does not withstand the competition of parties whose views on the meaning of the state and the Constitution are radically divergent*".[332] If the former compatriot's disloyalty justified the forfeiture of their nationality and their exclusion from the national community, it undoubtedly justified even more that they be banished from the country. The measure most likely to complement the exclusion from nationality could be what used to be known as banishment, a penalty that no longer exists in the countries under consideration.

In France, although Article 17 of the 1810 Penal Code provided for a sentence of banishment, which became deportation in 1850[333], it was finally repealed by the Order of 6 June 1960[334]. The penalty of banishment therefore no longer exists in French law, and the closest measure to it would be deportation. Exclusion from

[332] Julien Freund, *L'essence du politique* (The Essence of Politics), Sirey, 1965, no. 153, p. 661.
[333] Law of 8 June 1850; see "De la déportation" (On Deportation), *Journal de droit criminel*, 1850, pp. 225-233.
[334] Article 12 of Order no. 60-529 of 4 June 1960 amending certain provisions of the Criminal Code, the Code of Criminal Procedure and the Codes of Military Justice for the Army and the Navy with a view to facilitating the maintenance of order, the safeguarding of the state and the pacification of Algeria (JO of 8 June 1960, pp. 5107 and 5119).

the political community is matched by a subsequent ban on any presence on national territory. In fact, one of the fundamental rights attached to the status of citizen is freedom of movement within the territory, and a state cannot prohibit one of its nationals from entering or leaving its territory: "*everyone has the right to leave any country, including their own, and to return to their country*".[335] Although there may be exceptions to this rule, they must be limited and regulated.[336] Consequently, once the disloyal national has become a foreigner as a result of their forfeiture of nationality, they will be barred from any presence on the territory. Once the person has lost their nationality, they can be deported or banned from the country, depending on whether they are in or out of the country. The conditions for implementing this measure must be considered in the light of fundamental rights.

§2 - Inadmissibility and fundamental rights

It is entirely possible to consider that a former national who has been stripped of their nationality because of their disloyalty and who has become a foreigner no longer has a place on national territory; in this case, it is the procedures aimed at prohibiting their presence that should be considered. Depending on whether the foreign national in question still resides in the country or is abroad, the legal measures will be different: ban or expulsion from the territory; they will nonetheless have to comply with the same body of rules derived essentially from the stipulations of the European Convention on Human Rights.

Residing outside the country, the person who has become a foreigner may challenge the ban and request their return under the terms of Article 8 of the Convention, on the grounds that this measure would infringe their right to respect for their private and family life. Residing in the country of which they were formerly a national, they could be expelled from it, either because they have never left it or because they have returned to it, legally or otherwise. Whichever of these hypotheses is envisaged, the question of their future in the country arises. The foreigner could then be expelled to a country of which

[335] Art. 13 of the Universal Declaration of Human Rights.

[336] As in the case of a judicial ban on access to certain places or a preventive administrative ban for the same purpose. The same applies to the confiscation of a passport. Although the right to leave one's country does not appear in the text of the ECHR, it does appear in art. 2§4 of Protocol No. 4 to the ECHR, which came into force on 2 May 1968. §3 of this article sets out the conditions for any limitations to this right: "*No restrictions may be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of law and order, for the prevention of crime, for the protection of health or morals or for the protection of the rights and freedoms of others*".

they are a national – or any other country of their choice that accepts them – as long as it complies with the requirements of the provisions of the European Convention on Human Rights.

Among the requirements arising from the Convention and its interpretation by the European Court of Human Rights is compliance with Article 3 on the prohibition of torture: "*No one shall be subjected to torture or to inhuman or degrading treatment or punishment*". The expulsion of a former national who has become a foreigner cannot therefore be ordered to another country of which they are a national if there is a risk of ill-treatment or torture.[337] In each case submitted to it, the Court verifies both objectively and subjectively that the person whose expulsion is planned will not be subjected to such treatment. Objectively, the aim is to check that the state of destination offers sufficient guarantees against the risks of infringement of Article 3, and subjectively, that the person concerned will not be personally targeted by such practices as a result of their past actions. Far from being set in stone, this assessment of the state of a country evolves in line with its internal changes, and it was for this reason that in 2018 the expulsion from France to Algeria of an Algerian convicted of acts of terrorism was considered to violate their rights under Article 3[338], while the following year, in the light of developments in Algeria's domestic policy, another expulsion to the same country was this time considered to be in compliance with the Convention.[339]

The subjective question then arises as to whether or not the expulsion order unreasonably infringes the right to respect for private and family life of the former national who has become the foreign national concerned, a right guaranteed by Article 8 of the ECHR. Such interference may take place under certain conditions, in particular if "*it constitutes a measure which, in a democratic society, is necessary to protect national security, public safety, the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others*". Unlike applications alleging a breach of Article 3, the ECHR only reviews the proportionality of respect for the right to family life, as this right is not absolute and may therefore be limited, particularly in order to protect national security. To review the proportionality of expulsion, the Court has drawn up

[337] The Court has even ruled that Art. 3 cannot be restricted or derogated from "*even in time of public emergency threatening the life of the nation*", ECtHR, 29 Apr. 2019, *A. M. v. France*, no. 12148/18, §112.
[338] ECtHR, 1 Feb. 2018, *M. A. v. France*, no. 9373/15.
[339] ECtHR, 29 Apr. 2019, *A. M. v. France*, no. 12148/18, cited above.

a set of "guiding principles" to help it assess the case before it; these principles were formalised in 2001 in the *Boultif v. Switzerland* judgment.[340]

To date, all of the expulsion orders reviewed by the Court have concerned naturalised citizens who were subsequently stripped of their nationality. In March 2022, the Court handed down a particularly interesting decision in this area: The case concerned a Daesh fighter, Danish by birth on his mother's side, who also held Tunisian nationality. Sentenced in Denmark to a prison term on his return from Syria, he was subsequently stripped of his Danish nationality in 2018, following which Denmark decided to expel him to Tunisia, the country of which he remained a national. It is interesting to note that in this case, the applicant, formerly Danish, was married and the father of a child born and residing in Europe; his wife and child had no ties with Tunisia. However, the ECtHR's analysis led it to uphold the expulsion order; when it examined this case, the Court upheld the expulsion of the former Dane to Tunisia[341], considering that the applicant's family was able to follow him to live in Tunisia.

There is still another application pending, which is also interesting. This is a case involving an Iraqi jihadist legally resident in Germany and convicted *inter alia* of financing terrorist activities in Iraq; he too is challenging the expulsion order against him.[342] Unlike in the previous case, the person in question has never held German nationality; however, in a similar way, the applicant is married and has children born and living in Germany, without his wife and children having any links with Iraq, the country to which he could be expelled. We still have to wait for the outcome of this second case, and the analysis of the European Court of Human Rights will be interesting; however, if we look at its past case law, reinforced by the

[340] ECtHR, 2 August 2001, *Boultif v. Switzerland*, no. 54273/00, §48. The eight guiding principles identified correspond to various factual elements to be weighed against each other: legal qualifications, length of presence, legal affiliation and status. Two additional "guiding principles" were added in 2006, with the Grand Chamber judgment, *Üner v. Netherlands* (ECtHR, 18 Oct. 2006, no. 46410/99). In addition to the length of the person's stay in the country from which they are to be expelled, the Court now also assesses "*the strength of social, cultural and family ties*" with that country (§58). In view of the actual situation in countries of residence, the length of the stay no longer necessarily constitutes a guarantee that the person subject to a removal order has built up real links with their country of residence. There are now ten
"guiding principles" formalised by case law and covering the individual situation of the person, their family and the danger they represent to public safety.
[341] ECtHR, 3 March 2022, *Johansen v. Denmark*, no. 27801/19.
[342] ECtHR, 1 March 2019, *Al-Bayati v. Germany*, no. 12538/19.

recent *Johansen v. Denmark* decision, there is every reason to believe that the expulsion order would also be validated.

The last situation to be considered is that of a former national who has become stateless as a result of forfeiture of nationality. If, in view of the previous case law, it seems possible to envisage that the refusal of their return to the territory could be validated by the ECtHR, they would still have to be outside the country at the time the measure was adopted. Indeed, if they were still residing on the territory of the state of which they were previously a national, their expulsion would probably be impossible, both because no other state in the world would be legally obliged to accept a stateless person on its territory[343] and because of the obligations incumbent on states as a result of their joint acceptance of the stipulations of the United Nations Convention of 28 September 1954 relating to the Status of Stateless Persons.[344] Moreover, although Article 31 of the said Convention stipulates that "*Contracting States shall not expel a stateless person lawfully in their territory save on grounds of national security or public order*", this in no way settles the question of determining which state accepts them...

[343] Moreover, it is hard to imagine that states would rush to accept on their territory a stateless person who had become one because they had been convicted of involvement in terrorism...
[344] The eleven states considered in the study are all parties to the Convention.

Conclusion of Chapter 3

A study of European practices regarding the withdrawal of nationality is very interesting in many respects. Over and above the technical differences that can be observed from one country to another, which are essentially due to the details and practicalities of the procedure to be followed for forfeiture of nationality, there is indeed a boom in the use of forfeiture of nationality for disloyal nationals.

Although this situation is real, it is nonetheless highly exceptional. In concrete terms, there have probably been fewer than 350 forfeitures of nationality in the states in question, when at least 5,000 people from these countries have joined terrorist jihadist movements in the Syrian-Iraqi combat zones, not counting their families.[345] In the case of France alone, it should be noted that, to date, more than 500 people have been detained for acts of terrorism (accused and convicted)[346]; this figure should be compared with the sixteen (16!) forfeitures of nationality mentioned in the *Journal officiel* since 1980... From this point of view, the United Kingdom is probably the only one of the states studied to stand out from the crowd insofar, as ¾ of the forfeitures of nationality that have occurred in Europe have been due to the United Kingdom; this is, moreover, for the stated reason of preventing the return to the United Kingdom of individuals who are disloyal and dangerous to national security.

This reluctance to resort to forfeiture of nationality when it seems necessary is all the more curious given that a study of the case law and judicial review of forfeiture measures, in particular by the European Court of Human Rights, reveals that there are no significant obstacles to these measures, which tend to be deemed "*necessary in a democratic society*".[347]

[345] This figure does not take into account the fact that a small proportion of these departures are made by people who remain foreigners and do not hold the nationality of the country of residence of the person leaving.
[346] Yaël Braun-Pivet, report no. 3116 on the draft law no. 2754 introducing security measures for perpetrators of terrorist offences on completion of their sentence, National Assembly, 17 June 2020, p. 12.
[347] Article 8 of the ECHR.

Conclusion

A study of the procedures for withdrawing and forfeiting nationality in Europe naturally reveals a number of technical differences between the various laws studied. Notwithstanding these differences, however, it is clear that there are a number of common threads and commonalities between countries. Studying them first and foremost demonstrates the need to move away from the militant rhetoric that is usually in the media, since the technical reality of the mechanisms for withdrawing and forfeiting nationality is far removed from such rhetoric.

The first observation is that in all European states there are mechanisms leading to the loss of nationality of nationals whose links with the state to which they belong appear to have weakened. Beyond this starting point, almost all the states envisaged provide for the possibility of withdrawing their nationality from those of their citizens whose behaviour attests to disloyalty. While some of the forfeiture measures specifically affect persons of foreign origin who have acquired the nationality of their state of residence (this is particularly the case where they have acquired their nationality by fraud or deceit), most of the forfeiture measures are likely to affect all nationals, whether they hold their nationality by attribution or acquisition. There is therefore absolutely no discrimination here; it is the individual behaviour of a national that establishes their disloyalty to the political community and therefore justifies their exclusion from it.

Among the disloyal behaviours justifying the measure of forfeiture of nationality of a national is most often the fact of having taken up arms and having engaged militarily in a conflict against the interests of the state. Similarly, participation in terrorist activities is unanimously considered to be a serious act of disloyalty on the part of the national; the same is often true of violent attacks on the institutions of the state. It should also be noted that in states that have retained a monarchical form, undermining the ruling family is still considered a serious act of disloyalty.

The second observation lies in the widespread awareness within the eleven states under consideration of the now heterogeneous nature of their population; a heterogeneity characterised by the fact that for some sections of their population, albeit a minority but nonetheless significant, allegiance to the state to which their nationality bears witness is no more than a legal illusion. This illusion has been shattered by the commitment of several thousand Europeans to their national interests, their civilisational identity and democratic values. This realisation has given rise to a third observation.

Throughout Europe, there has been a public, media and political debate, albeit of varying intensity depending on the country in question, on how to deal with and punish this disloyal behaviour. A very large majority of the states considered, especially those most frequently confronted with this problem, have chosen to consider that nationals cannot be forced to remain legally in a political community that they do not recognise as their own and whose most fundamental values they do not accept. To this end, over the last fifteen years or so, these states have adopted legal measures enabling them to strip such nationals of their nationality or, where they already had such measures, have extended them.

The fourth observation is undoubtedly that there is a kind of pusillanimity on the part of the European states on this issue. The number of measures of forfeiture of nationality that have been taken is extremely small and most often very late in relation to the date on which the events justifying them occurred. In terms of the number of measures of forfeiture of nationality taken, and taking into account the difficulty of obtaining an accurate and exhaustive count, a maximum total of 350 forfeitures have been pronounced by the states covered by our study. This is a very small number compared with the total number of nationals whose behaviour objectively demonstrates disloyalty to the state of which they are a national. To take just one example of the time taken by states to react, we should remember that the Frenchman Mohamed Skalab was convicted of fighting alongside the Islamic State in April 2014, yet it was not until a decree of 17 November 2021 that his French nationality was forfeited because of his participation in terrorist combat with Daesh.[348] This measure was taken more than eight years after his departure to fight.[349]

[348] Decree of 17 Nov. 2021 on forfeiture of French nationality (JO of 19 November, text no. 98).
[349] The same applies to the Franco-Turkish Mesut Sekerci, who had been fighting in Syria since 2013 and whose nationality was not forfeited until nine years later, by a decree of 31 March 2022 (JO of 1 April, text no. 94).

From this point of view, one may consider that only the United Kingdom has chosen to pursue a resolutely offensive policy towards disloyal subjects of the Crown. The United Kingdom alone accounts for more than ¾ of the forfeiture of nationality measures taken in Europe. In addition, one of the stated aims of this policy is the clearly expressed desire of the British authorities to make it more difficult, if not totally impossible, for these dangerous individuals to return, as their presence in the United Kingdom would constitute a significant danger to both residents and institutions. This is undoubtedly the price of protecting democratic life.

The final observation that can be made is that the courts, and especially the European Court of Human Rights, are not opposed in principle to these measures of forfeiture of nationality. Furthermore, an examination of the Strasbourg Court's case law shows that, beyond the measure of forfeiture of nationality, which is certainly politically important but above all symbolically striking, states are subsequently entitled to remove from their territory those who have used their rights to try to put an end to the social pact, democratic society and individual freedoms.

Everyone spontaneously feels that eliminating the enemy is a condition of survival for the order of the community. The exclusion from the political community of anyone who violently, or by terror, challenges its functioning belongs to the natural right of the state's leaders, because there is an "*eminently political need to combat an adversary who wishes to destroy the values of those who defend a legal-political order*".[350] The danger created by the actions of a political adversary who challenges the foundations of the community justifies recourse to forfeiture of nationality. Excluding the disloyal national from the national community is a response "*to the obvious need to safeguard order*".[351] The state is responsible for this. While it is true that where there is a will there is a way, it seems that the will to really punish disloyal nationals who threaten the democratic order is still in its infancy.

[350] François Saint-Bonnet, *L'état d'exception* (State of Exception), Puf, 2001, p. 309.
[351] *Ibid.*, p. 374.

Glossary

- **Acquisition of nationality.** These terms are used to designate any situation in which nationality is given to a person after birth; nationality is then acquired by the individual and operates as a novation.

- **Allegiance.** Commitment and obligation of fidelity and **loyalty** (see this term) of a person to the political authority to which they report.

- **Statelessness.** A situation in which a person has no nationality, either because it has been withdrawn or because they were not given one at birth.

- **Attribution of nationality.** This refers to any situation in which nationality is received by a person at birth; this nationality is then said to be of origin.

- **Forfeiture of nationality.** Procedure by which a state ceases to recognise a person as one of its nationals, as a sanction for behaviour that is disloyal or contrary to the country's morals and values (see **Disloyalty**, **Treason**).

- **Forfeiture of nationality (France).** The French term of *déchéance* (forfeiture) refers to a procedure that can only be applied to nationals who have acquired nationality; other nationals may have their nationality withdrawn (see **Withdrawal of nationality**).

- **Disloyalty.** The character of someone who lacks loyalty; in this case, a person's behaviour against the interests of their country (see **Treason**).

- **Dual nationality.** This situation, also known as **multiple nationality** (see this term), is where a person holds several nationalities, either because they received several at birth (e.g., from their parents), or because they acquired a new one without losing the first.

- ***Jus sanguinis*.** Right of blood is a concept that bases the attribution of nationality on heredity and filiation. It reflects the presumption that the child of a national will be brought up in accordance with the mores and customs of a given state.

- ***Jus soli.*** Right of soil makes the place of birth a determining factor in the attribution of nationality. Birth on the territory of a state justifies the individual obtaining its nationality.

- **Loyalty.** Refers to the behaviour of a person whose conduct shows fidelity to commitments made and to the rules of honour and probity; in this case, who respects and defends their country.

- **Nationality.** The term refers to the legal bond that symbolises and gives effect to a person's legal and political membership of the constituent population of a state.

- **Naturalisation.** Discretionary act by which a state recognises a person as one of its nationals by conferring its nationality on that person.

- **Loss of nationality.** The fact of being deprived of the status of national of a state by a decision of that state; at the request or against the will of the person concerned.

- **Multiple nationality.** Legal term for a person with several nationalities (see **Dual nationality**).

- **Withdrawal of nationality.** Procedure by which a state ceases to recognise one of its nationals as one of its own by withdrawing their nationality, irrespective of how this nationality was acquired (**acquisition** or **attribution**).

- **Treason.** Action by a person against the external security of the state; especially *by* bearing arms or acting against the homeland and its interests (see **Disloyalty**).

Appendices

Appendix 1

United Nations Convention on the Reduction of Statelessness From 30 August 1961

- Status of ratifications and reservations -

Article 8

1. The Contracting States shall not deprive any individual of their nationality if such deprivation would render them stateless.
2. Notwithstanding the provision of the first paragraph of this Article, an individual may be deprived of the nationality of a Contracting State;

a) In cases where, by virtue of paragraphs 4 and 5 of Article 7, it is permitted to prescribe the loss of nationality;

b) If they have obtained this nationality by means of a false declaration or any other fraudulent act.

3. Notwithstanding the provision of paragraph 1 of this Article, a Contracting State may retain the right to deprive an individual of its nationality if, at the time of signature, ratification or accession, it makes a declaration to that effect specifying one or more of the grounds provided for in its national legislation at that time and falling within the following categories:

a) If an individual, under conditions implying on their part a lack of loyalty towards the Contracting State;

i) Has, in defiance of an express prohibition of that state, rendered or continued to render assistance to another state, or received or continued to receive emoluments from another state, or

ii) Has behaved in such a way as to cause serious prejudice to the essential interests of the state;

b) If an individual has sworn allegiance, or has made a formal declaration of allegiance to another state, or has manifested in a manner not open to doubt by their conduct their determination to repudiate their allegiance to the Contracting State.

4. A Contracting State shall not exercise the power to deprive an individual of its nationality under the conditions set forth in paragraphs 2 and 3 of this Article except in accordance with the law, which shall include the opportunity for the person concerned to present their case before a court or other independent body.

	Membership	**Reservations**
GERMANY	YES	NO
AUSTRIA	YES	YES with reservations
BELGIUM	YES	YES with reservations
DENMARK	YES	NO
FRANCE	NO	NO
ITALY	YES	YES with reservations
LUXEMBOURG	YES	NO
NETHERLANDS	YES	NO
UNITED KINGDOM	YES	YES with reservations
SWEDEN	YES	NO
SWITZERLAND	NO	NO

Reservations expressed and declarations made

Austria

Declarations concerning Article 8, paragraph 3, a, i and ii:

Austria declares that it retains the right to deprive an individual of its nationality when that individual freely enters the military service of a foreign state.

Austria declares that it retains the right to deprive an individual of its nationality when that individual, being in the service of a foreign state, engages in conduct which seriously prejudices the interests or prestige of the Republic of Austria.

Belgium

Declaration in relation to Article 8 § 3 of the Convention:

Belgium reserves the right to forfeit the nationality of a person who did not derive their nationality from a Belgian parent on the day of their birth or who has not been granted nationality under the Belgian Nationality Code in the cases currently provided for in Belgian legislation; i.e.:

1. if this person has acquired Belgian nationality as a result of fraudulent conduct, through false information, forgery and/or use of false or falsified documents, identity fraud or fraud in obtaining the right of residence;

2. if they seriously fail in their duties as a Belgian citizen;

3. if they have been sentenced, as perpetrator, co-perpetrator or accomplice, to an unsuspended prison term of at least five years for one of the following offences:

- attacks and plots against the King, the Royal Family and the Government;
- crimes and offences against the internal security of the state;
- crimes and offences against the internal security of the state;
- serious violations of international humanitarian law;
- terrorist offences;
- threats to attack persons or property, and false information relating to serious attacks;
- theft and extortion of nuclear materials;
- offences relating to the physical protection of nuclear materials;
- trafficking in human beings;
- trafficking in human beings;

4. if they have been sentenced, as perpetrator, co-perpetrator or accomplice, to an unsuspended term of imprisonment of at least five years for an offence the commission of which was manifestly facilitated by the possession of Belgian nationality, provided that the offence was committed within five years of the date of obtaining Belgian nationality.

Italy

When depositing the instrument of accession, the [Italian] Government avails itself of the option provided for in paragraph 3 of Article 8 of the Convention.

United Kingdom

The Government, in accordance with paragraph 3 (a) of Article 8 of the Convention, declares that, notwithstanding the provisions of paragraph 1 of Article 8, the United Kingdom retains the power to deprive a naturalised person of their nationality on the following grounds for which provision is at present made in United Kingdom law:

If an individual, in conditions implying on their part a lack of loyalty to His Britannic Majesty,

i) Has, in defiance of an express prohibition of that state, rendered or continued to render assistance to another state, or received or continued to receive emoluments from another state,

ii) Or has behaved in such a way as to cause serious prejudice to the essential interests of His Britannic Majesty.

France

Although France signed this Convention on 31 May 1962, it did not ratify it and, furthermore, made this reservation at the time of signature:

At the time of signing this Convention, the Government of the French Republic declares that it reserves the right, when depositing the instrument of ratification of this Convention, to avail itself of the option provided for in Article 8, paragraph 3, under the conditions laid down in that provision.

Appendix 2

European Convention on Nationality From 6 November 1997

- Status of ratifications and reservations -

Article 7 - Loss of nationality ipso jure or at the initiative of a State Party

1 A State Party may not provide in its internal law for the loss of its nationality *ipso jure* or on its own initiative, except in the following cases:

-a. voluntary acquisition of another nationality

-b. acquisition of the nationality of the State Party as a result of fraudulent conduct, false information or concealment of a relevant fact on the part of the applicant

-c. voluntary enlistment in foreign military forces;

-d. conduct seriously prejudicial to the essential interests of the State Party;

-e. absence of any effective link between the State Party and a national habitually resident abroad;

-f. where it is established, during the minority of a child, that the conditions laid down by internal law which led to the acquisition of the nationality of the State Party *ipso jure* are no longer fulfilled;

-g. adoption of a child where the child acquires or possesses the foreign nationality of one or both of the adoptive parents.

2 A State Party may provide for the loss of its nationality by children whose parents lose its nationality, except in cases covered by sub-paragraphs c and d of paragraph 1.

However, children shall not lose their nationality if at least one of their parents retains that nationality.

3 A State Party may not provide in its internal law for the loss of its nationality by virtue of paragraphs 1 and 2 of this article if the person concerned thereby becomes stateless, except in the cases mentioned in paragraph 1, subparagraph b, of this article.

	Membership	**Reservations**
GERMANY	YES	YES with reservations
AUSTRIA	YES	YES with reservations
BELGIUM	NO	NO
DENMARK	YES	NO
FRANCE	NO	NO
ITALY	NO	NO
LUXEMBOURG	YES	NO
NETHERLANDS	YES	YES with reservations
UNITED KINGDOM	NO	NO
SWEDEN	YES	NO
SWITZERLAND	NO	NO

Reservations expressed and declarations made

Germany - 11 May 2005

Declarations concerning Article 7 (1) (f):

Germany declares that loss of nationality may also occur if, when the age of majority is reached, it is established that the conditions governing the acquisition of German nationality are not met.

Justification: This reservation is required since German law provides for the possibility for minors and adults to lose German nationality if the pre-conditions that led to the acquisition of German nationality are no longer met.

Austria - 17 Sept. 1998

Declarations concerning Article 7, in particular paragraphs 1, c, f:

Austria declares that it reserves the right to deprive a national who is in the service of a foreign state of its nationality if, by their conduct, they seriously damage the interests or reputation of the Republic of Austria.

Concerning Article 7, paragraph 3, in connection with Article 7§1, sub-paragraph c, Austria declares that it reserves the right to deprive of nationality an Austrian national who voluntarily enlists in the armed forces of a foreign state.

Concerning Article 7, paragraph 3, in connection with Article 7§1, subparagraph f, Austria declares that it reserves the right to deprive an Austrian national of nationality if it is established, at any time, that the conditions determined by national law which led to the automatic acquisition of Austrian nationality are no longer fulfilled.

Austria declares that it reserves the right to deprive a national of nationality:

1. if that individual acquired nationality more than two years ago by naturalisation or by extension of naturalisation in accordance with the Nationality Act 1985 in the version in force,
2. if neither article 10§4, nor articles 16§2, or 17§4, of the Nationality Act 1985 in the version in force have been applied;
3. if the individual was not a refugee under the Convention of 28 July 1951 or the Protocol relating to the Status of Refugees of 31 January 1967 on the day of naturalisation (extension of the grant of naturalisation), and
4. if this person, while having acquired Austrian nationality, has since retained a foreign nationality for reasons for which they are responsible.

Netherlands - 21 March 2001

Declarations concerning Article 7, paragraph 2:

With regard to Article 7§2 of the Convention, the Kingdom of the Netherlands declares that this provision includes the loss of Dutch nationality for any child whose parents renounce Dutch nationality, as mentioned in Article 8 of the Convention.

Appendix 3

Methods of implementation

of withdrawal and forfeiture of nationality

	Decision by the public authorities	Court decision
GERMANY	PUBLIC AUTHORITIES	
AUSTRIA	PUBLIC AUTHORITIES	
BELGIUM		COURT
DENMARK		COURT
FRANCE	PUBLIC AUTHORITIES	
ITALY	PUBLIC AUTHORITIES	
LUXEMBOURG	PUBLIC AUTHORITIES	
NETHERLANDS	PUBLIC AUTHORITIES	
UNITED KINGDOM	PUBLIC AUTHORITIES	
SWEDEN	PUBLIC AUTHORITIES	
SWITZERLAND	PUBLIC AUTHORITIES	

Appendix 4

Number of inhabitants leaving for Syrian-Iraqi combat zones

	Estimated number of volunteers
GERMANY	**800**
AUSTRIA	**300**
BELGIUM	**500**
DENMARK	**200**
FRANCE	**2000**
ITALY	**~ 50**
LUXEMBOURG	**~ 10**
NETHERLANDS	**300**
UNITED KINGDOM	**800**
SWEDEN	**300**
SWITZERLAND	**100**

This number is necessarily an estimate, as the exact number of people who left is impossible to determine. The proposed figures are based on the estimates of the security services as presented to the parliaments of the various states.

For the same reason, it is strictly impossible to provide an estimate of the exact number of nationals or dual nationals who have left for the combat zones.

In the same way, it is still impossible to carry out a count according to the sex or age of the volunteers.

Appendix 5

Measures taken to forfeit nationality

	Number
GERMANY	none yet
AUSTRIA	less than **10**
BELGIUM	**approx. 30**
DENMARK	less than **10**
FRANCE	**approx. 20**
ITALY	less than **5**
LUXEMBOURG	n/a
NETHERLANDS	**approx. 20**
UNITED KINGDOM	**approx. 250**
SWEDEN	n/a
SWITZERLAND	less than **5**

This number is necessarily an estimate, as the exact number of people who left is impossible to determine. The proposed figures are based on the estimates of the security services as presented to the parliaments of the various states.

For the same reason, it is strictly impossible to provide an estimate of the exact number of nationals or dual nationals who have left for the combat zones.

In the same way, it is still impossible to carry out a count according to the sex or age of the volunteers.

Appendix 6

Relevant national provisions relating to the withdrawal and forfeiture of nationality

German provisions on loss of nationality

Staatsangehörigkeitsgesetz (StAG), 22 Jul. 1913
http://www.gesetze-im-internet.de/englisch_stag/index.html

Staatsangehörigkeitsgesetz (StAG)

Staatsangehörigkeitsgesetz in der im Bundesgesetzblatt Teil III, Gliederungsnummer 102-1, veröffentlichten bereinigten Fassung, das zuletzt durch Artikel 10 des Gesetzes vom 28. März 2021 (BGBl. I S. 591) geändert worden ist.

§ 17

(1) Die Staatsangehörigkeit geht verloren

1. durch Entlassung (§§ 18 bis 24),
2. durch den Erwerb einer ausländischen Staatsangehörigkeit (§ 25),
3. durch Verzicht (§ 26),
4. durch Annahme als Kind durch einen Ausländer (§ 27),
5. durch Eintritt in die Streitkräfte oder einen vergleichbaren bewaffneten Verband eines ausländischen Staates oder durch konkrete Beteiligung an Kampfhandlungen einer terroristischen Vereinigung im Ausland (§ 28),
6. durch Erklärung (§ 29) oder
7. durch Rücknahme eines rechtswidrigen Verwaltungsaktes (§ 35).

(2) Der Verlust nach Absatz 1 Nr. 7 berührt nicht die kraft Gesetzes erworbene deutsche Staatsangehörigkeit Dritter, sofern diese das fünfte Lebensjahr vollendet haben.
(3) Absatz 2 gilt entsprechend bei Entscheidungen nach anderen Gesetzen, die den rückwirkenden Verlust der deutschen Staatsangehörigkeit Dritter zur Folge hätten, insbesondere bei der Rücknahme der Niederlassungserlaubnis nach § 51 Abs. 1 Nr. 3 des Aufenthaltsgesetzes, bei der Rücknahme einer Bescheinigung nach § 15 des Bundesvertriebenengesetzes und bei der Feststellung des Nichtbestehens der Vaterschaft nach § 1599 des Bürgerlichen Gesetzbuches. Satz 1 findet keine Anwendung bei Anfechtung der Vaterschaft nach § 1600 Abs. 1 Nr. 5 und Abs. 3 des Bürgerlichen Gesetzbuches.

§ 18

Ein Deutscher wird auf seinen Antrag aus der Staatsangehörigkeit entlassen, wenn er den Erwerb einer ausländischen Staatsangehörigkeit beantragt und ihm die zuständige Stelle die Verleihung zugesichert hat.

§ 19

(1) Die Entlassung einer Person, die unter elterlicher Sorge oder unter Vormundschaft steht, kann nur von dem gesetzlichen Vertreter und nur mit Genehmigung des deutschen Familiengerichts beantragt werden.
(2) Die Genehmigung des Familiengerichts ist nicht erforderlich, wenn der Vater oder die Mutter die Entlassung für sich und zugleich kraft elterlicher Sorge für ein Kind beantragt und dem Antragsteller die Sorge für die Person dieses Kindes zusteht.

§ 22 Die Entlassung darf nicht erteilt werden

1. Beamten, Richtern, Soldaten der Bundeswehr und sonstigen Personen, die in einem öffentlich-rechtlichen Dienst- oder Amtsverhältnis stehen, solange ihr Dienst- oder Amtsverhältnis nicht beendet ist, mit Ausnahme der ehrenamtlich tätigen Personen,
2. Wehrpflichtigen, solange nicht das Bundesministerium der Verteidigung oder die von ihm bezeichnete Stelle erklärt hat, daß gegen die Entlassung Bedenken nicht bestehen.

§ 23 Die Entlassung wird wirksam mit der Aushändigung der von der zuständigen Verwaltungsbehörde ausgefertigten Entlassungsurkunde.

§ 24 Die Entlassung gilt als nicht erfolgt, wenn der Entlassene die ihm zugesicherte ausländische Staatsangehörigkeit nicht innerhalb eines Jahres nach der Aushändigung der Entlassungsurkunde erworben hat.

§ 25

(1) Ein Deutscher verliert seine Staatsangehörigkeit mit dem Erwerb einer ausländischen Staatsangehörigkeit, wenn dieser Erwerb auf seinen Antrag oder auf den Antrag des gesetzlichen Vertreters erfolgt, der Vertretene jedoch nur, wenn die Voraussetzungen vorliegen, unter denen nach § 19 die Entlassung beantragt werden könnte. Der Verlust nach Satz 1 tritt nicht ein, wenn ein Deutscher die Staatsangehörigkeit eines anderen Mitgliedstaates der Europäischen Union, der Schweiz oder eines Staates erwirbt, mit dem die Bundesrepublik Deutschland einen völkerrechtlichen Vertrag nach § 12 Abs. 3 abgeschlossen hat.
(2) Die Staatsangehörigkeit verliert nicht, wer vor dem Erwerb der ausländischen Staatsangehörigkeit auf seinen Antrag die schriftliche Genehmigung der zuständigen Behörde zur Beibehaltung seiner Staatsangehörigkeit erhalten hat. Hat ein Antragsteller seinen gewöhnlichen Aufenthalt im Ausland, ist die deutsche Auslandsvertretung zu hören. Bei der Entscheidung über einen Antrag nach Satz 1 sind die öffentlichen und privaten Belange abzuwägen. Bei einem Antragsteller, der seinen gewöhnlichen Aufenthalt im Ausland hat, ist insbesondere zu berücksichtigen, ob er fortbestehende Bindungen an Deutschland glaubhaft machen kann.

§ 26

(1) Ein Deutscher kann auf seine Staatsangehörigkeit verzichten, wenn er mehrere Staatsangehörigkeiten besitzt. Der Verzicht ist schriftlich zu erklären.
(2) Die Verzichtserklärung bedarf der Genehmigung der nach § 23 für die Ausfertigung der Entlassungsurkunde zuständigen Behörde. Die Genehmigung ist zu versagen, wenn eine Entlassung nach § 22 nicht erteilt werden dürfte; dies gilt jedoch nicht, wenn der Verzichtende

1. seit mindestens zehn Jahren seinen dauernden Aufenthalt im Ausland hat oder
2. als Wehrpflichtiger im Sinne des § 22 Nr. 2 in einem der Staaten, deren Staatsangehörigkeit er besitzt, Wehrdienst geleistet hat.

(3) Der Verlust der Staatsangehörigkeit tritt ein mit der Aushändigung der von der Genehmigungsbehörde ausgefertigten Verzichtsurkunde.
(4) Für Minderjährige gilt § 19 entsprechend.

§ 27 Ein minderjähriger Deutscher verliert mit der nach den deutschen Gesetzen wirksamen Annahme als Kind durch einen Ausländer die Staatsangehörigkeit, wenn er dadurch die Staatsangehörigkeit des Annehmenden erwirbt. Der Verlust erstreckt sich auf seine Abkömmlinge, wenn auch der Erwerb der Staatsangehörigkeit durch den Angenommenen nach Satz 1 sich auf seine Abkömmlinge erstreckt. Der Verlust nach Satz 1 oder Satz 2 tritt nicht ein, wenn der Angenommene oder seine Abkömmlinge mit einem deutschen Elternteil verwandt bleiben.

§ 28

(1) Ein Deutscher, der

1. auf Grund freiwilliger Verpflichtung ohne eine Zustimmung des Bundesministeriums der Verteidigung oder der von ihm bezeichneten Stelle in die Streitkräfte oder einen vergleichbaren bewaffneten Verband eines ausländischen Staates, dessen Staatsangehörigkeit er besitzt, eintritt oder
2. sich an Kampfhandlungen einer terroristischen Vereinigung im Ausland konkret beteiligt,

verliert die deutsche Staatsangehörigkeit, es sei denn, er würde sonst staatenlos.
(2) Der Verlust nach Absatz 1 tritt nicht ein,

1. wenn der Deutsche noch minderjährig ist oder,
2. im Falle des Absatzes 1 Nummer 1, wenn der Deutsche auf Grund eines zwischenstaatlichen Vertrages zum Eintritt in die Streitkräfte oder in den bewaffneten Verband berechtigt ist.

(3) Der Verlust ist im Falle des Absatzes 1 Nummer 2 nach § 30 Absatz 1 Satz 3 von Amts wegen festzustellen. Die Feststellung trifft bei gewöhnlichem Aufenthalt des Betroffenen im Inland die oberste Landesbehörde oder die von ihr nach Landesrecht bestimmte Behörde. Befindet sich der Betroffene noch im Ausland, findet gegen die Verlustfeststellung kein Widerspruch statt; die Klage hat keine aufschiebende Wirkung.

§ 29

(1) Optionspflichtig ist, wer

1. die deutsche Staatsangehörigkeit nach § 4 Absatz 3 oder § 40b erworben hat,
2. nicht nach Absatz 1a im Inland aufgewachsen ist,
3. eine andere ausländische Staatsangehörigkeit als die eines anderen Mitgliedstaates der Europäischen Union oder der Schweiz besitzt und
4. innerhalb eines Jahres nach Vollendung seines 21. Lebensjahres einen Hinweis nach Absatz 5 Satz 5 über seine Erklärungspflicht erhalten hat.

Der Optionspflichtige hat nach Vollendung des 21. Lebensjahres zu erklären, ob er die deutsche oder die ausländische Staatsangehörigkeit behalten will. Die Erklärung bedarf der Schriftform.

(1a) Ein Deutscher nach Absatz 1 ist im Inland aufgewachsen, wenn er bis zur Vollendung seines 21. Lebensjahres

1. sich acht Jahre gewöhnlich im Inland aufgehalten hat,
2. sechs Jahre im Inland eine Schule besucht hat oder
3. über einen im Inland erworbenen Schulabschluss oder eine im Inland abgeschlossene Berufsausbildung verfügt.

Als im Inland aufgewachsen nach Satz 1 gilt auch, wer im Einzelfall einen vergleichbar engen Bezug zu Deutschland hat und für den die Optionspflicht nach den Umständen des Falles eine besondere Härte bedeuten würde.

(2) Erklärt der Deutsche nach Absatz 1, dass er die ausländische Staatsangehörigkeit behalten will, so geht die deutsche Staatsangehörigkeit mit dem Zugang der Erklärung bei der zuständigen Behörde verloren.

(3) Will der Deutsche nach Absatz 1 die deutsche Staatsangehörigkeit behalten, so ist er verpflichtet, die Aufgabe oder den Verlust der ausländischen Staatsangehörigkeit nachzuweisen. Tritt dieser Verlust nicht bis zwei Jahre nach Zustellung des Hinweises auf die Erklärungspflicht nach Absatz 5 ein, so geht die deutsche Staatsangehörigkeit verloren, es sei denn, dass dem Deutschen nach Absatz 1 vorher die schriftliche Genehmigung der zuständigen Behörde zur Beibehaltung der deutschen Staatsangehörigkeit (Beibehaltungsgenehmigung) erteilt wurde. Ein Antrag auf Erteilung der Beibehaltungsgenehmigung kann, auch vorsorglich, nur bis ein Jahr nach Zustellung des Hinweises auf die Erklärungspflicht nach Absatz 5 gestellt werden (Ausschlussfrist). Der Verlust der deutschen Staatsangehörigkeit tritt erst ein, wenn der Antrag bestandskräftig abgelehnt wird. Einstweiliger Rechtsschutz nach § 123 der Verwaltungsgerichtsordnung bleibt unberührt.

(4) Die Beibehaltungsgenehmigung nach Absatz 3 ist zu erteilen, wenn die Aufgabe oder der Verlust der ausländischen Staatsangehörigkeit nicht möglich oder nicht zumutbar ist oder bei einer Einbürgerung nach Maßgabe von § 12 Mehrstaatigkeit hinzunehmen wäre.

(5) Auf Antrag eines Deutschen, der die Staatsangehörigkeit nach § 4 Absatz 3 oder § 40b erworben hat, stellt die zuständige Behörde bei Vorliegen der Voraussetzungen den Fortbestand der deutschen Staatsangehörigkeit nach Absatz 6 fest. Ist eine solche Feststellung nicht bis zur Vollendung seines 21. Lebensjahres erfolgt, prüft die zuständige Behörde anhand der Meldedaten, ob die Voraussetzungen nach Absatz 1a Satz 1 Nummer 1 vorliegen. Ist dies danach nicht feststellbar, weist sie den Betroffenen auf die Möglichkeit hin, die Erfüllung der Voraussetzungen des Absatzes 1a nachzuweisen. Wird ein solcher Nachweis erbracht, stellt die zuständige Behörde den Fortbestand der deutschen Staatsangehörigkeit nach Absatz 6 fest. Liegt kein Nachweis vor, hat sie den Betroffenen auf seine Verpflichtungen und die nach den Absätzen 2 bis 4 möglichen Rechtsfolgen hinzuweisen. Der Hinweis ist zuzustellen. Die Vorschriften des Verwaltungszustellungsgesetzes finden Anwendung.

(6) Der Fortbestand oder Verlust der deutschen Staatsangehörigkeit nach dieser Vorschrift wird von Amts wegen festgestellt. Das Bundesministerium des Innern, für Bau und Heimat kann durch

Rechtsverordnung mit Zustimmung des Bundesrates Vorschriften über das Verfahren zur Feststellung des Fortbestands oder Verlusts der deutschen Staatsangehörigkeit erlassen.

§ 30

(1) Das Bestehen oder Nichtbestehen der deutschen Staatsangehörigkeit wird auf Antrag von der Staatsangehörigkeitsbehörde festgestellt. Die Feststellung ist in allen Angelegenheiten verbindlich, für die das Bestehen oder Nichtbestehen der deutschen Staatsangehörigkeit rechtserheblich ist. Bei Vorliegen eines öffentlichen Interesses kann die Feststellung auch von Amts wegen erfolgen.
(2) Für die Feststellung des Bestehens der deutschen Staatsangehörigkeit ist es erforderlich, aber auch ausreichend, wenn durch Urkunden, Auszüge aus den Melderegistern oder andere schriftliche Beweismittel mit hinreichender Wahrscheinlichkeit nachgewiesen ist, dass die deutsche Staatsangehörigkeit erworben worden und danach nicht wieder verloren gegangen ist. § 3 Abs. 2 bleibt unberührt.
(3) Wird das Bestehen der deutschen Staatsangehörigkeit auf Antrag festgestellt, stellt die Staatsangehörigkeitsbehörde einen Staatsangehörigkeitsausweis aus. Auf Antrag stellt die Staatsangehörigkeitsbehörde eine Bescheinigung über das Nichtbestehen der deutschen Staatsangehörigkeit aus.

§ 31 Staatsangehörigkeitsbehörden und Auslandsvertretungen dürfen personenbezogene Daten verarbeiten, soweit dies zur Erfüllung ihrer Aufgaben nach diesem Gesetz oder nach staatsangehörigkeitsrechtlichen Bestimmungen in anderen Gesetzen erforderlich ist. Personenbezogene Daten, deren Verarbeitung nach Artikel 9 Absatz 1 der Verordnung (EU) 2016/679 des Europäischen Parlaments und des Rates vom 27. April 2016 zum Schutz natürlicher Personen bei der Verarbeitung personenbezogener Daten, zum freien Datenverkehr und zur Aufhebung der Richtlinie 95/46/EG (Datenschutz-Grundverordnung) (ABl. L 119 vom 4.5.2016, S. 1; L 314 vom 22.11.2016, S. 72; L 127 vom 23.5.2018, S. 2) in der jeweils geltenden Fassung untersagt ist, dürfen verarbeitet werden, soweit die personenbezogenen Daten gemäß § 37 Absatz 2 Satz 2 zur Ermittlung von Ausschlussgründen nach § 11 von den Verfassungsschutzbehörden an die Einbürgerungsbehörden übermittelt worden sind oder die Verarbeitung sonst im Einzelfall zur Aufgabenerfüllung erforderlich ist. Dies gilt im Rahmen der Entscheidung über die Staatsangehörigkeit nach Artikel 116 Absatz 2 des Grundgesetzes auch in Bezug auf Daten, die sich auf die politischen, rassischen oder religiösen Gründe beziehen, wegen derer zwischen dem 30. Januar 1933 und dem 8. Mai 1945 die deutsche Staatsangehörigkeit entzogen worden ist.

§ 32

(1) Öffentliche Stellen haben den in § 31 genannten Stellen auf Ersuchen personenbezogene Daten zu übermitteln, soweit die Kenntnis dieser Daten zur Erfüllung der in § 31 genannten Aufgaben erforderlich ist. Öffentliche Stellen haben der zuständigen Staatsangehörigkeitsbehörde diese Daten auch ohne Ersuchen zu übermitteln, soweit die Übermittlung aus Sicht der öffentlichen Stelle für die Entscheidung der Staatsangehörigkeitsbehörde über ein anhängiges Einbürgerungsverfahren oder den Verlust oder Nichterwerb der deutschen Staatsangehörigkeit erforderlich ist. Dies gilt bei Einbürgerungsverfahren insbesondere für die den Ausländerbehörden nach § 87 Absatz 4 des Aufenthaltsgesetzes bekannt gewordenen Daten über die Einleitung von Straf- und Auslieferungsverfahren sowie die Erledigung von Straf-, Bußgeld- und Auslieferungsverfahren. Die Daten nach Satz 3 sind unverzüglich an die zuständige Staatsangehörigkeitsbehörde zu übermitteln.
(2) Die Übermittlung personenbezogener Daten nach Absatz 1 unterbleibt, soweit besondere gesetzliche Verarbeitungsregelungen entgegenstehen.

§ 33

(1) Das Bundesverwaltungsamt (Registerbehörde) führt ein Register der Entscheidungen in Staatsangehörigkeitsangelegenheiten. In das Register werden eingetragen:

1. Entscheidungen zu Staatsangehörigkeitsurkunden,
2. Entscheidungen zum Bestand und gesetzlichen Verlust der deutschen Staatsangehörigkeit,
3. Entscheidungen zu Erwerb, Bestand und Verlust der deutschen Staatsangehörigkeit, die nach dem 31. Dezember 1960 und vor dem 28. August 2007 getroffen worden sind.

(2) Im Einzelnen dürfen in dem Register gespeichert werden:

1. die Grundpersonalien der betroffenen Person (Familienname, Geburtsname, frühere Namen, Vornamen, Tag und Ort der Geburt, Geschlecht sowie die Anschrift im Zeitpunkt der Entscheidung) und Auskunftssperren nach § 51 des Bundesmeldegesetzes,
2. Rechtsgrund und Datum der Urkunde oder der Entscheidung sowie Rechtsgrund und der Tag des Erwerbs oder Verlusts der Staatsangehörigkeit, im Fall des § 3 Absatz 2 auch der Zeitpunkt, auf den der Erwerb zurückwirkt,
3. Bezeichnung, Anschrift und Aktenzeichen der Behörde, die die Entscheidung getroffen hat.

(3) Die Staatsangehörigkeitsbehörden sind verpflichtet, die in Absatz 2 genannten personenbezogenen Daten zu den Entscheidungen nach Absatz 1 Satz 2 Nr. 1 und 2, die sie nach dem 28. August 2007 treffen, unverzüglich an die Registerbehörde zu übermitteln.

(4) Die Registerbehörde übermittelt den Staatsangehörigkeitsbehörden und Auslandsvertretungen auf Ersuchen die in Absatz 2 genannten Daten, soweit die Kenntnis der Daten für die Erfüllung der staatsangehörigkeitsrechtlichen Aufgaben dieser Stellen erforderlich ist. Für die Übermittlung an andere öffentliche Stellen und für Forschungszwecke gelten die Bestimmungen des Bundesdatenschutzgesetzes. Die Übermittlung von Angaben nach Absatz 1 zu Forschungszwecken ist nur in anonymisierter Form oder dann zulässig, wenn das wissenschaftliche Interesse an der Durchführung des Forschungsvorhabens das Interesse der betroffenen Person an dem Ausschluss der Verarbeitung erheblich überwiegt.

(5) Die Staatsangehörigkeitsbehörde teilt nach ihrer Entscheidung, dass eine Person eingebürgert worden ist oder die deutsche Staatsangehörigkeit weiterhin besitzt, verloren, aufgegeben oder nicht erworben hat, der zuständigen Meldebehörde oder Auslandsvertretung die in Absatz 2 genannten Daten unverzüglich mit.

§ 34

(1) Für die Durchführung des Optionsverfahrens hat die Meldebehörde in Fällen des Erwerbs der deutschen Staatsangehörigkeit nach § 4 Absatz 3 oder § 40b, in denen nach § 29 ein Verlust der deutschen Staatsangehörigkeit eintreten kann, bis zum zehnten Tag jedes Kalendermonats der zuständigen Staatsangehörigkeitsbehörde für Personen, die im darauf folgenden Monat das 21. Lebensjahr vollenden werden, folgende personenbezogenen Daten zu übermitteln:

1. Familienname,
2. frühere Namen,
3. Vornamen,
4. derzeitige und frühere Anschriften und bei Zuzug aus dem Ausland auch die letzte frühere Anschrift im Inland,
5. Einzugsdatum, Auszugsdatum, Datum des letzten Wegzugs aus einer Wohnung im Inland sowie Datum des letzten Zuzugs aus dem Ausland,
6. Geburtsdatum und Geburtsort,
7. Geschlecht,
8. derzeitige Staatsangehörigkeiten,
9. die Tatsache, dass nach § 29 ein Verlust der deutschen Staatsangehörigkeit eintreten kann,
10. Auskunftssperren nach § 51 des Bundesmeldegesetzes.

(2) Ist eine Person nach Absatz 1 ins Ausland verzogen, hat die zuständige Meldebehörde dem Bundesverwaltungsamt innerhalb der in Absatz 1 genannten Frist die dort genannten Daten, das Datum des Wegzugs ins Ausland und, soweit bekannt, die neue Anschrift im Ausland zu übermitteln. Für den Fall des Zuzugs aus dem Ausland gilt Satz 1 entsprechend.

§ 35

(1) Eine rechtswidrige Einbürgerung oder eine rechtswidrige Genehmigung zur Beibehaltung der deutschen Staatsangehörigkeit kann nur zurückgenommen werden, wenn der Verwaltungsakt durch arglistige Täuschung, Drohung oder Bestechung oder durch vorsätzlich unrichtige oder unvollständige Angaben, die wesentlich für seinen Erlass gewesen sind, erwirkt worden ist.

(2) Dieser Rücknahme steht in der Regel nicht entgegen, dass der Betroffene dadurch staatenlos wird.

(3) Die Rücknahme darf nur bis zum Ablauf von zehn Jahren nach der Bekanntgabe der Einbürgerung oder Beibehaltungsgenehmigung erfolgen.

(4) Die Rücknahme erfolgt mit Wirkung für die Vergangenheit.
(5) Hat die Rücknahme Auswirkungen auf die Rechtmäßigkeit von Verwaltungsakten nach diesem Gesetz gegenüber Dritten, so ist für jede betroffene Person eine selbständige Ermessensentscheidung zu treffen. Dabei ist insbesondere eine Beteiligung des Dritten an der arglistigen Täuschung, Drohung oder Bestechung oder an den vorsätzlich unrichtigen oder unvollständigen Angaben gegen seine schutzwürdigen Belange, insbesondere auch unter Beachtung des Kindeswohls, abzuwägen.

Provisions of Austria relating to loss of nationality

Bundesgesetz über die österreichische Staatsbürgerschaft, 19 juil. 1985
(Staatsbürgerschaftsgesetz 1985 - StbG)
https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10005579

ABSCHNITT III - VERLUST DER STAATSBÜRGERSCHAFT

§ 26. Die Staatsbürgerschaft wird verloren durch
1. Erwerb einer fremden Staatsangehörigkeit (§§ 27 und 29) ;
2. Eintritt in den Militärdienst eines fremden Staates (§ 32);
3. Entziehung (§§ 33 bis 36) ;

Eintritt in den Militärdienst eines fremden Staates

§ 32. Einem Staatsbürger, der freiwillig in den Militärdienst eines fremden Staates tritt, ist die Staatsbürgerschaft zu entziehen. § 27 Abs. 2 ist sinngemäß anzuwenden.

Entziehung

§ 33.
(1) Einem Staatsbürger, der im Dienst eines fremden Staates steht, ist, sofern nicht schon § 32 anzuwenden ist, die Staatsbürgerschaft zu entziehen, wenn er durch sein Verhalten die Interessen oder das Ansehen der Republik erheblich schädigt.
(2) Einem Staatsbürger, der freiwillig für eine organisierte bewaffnete Gruppe aktiv an Kampfhandlungen im Ausland im Rahmen eines bewaffneten Konfliktes teilnimmt, ist die Staatsbürgerschaft zu entziehen, wenn er dadurch nicht staatenlos wird.
(3) Einem Staatsbürger kann die Staatsbürgerschaft ferner entzogen werden, wenn er wegen einer gerichtlich strafbaren Handlung nach den §§ 278b, 278c, 278d, 278e, 278f, 278g oder 282a StGB zu einer unbedingten oder teilbedingt nachgesehenen Freiheitsstrafe rechtskräftig verurteilt worden ist, sofern er dadurch nicht staatenlos wird. Einer Verurteilung durch ein inländisches Gericht ist eine Verurteilung durch ein ausländisches Gericht gleichzuhalten, wenn sie in einem den Grundsätzen des Art. 6 EMRK entsprechenden Verfahren ergangen ist und den Täter wegen einer Tat schuldig spricht, die auch nach einem im ersten Satz genannten Tatbestand gerichtlich strafbar wäre.

§ 34.
(1) Einem Staatsbürger ist die Staatsbürgerschaft ferner zu entziehen, wenn
1. er sie vor mehr als zwei Jahren durch Verleihung oder durch die Erstreckung der Verleihung nach diesem Bundesgesetz erworben hat,
2. hiebei weder § 10 Abs. 6 noch die §§ 16 Abs. 2 oder 17 Abs. 4 angewendet worden sind,
3. er trotz des Erwerbes der Staatsbürgerschaft seither aus Gründen, die er zu vertreten hat, eine fremde Staatsangehörigkeit beibehalten hat.
(2) Der betroffene Staatsbürger ist mindestens sechs Monate vor der beabsichtigten Entziehung der Staatsbürgerschaft über die Bestimmung des Abs. 1 zu belehren.
(3) Die Entziehung ist nach Ablauf der im Abs. 1 Z 1 genannten Frist ohne unnötigen Aufschub schriftlich zu verfügen. Nach Ablauf von sechs Jahren nach der Verleihung (Erstreckung der Verleihung) ist die Entziehung nicht mehr zulässig.

§ 35. Die Entziehung der Staatsbürgerschaft (§§ 32 bis 34) oder die Wiederaufnahme des Verfahrens nach § 69 Abs. 1 Z 1 AVG hat von Amts wegen oder auf Antrag des Bundesministers für Inneres zu erfolgen. Der Bundesminister für Inneres hat in dem auf seinen Antrag einzuleitenden Verfahren Parteistellung.

§ 36. Hält sich derjenige, dem die Staatsbürgerschaft entzogen werden soll, im Ausland auf und wurde eine Zustellung an ihn bereits erfolglos versucht, so ist § 11 AVG, BGBl. Nr. 51/1991, auch dann anzuwenden, wenn sein Aufenthalt bekannt ist.

Belgian provisions on loss of nationality

Belgian Nationality Code, 28 June 1984
http://www.ejustice.just.fgov.be/eli/loi/1984/06/28/1984900065/justel

Art. 22.
§ 1. Loss of Belgian nationality:
1° [...]
2° a person who, having reached the age of eighteen, declares that they renounce Belgian nationality; this declaration can only be made if the declarant proves that they possess a foreign nationality or that they acquire it or recover it by virtue of the declaration if this acquisition or recovery does not immediately follow the declaration of renunciation and, moreover, has the result of rendering the person concerned stateless, this declaration only produces legal effects at the time of the effective acquisition or recovery of the foreign nationality;
3° an unemancipated child who has not reached the age of eighteen and who is subject to the authority of a single parent or adopter, where the child loses Belgian nationality as a result of the provisions of 2°, on condition that the foreign nationality of the parent or adopter is conferred on the child or that the child already possesses it; where authority over the child is exercised by the father and mother or by the adopters, a non-emancipated child who has not reached the age of eighteen years does not lose Belgian nationality as long as one of them still possesses it; they lose it when that parent or adopter loses it, provided that the child acquires the nationality of one of its parents or adopters or already possesses it; the same rule applies where authority over the child is exercised by the father or mother and their adopting spouse;
4° an unemancipated child who has not reached the age of eighteen years, adopted by a foreigner or by foreigners, on condition that the nationality of the adopters or of one of them is acquired by the effect of the adoption or that they already possess that nationality; they do not lose Belgian nationality if one of the adopters is Belgian or if the spouse of the foreign adopter is Belgian;
5° a Belgian born abroad, with the exception of the former Belgian colonies, if:
a) they have had their principal and continuous residence abroad from the age of eighteen to twenty-eight;
b) they do not hold any office abroad conferred by or at the instigation of the Belgian Government, or are not employed there by a company or association governed by Belgian law to whose staff they belong;
c) they have not declared, before reaching the age of twenty-eight, that they wish to retain their Belgian nationality;
6° an unemancipated child who has not reached the age of eighteen and who is subject to the authority of a single parent or adopter, when the latter loses Belgian nationality as a result of 5°; when authority over the child is exercised by the father and mother or by the adopters, an unemancipated child who has not reached the age of eighteen does not lose Belgian nationality as long as one of them still possesses it; they lose it when that parent or adopter loses it; the same rule applies where authority over the child is exercised by the father or mother and their adoptive spouse;
7° a person who is deprived of Belgian nationality by virtue of Articles 23, 23/1 and 23/2.
§ 2. [2 Paragraph 1, 5°, does not apply to a Belgian who, between their eighteenth and twenty-eighth birthdays, has applied for and been issued with a Belgian passport or identity card.]2
§ 3. 1, 5° and 6° do not apply to a Belgian who, as a result of one of these provisions, would become stateless.
§ 4. The declarations provided for in § 1, 2° and 5° are made before the civil registrar of the main residence of the declarant and, abroad, before the head of a Belgian career consular post. On the basis of the declaration, the civil registrar or, where applicable, the head of the Belgian career consular post will draw up a record of nationality in accordance with Article 67 of the Civil Code.
The declaration is recorded as an appendix in the BAEC.

The declaration takes effect from the date on which the certificate of nationality is drawn up. The civil registrar carries out the procedure without the assistance of witnesses.

Art. 23.

§ 1. Belgians who do not derive their nationality from a Belgian parent or adopter on the day of their birth and Belgians who have not been granted their nationality by virtue of Articles 11 and 11bis may have their Belgian nationality forfeited:

1° if they have acquired Belgian nationality as a result of fraudulent conduct, through false information, forgery and/or the use of false or falsified documents, identity fraud or fraud in obtaining the right of residence;

2° if they seriously fail in their duties as a Belgian citizen.

The Court does not pronounce forfeiture if it would have the effect of rendering the person concerned stateless, unless nationality was acquired as a result of fraudulent conduct, false information or concealment of a relevant fact. In this case, even if the person concerned has not succeeded in recovering their original nationality, the forfeiture of nationality will be pronounced only after the expiry of a reasonable period of time granted by the Court to the person concerned to enable them to try to recover their original nationality.

§ 2. Forfeiture is pursued by the public prosecutor. The alleged breaches are specified in the summons.

§ 3. The forfeiture action is pursued before the Court of Appeal of the defendant's principal residence in Belgium or, failing this, before the Brussels Court of Appeal.

§ 4. The first president appoints an advisor, on whose report the Court rules within one month of expiry of the time limit for summons.

§ 5. If the judgment is rendered by default, it is published by extract in two newspapers of the province and in the *Moniteur belge*, after service, unless this is made in person.

Objections must be lodged within eight days of the date of personal service or publication, failing which they will be inadmissible; this time limit may not be extended due to distance. The opposition is brought to the first hearing of the chamber that handed down the judgment; it is judged on the report of the assigned councillor if they are still a member of the chamber, or, in their absence, by the councillor appointed by the first president, and the judgment is handed down within fifteen days.

§ 6. An appeal to the Court of Cassation is admissible only if reasons are given for the appeal and if, on the one hand, it was admitted or argued before the Court of Appeal that the Belgian nationality of the defendant to the action for forfeiture resulted from the fact that, on the day of the defendant's birth, the person from whom they derived their nationality was themselves Belgian and that, on the other hand, the appeal alleges violation or misapplication of the laws establishing the basis of this plea or failure to give reasons for its dismissal.

The appeal is lodged and judged as prescribed for appeals in criminal matters.

§ 7. The time limit for appealing to the Supreme Court and the appeal suspend execution of the judgment.

§ 8. When the judgment pronouncing the forfeiture of Belgian nationality has become final, the registrar immediately transmits the data required to draw up the certificate of forfeiture of Belgian nationality, via the BAEC, to the civil registrar, mentioning the full identity of the person concerned.

The civil registrar of the place of registration in the population register, the register of foreign nationals or the waiting register of the person concerned, or, failing that, of the current residence of the person concerned, or, failing that, of Brussels, draws up a certificate of forfeiture of Belgian nationality.

The forfeiture takes effect from the date on which the certificate of forfeiture of Belgian nationality is drawn up.

§ 9. A person who has been deprived of Belgian nationality can only become Belgian again by naturalisation. In the case referred to in § 1, 1°, the forfeiture action is barred after five years from the date on which the person concerned obtained Belgian nationality.

Art. 23/1.

§ 1. Forfeiture of Belgian nationality may be ordered by the court at the request of the public prosecutor in respect of Belgians who did not derive their nationality from a Belgian parent or adopter on the day of their birth and Belgians who were not granted their nationality pursuant to Article 11, 5, first paragraph, 1° and 2°: 1° if they have been sentenced, as perpetrator, co-perpetrator or accomplice, to an unsuspended term of imprisonment of at least five years for an offence referred to in Articles 101

to 112, 113 to 120bis, 120quater, 120sexies, 120octies, 121 to 123, 123ter, 123quater, paragraph 2, 124 to

134, 136bis, 136ter, 136quater, 136quinquies, 136sexies and 136septies, 331bis, 433quinquies to 433octies, 477 to 477sexies and 488bis of the Criminal Code and articles 77bis, 77ter, 77quater and 77quinquies of the Aliens Act, provided that the acts of which they are accused were committed within ten years of the date on which they obtained Belgian nationality, with the exception of the offences referred to in articles 136bis, 136ter and 136quater of the Criminal Code;
2° if they have been sentenced, as perpetrator, co-perpetrator or accomplice, to an unsuspended term of imprisonment of at least five years for an offence the commission of which was manifestly facilitated by the possession of Belgian nationality, provided that the offence was committed within five years of the date of obtaining Belgian nationality;
3° if they acquired Belgian nationality by marriage in accordance with Article 12bis, § 1, 3°, and this marriage was annulled due to a marriage of convenience as described in Article 146bis of the Civil Code, subject to the provisions of Articles 201 and 202 of the Civil Code.
§ 2. The judge shall not pronounce forfeiture where this would have the effect of rendering the person concerned stateless, unless the nationality was acquired as a result of fraudulent conduct, false information or concealment of a relevant fact. In this case, even if the person concerned has not succeeded in recovering their original nationality, forfeiture of nationality will only be pronounced upon expiry of a reasonable period of time granted by the judge to the person concerned in order to allow them to try to recover their original nationality.
§ 3. When the judgement pronouncing the forfeiture of Belgian nationality has become *res judicata*, the registrar immediately transmits the data required to draw up the certificate of forfeiture of Belgian nationality via the BAEC to the civil registrar, mentioning the full identity of the person concerned.
The civil registrar of the place of registration in the population register, the register of foreign nationals or the waiting register of the person concerned, or, failing that, of the current residence of the person concerned, or, failing that, of Brussels, draws up a certificate of forfeiture of Belgian nationality.
The forfeiture takes effect from the date on which the certificate of forfeiture of Belgian nationality is drawn up.
§ 4. A person who has been deprived of Belgian nationality by virtue of this Article may only become Belgian again by naturalisation.

Art. 23/2.
§ 1. Forfeiture of Belgian nationality may be ordered by the court at the request of the public prosecutor in respect of Belgians who did not derive their nationality from a Belgian parent or adopter on the day of their birth and Belgians who have not been granted their nationality by virtue of Article 11, paragraph 1, 1° and 2°, if they have been sentenced, as perpetrator, co-perpetrator or accomplice, to an unsuspended prison sentence of at least five years for an offence referred to in Book II, Title I ter, of the Criminal Code.
§ 2. The judge shall not pronounce forfeiture where this would have the effect of rendering the person concerned stateless, unless the nationality was acquired as a result of fraudulent conduct, false information or concealment of a relevant fact. In this case, even if the person concerned has not succeeded in recovering their original nationality, forfeiture of nationality will only be pronounced upon expiry of a reasonable period of time granted by the judge to the person concerned in order to allow them to try to recover their original nationality.
§ 3. When the judgement pronouncing the forfeiture of Belgian nationality has become *res judicata*, the registrar immediately transmits the data required to draw up the certificate of forfeiture of Belgian nationality via the BAEC to the civil registrar, mentioning the full identity of the person concerned.
The civil registrar of the place of registration in the population register, the register of foreign nationals or the waiting register of the person concerned, or, failing that, of the current residence of the person concerned, or, failing that, of Brussels, immediately draws up the certificate of forfeiture of Belgian nationality. The forfeiture takes effect from the date on which the certificate of forfeiture of Belgian nationality is drawn up.
§ 4. A person who has been deprived of Belgian nationality by virtue of this Article may only become Belgian again by naturalisation.

Danish provisions relating to loss of nationality

Lov om dansk indfødsret no. 422, 7 June 2004
https://www.retsinformation.dk/eli/lta/2020/1191

§ 8 A. Den, som i forbindelse med sin erhvervelse af dansk indfødsret har udvist svigagtigt forhold, herunder ved forsætligt at afgive urigtige eller vildledende oplysninger eller fortie relevante oplysninger, kan ved dom frakendes indfødsretten, hvis det udviste forhold har været bestemmende for erhvervelsen.

§ 8 B. Den, som dømmes for overtrædelse af en eller flere bestemmelser i straffelovens kapitel 12 og 13, kan ved dom frakendes sin danske indfødsret, medmindre den pågældende derved bliver statsløs.
Stk. 2. Er en person i udlandet straffet for en handling, der efter stk. 1 kan medføre frakendelse af dansk indfødsret, kan indfødsret frakendes i medfør af straffelovens § 11.
Stk. 3. Den, som har udvist en handlemåde, som er til alvorlig skade for landets vitale interesser, kan af udlændinge- og integrationsministeren fratages sin danske indfødsret, medmindre den pågældende derved bliver statsløs.
Stk. 4. Justitsministeren kan bestemme, at oplysninger, der indgår i vurderingen efter stk. 3, af sikkerhedsmæssige grunde ikke kan videregives til parten eller til udlændinge- og integrationsministeren. I sager, hvor vurderingen af, om der er udvist en handlemåde, som er til alvorlig skade for landets vitale interesser, i væsentligt omfang hviler på oplysninger, som ud fra sikkerhedsmæssige hensyn ikke kan videregives til parten eller til udlændinge- og integrationsministeren, kan justitsministeren efter anmodning fra udlændinge- og integrationsministeren vurdere, om den pågældende efter stk. 3 må anses for at have udvist en handlemåde, som er til alvorlig skade for landets vitale interesser. Denne vurdering lægges til grund ved udlændinge- og integrationsministerens afgørelse af sagen.
Stk. 5. Hvis det trods rimelige bestræbelser ikke er muligt at meddele fratagelsen efter stk. 3 til den, der efter stk. 3 har fået frataget sin danske indfødsret, på andre måder, optages fratagelse af statsborgerskab som meddelelse i Statstidende.

§ 8 C. En person kan ikke støtte ret på at have haft dansk indfødsret, når den pågældende er frakendt eller frataget indfødsretten i medfør af § 8 A eller § 8 B. Det gælder dog ikke, i det omfang retsforholdet vedrører tiden før frakendelsen.

§ 8 D. Sag om frakendelse af dansk indfødsret efter § 8 A indbringes for retten af anklagemyndigheden efter anmodning fra udlændinge- og integrationsministeren. Påstand om frakendelse af indfødsret kan efter anmodning fra udlændinge- og integrationsministeren nedlægges i forbindelse med en straffesag.
Stk. 2. Rejses sag om frakendelse, uden at der samtidig nedlægges påstand om straf, indbringes sagen for byretten i den retskreds, hvor den pågældende bor eller opholder sig. Har den pågældende ikke kendt bopæl eller opholdssted her i landet, indbringes sagen for Københavns Byret. Sagen føres i strafferetsplejens former.

§ 8 E. Udlændinge- og integrationsministeren kan hos andre myndigheder indhente de oplysninger, også i elektronisk form, som er nødvendige for at behandle sager om frakendelse af dansk indfødsret i medfør af § 8 A.

§ 8 F. Sager omfattet af § 8 B, stk. 3, kan indbringes for Københavns Byret af den, som efter § 8 B, stk. 3, har fået frataget sin danske indfødsret, inden 4 uger efter afgørelsens meddelelse. Københavns Byret kan dog undtagelsesvis tillade en indbringelse efter 4 uger. I afgørelsen af sagen ved byretten deltager 3 dommere. Udlændinge- og integrationsministeren eller den, ministeren bemyndiger hertil, er part i sagen for det offentlige. Udlændinge- og integrationsministeren eller den, ministeren

bemyndiger hertil, kan lade personer, der er ansat i Politiets Efterretningstjeneste, møde for sig i retten som rettergangsfuldmægtige. Sagens indbringelse for retten kan ikke tillægges opsættende virkning.
Stk. 2. Ved domstolsbehandlingen beskikker retten en advokat for den, som efter § 8 B, stk. 3, har fået frataget sin danske indfødsret.
Stk. 3. Ved domstolsbehandling efter stk. 1 beskikker retten en særlig advokat til at varetage interesser for den person, som i medfør af § 8 B, stk. 3, har fået frataget sin danske indfødsret, og på vegne af denne udøve partsbeføjelser med hensyn til oplysninger omfattet af § 8 B, stk. 4, 1. pkt. Om salær og godtgørelse for udlæg til den særlige advokat gælder samme regler som i tilfælde, hvor der er meddelt fri proces, jf. retsplejelovens kapitel 31.
Stk. 4. Den særlige advokat efter stk. 3 skal underrettes om alle retsmøder i sagen og er berettiget til at deltage i disse. Den særlige advokat skal gøres bekendt med og have udleveret kopi af det materiale, som indgår i sagen for retten. Justitsministeren eller den, ministeren bemyndiger hertil, kan dog bestemme, at der af sikkerhedsmæssige grunde ikke udleveres kopi til den særlige advokat. Spørgsmål herom kan indbringes for retten.
Stk. 5. Retten bestemmer, hvordan den, der efter § 8 B, stk. 3, har fået frataget sin danske indfødsret, i tilfælde af at vedkommende opholder sig i udlandet, får lejlighed til at udtale sig over for retten.
Stk. 6. Oplysninger omfattet af § 8 B, stk. 4, 1. pkt., videregives til den særlige advokat beskikket efter stk. 3. Når sådanne oplysninger er videregivet til den særlige advokat, må advokaten ikke drøfte sagen med den, der efter § 8 B, stk. 3, har fået frataget sin danske indfødsret, eller dennes advokat og må ikke udtale sig i retsmøder, hvor den, der efter § 8 B, stk. 3, har fået frataget sin danske indfødsret, eller dennes advokat er til stede. Den, der efter § 8 B, stk. 3, har fået frataget sin danske indfødsret, og dennes advokat kan til enhver tid give skriftlige meddelelser til den særlige advokat om sagen.
Stk. 7. Retten kan af egen drift eller efter begæring fra den særlige advokat beskikket efter stk. 3 beslutte, at oplysninger, der er indgået i justitsministerens vurdering efter § 8 B, stk. 4, 1. og 2. pkt., videregives til den, der efter § 8 B, stk. 3, har fået frataget sin danske indfødsret, og dennes advokat, hvis sikkerhedsmæssige forhold ikke kan begrunde justitsministerens bestemmelse efter § 8 B, stk. 4,
1. pkt. Afgørelsen træffes ved kendelse, og efter at den særlige advokat og den, der for det offentlige er part i sagen, har haft lejlighed til at udtale sig. Kendelsen kan kæres af de personer, der er nævnt i 2. pkt. Kære af en afgørelse om, at oplysninger videregives, har opsættende virkning.
Stk. 8. Har retten truffet afgørelse efter stk. 7, 1. pkt., kan justitsministeren eller den, ministeren bemyndiger hertil, bestemme, at de pågældende oplysninger ikke indgår i sagen for retten.
Stk. 9. Ingen må deltage som dommer i sagen, hvis den pågældende har truffet afgørelse efter stk. 7, 1. pkt., eller i øvrigt har haft adgang til oplysninger omfattet af en sådan afgørelse og justitsministeren eller den, ministeren bemyndiger hertil, har truffet beslutning efter stk. 8 om, at de pågældende oplysninger ikke indgår i sagen for retten.
Stk. 10. Den del af et retsmøde, der angår oplysninger omfattet af § 8 B, stk. 4, 1. pkt., eller hvor sådanne oplysninger fremlægges eller behandles, og som ikke er omfattet af en afgørelse efter stk. 7, holdes for lukkede døre. I denne del af et retsmøde deltager den særlige advokat beskikket efter stk. 3, men ikke den, der efter § 8 B, stk. 3, har fået frataget sin danske indfødsret, og dennes advokat. Retten bestemmer, hvordan retsmøder, der efter dette stykke helt eller delvis holdes for lukkede døre, gennemføres.
Stk. 11. Retten træffer afgørelse, efter at parterne og den særlige advokat beskikket efter stk. 3 har haft lejlighed til at udtale sig. Rettens afgørelse træffes ved dom.
Stk. 12. Anke af en sag omfattet af denne bestemmelse kan ikke tillægges opsættende virkning.
Stk. 13. Reglerne i denne bestemmelse om sagens behandling i byretten gælder tilsvarende for sagens behandling i landsretten og Højesteret.

French provisions on loss of nationality

Articles 23 to 27-3 of the Civil Code
https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006070721/

Title I bis: French nationality (Articles 17 to 33-2)

Chapter IV: Loss, forfeiture and reinstatement of French nationality Section 1: Loss of

French nationality

Art. 23. Any adult of French nationality, habitually resident abroad, who voluntarily acquires a foreign nationality shall not lose French nationality unless they expressly declare this under the conditions set out in Articles 26 et seq. of this Title.

Art. 23-1. The declaration with a view to losing French nationality may be made from the date of submission of the application to acquire foreign nationality and, at the latest, within one year from the date of such acquisition.

Art. 23-2. French nationals under the age of thirty-five may only make the declaration provided for in Articles 23 and 23-1 above if they have fulfilled their obligations under Book II of the National Service Code.

Art. 23-3. French nationals who exercise the option to renounce French nationality in the cases provided for in Articles 18-1, 19-4 and 22-3 shall lose their French nationality.

Art. 23-4. A French national, even a minor, who, having a foreign nationality, is authorised by the French Government to lose French nationality, at their request, shall lose French nationality.
This authorisation is granted by decree.

Art. 23-5. In the event of marriage to a foreign national, the French spouse may renounce French nationality in accordance with the provisions of articles 26 et seq. on condition that they have acquired the foreign nationality of their spouse and that the usual residence of the household has been established abroad.
However, French nationals under the age of thirty-five may only exercise this repudiation option if they have fulfilled the obligations set out in Book II of the National Service Code.

Art. 23-6. Loss of French nationality may be established by judgment where the person concerned, French by descent, does not have possession of French nationality and has never had their habitual residence in France, if the ascendants from whom they derived French nationality do not themselves have possession of French nationality or have not been resident in France for half a century.
The judgement determines the date on which French nationality was lost. It may decide that this nationality was lost by the parents of the person concerned and that the latter has never been French.

Art. 23-7. A French person who behaves in fact as the national of a foreign country may, if they have the nationality of that country, be declared, by decree after the assent of the *Conseil d'État* (Council of State), to have lost French nationality.

Art. 23-8. French nationals shall lose their French nationality if, while employed in a foreign army or public service or in an international organisation of which France is not a member, or more generally if they provide assistance to such organisations, they do not resign from their employment or cease their assistance notwithstanding an injunction to do so issued by the Government.

The person concerned will be declared to have lost French nationality by decree of the *Conseil d'État* if, within the period set by the injunction, which may not be less than fifteen days and not more than two months, they have not ceased their activity.
If the opinion of the *Conseil d'État* is unfavourable, the measure provided for in the previous paragraph may only be taken by decree in the Council of Ministers.

Art. 23-9. Loss of French nationality takes effect:
1° In the case provided for in Article 23 on the date of acquisition of foreign nationality; 2° In the case provided for in Articles 23-3 and 23-5 on the date of declaration;
3° In the case provided for in articles 23-4, 23-7 and 23-8 on the date of the decree; 4° In the cases provided for in article 23-6 on the date set by the judgment.

Section 3: Forfeiture of French nationality
Art. 25. A person who has acquired French nationality may, by decree issued after approval by the *Conseil d'État*, forfeit their French nationality, unless the forfeiture results in the person becoming stateless:
1° If they have been convicted of a crime or offence constituting an attack on the fundamental interests of the Nation or a crime or offence constituting an act of terrorism;
2° If convicted of an act classified as a felony or misdemeanour provided for and punishable under Chapter II of Title III of Book IV of the Criminal Code;
3° If they have been convicted of failing to fulfil their obligations under the national service code;
4° If they have committed acts on behalf of a foreign State that are incompatible with French nationality and prejudicial to the interests of France.

Art. 25-1. Forfeiture is only incurred if the acts of which the person concerned is accused and referred to in Article 25 occurred prior to acquisition of French nationality or within ten years of the date of such acquisition.
It may only be pronounced within ten years of the commission of the said acts.
If the acts of which the person concerned is accused are covered by 1° of article 25, the time limits mentioned in the two previous paragraphs are extended to fifteen years.

Chapter V: Acts relating to the acquisition or loss of French nationality Section 1:

Declarations of nationality
Art. 26. Declarations of nationality made by virtue of marriage to a French spouse, pursuant to article 21-2, or by virtue of being an ascendant of a French national, pursuant to article 21-13-1, or by virtue of being a brother or sister of a French national, pursuant to article 21-13-2, are received by the administrative authority. Other declarations of nationality are received by the director of the court registry services of the judicial court or by the consul. The forms in which these declarations are received are determined by decree in the *Conseil d'État*.
A receipt will be issued after submission of the documents required to prove their admissibility.

Art. 26-1. All declarations of nationality must, on pain of nullity, be registered either by the director of the judicial registry services of the judicial court, for declarations made in France, or by the Minister of Justice, for declarations made abroad, with the exception of the following declarations, which are registered by the Minister responsible for naturalisations:
1° Those made on the grounds of marriage to a French spouse;
2° Those made pursuant to Article 21-13-1 on the grounds of being an ascendant of a French national;
3° Those made pursuant to Article 21-13-2 on the grounds of being the sibling of a French national.

Art. 26-2. The seat and jurisdiction of the judicial courts or local courts with jurisdiction to receive and register declarations of French nationality shall be determined by decree.

Art. 26-3. The Minister or the director of the judicial registry services of the judicial court shall refuse to register declarations that do not satisfy the legal conditions.
The declarant shall be notified of the reasoned decision and may challenge it before the judicial court within a period of six months. The action may be brought personally by the minor from the age of sixteen. The decision to refuse registration must be taken no more than six months after the date on which the declarant was issued with the receipt certifying that all the documents required to prove the admissibility of the declaration have been submitted.
The time limit is extended to one year for declarations submitted under articles 21-2, 21-13-1 and 21-13-2. If an opposition procedure is initiated by the Government pursuant to Articles 21-4, 21-13-1 or 21-13-2, this period is extended to two years.

Art. 26-4. If registration is not refused within the legal time limit, a copy of the declaration will be given to the declarant, bearing the registration notice.
Within two years of the date on which it was made, registration may be contested by the Public Prosecutor if the legal conditions are not met.
The registration may still be contested by the Public Prosecutor in the event of falsehood or fraud within two years of their discovery. If the spouses cease to live together within twelve months of registration of the declaration provided for in Article 21-2, fraud is presumed.

Art. 26-5. Subject to the provisions of the second paragraph (1°) of Article 23-9, declarations of nationality, once they have been registered, take effect on the date on which they were made.

Section 2: Administrative decisions
Art. 27-1. Decrees concerning acquisition, naturalisation or reinstatement, authorisation to lose French nationality, loss or forfeiture of such nationality, shall be issued and published in the manner laid down by decree. They shall have no retroactive effect.

Art. 27-2. Decrees on acquisition, naturalisation or reinstatement may be revoked with the assent of the *Conseil d'État* within two years of their publication in the *Journal officiel* if the applicant does not satisfy the legal conditions; if the decision has been obtained by deceit or fraud, these decrees may be revoked within two years of the discovery of the fraud.

Art. 27-3. Decrees which result in the loss of French nationality for one of the reasons set out in articles 23-7 and 23-8 or forfeiture of French nationality are issued after the interested party has been heard or called upon to produce their observations.

Italian provisions on loss of nationality

Nuove norme sulla cittadinanza, Law no. 91 of 5 Feb. 1992
https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1992-02-05;91

Art. 3.
1. Il minore straniero adottato da cittadino italiano acquista la cittadinanza.
2. La disposizione del comma 1 si applica anche nei confronti degli adottati prima della data di entrata in vigore della presente legge.
3. Qualora l'adozione sia revocata per fatto dell'adottato, questi perde la cittadinanza italiana, sempre che sia in possesso di altra cittadinanza o la riacquisti.
4. Negli altri casi di revoca l'adottato conserva la cittadinanza italiana. Tuttavia, qualora la revoca intervenga durante la maggiore eta' dell'adottato, lo stesso, se in possesso di altra cittadinanza ose la riacquisti, potra' comunque rinunciare alla cittadinanza italiana entro un anno dalla revoca stessa.

Art. 10.
1. Il decreto di concessione della cittadinanza non ha effetto se la persona a cui si riferisce non presta, entro sei mesi dalla notifica del decreto medesimo, giuramento di essere fedele alla Repubblica e di osservare la Costituzione e le leggi dello Stato.

Art. 10-bis.
1. La cittadinanza italiana acquisita ai sensi degli articoli 4, comma 2, 5 e 9, e' revocata in caso di condanna definitiva per I reati previsti dall'articolo 407, comma 2, lettera a), n. 4), del codice di procedura penale, nonche' per i reati di cui agli articoli 270-ter e 270-quinquies.2, del codice penale. La revoca della cittadinanza e' adottata, entro tre anni dal passaggio in giudicato della sentenza di condanna per i reati di cui al primo periodo, con decreto del Presidente della Repubblica, su proposta del Ministro dell'interno.).

Art. 12.
1. Il cittadino italiano perde la cittadinanza se, avendo accettato un impiego pubblico od una carica pubblica da uno Stato o ente pubblico estero o da un ente internazionale cui non partecipi l'Italia, ovvero prestando servizio militare per uno Stato estero, non ottempera, nel termine fissato, all'intimazione che il Governo italiano puo' rivolgergli di abbandonare l'impiego, la carica o il servizio militare.
2. Il cittadino italiano che, durante lo stato di guerra con uno Stato estero, abbia accettato o non abbia abbandonato un impiego pubblico od una carica pubblica, od abbia prestato servizio militare per tale Stato senza esservi obbligato, ovvero ne abbia acquistato volontariamente la cittadinanza, perde la cittadinanza italiana al momento della cessazione dello stato di guerra.

Luxembourg provisions on loss of nationality

Law of 8 March 2017 on Luxembourg nationality https://legilux.public.lu/eli/etat/leg/loi/2017/03/08/a289/jo

Chapter 4. Loss of Luxembourg nationality

Section 1. General provisions

Art. 55. Luxembourg nationality is lost by renunciation or forfeiture.

Art. 56.

(1) Loss of Luxembourg nationality, from whatever cause, has effect only for the future.

(2) Acts and deeds performed as a Luxembourg national before the loss of Luxembourg nationality remain valid.

Section 3. Forfeiture of Luxembourg nationality

Art. 62.

(1) A person who has obtained Luxembourg nationality following a naturalisation, option or recovery procedure is stripped of Luxembourg nationality by an order issued by the Minister:

1° if they have obtained Luxembourg nationality by making false statements, by fraud or by concealment of material facts; or

2° if they have obtained Luxembourg nationality on the basis of a forgery or the use of a forgery, usurpation of a name or marriage of convenience, provided that the person concerned has been found guilty, in the Grand Duchy of Luxembourg or abroad, of one of these offences by a court decision that has the force of *res judicata*.

(2) Forfeiture of Luxembourg nationality is not permitted where it results in the person concerned becoming stateless.

Art. 63.

(1) The ministerial order forfeiting Luxembourg nationality is notified to the person concerned by the registrar of the person's habitual residence.

In the absence of habitual residence in the Grand Duchy of Luxembourg, notification is made by the Minister.

(2) When the forfeiture of Luxembourg nationality has become final, the ministerial decree or the court decision confirming this decree is mentioned on the declaration of naturalisation, option or recovery.

(3) Forfeiture of Luxembourg nationality takes effect on the date of affixing of the endorsement referred to in the preceding paragraph.

Art. 64.

(1) In the event of forfeiture of Luxembourg nationality, the Minister also imposes a ban on initiating naturalisation, option or recovery proceedings within fifteen years of the date of the ministerial order.

(2) The prohibition referred to in the preceding paragraph takes effect immediately.

Dutch provisions on loss of nationality

Rijkswet op het Nederlanderschap, 19 Dec. 1984
https://www.legislation.gov.uk/ukpga/1981/61/resources

Hoofdstuk 5. Verlies van het Nederlanderschap

Art 14.

1. Onze Minister kan de verkrijging of verlening van het Nederlanderschap intrekken, indien zij berust op een door de betrokken persoon gegeven valse verklaring of bedrog, dan wel op het verzwijgen van enig voor de verkrijging of verlening relevant feit. De intrekking werkt terug tot het tijdstip van verkrijging of verlening van het Nederlanderschap. De intrekking is niet mogelijk indien sedert de verkrijging of verlening een periode van twaalf jaar is verstreken. De derde volzin is niet van toepassing indien de betrokken persoon is veroordeeld voor een van de misdrijven, omschreven in de artikelen 6, 7, 8 en 8 bis van het op 17 juli 1998 te Rome tot stand gekomen Statuut van Rome inzake het Internationale Strafhof.

2. Onze Minister kan het Nederlanderschap intrekken van de persoon die onherroepelijk is veroordeeld wegens:

a. een misdrijf omschreven in de titels I tot en met IV van het Tweede Boek van het Nederlandse Wetboek van Strafrecht, waarop naar de wettelijke omschrijving een gevangenisstraf van acht jaar of meer is gesteld;
b. een misdrijf als bedoeld in de artikelen 83, 134a of 205 van het Nederlandse Wetboek van Strafrecht;
c. een misdrijf dat soortgelijk is aan de misdrijven bedoeld onder a waarop naar de wettelijke omschrijving in de strafwet van een van de landen van het Koninkrijk een gevangenisstraf van acht jaar of meer is gesteld, danwel een misdrijf dat naar de wettelijke omschrijving inde strafwet van een van de landen van het Koninkrijk soortgelijk is aan de misdrijven bedoeld onder b;
d. een misdrijf omschreven in de artikelen 6, 7, 8 en 8 bis van het op 17 juli 1998 te Rome tot stand gekomen Statuut van Rome inzake het Internationale Strafhof.

3. Onze Minister kan het Nederlanderschap intrekken van de persoon die de leeftijd van zestien jaar heeft bereikt en die zich vrijwillig in vreemde krijgsdienst begeeft van een staat die betrokken is bij gevechtshandelingen tegen het Koninkrijk dan wel tegen een bondgenootschap waarvan het Koninkrijk lid is.

4. Onze Minister kan in het belang van de nationale veiligheid het Nederlanderschap intrekken van een persoon die de leeftijd van zestien jaar heeft bereikt en die zich buiten het Koninkrijk bevindt, indien uit zijn gedragingen blijkt dat hij zich heeft aangesloten bij een organisatie die door Onze Minister, in overeenstemming met het gevoelen van de Rijksministerraad, is geplaatst op een lijst van organisaties die deelnemen aan een nationaal of internationaal gewapend conflict en een bedreiging vormen voor de nationale veiligheid.

5. De persoon die de Nederlandse nationaliteit heeft verloren op grond van het tweede, derde of vierde lid kan de Nederlandse nationaliteit niet herkrijgen. Wij kunnen, de Raad van State van het Koninkrijk gehoord, in bijzondere gevallen van de eerste zin afwijken, indien ten minste vijf jaren zijn verstreken sedert het verlies van de Nederlandse nationaliteit.

6. Het Nederlanderschap wordt door een minderjarige verloren door het vervallen van de familierechtelijke betrekking waaraan het wordt ontleend ingevolge artikel 3, 4, 5, 5a, 5b, 5c, of 6, eerste lid, aanhef en onder c, alsmede ingevolge artikel 4 zoals dit luidde tot de inwerkingtreding van de Rijkswet tot wijziging van de Rijkswet op het Nederlanderschap met betrekking tot de verkrijging, de verlening en het verlies van het Nederlanderschap van 21 december 2000, Stb. 618 en ingevolge artikel 5 zoals dat luidde tot de inwerkingtreding van de Rijkswet van 3 juli 2003 tot wijziging van de Rijkswet op het Nederlanderschap in verband met de totstandkoming van de Wet conflictenrecht adoptie (Stb. 284). Het verlies bedoeld in de eerste zin treedt niet in indiende

andere ouder op het tijdstip van het vervallen van die betrekking Nederlander is of dat was ten tijde van zijn overlijden. Het verlies treedt evenmin in indien het Nederlanderschap ook kan worden ontleend aan artikel 3, derde lid, of aan artikel 2, onder a, van de Wet van 12 december 1892 op het Nederlanderschap en het ingezetenschap (Stb. 268).

7. Het Nederlanderschap wordt niet verloren dan krachtens een van de bepalingen van dit hoofdstuk.

8. Met uitzondering van het geval, bedoeld in het eerste lid, heeft geen verlies van het Nederlanderschap plaats indien staatloosheid daarvan het gevolg zou zijn.

9. De in het vierde lid bedoelde lijst wordt na vaststelling of wijziging toegezonden aan de Tweede Kamer der Staten-Generaal, aan de Staten van Aruba, aan die van Curaçao en aan die van Sint Maarten en wordt gepubliceerd in de Staatscourant, in het Afkondigingsblad van Aruba, inhet Publicatieblad van Curaçao en in het Afkondigingsblad van Sint Maarten.

10. Bij of krachtens algemene maatregel van rijksbestuur worden nadere regels gesteld omtrent de elementen die betrokken worden bij de belangenafweging inzake een beslissing omtrent intrekking van het Nederlanderschap op grond van het eerste, tweede, derde of vierde lid.

Art. 15.

1. Het Nederlanderschap gaat voor een meerderjarige verloren:
   a. door het vrijwillig verkrijgen van een andere nationaliteit;
   b. door het afleggen van een verklaring van afstand;
   c. indien hij tevens een vreemde nationaliteit bezit en tijdens zijn meerderjarigheid gedurende een ononderbroken periode van tien jaar in het bezit van beide nationaliteiten zijn hoofdverblijf heeft buiten Nederland, Aruba, Curaçao en Sint Maarten, en buiten de gebieden waarop het Verdrag betreffende de Europese Unie van toepassing is, anders dan in een dienstverband met Nederland, Aruba, Curaçao of Sint Maarten dan wel met een internationaal orgaan waarin het Koninkrijk is vertegenwoordigd, of als echtgenoot van of als ongehuwde in een duurzame relatie samenlevend met een persoon in een zodanig dienstverband;
   d. door intrekking door Onze Minister van het besluit waarbij het Nederlanderschap is verleend, welke kan plaatsvinden, indien de betrokkene heeft nagelaten na de totstandkoming van zijn naturalisatie al het mogelijke te doen om zijn oorspronkelijke nationaliteit te verliezen;
   e. door intrekking door Onze Minister van het besluit waarbij de verkrijging van het Nederlanderschap is bevestigd, welke kan plaatsvinden, indien de vreemdeling als bedoeld in artikel 6, eerste lid, onder e, heeft nagelaten na de verkrijging van het Nederlanderschap het mogelijke te doen om zijn oorspronkelijke nationaliteit te verliezen.

2. Het eerste lid, aanhef en onder a, is niet van toepassing op de verkrijger
   a. die in het land van die andere nationaliteit is geboren en daar ten tijde van de verkrijging zijn hoofdverblijf heeft;
   b. die voor het bereiken van de meerderjarige leeftijd gedurende een onafgebroken periode van tenminste vijf jaren in het land van die andere nationaliteit zijn hoofdverblijf heeft gehad; of
   c. die gehuwd is met een persoon die die andere nationaliteit bezit.

3. De periode bedoeld in het eerste lid, onder c, wordt geacht niet te zijn onderbroken indien de betrokkene gedurende een periode korter dan één jaar zijn hoofdverblijf in Nederland, Aruba, Curaçao of Sint Maarten heeft, dan wel in de gebieden waarop het Verdrag betreffende de Europese Unie van toepassing is.

4. De periode, bedoeld in het eerste lid, onder c, wordt gestuit door de verstrekking van een verklaring omtrent het bezit van het Nederlanderschap dan wel van een reisdocument, Nederlandse identiteitskaart of vervangende Nederlandse identiteitskaart in de zin van de Paspoortwet. Vanaf de dag der verstrekking begint een nieuwe periode van tien jaren te lopen.

Art. 15A. Voorts gaat het Nederlanderschap voor een meerderjarige verloren:
   a. indien hij ten gevolge van een uitdrukkelijke wilsverklaring door naturalisatie, optie of herstel daarin de nationaliteit verkrijgt van een Staat die Partij is bij het op 6 mei 1963 te Straatsburg gesloten Verdrag betreffende beperking van gevallen van meervoudige nationaliteit en betreffende militaire verplichtingen in geval van meervoudige nationaliteit en dit Verdrag dat verlies meebrengt. Het voorgaande is echter niet van toepassing indien die Staat tevens Partij is bij het Tweede Protocol tot wijziging van dat Verdrag en de betrokkene behoort tot een van de

categorieën, genoemd in artikel 15, tweede lid;

b. indien hij ingevolge de op 25 november 1975 te Paramaribo gesloten Toescheidingsovereenkomst inzake nationaliteiten tussen het Koninkrijk der Nederlanden en de Republiek Suriname de Surinaamse nationaliteit verkrijgt.

Art 16.

1. Het Nederlanderschap gaat voor een minderjarige verloren:

a. door gerechtelijke vaststelling van het ouderschap, erkenning, wettiging of adoptie door een vreemdeling, indien hij diens nationaliteit daardoor verkrijgt, of deze reeds bezit;
b. door het afleggen van een verklaring van afstand, indien hij de nationaliteit bezit van zijn vader, moeder of adoptiefouder als bedoeld in artikel 11, achtste lid;
c. indien zijn vader of moeder vrijwillig een andere nationaliteit verkrijgt en hij in deze verkrijging deelt of deze nationaliteit reeds bezit;
d. indien zijn vader of moeder het Nederlanderschap verliest ingevolge artikel 15, eerste lid, onder b, c of d, of ingevolge artikel 15A;
e. indien hij zelfstandig dezelfde nationaliteit verkrijgt als zijn vader of moeder.

Voor de toepassing van de onderdelen c, d en e wordt onder vader of moeder mede verstaande adoptiefouder aan wie de minderjarige het Nederlanderschap ontleent, en de persoon die mede het gezamenlijk gezag over de minderjarige uitoefent en aan wie hij het Nederlanderschap ontleent. De in onderdeel b bedoelde verklaring van afstand heeft geen rechtsgevolg dan nadat de minderjarige die de leeftijd van twaalf jaar heeft bereikt en, op diens verzoek, de ouder die geen wettelijk vertegenwoordiger is, daarover zijn gehoord. Geen afstand is mogelijk indien het kind en die ouder daartegen bedenkingen hebben. De minderjarige die de leeftijd van zestien jaar heeft bereikt, legt de verklaring van afstand zelfstandig af en kan daarin niet worden vertegenwoordigd.

2. Het verlies van het Nederlanderschap, bedoeld in het eerste lid treedt niet in:

a. indien en zolang een ouder het Nederlanderschap bezit;
b. door het overlijden van een ouder na het tijdstip waarop krachtens het eerste lid het verlies van het Nederlanderschap zou intreden;
c. indien een ouder als Nederlander is overleden vóór het tijdstip waarop krachtens het eerste lid het verlies van het Nederlanderschap zou intreden;
d. indien de minderjarige voldoet aan artikel 3, derde lid, of artikel 2, onder a, van de wet van 12 december 1892 op het Nederlanderschap en het ingezetenschap (Stb.268), behoudens in het geval bedoeld in het eerste lid onder b;
e. indien de minderjarige in het land van de door hem verkregen nationaliteit is geboren en daar ten tijde van de verkrijging zijn hoofdverblijf heeft, behoudens in het geval bedoeld in het eerste lid onder b;
f. indien de minderjarige gedurende een onafgebroken periode van tenminste vijf jaren in het land van de door hem verkregen nationaliteit zijn hoofdverblijf heeft of gehad heeft, behoudens in het geval bedoeld in het eerste lid onder b; of
g. indien in het geval in het eerste lid, onder e, bedoeld een ouder op het tijdstip van de verkrijging Nederlander is.

Voor de toepassing van de onderdelen a, b, c en g wordt onder een ouder mede verstaan de adoptiefouder als bedoeld in artikel 11, achtste lid, en de persoon die mede het gezamenlijk gezag over de minderjarige uitoefent en aan wie hij het Nederlanderschap ontleent.

Art. 16A.

Voorts gaat het Nederlanderschap voor een minderjarige verloren indien hij ten gevolge van een uitdrukkelijke wilsverklaring door naturalisatie, optie of herstel daarin de nationaliteit verkrijgt van een Staat die Partij is bij het op 6 mei 1963 te Straatsburg gesloten Verdrag betreffende beperking van gevallen van meervoudige nationaliteit en betreffende militaire verplichtingen in geval van meervoudige nationaliteit (Trb. 1964, nr. 4) en dit Verdrag dat verlies meebrengt. Het voorgaande is niet van toepassing indien die Staat tevens Partij is bij het Tweede Protocol tot wijziging van dat Verdrag (Trb. 1994, nr. 265), en de betrokkene behoort tot een van de categorieën, genoemd in artikel 16, tweede lid, onder e, f en g.

United Kingdom provisions on loss of nationality

British nationality Act 1981, 30 Oct. 1981
https://www.legislation.gov.uk/ukpga/1981/61/resources

British Nationality Act 1981
CHAPTER 61

An Act to make fresh provision about citizenship and nationality, and to amend the Immigration Act 1971 as regards the right of abode in the United Kingdom.

Section 40. 40 Deprivation of citizenship.
(1) In this section a reference to a person's " citizenship status " is a reference to his status as
(a) a British citizen,
(b) a British overseas territories citizen,
(c) a British Overseas citizen,
(d) a British National (Overseas),
(e) a British protected person, or
(f) a British subject.
(2) The 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.
(3) The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of
(a) fraud,
(b) false representation, or
(c) concealment of a material fact.
(4) The Secretary of State may not make an order under subsection (2) if he is satisfied that the order would make a person stateless.
(4A) But that does not prevent the Secretary of State from making an order under subsection (2) to deprive a person of a citizenship status if—
(a) the citizenship status results from the person's naturalisation,
(b) the Secretary of State is satisfied that the deprivation is conducive to the public good because the person, while having that citizenship status, has conducted him or herself in a manner which is seriously prejudicial to the vital interests of the United Kingdom, any of the Islands, or any British overseas territory, and
(c) 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.]
(5) Before making an order under this section in respect of a person the Secretary of State must give the person written notice specifying
(a) that the Secretary of State has decided to make an order,
(b) the reasons for the order, and
(c) the person's right of appeal under section 40A(1) or under section 2B of the Special Immigration Appeals Commission Act 1997 (c. 68).
(6) Where a person acquired a citizenship status by the operation of a law which applied to him because of his registration or naturalisation under an enactment having effect before commencement, the Secretary of State may by order deprive the person of the citizenship status if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of
(a) fraud,
(b) false representation, or
(c) concealment of a material fact.]

Section 40A. Deprivation of citizenship: appeal

(1) A person who is given notice under section 40(5) of a decision to make an order in respect of him under section 40 may appeal against the decision to the First-tier Tribunal.

(2) Subsection (1) shall not apply to a decision if the Secretary of State certifies that it was taken wholly or partly in reliance on information which in his opinion should not be made public

(a) in the interests of national security,

(b) in the interests of the relationship between the United Kingdom and another country, or

(c) otherwise in the public interest.

(3) The following provisions of the Nationality, Immigration and Asylum Act 2002 (c. 41) shall apply in relation to an appeal under this section as they apply in relation to an appeal under section 82 of that Act

(a) Repealed

(b) Repealed

(c) section 106 (rules),

(d)section 107 (practice directions), and

(e)section 108 (forged document: proceedings in private).

(6) Repealed

(7) Repealed

(8) Repealed

Section 40B. Review of power under section 40(4A)

(1) The Secretary of State must arrange for a review of the operation of the relevant deprivation power to be carried out in relation to each of the following periods

(a) the initial one year period;

(b) each subsequent three year period.

(2) The "relevant deprivation power" is the power to make orders under section 40(2) to deprive persons of a citizenship status in the circumstances set out in section 40(4A).

(3) A review must be completed as soon as practicable after the end of the period to which the review relates.

(4) As soon as practicable after a person has carried out a review in relation to a particular period, the person must

(a) produce a report of the outcome of the review, and

(b) send a copy of the report to the Secretary of State.

(5) The Secretary of State must lay before each House of Parliament a copy of each report sent under subsection (4)(b).

(6) The Secretary of State may, after consultation with the person who produced the report, exclude a part of the report from the copy laid before Parliament if the Secretary of State is of the opinion that it would be contrary to the public interest or prejudicial to national security for that part of the report to be made public.

(7) The Secretary of State may

(a) make such payments as the Secretary of State thinks appropriate in connection with the carrying out of a review, and

(b) make such other arrangements as the Secretary of State thinks appropriate in connection with the carrying out of a review (including arrangements for the provision of staff, other resources and facilities).

(8) In this section

"initial one year period" means the period of one year beginning with the day when section 40(4A) comes into force;

"subsequent three year period" means a period of three years beginning with the first day after the most recent of

(a) the initial one year period, or

(b) the most recent subsequent three year period.

Swedish provisions on loss of nationality

Kungörelse (1974:152) om beslutad ny regeringsform, 28 fév. 1974
https://rkrattsbaser.gov.se/sfst?bet=1974:152

2 kap. Grundläggande fri- och rättigheter

7 §. Ingen svensk medborgare får landsförvisas eller hindras att resa in i riket.
Ingen svensk medborgare som är eller har varit bosatt i riket får fråntas sitt medborgarskap. Det får dock föreskrivas att barn under arton år i fråga om sitt medborgarskap ska följa föräldrarna eller en av dem. *Lag (2010:1408)*.

Lag (2001:82) om svenskt medborgarskap, 1er mars 2001
https://rkrattsbaser.gov.se/sfst?bet=2001:82

Förlust av svenskt medborgarskap

14 §. En svensk medborgare förlorar sitt svenska medborgarskap när han eller hon fyller tjugotvå år, om han eller hon
1. är född utomlands,
2. aldrig haft hemvist i Sverige, och
3. inte heller varit här under förhållanden som tyder på samhörighet med landet. På ansökan som görs innan den svenske medborgaren fyller tjugotvå år får dock medges att medborgarskapet behålls.
När någon förlorar svenskt medborgarskap enligt första stycket, förlorar även hans eller hennes barn sitt svenska medborgarskap, om barnet förvärvat detta på grund av att föräldern varit svensk medborgare. Barnet förlorar dock inte sitt medborgarskap om den andra föräldern har kvar sitt svenska medborgarskap och barnet härleder sitt svenska medborgarskap även från honom eller henne.
Förlust av svenskt medborgarskap sker inte om detta skulle leda till att personen blir statslös.

Swiss provisions on loss of nationality

Swiss Citizenship Act (SCA), 20 juin 2014 –
https://www.fedlex.admin.ch/eli/cc/2016/404/en

Chapter 2 - Loss by Official Decree

Section 1. Relief of Citizenship
Art. 37. Request for relief and decision
Art. 38. Inclusion of children **Art. 39.**
Certificate of relief of citizenship
Art. 40. Fees
Art. 41. Multiple cantonal citizenships

Section 2. Revocation
Art. 42. The SEM may, with consent of the authority in the canton of origin, revoke the Swiss, cantonal and communal citizenship of a person holding dual nationality if his or her conduct is seriously detrimental to the interests or the reputation of Switzerland.

Ordinance on Swiss nationality (OLN), 17 June 2016
https://www.fedlex.admin.ch/eli/cc/2016/405/fr

Chapter 4 - Common provisions

Section 6. Revocation
Art. 30. Withdrawal of nationality (Art. 42 LN)
[1] Anyone who seriously damages the interests or reputation of Switzerland:

a. commits a felony or misdemeanour as referred to in Articles 266, 266bis, 272 to 274, 275, 275bis and 275ter of the Criminal Code (CC);
b. commits a serious crime in the context of terrorist activities, violent extremism or organised crime;
c. commits genocide (art. 264 of the Swiss Criminal Code), a crime against humanity (art. 264a of the CC), a grave breach of the Geneva Conventions of 12 August 1949 (art. 264c of the CC) or another war crime (arts. 264d to 264h of the CC);
d. poses a lasting threat to Switzerland's good relations with a foreign state by committing an offence against that state (art. 296 CC).

[2] Withdrawal presupposes that a conviction has become final. This does not apply in cases where criminal proceedings would be unsuccessful because the state in which the acts were committed is unwilling or unable to bring criminal proceedings to a conclusion or to meet the requirements of a request for foreign legal assistance, in particular due to the malfunctioning of all or a substantial part of the independent legal system.

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