Quasi-loss of nationality

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I. Context

- ILEC-project on involuntary loss of nationality (www.ilecproject.eu) → progeny of *Rottmann* (C-135/08)
- 'Quasi-loss' of nationality as one of the components
- Research based on
  - Comparative analysis 28 MS (questionnaire)
  - International/European law

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II. The story of José

• José born in Chile – fled his country in 1977 during Pinochet dictatorship → came to the Netherlands
• In order to escape Chile, José used a friend's passport → refugee application (1977) using his friend's identity
II. The story of José

- José married to an American national (1982)
- Two children born in the Netherlands:
  - Irena (1983)
  - Julio (1985)
- Naturalization (1986) – under his friend's identity
II. The story of José

- 2014: José wants to recover his real identity
- Consequences?
  - Identity fraud → loss of nationality (art. 14 Dutch Act)
  - Fraud committed before 01.04.2003 → naturalization is void *ab initio*
  - José's children would also lose their nationality
III. Cases of quasi-loss?

• José's case: nationality was never acquired → 'quasi-loss'
• Other instances of quasi-loss:
  – Disappearance family relationship (e.g. annulment of paternity)
  – Incorrect application/interpretation of nationality law (e.g. voluntary acquisition of nationality)
IV. Legal framework?

- National law?
  - Falls in between acquisition and loss – no specific rule
  - In some cases – solution:
    - Constitutional protection
    - Nationality law (e.g. statute of limitation)
    - Family law (e.g. apparent status in case marriage null and void)
IV. Legal framework?

• International law?
  – Most protection rules predicated on loss, not quasi-loss (e.g. art. 5(1) 1961 Convention Statelessness: loss of nationality as a consequence of change in family status) – broad interpretation?
  – Some provisions may help – though not directly aimed at quasi-loss – e.g.:
    • Art. 7(1)(f) ECN: no loss after minority of child
    • Procedural guarantees in case of deprivation

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V. Outlook

- Quasi-loss *is* loss
- Protection mechanisms in relation to loss should apply – *e.g.* Rottmann – proportionality test
- Adaptation of protection rules? 'Quasi-loss twist' - *e.g.* protection of legitimate expectations