Quasi-loss of nationality: findings and recommendations

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I. What is quasi-loss?
The story of Melaku

• Melaku was born in Ethiopia in 2010
  – Mother: citizen of Ethiopia
  – Father: citizen of Italy
  – Parents married in Ethiopia in 2009

• Melaku obtained *Italian* (art. 1 Act 5.02.1992) and *Ethiopian* (sec. 3(1) Ethiopian Proclamation on Nationality No 378/2003) citizenship at birth – lives in France
I. What is quasi-loss?
The story of Melaku

• In 2014 discovery by Italian authorities that previous (customary) marriage of mother not validly terminated when Melaku's parents married
• Italian court: 2nd marriage is *null and void*
• Under Italian law: no father-son link → no acquisition of nationality
• Should Melaku obtain residence permit to continue attending school in France?
I. What is quasi-loss?

- Melaku's case: nationality was never acquired → 'quasi-loss'
- Quasi-loss: catch all descriptor to identify situations in which authorities of a country indicate that a person who assumed / was assumed by the authorities to possess the nationality of a country, never acquired the nationality of the country involved
I. What is quasi-loss?

• Main instances of quasi-loss:
  – Disappearance of family relationship (*e.g.* annulment of paternity)
  – Incorrect application/interpretation of nationality law
  – Identity fraud
II. The findings

• Current situation: a patchwork of different national approaches leading to protection gap

• 1°) Identical situations treated differently – *e.g.* annulment of paternity
  – In some MS: loss (GER/FIN/NET)
  – In other MS: 'quasi-loss' → case of *non-acquisition* of nationality → loss of EU citizenship (FR/BEL/DK)
II. The findings

• 2°) If situation treated as quasi-loss, some protection mechanisms available (not always) but variety
  – In some MS: protection through nationality law (e.g. statute of limitation)
  – In other MS, family law provisions (e.g. apparent status in case of marriage null and void)
  – In other MS: protection through administrative law (general principles of administrative law)
II. The findings

- 3°) In many MS, *uncertainty* on situation
- In more than 10 MS, no clear answer on 2 cases of questionnaire (mistake in registration of citizens 50 years ago and consequences on child's nationality / impact of wrong information during naturalization on children's nationality)
II. The findings

• 4°) Protection offered by international law?

• Question whether protection rules predicated on loss (e.g. art. 5(1) 1961 Convention Statelessness : loss of nationality as a consequence of change in family status) → also applicable in case of quasi-loss?
II. The findings

5) Protection offered by *European* law?

Application of *Rottmann*: may MS avoid principle of proportionality by labelling a case not as a loss, but as 'non-acquisition'?
III. Policy recommendations

• 1) *Procedural* guarantees
• In all situations of quasi-loss, minimum procedural guarantees:
  
  – Judicial review
  – Treatment as national during proceedings
  – Finality after exhaustion of remedies
III. Policy recommendations

• 2) Preference for treatment as deprivation of nationality
   – Better approach: quasi-loss situation leading to deprivation of nationality (instead of characterization as annulment or loss ex lege) → benefit of protection mechanisms
   – Deprivation may in some circumstances (fraud) work back to the day of acquisition
   – No ab initio null and void construction
III. Policy recommendations

3) Protection of *legitimate expectations*

- A. Substance:
  - Reasonable attempt by State to guarantee the continuation of nationality of person concerned
  - Strength and extent of attempt depends on circumstances
  - Variety of means:
    - Apparent status of national
    - Administrative recognition of nationality
    - Facilitated (re)acquisition
III. Policy recommendations

• 3) Protection of *legitimate expectations*
  – B. Procedure:

  – Take into account all relevant circumstances → proportionality test
  – Consequences of 'quasi-loss' for members of family: separate decisions based on individualized assessment taking into account personal circumstances + best interests of the child

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