

***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

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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)

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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)



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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'?



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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



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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

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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
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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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