The Nationality Lottery

Why Deprivation of Nationality Does Not Constitute Direct Discrimination on the Basis of Ethnic Origin

Santiago Dresen

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On 24 March 2025, the Amsterdam District Court issued a consequential judgement on deprivation of nationality after a terrorist conviction, feeding into a broader debate on revocation of nationality. The ruling stated that the Dutch government could not revoke the nationality of a person convicted of terrorism-related crimes, declaring it a violation of the prohibition of discrimination based on ethnic origin laid down in Article 14 of the European Convention on Human Rights (ECHR), Article 21 of the Charter of Fundamental Rights and Article 1 of the Dutch Constitution. The judgement marks a departure from previous case law established by the Council of State – the highest administrative court in the Netherlands – as it reconceptualizes the issue of deprivation of nationality as one of direct discrimination based on ethnic origin. However, it fails to provide a clear explanation for its reasoning and seems to conflate nationality with ethnicity.

This post will first briefly provide the relevant Dutch legal framework to this case, as well as an overview of the Council of State's established jurisprudence. It will then summarise the District Court's judgement, before concluding with some critical remarks.

Legal framework

Article 14(2) of the Dutch Nationality Act (in Dutch: *Rijkswet op het Nederlanderschap*) allows for the revocation of Dutch nationality of those who are convicted of terrorism-related crimes. However, due to the Netherlands' obligations under the European Convention on Nationality and the 1961 Convention on the Reduction of Statelessness, which prohibit the Netherlands from rendering a person stateless, Article 14(8) of the Dutch Nationality Act prohibits revoking the nationality of individuals who only have Dutch nationality.

In previous cases (see here paras. 5-5.1, here para. 12 and here paras. 6-6.3) the respective applicants in those cases argued that Article 14(8) of the Dutch Nationality Act illegally discriminates against dual nationals whose nationality can be revoked as opposed to mono-nationals whose nationality cannot be revoked. The Council of State has consistently rejected this argument, holding that legislation which distinguishes between comparable cases and directly discriminates on the basis of nationality is justified if there are "objective and reasonable" grounds to do so in light of the objective of the legislation. Considering the Netherlands' obligations under the Convention on the Reduction of Statelessness, it deemed the objective of Article 14(8) legitimate. The Court has also found in all these cases that any indirect discrimination based on race, ethnic origin, and religion was justified in light of this objective.

The judgement of the Amsterdam District Court

On 24 March 2025, the Court issued a ruling in a case brought by a Dutch-Moroccan dual-national who was deprived of his Dutch nationality after being convicted of terrorism-related offenses in 2021. Just like in the preceding cases, the applicant argued that deprivation of his Dutch nationality constitutes unlawful discrimination on the basis of ethnic origin. Departing from settled jurisprudence, the District Court classified the case as one of direct discrimination on grounds of ethnic origin – as opposed to on the ground of nationality. *Direct* discrimination on the basis of ethnic origin – rather than *indirect* discrimination on the

basis of ethnic origin or direct discrimination on the basis of nationality – cannot be justified, regardless of the aim it serves, under the ECHR. The District Court framed this as an issue of direct discrimination on the basis of ethnicity. It reasoned that the unequal treatment stems directly from immutable characteristics – namely, descent or ethnic origin. These characteristics determine whether an individual holds a second nationality and is therefore subject to nationality revocation.

The District Court argued that due to the nationality laws of certain countries such as Turkey and Morocco, some individuals automatically acquire a second nationality despite being born in the Netherlands, without the ability to renounce that nationality (para. 17.1). The Court illustrated its findings with a hypothetical example of persons X, Y, and Z, all of whom were born in the Netherlands and have Dutch nationality. However, persons Y and Z, due to having a grandparent from Morocco and Turkey respectively, also have the nationalities of those respective countries. If X, Y and Z were all to be convicted of terrorism-related offenses, the consequences would differ significantly. X, as a sole Dutch national, would receive a prison sentence but would not face nationality revocation. Y and Z would face the same prison sentence and in addition have their Dutch nationality revoked and be expelled to Turkey and Morocco. The fact that Y and Z possess a second nationality is a direct consequence of their descent. The Court therefore concluded that the Dutch Nationality Act constitutes direct discrimination based on descent or national or ethnic origin.

The difference between nationality and ethnic origin

At the heart of this case lies the determination of whether the provision on revocation found in the Dutch Nationality Act constitutes *direct* or *indirect* discrimination based on ethnic origin. In *Timishev v. Russia*, the European Court of Human Rights (ECtHR) held that "no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures" (para. 58). However, *indirect* discrimination based on ethnic origin can be justified. In *Biao v. Denmark*, the ECtHR ruled that a law discriminating directly based on nationality, and only indirectly on ethnic origin, could be justified on the basis of "compelling or very weighty reasons" (para. 114). In *Konstantin Markin v. Russia*, the Court found that indirect discrimination can be justified on the basis of national security, given the wide "margin of appreciation" that states are afforded in matters of national security (para. 134).

The District Court found that the Dutch Nationality Act constituted direct discrimination based on ethnic origin and used the aforementioned example to illustrate this. However, the example may not fully capture the complexity of the relationship between ethnic origin and nationality status. For instance, if one assumes a hypothetical scenario in which Morocco and Turkey only grant nationality to individuals born on their territory, the ethnic origin of persons Y and Z would remain unchanged, but their nationality would not. In this case, they would be solely Dutch nationals, like person X, and none of the three would be subject to nationality deprivation. This suggests that nationality laws of third countries can be a decisive factor, potentially complicating a straightforward attribution of differential treatment to ethnic origin alone.

To further illustrate how the nationality laws of certain countries – rather than ethnic origin alone – can influence the potential for nationality deprivation, another hypothetical person can be added to the District Court's example. If person S, like the author of this blog post, has a Colombian parent but is born in the Netherlands, S would be ethnically part Colombian and part Dutch. Yet, since Colombia does not automatically grant Colombian nationality to descendants of its nationals who are born abroad, person S would not be a Colombian national. If, unlike the author, person S were then convicted of terrorism-related crimes, they would not be at risk of having their nationality revoked, despite their ethnic background.

According to the *Timishev* standard, direct discrimination occurs where a difference in treatment

is based "exclusively or to a decisive extent" on ethnic origin (para. 58). In the present case, while ethnic origin correlates with the likelihood of possessing a second nationality, it is not the decisive factor for nationality deprivation. Instead, the decisive factor is whether an individual holds a second nationality, which is determined by the nationality laws of third countries. As illustrated by the example of person S, an individual of foreign ethnic descent may nevertheless be solely Dutch if the third country does not confer nationality automatically. This demonstrates that ethnic origin alone does not trigger deprivation of Dutch nationality. Therefore, while the Dutch Nationality Act may result in indirect discrimination against individuals of certain ethnic backgrounds, it does not constitute direct discrimination under the standards articulated by the ECtHR.

Ethnicity, nationality laws and indirect discrimination

While ethnicity and nationality can be closely linked, discrimination based on nationality does not automatically amount to *direct* discrimination based on ethnic origin. However, it is likely to satisfy the test for indirect discrimination under the ECHR. In *Biao*, the ECtHR defined indirect discrimination "as a general policy or measure which, though couched in neutral terms, discriminates against a group" (para. 16). In that judgment, the ECtHR assessed a Danish law that distinguished between Danish nationals who had held nationality for more than 28 years and those who had not. In the absence of statistics, the Court accepted the assumption that "at least the vast majority" of those meeting the 28-year threshold would be of Danish ethnic origin (para. 112). By contrast, those who did not meet the threshold "would generally be of foreign ethnic origin" and were treated differently under the law (para. 112). Consequently, the Court held that this constituted indirect discrimination on ethnic grounds. By analogy, one can argue that the Dutch Nationality Act, "though couched in neutral terms, discriminates against a group" and therefore constitutes indirect discrimination based on ethnic origin, instead of direct discrimination, like the District Court concluded.

Revocation as a counter-terrorism measure

The line of reasoning used by the District Court, if upheld on appeal, also leaves open the question of whether revocation of nationality can ever be used as a counter-terrorism measure. While Article 15 of the Universal Declaration of Human Rights provides that "no one shall be *arbitrarily* deprived of his nationality", the provision does not seek to ban deprivation of nationality in all cases. The Statelessness Convention also only bans nationality deprivation in cases where it renders the person stateless, or in cases where it is done on the basis of racial, ethnic, religious or political grounds. Article 7 of the European Convention on Nationality provides for a number of grounds under which a State Party may provide for the loss of nationality, including in cases of "conduct seriously prejudicial to the vital interest of the State Party." The Statelessness Convention

The Court also cites an *amicus* brief by former UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Ms. E. Tendayi Achiume, submitted to the Dutch Immigration and Naturalization Service back in 2018. The Special Rapporteur, following the same reasoning as the District Court, considered that the revocation of nationality constituted discrimination on the basis of ethnic origin. However, she did so without stating whether it constitutes indirect or direct discrimination. Thus, the evidentiary value of the *amicus* to buttress the argument that the Dutch law constitutes direct discrimination is arguably limited.

Conclusion

In conclusion, the Amsterdam District Court's ruling represents a significant departure from established Dutch case law by characterizing the Dutch Nationality Act as directly discriminating on the basis of ethnic origin. The District Court offered a solution for those who, holding a nationality that they are unable to renounce, may be deprived of their Dutch nationality, thereby leaving them with the nationality of a country to which they have little to no connection. Yet, its reasoning is unconvincing, as it conflates nationality

with ethnicity and fails to clearly establish that ethnic origin is the decisive factor in the differential treatment of dual nationals. The Dutch government has announced that it will appeal the decision to the Council of State. If upheld, this decision could have far-reaching implications for counter-terrorism policies and the legal framework surrounding nationality revocation, especially given that the Dutch government has said it is looking into whether nationality deprivation can be used in cases of antisemitism or other forms of discrimination.

ABOUT THE AUTHOR

Santiago Dresen

Santiago Dresen is currently pursuing a master's in European law at Leiden University and is a research intern at the Centre for the Law of EU External Relations (CLEER) at the T.M.C. Asser Instituut, The Hague, The Netherlands.

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