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Evaluatie wijziging van de Rijkswet op het Nederlanderschap in het belang van de nationale veiligheid

Summary

GRONINGEN, 10 JULI 2020

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Subject of investigation

Since 1 March 2017, Section 14 (4) of the Netherlands Nationality Act has given the Minister of Justice and Security authority to revoke Dutch citizenship of volunteers who have joined a terrorist organisation that presents a threat to national security. This authority has been conferred to the State Secretary for Justice and Security. The amendment to the Netherlands Nationality Act results from the programme of action of the Integrated Approach to Jihadism, which is part of the counterterrorism policy of the government. The purpose of the change in legislation is to protect national security by revoking Dutch citizenship of volunteers who have joined a terrorist organisation that presents a threat to national security. Revocation of Dutch citizenship, combined with a pronouncement of undesirability, prevents volunteers from returning to the Netherlands *in a legal manner*. In this way, an actual return is made difficult.

During the debate on the legislative change in the Senate, the then Minister of Justice and Security promised to have Section 14 (4) of the Netherlands Nationality Act evaluated three years after its entry into force, in order to determine whether the provision will be maintained, in an altered form or not, after the expiry date (1 March 2022).

Question

The evaluation research will focus on the following research question:

To what extent has the implementation of Section 14 (4) of the Netherlands Nationality Act successfully prevented Dutch members of foreign jihadi organisations, by revoking their Dutch citizenship, from returning to the Netherlands in a legal manner?

To answer this question, a plan evaluation and a process evaluation have been carried out.

Plan evaluation

The plan evaluation sets out the conditions for revoking Dutch citizenship. It must be self-evident, for example, that the person concerned has voluntarily joined a terrorist organisation that presents a threat to national security and that is mentioned on a list, defined by the Minister of Justice and Security, of organisations that are engaged in a national or international armed conflict and that present a threat to national security. In addition, the person concerned must be at least 16 years old, reside outside the Netherlands and have dual nationality.

The plan evaluation further stipulates that, if the above conditions are met, a balance of interests must be made. This involves assessing whether revocation of citizenship is proportionate in view of the threat posed by the person concerned. Also to be assessed is whether revocation would interfere with the importance of detecting, prosecuting and trying the person concerned, and the possibility of imposing a prison sentence. The person

concerned may not only lose their Dutch citizenship, but also their Union citizenship. In this case, a proportionality test is required. Finally, the eventual minority of the person concerned and very special personal circumstances are also taken into consideration when balancing the interests. The plan evaluation also indicates that the pronouncement of undesirability requires an assessment within the framework of Section 8 ECHR (private and family life).

As the person concerned resides outside the Netherlands at the time of revocation of citizenship, Section 22 (a), subsection 3, of the Netherlands Nationality Act provides that, no later than 28 days after the notification of any decision to revoke Dutch citizenship, unless the person himself had already lodged an appeal, the Minister shall notify the court of that revocation decision, with the consequence that the person concerned is deemed to have lodged an appeal against the decision to revoke Dutch citizenship. In this way, there is the guarantee that any decision to revoke Dutch citizenship under Section 14 (4) of the Netherlands Nationality Act shall be assessed by the court.

Process evaluation

Investigation has been made, in the process evaluation, into how Section 14 (4) of the Netherlands Nationality Act is implemented in practice, and in how many cases Dutch citizenship has, eventually, been revoked.

Interviews and file search offer the following picture. Since the amendment of Section 14 (4) of the Netherlands Nationality Act, the decision was made in 21 cases to revoke Dutch citizenship; in all these cases, revocation of Dutch citizenship was accompanied by a pronouncement of undesirability. In two other cases, revocation of Dutch citizenship was considered but not carried through in the end. In all 21 cases in which the decision was made to revoke Dutch citizenship, an appeal was lodged. In two cases, the Administrative Jurisdiction Division of the Council of State considered the revocation decision to be unlawful, as it had not been substantiated by information on affiliation with an organisation dating from 11 March 2017 (the date on which the list of terrorist organisations was published) or thereafter. In response to these rulings, the Minister set aside the revocation decision in five other cases. As for the remaining fourteen decisions: in five published cases, the court of The Hague maintained the revocation decisions. This leaves nine appeals still pending. In one case an appeal to the Administrative Jurisdiction Division of the Council of State has been lodged.

In practice, a revocation decision and a pronouncement of undesirability are made public on the same date. A revocation decision also includes an assessment of the requirements that emerged from the plan evaluation. In addition, a balance of interests is made pursuant to Section 68(c) of the Nationality (Acquisition and Loss) Decree. This involves an assessment of the proportionality of revocation in view of the threat posed by the person concerned, and in the balancing of interest, account is taken of the importance of detecting, prosecuting and trying the person concerned, the possibility of executing a prison sentence, the possible loss

of Union citizenship, the possible minority of the person involved, and the possible very special personal circumstances of the person concerned. In addition, a pronouncement of undesirability under Section 67 of the Aliens Act 2000 also implies a balancing of interests. This includes, among other things, a check against Section 8 of the ECHR. This procedure corresponds with the picture put forth in the plan evaluation.

It is the Immigration and Naturalisation Service that prepares the State Secretary's decision concerning revocation of Dutch citizenship, based on official reports from the General Intelligence and Security Service, default judgments, or public sources. The Directorate-General for Migration is also involved in providing advice. The research shows that none of the revocations is solely based on public sources. Before taking any decision on revocation, the Public Prosecution Service is asked for advice on whether revocation and the pronouncement of undesirability will possibly interfere with the detection, prosecution or trial of the person concerned, and the execution of a prison sentence.

The balancing of interests that the Minister must make involves, among other things, the importance of the possible interference with the investigation and prosecution of criminal offences. As evidenced by the assessment of the 21 files on the persons confronted with a revocation decision, the Public Prosecution Service has argued, in most of these cases, that revocation may indeed interfere with the investigation and prosecution of criminal offences. In only four of the 21 cases, the Public Prosecution Service has raised no objections against revocation of Dutch citizenship. In none of the seventeen cases in which the Public Prosecution Service did raise objections, was revocation cancelled. The main argument for not cancelling revocation, as indicated in interviews with the Immigration and Naturalisation Service and Directorate-General for Migration, was that the Public Prosecution Service has the possibility to request elimination of the pronouncement of undesirability to make investigation and prosecution in the Netherlands possible. Such a request has been made in one case, but there the migrant already entered the Netherlands on an irregular basis.

The research also shows that the parties involved (Immigration and Naturalisation Service, Public Prosecution Service, General Intelligence and Security Service, National Coordinator for Security and Counterterrorism, and Directorate-General for Migration) consult each other about the revocation measure on a regular basis, with the National Coordinator for Security and Counterterrorism in a coordinating role. The measure is discussed within a larger context, in which the fight against jihadism is discussed, and also in joint consultations, for example between the Immigration and Naturalisation Service and the General Intelligence and Security Service, with regard to official reports published by the General Intelligence and Security Service. The cooperation between the Immigration and Naturalisation Service and the General Intelligence and Security Service is also streamlined by two liaisons. This is done to prevent official reports from being published while the requirements under Section 14 (4) of the Netherlands Nationality Act are not being met. At first, cooperation between the Public Prosecution Service and the Immigration and Naturalisation Service did not proceed smoothly. This was due to the objections that the

Public Prosecution Service has against revocation of Dutch citizenship. The parties have indicated that cooperation is proceeding much better now. This has, however, not resulted in the Public Prosecution Service having no objections anymore against revocation of Dutch citizenship and the related pronouncement of undesirability.

How many volunteers with dual nationality there are, remains unclear. Although the General Intelligence and Security Service indicates that approximately 100 volunteers have dual nationality and that a (small) part of them is no longer alive, the precise number is unknown. The General Intelligence and Security Service assumes that the largest part of the group is still alive.

Concerning any illegal return to the Netherlands of the fourteen volunteers who had their Dutch citizenship revoked, there is, by the nature of things, no certainty. Interviews with the persons concerned have revealed no evidence that anyone has returned illegally.

Answering of the research question

The question as to whether, as a result of the amendment to Section 14 (4) of the Netherlands Nationality Act, the threat of terrorist activities by members of jihadi organisations on Dutch territory has decreased, and, therefore, the degree of national security has increased, cannot be answered on the basis of this research. It is also impossible to determine in how many cases revocation of Dutch citizenship and the related pronouncement of undesirability has led to the prevention of *illegal* entry by Dutch members of jihadi organisations whose Dutch citizenship was revoked.

The question that could, on the other hand, be investigated, was whether the implementation of Section 14 (4) of the Netherlands Nationality Act has, as a result of the revocation of their Dutch citizenship, been responsible for preventing Dutch members of foreign jihadi organisations from *legally* returning to the Netherlands. This leads to the question as to how many volunteers who comply with the conditions concerned have had their Dutch citizenship revoked. This research shows that there are now fourteen volunteers who have had their Dutch citizenship revoked.

There is no way of establishing for certain how many persons with dual nationality, who meet the requirements of Section 14 (4) of the Netherlands Nationality Act, reside abroad. The General Intelligence and Security Service estimates the number of persons with dual nationality at 100, but not all of these persons may still be alive. Due to this uncertainty and the small amount of data, there is no way of answering the question as to how the number of revocations relates to the number of persons complying with the requirements of Section 14 (4) of the Netherlands Nationality Act.

It is important to point out that, from a letter of 15 July 2019 by the Minister of Justice and Security to the House of Representatives, it not only appears that, up to that moment, there had been eleven cases in which citizenship was revoked and that in a few other cases

citizenship was going to be revoked, but also that in all other cases the information available was not sufficient enough to determine whether the conditions mentioned in Section 14 (4) of the Netherlands Nationality Act had been met. The letter also mentions that, in some cases, information cannot be shared with the Immigration and Naturalisation Service in an official report due to the confidential nature of sources and the safety of persons.

All in all, there is no precise answer to the question about the relation between the number of volunteers who meet the conditions, and the number of revocations. We do know, however, that, at this moment, fourteen revocation decisions are still effective (they are, by the way, still subject to an appeal before a court). In addition, we know that, at the time that the research was completed, no persons who had their Dutch citizenship revoked, have returned to the Netherlands in a legal manner.