



Universiteit
Leiden

The Netherlands

What is the use of nationality?

Boeles, P.

Citation

Boeles, P. (2007). What is the use of nationality? Retrieved from <https://hdl.handle.net/1887/12397>

Version: Not Applicable (or Unknown)

License:

Downloaded from: <https://hdl.handle.net/1887/12397>

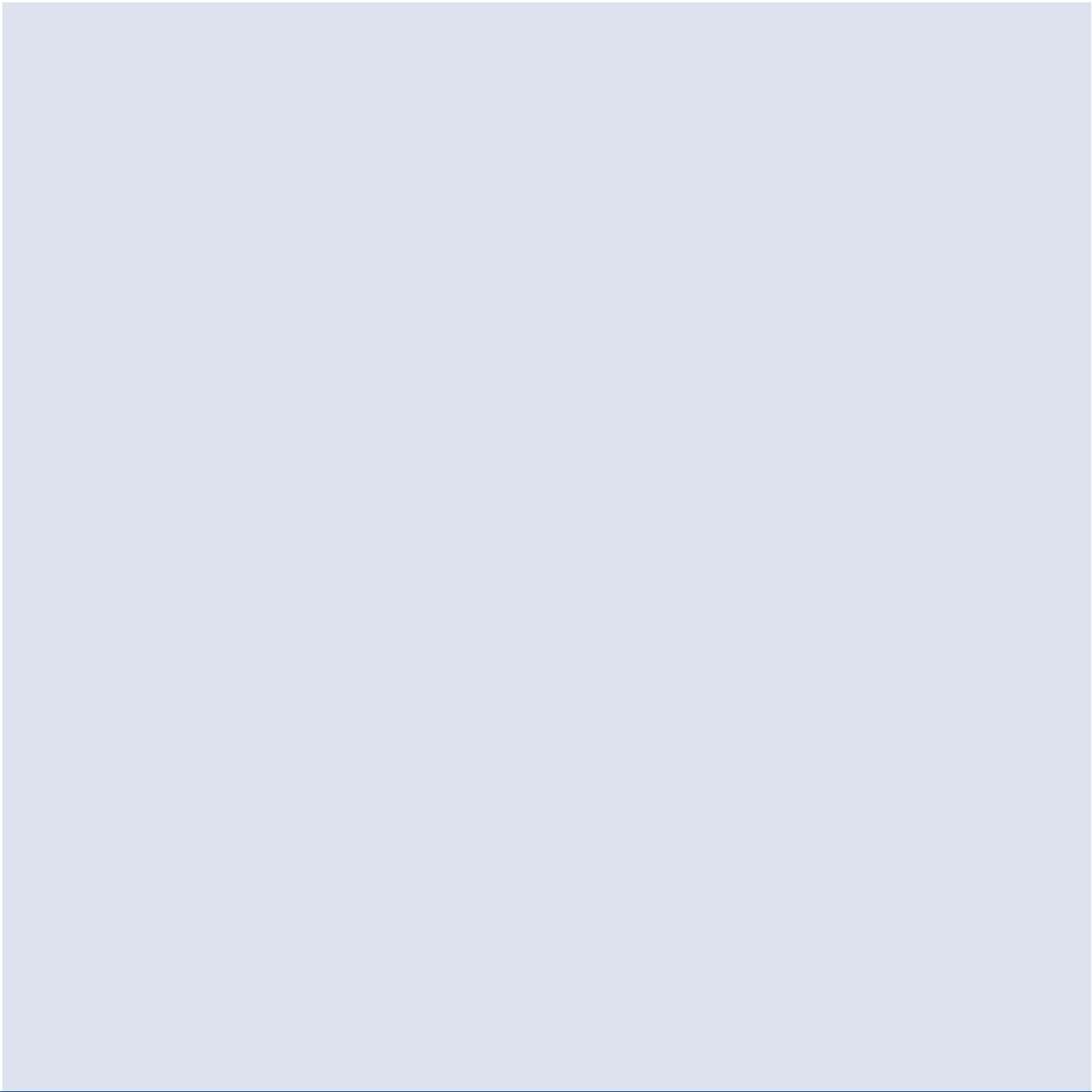
Note: To cite this publication please use the final published version (if applicable).

Prof.mr. P. Boeles

What is the use of nationality?



Universiteit Leiden



What is the use of nationality?

Rede uitgesproken door

Prof.mr. P. Boeles

ter gelegenheid van zijn afscheid als hoogleraar in het

Immigratierecht

aan de Universiteit Leiden

op 29 juni 2007



Universiteit Leiden

In May last year, a Dutch citizen was arrested in Syria and extradited to Iran. In Iran, he is still detained until this day. It is assumed that he is alive because his father was allowed to speak with him on the telephone some time ago. Other than that, no information as to his situation is available. Amnesty International fears that he has been tortured. The name of this Dutchman is Fateh Abdoullah Al Mansouri. He came to the Netherlands as an Iranian refugee. In the Netherlands, he was naturalized and he received Dutch nationality. But he was allowed to keep his Iranian nationality as well. So he has two nationalities. He lived in Maastricht for some thirty years, and he was active as chairman of the Ahwaz liberation organization. This organization strives for an independent state for the suppressed minority group of the Arabic Ahwazi.

For those who want to support the action of Amnesty international for the release of Mr. Al-Mansouri, I refer to the Amnesty website.¹ Today I would like to limit myself to a short reflection on the role of nationality in Al-Mansouri's adventures. Mr. Al-Mansouri has a double nationality. From what happened to him it appears that it was very risky for him not to renounce his Iranian nationality. It is not certain whether he would have been arrested so easily if he would just have had the single Dutch nationality. Now, the Iranians can claim that they are treating him as an Iranian citizen according to Iranian law. Nothing to worry about, they can say. I have no information as to diplomatic efforts from the side of the Dutch government, but, apparently, Mr. Al Mansouri's Dutch nationality is of little avail at the moment.

We can learn at least one thing from this example: nationality is highly important for individuals, it may decide their fate. It also illustrates that nationality may provide states with

considerable power over individuals. Further, we can see that dual nationality can be risky.

But apart from the specific and serious danger threatening Mr. Al-Mansouri, issues of single or dual nationality are in general luxury problems compared to those of persons who have no nationality at all.

According to estimates, there are over 11 million stateless persons in the world.² Statelessness can occur as a result of huge political changes and armed conflicts, like the founding of the State of Israel, the collapse of the Soviet Union, the Yugoslavian war. Millions of Palestinians are stateless. Hundreds of thousands of former soviet citizens have difficulties in states that became independent, like the Baltic states and Belarus. In Europe, Roma are the predominant group of stateless persons. There are eight million Roma in the region of Europe. In The Netherlands, there are about 12,000 stateless Roma.

Let me explain to you as clearly as I can that it is extremely hard to live without a nationality. It means living without a passport, often without a birth certificate or any other official personal document, it may mean that you have no health insurance, it certainly means that you have no political rights. Maybe you will have a residence permit in the state where you are, but maybe you have nothing at all. You will have great difficulties proving who you are and what your legal position is. Stateless persons are the homeless people of the world. The only advantage of statelessness is that you cannot be expelled, because you have nowhere to go. That is why states don't like stateless persons.

I hope that I have by now already convinced you, that the right to have any nationality at all must be considered a basic human right. This right is laid down in the Universal Declaration of Human Rights. Unfortunately, this declaration is not binding. There are some binding treaty provisions having the effect that statelessness must be combated, but the system is far from perfect, as we can already conclude from the huge numbers of stateless persons in the world.

These were only introductory remarks, ladies and gentlemen. The subject of today's lecture is "what is the use of nationality?". We just saw that nationality is important. But what is the purpose it serves? The reason to choose this subject was a discussion in Dutch politics some months ago. Two newly assigned members of the government were attacked because of their dual nationality. It was suggested they would have a double loyalty, something that cannot be allowed for a state secretary who must serve only one country. Unfortunately, this debate was too easily distorted into a heated controversy between followers of right-wing ideas and people who consider themselves progressive. This distortion was partly caused by the fact that the member of parliament who started the debate is the leader of a populist anti-Islam party. Another aspect was that the addressees were of Turkish and Moroccan descent, which suggested, wrongly, that dual nationality is something specific to Turkish or Moroccan people, which it is not. In the debate, it was apparently considered to be right-wing, nationalist or even racist to plead that a minister should renounce his or her foreign nationality before joining a Dutch government.

However, I must say that I cannot see this as an absurd or abject idea at first glance. It is common ground that a politician who is to occupy a high position in government must avoid even the appearance of conflicting interests. That is why Neelie Smit-

Kroes had to abandon her ties with commercial enterprises before becoming a European Commissioner, that is why the former Dutch minister of Internal Affairs Remkes had to abandon his membership of a society promoting Schiedam gin. So, why could it not be required that a minister to be must renounce a foreign nationality?

What is the essential difference between commercial or society ties on the one hand and nationality ties on the other hand? This is what I would like to find out today. I will not promise that my findings will lead to a compelling answer to the political controversy surrounding dual nationality. But I will try to describe the nature of nationality and its use for states and for individuals. In doing so, I hope to come to a better understanding of what we are talking about.

What is nationality?

Nationality is membership of a state. Unfortunately, I cannot tell you what the exact content of nationality is. That is because every single state has the exclusive right to decide what its nationality means and who may obtain it. So there may be considerable differences in what states make of it. Still, it is possible to draw a general picture. Nationality provides a citizen with the right to enter and to leave his country, the right to live there without needing a residence permit. In democracies, nationality gives citizens the right to vote and the right to be elected. Besides rights there may be specific obligations, like for instance military conscription.

Nationality did not always exist. It is an invention of lawyers, philosophers and politicians. An invention which only emerged some four centuries ago. The start of this development is normally dated as 1648, when the Peace of

Westphalia was concluded. Each state obtained the right to govern the population within its territory. Nation states were created as a consequence of war and they continued to be instrumental for further warfare, as the populations served as soldiers and paid taxes to finance military efforts. But nation states certainly also provide an effective organisational structure in many other respects.

I think that it is very important to keep in mind that nationality is a human invention. Nationality is not given by any God, it is not a natural right which existed since the earliest history of man, it is a construct, invented for practical purposes of territorial organisation of power.

6 This notion gives us the freedom to rethink and reconsider the merits of nationality in our times. This is the first point I would like to make. We are free to redefine nationality. It is our own invention.

Why is nationality such an emotionally charged concept?

As yet, I have only described nationality in legal terms. It is just the membership of a state. This definition sounds neutral and innocent. It does not explain why nationality is able to excite and mobilize people, why it is associated with honour and shame, hope and glory, blood and tears, euphoria and despair, exclusion and discrimination, with loyalty, life and death. If nationality was just an invention of states, it would not work. How is it possible that nationalist and populist movements are so alive and powerful? Why is it, that I, not being a nationalist at all, feel so very Dutch when I am in a foreign country, especially when I feel embarrassed at seeing other Dutch people? What is this feeling of nationality?

I am inclined to seek the explanation of this phenomenon in biology. When I was at a goat farm some time ago, I learned that there is a maximum of some 80 goats that fit into one herd. As soon as the amount of goats exceeds this magical number, the herd splits in two and the new herds start fighting each other. Nobody ever told these goats how to act, they just do it. It vaguely brings to mind the sudden hostilities between Ruandese families and neighbours splitting up into Hutus and Tutsis. On another occasion, I saw a tv documentary about male chimpanzees chasing a foreign chimpanzee nearly to death, just because he did not belong to their group. I was amazed by the whoops of excitement of these apes, the sense of conspiracy and thrill, which was in no way different from when we see a group of hooligans preparing for a major confrontation with their favourite enemy club, or the massive reaction we can still hear in old radio recordings when Hitler asked “Wollt Ihr den totalen Krieg”? There appears to be some uneasy and unsavoury connection between group awareness and war. There is no sense of group identity without a sense of who is the outsider.³ Group identity is highly inflammable stuff.

Whatever the value of these amateurish exercises in biology may be, it may be useful to note that we, as human beings, feel a fundamental need for identification with one or more groups. At this point, it is almost inevitable to talk about sports, especially soccer, when group identification is at issue. On a daily basis, we are able to see fascinating live experiments in group behaviour within the relatively harmless context of football. Harmless, but still! Listen to the intimidating sound of the howling masses, observe how they melt together into one huge banner of club colours, look how they fill the streets with hooting cars when they win, see how they cry with despair when they lose, how they are sometimes even prepared

to murder the goalkeeper who simply failed to stop a ball. Isn't it strange that a random team of eleven individual players automatically stands for the honour of a club, a city, a district, or a country? Isn't it weird that people say "we did it!" when it was, after all, only *one* football player who shot a ball into a goal? Group identification is forceful and irrational. It is about leaders and followers, about symbols and myths.

Still, this does not explain at all, why we would necessarily have to identify with the population of a nation state. In our quality as living creatures we have no specific reason to identify with a construct of territorial power organisation. What are the factors determining to which group we want to belong? There are strong factors connected with our surroundings in the first years of our lives. Place, culture, religion, history, neighbourhood, landscape, perfume, food, language, ethnicity, family, language. It is not without cause that we speak of our *mother* tongue, that we feel *patriotic* about our *Vaterland*. Family, a concept that we all understand, is used as a metaphor to explain nationality, a concept that we do not understand. Nationality has strong competitors when it comes to attracting group identification: Religion and language are two of them. Tribes and ethnicity are two others. This competition is permanent and universal. There is no state without minorities defined in terms of religion, language or ethnicity or tribalism. There is no natural sense of national identity which automatically and permanently unites all nationals. Cynically enough, nationalism is often the group identity of a majority which is defined by excluding a minority. Or it is the identity of a national minority using nationalism as a tool for separatism. Nationalism is a splitting image.

This is the second point that I would like to make: People do seek identification with one or more groups. But it is definitely

not a given fact, that all nationals of a state automatically seek identification with that particular state.

What is the use of nationality for individuals?

In essence, I already dealt with that question in my introductory remarks. Individuals are the consumers of nationality. They may be proud of their nationality or they may not. They may feel loyal to their country or they may not. We just saw that the emotional content of nationality is not to be framed in general terms. It is different per individual, per country and per period of history. I would even go so far as to state that the capricious and uncontrollable emotional connotation of nationality is not an essential aspect of nationality itself, but a by-product. Whatever the case may be, it is notoriously difficult to say anything about the emotional meaning of nationality for individuals which is true for everybody.

More tenable things can be said about the consumer value of nationality. I already illustrated that nationality is extremely important for individuals. Nationality provides them with state protection, access to social life and allocation to a territory. The right to have a nationality is weighty enough to be considered a basic human right.

An aspect we have not dealt with yet is the use of nationality for migrants.

What is the use of nationality for migrants?

When you are not a national you are an alien. The situation of non-nationals has become more and more topical as a consequence of the huge growth of worldwide migration. What does it mean to be an alien? To put it simply: an alien does not have the rights of a national. But reality is more complicated as we will see. It is generally accepted in

international law that states have the right to control the entry and residence of non-nationals in their territories. But once a state uses its right to grant a residence permit to a foreign national, the integration process starts right away. The alien is given a right to stay in the country, which is to a certain extent similar to that of a national. The longer he stays, the more his legal position is going to resemble that of a national. He becomes a long-term resident which normally means a permanent right to stay, full participation in the labour market and full participation in social security. So there are nationals and legal migrants. There are legal and illegal aliens.

8 For a migrant, it matters which nationality he has. Nationality is decisive for the degree in which one has freedom of movement. This can clearly be seen in Europe. Within the European Union, citizens of the EU member states have the freedom to settle in any member state. In principle, nationals from countries outside the European Union do not have this freedom. They may be subjected to visa requirements, their data may be stored in huge European data systems, they may be subjected to restrictive immigration conditions, they may be expelled, detained and served an exclusion order.

If we look at the worldwide geographical distribution of visa requirements, we see roughly two groups of nationalities: First a group of rich western nationalities, like Europe, the United States, Canada; Australia, New Zealand, Japan. These nationalities provide quite a wide freedom of movement. Second, a group of poor countries or countries with a strong Islamic identity. The nationalities of these countries provide considerably less freedom of movement within what we could call the western world. Here we see one of the ways in which nationality is used by states. It is used to maintain a division of

the world in different spheres in terms of wealth and religion. So, it matters what nationality you have.

What is the use of nationality for states?

States do need a population. Without a population, states lose their reason to exist. That is why states may make nationality easily available, for instance by birth on their soil, or by birth from a national. Naturalisation may be granted under relatively light conditions. In doing so states try to recruit as vast a population as they can. This is often the case with emigration countries. On the other hand states may also have reasons to limit access to their population. In the Netherlands, naturalisation may be refused because you put your garbage bin outside too early.

States strive for coherence and unity of their population. A floating mix of majorities and minorities may be dangerous for the existence of a state. The mix must not become explosive. Conflicts between various groups must not escalate. It is not difficult to see that internal civil war is a fundamental threat to state continuity.

So, states may wish to promote nationality as the uniting magic potion offering a remedy for group identification to the whole population. However, that is not so simple. We already saw that religion, language, clan and ethnicity are strong competitors. How should one deal with those competitors? One option is alliance. If you can't beat them, join them, at least one of them. It can be helpful for the coherence of a nation state if it has one predominant religion or one predominant language or one predominant ethnicity. That does not mean, however, that unity is secured. Another option is pointing to an external enemy. Few factors are so effective in producing national

awareness as an enemy. But it is a dangerous option. Enemy means war or a threat of war. Even more hazardous is choosing an internal enemy. It means the lack of national coherence of the population as a whole, because one or more minority groups are made into a scapegoat.

States may choose suppression of dissident groups threatening the unity of the nation state. That is probably why Iran wanted to [apprehend, control] Mr. Al Mansouri who is striving for an independent state for the Arabic Ahwazi. It is an approach that leads to violence and bloodshed. It normally does not lead to a stable solution. The quest for homogeneity of the population has led to humanitarian disasters and crimes against humanity. This is known by everyone who has been the subject of ethnic or religious cleansing.

Is there no peaceful solution then? There is. States may also opt for a policy of reconciliation. However, this can only work in so far as the various groups are willing to be reconciled. It is an approach in which the existence of differences must be acknowledged, it is about agreeing to disagree, about peaceful coexistence, about unity in diversity. It is the blueprint, not only of the Dutch “poldermodel”, but also of democracy in general. Reconciliation is not soft, it may require binding legislation and sanctions in order to defend the system.

Here we come to an instrument for advancing national unity, which may survive without really competing with strong group identity factors like religion, language, tribe and ethnicity. It is the concept of an open society allowing every citizen his own group identity, permitting each citizen to exercise fundamental freedoms and to participate in democracy. It is a fragile concept, because it is dependent on the co-operation of all

groups involved. But it may have a durable effect because it is based on the common interests shared by various groups. Democracy is mediation on a state level.

What is the point that I would like to make here? Maybe this: states tend to use nationality as a tool to promote coherence of their population. Sometimes they succeed, often they don't. There are approaches based on violence, suppression or exclusion. I think that these approaches will not lead to a lasting and stable solution because violence normally leads to counter-violence. Old wounds are not forgotten. Therefore I put my trust in an approach of reconciliation, which is represented by the democratic and polymorphic model. In that approach, the emotional aspect of nationality is reduced to a minimum. Nationality is then not in the first place defined by its ability to attract [ensure?] group identification but by its practical advantages for members of the population. In this view, the consumer value of nationality prevails. One could call it the “neutral” concept of nationality.

Please understand this neutral concept correctly: I do not want to deny the existence of strong emotional connotations of nationality, but, as a lawyer, I do not want to give these emotional aspects any legal status.

We have now reached a point of reflection. Is it necessary to rethink the concept of nationality? Is nationality still relevant in our time of Europeanisation and globalisation? And, are we now able to say something meaningful about the dilemma of politicians with dual nationality? I will limit myself to some brief remarks.

I do not think that the concept of nationality has outlived its term of use. It is still alive and kicking. Globalisation does not

change that. Globalisation is about worldwide economy, worldwide movement of persons, worldwide exchange of information. But it has not essentially eroded the organisational, legislative and economic impact of nation-states. Neither has it affected the primordial role of nationality for the way in which the movement of persons is organised. For Member States of the European Union, who have ceded part of their sovereignty to the greater union, the impression might exist that the meaning of nationality is fading away. But that impression is only appearance. Nationality of a Member State will not fade away until a new European nationality is created that is able to replace nationalities of the Member States. As yet, this is out of the question.

10 However, there are reasons to believe that we might have to rethink the concept of “population”. We have seen that the population of many immigration states like the Netherlands consists of nationals and lawful migrants. The rights and obligations of lawful migrants within the country of residence are not so different from the rights and obligations of nationals: they pay the same taxes, they receive the same social benefits, they have the same access to labour, they may have a right to vote in municipal elections and they are protected from arbitrary expulsion. In present times, it is not unreasonable to conclude that immigration countries have two types of members of their population: nationals who possess full membership, and legal migrants who have a limited and conditional membership. This makes it more difficult to decide who the outsiders are. Are we still distinguishing between nationals and aliens, or should we now make a distinction between legal and illegal inhabitants? This extended definition of who belongs to the population would render the meaning of ‘nationality’ even more neutral.

Nationality would then be nothing more than just one of the instruments determining membership of a state. It is the ultimate residence permit giving access to full citizenship.

Would this undermine the *raison d’être* of nationality? I do not think so. It is still conceivable to emphasise nationality as something having a special societal meaning to which immigrants must adapt. This is what happens in the Netherlands. Newcomers must have sufficient command of Dutch language and culture, they must attend a ceremony when obtaining Dutch nationality, immigrants must respect democracy and human rights and freedoms. I do not think that this trend opposes a neutral concept of nationality, as long as Dutch identity is defined in terms of tolerance, democracy and fundamental freedoms. On the contrary, these requirements are precisely the preconditions for neutrality of the nationality concept. It is entirely legitimate to define what is asked from full citizens in the receiving society. And it is certainly legitimate to stimulate the population of a country to be able to understand one another. As yet, I do not think that Dutch policies, taken as a whole, are tending towards nationalism or exclusionism, though there may be reasons to remain alert. As yet, we are still a country of moderateness and proportionality.

And now, finally, for the dual nationality. If we set out from the neutral concept of nationality, there is, in principle, no objection against a consumer having two or more nationalities, like credit cards or membership licences. As long as the requirements of full citizenship of the two countries involved are met, these countries may not have any reason to object. I am fully aware, however, that this representation of the situation may be a little bit naïve. Let’s look again at the example of Mr. Fateh Abdoullah Al Mansouri. Apparently, he

could not combine his rights and obligations vis-à-vis his two nation states. One state is not the same as the other. Some states are democracies, others are dictatorships. It is difficult to combine nationalities when at least one of the nation states involved is a dictatorial regime, threatening you with incarceration and torture. Still, I would advocate full freedom for anyone to have or maintain a dual nationality in any combination. It belongs to the realm of a person's own responsibility.

However, things may be different when a person wishes to become a member of the government of one of his countries. I have already said that it is legitimate for a country to ask from its ministers and under-ministers that they avoid conflicts of interests. Now, we must see whether this lecture has brought us anywhere. Did we find essential differences between commercial ties or club affiliations on the one hand and nationality bonds on the other hand? When nationality is conceived as a set of consumers' rights and obligations, the difference does not seem to be very striking. However, three issues appear to be relevant:

First, it may be impossible or very hard to get a nationality back once it is lost.

Second, some nationalities simply cannot be renounced – like for instance Moroccan nationality.

Third, a nationality may have a special and important meaning for its holder, however neutral we have chosen to define nationality as a concept. You do not change nationality like a pair of old shoes.

For these reasons, it would be advisable to consider a more lenient variant. This would entail that a candidate minister be allowed to maintain his dual nationality, but that his or her concrete situation be subjected to thorough scrutiny in order

to detect possible concrete conflicts of interest caused by the concrete situation of dual nationality. The decision to accept membership of government should be taken on a case-by-case basis. If there is a likely conflict of interest, the candidate will have to choose between the nationality or the job.

Concluding remarks.

These were my findings. I hope it was of some use for you. I would like to thank all the staff members of the Institute of Immigration Law for all those years of pleasant, cheerful, inspired and loyal co-operation, I thank the Law Faculty for keeping our Institute in the air so far and I hope that we will be able to keep it in the air in the future, I thank the secretariat of the Department of Public Law, I thank all professionals, attorneys, judges, scientists, civil servants, ngo's for all the vivid and relevant interactions we had, I thank all students for their intense response to our lectures, their talent and their dedication, I thank my family for keeping me in the air, I thank life for being so nice to me.

Notes

- 1 www.amnesty.nl
- 2 Refugees International, www.refugeesinternational.org/section/publications/stateless_scope/
- 3 As Edmond Jabès put it: "l'étranger est celui qui te fait croire que tu es chez toi".

In deze reeks verschijnen teksten van oraties en afscheidscolleges.

Meer informatie over Leidse hoogleraren:
Leidsewetenschappers.Leidenuniv.nl

PROF.MR. P. BOELES



- 1975-2001 Attorney at law, Goudsmit & Branbergen;
Boekel van Empel & Drilling; Everaert
advocaten immigration lawyers
- 1992-1994 University teacher, Catholic
University of Nijmegen
- 1999 Professor of immigration law,
University of Amsterdam
- 1996-present: Professor of immigration law,
University of Leiden

Immigration mirrors the strong internationalisation of commerce, monetary relations, technology, science, culture, crime, love and politics. Immigration changes the population of a country. This can lead to social tension, which may be reflected in immigration legislation. In the Leiden Institute of Immigration Law we investigate the tensions and conceivable conflicts between the fundamental interests of migrating individuals and the legitimate interests of states wishing to control migration. The scope of our activity includes not only national law but also the increasingly relevant law of the European Union.



Universiteit Leiden