

2

2025

juriste

INTERNATIONAL

DEEP

I MIGRATIONS

V MIGRATIONS

E MIGRACIONES



Union Internationale des Avocats
International Association of Lawyers
Unión Internacional de Abogados



LexisNexis®

Citizenship by Descent: The Increasingly Travelled Highway of Global Migration



**Andreea
HAULBERT**



**Hermie
DE VOER**



**Renuka
CAVADINI**

➡ Les politiques migratoires restrictives sont de plus en plus nombreuses dans les pays à économie avancée. Par conséquent, les visas de travail semblent être un atout de plus en plus rare, la capacité d'un individu à revendiquer la citoyenneté par ascendance est un outil de plus en plus utilisé dans le cadre de la migration mondiale. Le pouvoir de cet outil est amplifié par la perspective d'une citoyenneté par filiation dans un pays de l'Union européenne (UE), avec la libre circulation qui en découle dans l'UE. Cet article résume les dispositions légales relatives à la citoyenneté par filiation dans trois pays européens : la France, les Pays-Bas et la Suisse. Les dispositions légales énoncent les principes de base de la citoyenneté par filiation et les exceptions uniques permettant de revendiquer la citoyenneté par filiation en raison de l'abrogation de lois obsolètes, tout en avertissant que la citoyenneté par filiation s'accompagne souvent d'exigences en matière de conservation.

➡ Las políticas migratorias restrictivas van en aumento en los países con economías avanzadas. Por lo tanto, dado que los visados de trabajo parecen ser un activo cada vez más escaso, la posibilidad de que una persona reclame la ciudadanía por ascendencia es una herramienta cada vez más utilizada en la migración mundial. El poder de esa herramienta se amplifica con la perspectiva de la ciudadanía por ascendencia en un país de la Unión Europea (UE), con la consiguiente libre circulación en la UE. Este artículo resume las disposiciones legales sobre ciudadanía por ascendencia de tres países europeos: Francia, Países Bajos y Suiza. Las disposiciones legales establecen la ciudadanía por ascendencia básica y excepciones únicas para reclamar la ciudadanía por ascendencia debido a la derogación de leyes anticuadas, pero al mismo tiempo, advierte que a menudo la ciudadanía por ascendencia viene acompañada de requisitos de retención.

France

France has maintained citizenship practices based on a mixture of territorial ("jus soli") and descent ("jus sanguinis") ties. French citizenship by descent is a very complex procedure and the processing time for obtaining a French citizenship certificate can reach up to three years. A child born by a French parent (father or mother) automatically acquires French citizenship. This applies

to both biological and adopted children if the adoptive parent is French. This rule applies to children born both in France and abroad, as long as one parent is French at the time of the child's birth. If the child is born abroad, the French parent should register the child's birth with the French consulate or embassy to officially recognize the child's French citizenship. This step is essential for a child born outside France. Thus, a child of a French parent born abroad maintains the right to French citizenship,

preserving the connection to French citizenship even without living in France. Additionally, a child born in France where at least one of the parents was also born in France (regardless of citizenship), is French starting from the moment of the birth (“double jus soli”).

[...] Clients usually are advised that “Dutch citizenship by ancestry does not exist.”

The attribution of French citizenship by descent may be interrupted and subsequently lost when a French citizen is absent from France for a protracted period and does not maintain ties with the country. Indeed, Article n° 30-3 of the Civil Code states:

“When an individual lives or usually lived abroad, where his/her ascendants who could have transmitted their French citizenship remained established during more than half a century, this individual will not be allowed to obtain the French citizenship by lineage if himself or his/her father and mother could have transmitted their French citizenship but were not in the state of possession d’état.”

The persons born abroad to a French parent may lose their French citizenship if they fail to maintain ties to France, such as by not registering their birth or taking any active steps to demonstrate their connection to France.

The Netherlands

In the Netherlands, citizenship is passed down from Dutch parents to their children. One therefore would think that Dutch citizenship by ancestry is common. However, clients usually are advised that “Dutch citizenship by ancestry does not exist.” This statement means that if one of an individual’s grandparents was Dutch, in most situations, that individual will not be able to claim Dutch citizenship. This is because in Dutch citizenship law, there are many grounds that makes one lose Dutch citizenship. Accordingly, over the years, the Dutch citizenship of the

It took the Netherlands a very long time to amend its citizenship law to give Dutch mothers equal rights as Dutch fathers [...].

grandparents and/or parents is lost, with the result that an individual, who queries about their Dutch citizenship by descent, receives the disappointing news that they were not born to a Dutch parent.

On a positive note, there are two exceptions to this general rule where an individual only can derive Dutch citizenship if one of their parents is Dutch. The two exceptions are the “grandparent article” and the “latent Dutch citizen option.”

Grandparent Article

The grandparent article states the following:



Children are Dutch when they are born to a father or mother who had their main residency in the Netherlands, Aruba, Curacao, or Saint Maarten when the child was born and who themselves is born to a father or mother who at the time of their birth had main residency in the Netherlands, Aruba, Curacao, or Saint Maarten while the child has their main residency in the Netherlands, Aruba, Curacao, or Saint Maarten.

Before 2003, the grandparent article was called the grandmother article as Dutch citizenship by ancestry through this article went only through the grandmother of the child. Based on the grandparent article, a child can be born with Dutch citizenship without having Dutch parents or Dutch grandparents. In this situation, the Dutch child can file an application for a Dutch passport and is automatically also an EU citizen.

Moving beyond the grandparent article, there also is the rare situation concerning individuals who originate from Aruba, Curacao, or Saint Maarten (former colonies and now special municipalities of the Kingdom of the Netherlands). In this rare situation, they, or their children, could be Dutch citizens through descent even if their parents and grandparents never had Dutch citizenship.

Latent Dutch Citizenship

Before 1985, Dutch citizenship by birth could only pass from a legal Dutch father to child. A Dutch mother could



not give Dutch citizenship to her children at birth. Slowly, Dutch citizenship acts were amended to give men and women equal rights concerning their and their children's citizenship positions. For example, it also used to be common that a woman lost her original citizenship when marrying a man who had a different citizenship. In Dutch citizenship law, there was a time that such a marriage could result in loss of Dutch citizenship for the wife, and therefore, statelessness in the situation where a Dutch woman would marry a man who was stateless. Fortunately, this is no longer the case.

It took the Netherlands a very long time to amend its citizenship law to give Dutch mothers equal rights as Dutch fathers in being able to transfer their Dutch citizenship to their children at birth. From 1 January 1985, the Dutch Citizenship Act stated that a child is born Dutch when their father or mother is Dutch. This Act did not have retroactive effect though, and therefore, the view was that the discrimination of Dutch mothers in Dutch citizenship law was not fully resolved.

It was not until 1 October 2010 that the Dutch Citizenship Act contained a special option right to claim Dutch citizenship for children born before 1985 to a Dutch mother and non-Dutch legal father. Also, the children of these so-called "latent Dutch citizens" can claim Dutch citizenship through a similar option process to the Dutch grandparent exception. This means that based on

ancestry through a Dutch grandmother, two generations of children can become Dutch. Whatever grounds for loss of Dutch citizenship over the years of the grandmother and mother would occur in a regular Dutch citizenship process do not apply when the descendent is a "latent Dutch citizen." Additionally, the descendent will receive their Dutch passport and EU citizenship on top of any other citizenships, whereas in most other citizenship situations, the Netherlands make you choose one citizenship or lose your original one(s).

Switzerland

While Switzerland is famous for its tourism, it is also known for its strict immigration rules. Citizenship, including naturalization, is no exception.

When an individual becomes Swiss, they have a canton and commune of origin. Switzerland has 26 cantons, and each of these cantons has its own rules for citizenship. Each of the communes may have its own specific rules on whether an individual can have more than one commune of origin. Birthright citizenship does not exist, except in the situation where children are found in Switzerland without any proof of affiliation, in which case they are granted Swiss citizenship.

When an individual becomes Swiss, they have a canton and commune of origin. Switzerland has 26 cantons, and each of these cantons has its own rules for citizenship.

Citizenship of Children Born to Swiss Parents Domiciled in Switzerland or Abroad

Obviously, children born to Swiss parents living in Switzerland acquire Swiss citizenship. The canton of origin and the commune of origin of a child depend on the canton and commune of origin of the parent from which the child has the last name, as per provision of Article 271 of the Swiss Civil Code. Swiss law does not allow a child to have both their mother's and father's last names.

The Role of Naturalization with Citizenship by Descent

Swiss citizenship used to distinguish between the Swiss citizenship of a mother according to whether she acquired her citizenship by descent (affiliation) or naturalization. This is fortunately no longer the case. Moreover, before 1985, a child born from a Swiss mother, who obtained her naturalization before giving birth, had to prove that they were "successfully integrated in Switzerland," for the child to attain Swiss citizenship by naturalization. This was not the case for a child born to a Swiss father.

Switzerland has two types of naturalization procedures: ordinary and simplified. The differences between the two types of procedures are that (1) the simplified procedure has a shorter requirement of years of residence in

Switzerland and (2) the simplified procedure has a faster processing time because the procedure only is handled by the Federal authorities. Both types of naturalization procedures require successful integration, i.e., no debts, no criminal record, respect for the Federal constitution, and sufficient language skills of at least written A2 level and oral B1 level.

Children born abroad, with another citizenship and who have at least one parent who is a Swiss citizen, must declare, before their 25th birthday, their intention to retain Swiss citizenship. Otherwise, they will lose Swiss citizenship, pursuant to Article 7, paragraph 1, of the Swiss Citizenship Act (SCA). This deadline can be extended in exceptional circumstances, per Article 7, paragraph 4, of the SCA. If a child was not naturalized at the time their parents were naturalized as Swiss citizens (after the child's birth), the child can be eligible for simplified naturalization, under Article 24, paragraph 1, of the SCA.

Citizenship from Partnerships and Same-Sex Marriages

If a child is born to a mother who is a citizen of another country and who is married to a Swiss woman, then the child acquires the citizenship of the Swiss parent depending on when the marriage took place, since same-sex marriages were authorized only since 1 July 2022 in Switzerland. If the parents were in a partnership at the time the child was born, then the partner could adopt their partner's child, provided the couple has lived together for at least three years, pursuant to Article 264c(1) of the Swiss Civil Code.

Citizenship from Swiss Grandparents

Before 2018, foreign children could apply for Swiss citizenship from their grandparents through the simplified naturalization procedure only if they were minors at the time that their parents were naturalized, per Article 31a of the prior SCA.

Since 15 February 2018, foreign citizens whose grandparents emigrated to Switzerland can apply for simplified naturalization before their 25th birthday, subject to the following conditions under Article 24a of the SCA:

1. At least one of their grandparents was born in Switzerland and can be proven to have acquired a right of residence in Switzerland.
2. At least one parent (has) acquired a permanent residence permit, (has) lived for at least ten years in Switzerland, and attended compulsory schooling in Switzerland for at least five years.
3. They were born in Switzerland and hold a permanent residence permit.
4. They have attended compulsory schooling for at least five years in Switzerland.
5. They are successfully integrated into Switzerland.
6. They submit their application before their 25th birthday.



Conclusion

Citizenship by descent, as illustrated by the above sampling of laws from France, the Netherlands, and Switzerland, is more than the declarative statements of "I am French," "I am Dutch," or "I am Swiss."

Indeed, as an area of global migration law, it has evolved into complex means for an individual to achieve greater global mobility. Despite this complexity, the rewards of a successive claim of citizenship by descent are rich – freedom from work visa applications and free movement being shining crown jewels amongst these rewards. ■

Andreea HAULBERT

Immigration Lawyer - Associate, Karl Waheed Avocats
Paris, France
andrea.haulbert@karlwaheed.fr

Hermie DE VOER

Attorney at Law - Partner,
Everaert Advocaten Immigration Lawyers
Amsterdam, Netherlands
devoer@everaert.nl

Renuka CAVADINI

Partner, Page & Partners
Geneva, Switzerland
rcavadini@e-avocats.ch