Deprivation of Citizenship in Germany: Accommodating Public and Private Interests

1 Introduction

This chapter discusses the German rules on deprivation of citizenship within the larger context of nationality legislation. Due to the association with the rules and practices of the Nazi regime, loss of citizenship is a much more sensitive topic in Germany than in the countries discussed in the previous chapters, despite the fact that they had also changed the rules on loss of citizenship to allow for easier deprivation. Although the Nazi regime of citizenship deprivation is not the main topic of this chapter, its legacy is important in understanding the constitutional protection of citizenship in Germany and the relevance of the amendments brought by various pieces of legislation after 2000. Similar to the other national examples presented in previous chapters, the issue of loss of nationality can be placed within recurring discourses on loyalty, dual nationality, naturalisation, or the construction of national identity. Although the changes introduced in 2000 have received tremendous attention from legal scholars, political scientists, and sociologists, citizenship deprivation has remained a relatively understudied issue. It captured the attention of scholars after a reference for a preliminary ruling was made by the Federal Administrative Court of Germany to the European Court of Justice in the Rottmann case. The question posed by Rottmann was whether loss of national citizenship leading to statelessness and loss of European citizenship status and the rights attached to it violates European law, despite it being in accordance with German law.¹ Courts have played an important role in shaping the law on deprivation of citizenship. As such, one of the interesting aspects of the German provisions on deprivation is that they are measures adopted at the ‘instigation’ of courts in an attempt to clarify the rules of loss of citizenship and offer legal clarity.

2 Problematizing the Ethnic Notion of Citizenship: Poverty and Citizenship before the Empire

Historical, political and social processes and transformations always shape ideas and perceptions about who is a citizen and who deserves to belong. Since nationality law does not occur in a vacuum, it is important to understand how this legislation has developed. Since Rogers Brubaker’s seminal work ‘Citizenship and Nationhood in France and Germany’, it has been hard for Germany to shake off the label of ethnic nation. Brubaker’s argument is that because of the different foundations of citizenship in France and Germany, their understanding and conceptualization of citizenship is very different. The type of *ius soli* used in France has allowed for an easier incorporation of foreigners, as well as generated a civic, open nation, whereas the use of *ius sanguinis* in Germany has led to a much more restrictive, and bounded idea of belonging, epitomized by the ethnic nation and blood ties. It has been argued that in Germany one operates with a conception of the nation as ‘imagined community’, not as a nation of citizens but as a *Volk* nation, bound together not by shared citizenship rights within the state, but by ties of blood and culture which were regarded more fundamental, more sound and of a higher order than political-territorial ties.

The importance of ethnicity and race in the development and construction of Germany’s nationality legislation has been downplayed by a variety of authors who have tried to nuance Brubaker’s theory of the German ethnic nation. This literature tries to bring new dimensions and depth to the history of German nationality by emphasizing that race and ethnicity were not the only elements that have shaped the policies pursued by the German state across time and space. For example, Nathans has argued,

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