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Resolution 2263 (2019)[1]

Withdrawing nationality as a measure to combat terrorism: a human-rights compatible approach?

Parliamentary Assembly

1. The Parliamentary Assembly recalls its Resolution 1989 (2014) on access to nationality and the effective implementation of the European Convention on Nationality, Resolution 1840 (2011) on human rights and the fight against terrorism, Resolution 2091 (2016) on foreign fighters in Syria and Iraq, Resolution 2090 (2016) on combating international terrorism while protecting Council of Europe standards and values and Resolution 2190 (2017) on prosecuting and punishing the crimes against humanity or even possible genocide committed by Daesh.

2. The Assembly underlines that while Council of Europe member States possess a legitimate sovereign right to guarantee security on their territory, our democratic societies can only be protected effectively by ensuring that anti-terrorism measures abide by the rule of law. As the deprivation of nationality in the context of counter-terrorism strategies is a drastic measure which can be extremely socially divisive, the measure may be at odds with human rights. In any case, the deprivation of nationality should not be politically motivated.

3. The Assembly recalls that the right to a nationality has been recognised as the "right to have rights" and is enshrined in international legal instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the European Convention on Nationality (ETS No. 166). Although the European Convention on Human Rights (ETS No. 5, "the Convention") does not guarantee it as such, the recent case law of the European Court of Human Rights shows that some aspects of this right are protected under Article 8 of the Convention, which enshrines the right to respect for private and family life.

4. The Assembly notes that although, under international law, statelessness should be prevented and eliminated, and arbitrary deprivation of nationality should be prohibited, States retain wide discretion in deciding to whom they can grant nationality and who may be deprived of it. The United Nations 1961 Convention on the Reduction of Statelessness, which has so far been ratified by 32 member States of the Council of Europe, sets out criteria under which a State may provide for the deprivation of nationality. The 1997 European Convention on Nationality further limits the circumstances in which the deprivation of nationality may occur; however, this convention has so far been ratified by only 21 member States of the Council of Europe.

5. The Assembly is concerned that some States consider nationality as a privilege and not a right. Many States retain the power to deprive of nationality, *inter alia*, persons whose conduct is seriously prejudicial to the vital interests of the State and/or who voluntarily participate in a foreign military force. Some member States of the Council of Europe have laws which allow withdrawal of nationality from persons who have been convicted of terrorist offences and/or are suspected of conducting terrorist activities (for example, Denmark, France, the Netherlands, Switzerland or the United Kingdom) and also of less serious offences. Some of these laws have been adopted quite recently (for example in Belgium, Norway or Turkey). In some member States, the decision to withdraw nationality can even be made without a criminal conviction. Such administrative decisions may be open to appeal, but without the procedural safeguards of criminal law and

1. *Assembly debate* on 25 January 2019 (9th Sitting) (see Doc. 14790, report of the Committee on Legal Affairs and Human Rights, rapporteur: Ms Tineke Strik). *Text adopted by the Assembly* on 25 January 2019 (9th Sitting).
See also Recommendation 2145 (2019).

mostly without the knowledge and/or presence of the person concerned. Such procedures violate basic elements of the rule of law. The Assembly is also concerned about the fact that deprivation of nationality is often used for the sole purpose of allowing expulsion or refusing re-entry of a person who has or may have been involved in terrorist activities.

6. The Assembly considers that the application of laws such as those mentioned above may raise several human rights concerns. First, it may lead to statelessness. Second, it often implies direct or indirect discrimination against naturalised citizens, which is contrary to Article 9 of the Convention on the Reduction of Statelessness and Article 5.2 of the European Convention on Nationality. Third, deprivation of nationality might occur without adequate procedural safeguards, especially if it is decided following administrative proceedings, without any judicial control, thereby raising issues under Articles 6 (right to a fair trial) and 13 (right to an effective remedy) of the European Convention on Human Rights. Fourth, in certain circumstances, the deprivation of nationality following a criminal conviction may violate the right not to be tried or punished twice for the same offence (*ne bis in idem*) (Article 4 of Protocol No. 7 to the European Convention on Human Rights (ETS No. 117)), if it imposes an additional sentence.

7. The use of the deprivation of nationality must be in accordance with the standards stemming from the European Convention on Human Rights and other relevant international legal instruments. Any deprivation of nationality for terrorist activities shall be decided or reviewed by a criminal court, with full respect for all procedural guarantees; shall not be discriminatory; shall not lead to statelessness; shall have suspensive effect; shall be proportionate to the pursued objective and shall be applied only if other measures foreseen in domestic law are not effective. Failure to apply these safeguards may result in the deprivation of nationality being arbitrary. Preventive deprivation of nationality, without judicial control, must be avoided. The deprivation of nationality of a parent must not lead to the deprivation of the nationality of his or her children.

8. The Assembly also notes that the practice of depriving of their nationality persons involved in terrorist activities (including “foreign fighters”) or suspected of such involvement may lead to the “exporting of risks”, as those persons may move to or remain in terrorist conflict zones outside Europe. Such a practice goes against the principle of international co-operation in combating terrorism, reaffirmed, *inter alia*, in United Nations Security Council Resolution 2178 (2014), which aims at preventing foreign fighters from leaving their State of residence or nationality, and may expose local populations to violations of international human rights and humanitarian law. It also undermines the State’s ability to fulfil its obligation to investigate and prosecute terrorist offences. In this context, deprivation of nationality is an ineffective anti-terrorism measure and may even work against the goals of counter-terrorism policy. Moreover, it may have a strong symbolic function but a weak deterrent effect.

9. The Assembly therefore calls on the member States of the Council of Europe to:

9.1. review their legislation in the light of international standards prohibiting arbitrary deprivation of nationality, and repeal any laws that would allow it;

9.2. refrain from adopting new laws that would permit arbitrary deprivation of nationality because, *inter alia,* it does not have a legitimate objective, it is discriminatory or disproportionate or because it lacks procedural or substantive safeguards;

9.3. ensure that any criteria similar to that of conduct seriously prejudicial to the vital interests of the State for involuntary deprivation of nationality uses precise terminology and is accompanied by written (and publicly available) guidance as to their scope and interpretation. This guidance must promote narrow interpretation which takes into account human right standards and the duty to not discriminate or be arbitrary;

9.4. provide for safeguards against statelessness in their national laws;

9.5. not discriminate between citizens on the basis of the way in which they have acquired nationality, in order to avoid indirect discrimination against minorities;

9.6. insofar as their legislation allows for deprivation of nationality of persons convicted or suspected of terrorist activities, review such provisions in light of international human rights obligations, refrain from applying this measure and envisage and prioritise wider use of other counter-terrorism measures foreseen in their respective national criminal and other legislation (for example, travel bans, surveillance measures or assigned residence orders), while respecting human rights and rule of law standards;

9.7. abolish or refrain from introducing administrative procedures allowing for the deprivation of nationality not based on a criminal conviction;

9.8. refrain from depriving minors of their nationality;

9.9. insofar as they have not yet done so, sign and/or ratify the United Nations 1954 Convention relating to the Status of Stateless Persons, the United Nations Convention on the Reduction of Statelessness and the European Convention on Nationality.