



**Doc. 14790 – Compendium of written amendments**  
24/01/2019

**(Final version)**

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

<b>Contents</b>	<b>Page</b>
A. Draft Resolution .....	2
B. Draft Recommendation .....	6

## A. Draft Resolution

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 recalls that Council of Europe member States possess a legitimate sovereign right to guarantee security on their territory, but that our democratic societies can only be protected effectively by ensuring that such 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 Council of Europe's 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 a 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 deprivation of nationality may occur; however, this latter 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

### **Amendment 4**

**Tabled by Mr Andrea ORLANDO, Mr Roberto RAMPI, Mr André GATTOLIN, Ms Maria Elena BOSCHI, Mr Piero FASSINO**

*In the draft resolution, paragraph 2, after the words "drastic measure", insert the following words: "having a strong symbolic value but a weak deterrent effect,"*

### **Amendment 5**

**Tabled by Mr Andrea ORLANDO, Mr Roberto RAMPI, Mr André GATTOLIN, Ms Maria Elena BOSCHI, Mr Piero FASSINO**

*In the draft resolution, paragraph 5, after the words "Switzerland or the United Kingdom)",*

terrorist activities (for example Denmark, France, the Netherlands, Switzerland or the United Kingdom). 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 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, 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, a deprivation of nationality following a criminal conviction may violate the principle of *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 nationality deprivation must in any case be applied in compliance 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 and shall not lead to statelessness; it shall have suspensive effect and shall be proportionate to the pursued objective and applied only if other measures foreseen in domestic law are not efficient. Failure to apply these safeguards may result in 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/her children.
8. The Assembly also notes that the practice of depriving of their nationality persons involved in terrorist activities (including so-called "foreign fighters") or suspected of such involvement may lead to an "export 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 country, and may expose local populations to violations of international human rights and humanitarian law. It also undermines

*insert the following words: "and also of less serious offences"*

**Amendment 1**

**Tabled by Mr Mart van de VEN, Ms Reina de BRUIJN-WEZEMAN, Mr Konstantin KUHLE, Ms Gyde JENSEN, Mr Vincent VAN QUICKENBORNE, Mr Rik DAEMS, Mr Olivier BECHT**

*In the draft resolution, paragraph 6, after the words "First, it may", insert the word "not".*

**Amendment 6**

**Tabled by Mr Olivier BECHT, Mr Claude KERN, Mr Frédéric REISS, Mr Jacques LE NAY, Mr André REICHARDT, Ms Gyde JENSEN**

*In the draft resolution, paragraph 7, after the words: "shall be decided" delete the words: "or reviewed by a criminal court".*

**Amendment 2**

**Tabled by Mr Mart van de VEN, Ms Reina de BRUIJN-WEZEMAN, Mr Konstantin KUHLE, Mr Vincent VAN QUICKENBORNE, Mr Rik DAEMS, Mr Olivier BECHT**

*In the draft resolution, delete paragraph 8.*

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 be counter-effective to the goals of counter-terrorism policy.

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 deprivation of nationality that is arbitrary 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 (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 terrorism 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 withdrawal of nationality not based on a criminal conviction;
  - 9.8. refrain from depriving minors of their nationality;

**Amendment 7**

**Tabled by Mr Olivier BECHT, Mr Claude KERN, Mr Frédéric REISS, Mr Jacques LE NAY, Mr André REICHARDT**

*In the draft resolution, paragraph 9.5, delete the words: "not discriminate between citizens on the basis of the way in which they have acquired nationality, in order to"*

**Amendment 8**

**Tabled by Mr Olivier BECHT, Mr Claude KERN, Mr Frédéric REISS, Mr Jacques LE NAY, Mr André REICHARDT**

*In the draft resolution, paragraph 9.7, delete the words "abolish or"*

- 9.9. insofar as they have not yet done so, sign and/or ratify the United Nations Convention on the Reduction of Statelessness and the European Convention on Nationality.

**Amendment 3**

**Tabled by Mr Tiny KOX, Mr Henk OVERBEEK, Mr Frank SCHWABE, Ms Ulla SANDBÆK, Mr Stefan SCHENNACH**

*In the draft resolution, paragraph 9.9, after the words "sign and/or ratify", insert the following words: "the United Nations Convention relating to the Status of Stateless Persons of 1954,".*

## **B. Draft Recommendation**

1. Referring to its Resolution ... (2019) “Withdrawing nationality as a measure to combat terrorism: a human rights-compatible approach?”, the Parliamentary Assembly recommends that the Committee of Ministers:
  - 1.1. prepare a comparative study on Council of Europe member States’ laws allowing for deprivation of nationality, with special focus on deprivation of nationality as a measure to combat terrorism;
  - 1.2. draft guidelines on the criteria to be set up for the deprivation of nationality and on other counter-terrorism measures that could be used instead of deprivation of nationality.