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

**Report**[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Ms Tineke STRIK, Netherlands, Socialists, Democrats and Greens Group

*Summary*

In preventing acts of terrorism on their soil, a number of Council of Europe member States have adopted legislation with a view to making it easier to withdraw nationality from individuals engaged or suspected of involvement in terrorist activities. In some countries, the withdrawal of an individual's nationality can take place without a criminal conviction. Other countries make a distinction between citizens by birth and naturalised citizens and even allow the deprivation of nationality if the person would become stateless.

The Committee on Legal Affairs and Human Rights recalls that under international law statelessness should be prevented and arbitrary deprivation of nationality should be prohibited, although States retain a wide discretion in deciding on nationality issues.

Laws and practices allowing for the deprivation of nationality as a measure to combat terrorism raise several concerns regarding their compatibility with international human rights standards. Although States possess a legitimate sovereign right to guarantee security on their territory, democratic societies can only be protected effectively by ensuring that anti-terrorism measures abide by the rule of law. Therefore, Council of Europe member States should consider the use of alternative measures instead of depriving their citizens of their nationality.

1. Reference to committee: Doc. 14375, Reference 4328 of 13 October 2017.

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## A. Draft resolution[2]

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 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

2. Draft resolution adopted unanimously by the committee on 13 December 2018.

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 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;

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.

## B. Draft recommendation[3]

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.

3. Draft recommendation adopted unanimously by the committee on 13 December 2018.

## C. Explanatory memorandum by Ms Tineke Strik, rapporteur

### 1. Introduction

1. The motion for a resolution entitled "Withdrawing citizenship as a measure to combat terrorism: a human rights-compatible approach?" was referred to the Committee on Legal Affairs and Human Rights on 13 October 2017 for report. The committee appointed me as rapporteur at its meeting in Paris on 12 December 2017. During its meeting in Strasbourg on 26 June 2018, the committee authorised me to send out a questionnaire to delegations of national parliaments and to national human rights institutions to gather further information on the state of their country's legislation concerning the possibility of nationality withdrawal as a measure to combat terrorism. On 10 September 2018, at the committee meeting in Paris, a hearing took place with the participation of Professor René de Groot, Faculty of Law, University of Maastricht (Netherlands), and Dr Sandra Krähenmann, Research Fellow, Geneva Academy of International Humanitarian Law and Human Rights (Switzerland).

2. The above-mentioned motion for a resolution focuses on the legitimacy and compatibility of nationality withdrawal with international and European human rights standards on nationality in the context of counter-terrorism strategies of Council of Europe member States. In preventing acts of terrorism on their soil, a number of Council of Europe member States adopt legislation with a view to making it easier to withdraw nationality from individuals engaged or suspected of involvement in terrorist activities. In some countries, the withdrawal of an individual's nationality can even take place without a criminal prosecution and conviction. These practices lead to concerns regarding proportionality, the right to an effective remedy, the obligation to avoid statelessness and, if only dual nationals are affected, to differential treatment amounting to discrimination.

3. Regarding anti-terrorism policy, some basic principles apply on all States, such as the requirement to ensure the investigation and prosecution of terrorism-related crimes as well as the effectiveness of any measure. Furthermore, a counter-terrorism context does not absolve member States from their obligation to respect human rights. Member States possess a legitimate sovereign right to guarantee security on their territory. This right encompasses the taking of effective anti-terrorism measures. Nevertheless, our democratic societies can only be protected effectively by ensuring that such anti-terrorism measures abide by the rule of law. A recent report by Amnesty International[4] highlights that the withdrawal of nationality in the context of counter-terrorism strategies can be extremely socially divisive.

4. Therefore, in my report, I will briefly introduce the main international legal instruments relating to the right to a nationality and then focus on the issue of deprivation of nationality as a measure to combat terrorism.

### 2. The right to a nationality

5. The power of a State to withdraw nationality needs to be examined in light of the right to a nationality[5]. Although rules on nationality belong primarily to the domestic legal order, several international legal instruments impose legal obligations aiming to safeguard the right to a nationality. This is, in particular, the case for Article 15 of the Universal Declaration of Human Rights, Article 20 of the American Convention on Human Rights and Article 4 of the Council of Europe's European Convention on Nationality (ETS No. 166) of 1997 (ECN). Moreover, a series of international human rights instruments affirm the right of access to a nationality without discrimination and the right of children to acquire a nationality: the 1965 Convention on the Elimination of All Forms of Racial Discrimination, the 1966 International Covenant on Civil and Political Rights, the 1979 Convention on the Elimination of All Forms of Discrimination against Women and the 1989 Convention on the Rights of the Child.

6. Article 15 of the Universal Declaration of Human Rights states that everyone has the right to a nationality and prohibits arbitrary deprivation of nationality. Article 4.a to 4.c of the European Convention on Nationality, which has so far been ratified by 21 Council of Europe member States,[6] repeats the message of

4. Amnesty International, Dangerously Disproportionate: the Ever-Expanding National Security State in Europe, 2017. See also European Parliamentary Research Service (EPRS), The return of foreign fighters to EU soil: Ex-post evaluation, 2018, p. 41.

5. The terms "citizenship" and "nationality" will be used interchangeably in this report, despite the distinction between the two motions made in certain legal traditions; see, for example, G.-R. de Groot and O.W. Vonk, *International Standards on Nationality Law*. Texts, Cases and Materials, Wolf Legal Publishers, 2015, pp. 3-4.

the Universal Declaration of Human Rights as follows: "The rules on nationality of each State Party shall be based on the following principles: a. everyone has the right to a nationality; b. statelessness shall be avoided; c. no one shall be arbitrarily deprived of his or her nationality."

### 3. Procedure and safeguards for deprivation of nationality

7. A person may lose his/her nationality either *ex lege,* at the initiative of the individual involved, or at the initiative of the State.[7] According to the United Nations Secretary-General's reports to the Human Rights Council, a measure of nationality deprivation taken by a State must meet standards of necessity, proportionality, and reasonableness in order not to be seen as arbitrary. It must be provided by law, serve a legitimate purpose, be proportionate, be the least intrusive measure possible to achieve its legitimate aim, and respect procedural standards of justice that allow for it to be challenged.[8] In this regard, as a corollary to the right to determine the conditions for the acquisition of nationality, States are duty-bound to avoid statelessness through legislative, administrative and other measures[9] (see section 4 below).

8. More importantly, Article 8.4 of the United Nations 1961 Convention on the Reduction of Statelessness ("the 1961 Convention") states that a State shall not exercise a power of deprivation except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body. Similarly, according to the ECN, States shall ensure that decisions relating to the loss of nationality include reasons in writing (Article 11) and are open to administrative or judicial review in conformity with internal law (Article 12).

9. Problems concerning involuntary loss of nationality, especially in relation to undesirable behaviour, have recently been examined by various experts and in different fora, resulting in certain valuable recommendations. For example, the European Union-funded Involuntary Loss of European Citizenship (ILEC) project drafted Guidelines in 2015 ("ILEC Guidelines 2015"). These Guidelines recommend that loss of nationality due to undesirable behaviour (e.g. acts seriously prejudicial to the vital interests of the State or foreign military service) may only occur if the following conditions are fulfilled: a) the person would not become stateless; b) there has been an explicit decision by competent authorities; c) "the unacceptable character of the undesirable behaviour of the person involved should be proven beyond any reasonable doubt. Such behaviour should constitute a crime and a criminal court should have imposed a sanction" (Guideline IV.3).

10. The "Tunis Conclusions"[10] state that the prohibition of arbitrary deprivation of nationality is now a norm of international law. Referring to Article 8.4 of the 1961 Convention, they state that "[w]here criminal conduct is alleged, it is strongly advisable that deprivation of nationality only occur following a two-step process, logically beginning with a finding of guilt by a criminal court. A decision by the competent authority (preferably a court) on deprivation of nationality would follow". As regards nationality deprivation on the basis of conduct seriously prejudicial to the vital interests of the State (Article 8.3.a.ii of the 1961 Convention), this exception establishes a very high threshold for deprivation of nationality resulting in statelessness. The term "seriously prejudicial" means that the person is capable of negatively impacting the State, and "vital interests" sets a "considerably higher threshold than "national interests", as confirmed by the *travaux préparatoires.* The exception does not cover criminal offences of a general nature; but acts of treason and espionage – depending on their interpretation in domestic law – may be considered to fall within the scope of this exception. The person's acts must be inconsistent with the "duty of loyalty" to the State of nationality. It is important to note that "the experience of some States indicates that governments do not benefit from rendering individuals stateless through the application of this exception, in particular because it may be difficult in practice to expel the persons concerned".[11]

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6. These are: Albania, Austria, Bosnia and Herzegovina, Bulgaria, the Czech Republic, Denmark, Finland, Germany, Hungary, Iceland, Luxembourg, Montenegro, the Netherlands, Norway, Portugal, the Republic of Moldova, Romania, the Slovak Republic, Sweden, "the former Yugoslav republic of Macedonia" and the United Kingdom, see: www.coe.int/en/web/conventions/full-list/-/conventions/treaty/166/signatures?p_auth=zOKcPPeJ.
7. The terminology used to name the act or conditions under which a person would cease to be a national of a given State varies. For the purposes of this report, the term "deprivation" will be used to refer to acts of State authorities by which a person is stripped of his/her nationality. It covers both *ex lege* loss and an active decision to withdraw.
8. United Nations Human Rights Council, Human Rights and Deprivation of Nationality, Reports by the Secretary-General of 19 December 2011 and 19 December 2013, respectively A/HRC/19/43 and A/HRC/25/28.
9. See Guidance Note of the Secretary-General: The United Nations and Statelessness, 28 June 2011, p. 3.
10. Based on discussions on the interpretation of the 1961 Convention that took place at an expert meeting convened by the Office of the United Nations High Commissioner for Refugees (UNHCR) in Tunis in 2013.
11. Paragraphs 27 and 69 of the Tunis Conclusions.

11. According to a 2013 report of the United Nations Secretary-General, many States allow deprivation of nationality in response to acts seriously prejudicial to the vital interests of the State, but the way in which this ground is expressed in domestic law varies significantly. Some States require a criminal conviction for a crime or offence which endangers the security of the State, while others "allow nationality to be withdrawn if this is deemed to be in the public interest, conducive to the public good or justified by national security considerations".[12] Due to the growing concern about terrorism, some States have expanded the powers of deprivation of nationality for crimes against nationality or in the public interest, or have made more active use of existing powers. States' broad discretion in determining when to deprive a person of their nationality entails a risk that the prohibition of arbitrary deprivation of nationality may not be respected.

12. Article 9 of the 1961 Convention forbids deprivation from any person or group of persons of their nationality on racial, ethnic, religious or political grounds. Similarly, Article 5 of the ECN provides that States' rules on nationality "shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin" (paragraph 1) and that States Parties "shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently" (paragraph 2).

### 4. The prohibition on causing statelessness

13. The main international legal instruments against statelessness are the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The latter is binding on 71 States, including 32 Council of Europe member States[13]. The Council of Europe has a strong track record in this field, in particular, the 1997 European Convention on Nationality and the Convention on the Avoidance of Statelessness in relation to State Succession (CETS No. 200). Article 1 of the 1954 Convention has established the definition of statelessness, which, according to the International Commission of Law, should be considered as definition of customary international law. Member States are therefore obliged to use the definition of a stateless person as "a person who is not considered as a national by any State under the operation of its law".

14. It is important to note that nationality deprivation leading to statelessness is not *per se* arbitrary and contrary to international law,[14] despite the prohibition included in Article 8.1 of the 1961 Convention and the provisions of Articles 4.b and 7.3 of the ECN. In particular, a person may be deprived of nationality if the latter has been obtained by misrepresentation or fraud (Article 8.2.b of the 1961 Convention). Moreover, some Contracting States declared their retention of the right to deprive of nationality already existing in national law at the time of signature, ratification or accession to the 1961 Convention, on one or more of the three additional grounds. Article 8.3.a allows this in situations where, "inconsistently with his duty of loyalty to the Contracting State" the person has rendered services to or received emoluments from another State, in disregard of an express prohibition by the Contracting State (sub-paragraph (i)) or has conducted himself in a manner seriously prejudicial to the vital interests of the State (sub-paragraph (ii))[15]. Article 8.3.b also allows the deprivation of nationality if "the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State".

15. Article 7.1 of the ECN provides grounds for involuntary deprivation of nationality, including acquisition of nationality by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the application (sub-paragraph (b)), voluntary service in a foreign military force (sub-paragraph (c)), conduct seriously prejudicial to the vital interests of the State Party (sub-paragraph (d)) or lack of genuine link between the State Party and a national habitually residing abroad (sub-paragraph (e)). Article 7.2 of the ECN regulates the situation of children who may lose nationality if their parents lose it, except in cases covered by sub-paragraphs c) and d) of paragraph 1. If one of their parents retains the nationality, the child shall not lose it.

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12. A/HRC/25/28, 19 December 2013, paragraph 13.
13. These are: Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Denmark, Finland, Georgia, Germany, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Montenegro, the Netherlands, Norway, Portugal, Republic of Moldova, Romania, Serbia, the Slovak Republic, Spain, Sweden, Ukraine and the United Kingdom.
14. S. Mantru, "Terrorist" citizens and the human right to nationality, *Journal of Contemporary European Studies*, 2018, Vol. 26, No. 1, p. 30.
15. Austria, Belgium, Georgia, Ireland Lithuania and the United Kingdom have made reservations concerning Article 8.3 of the 1961 Convention.

The Convention on the Rights of the Child, and in particular its Article 8 in conjunction with Articles 2 and 3, can be read as restricting any deprivation of nationality from children as a result of the behaviour of the parents, whether a parent retains the nationality or not.

16. According to Article 7.3 of the ECN, it is possible to deprive a person of his nationality with the result that he/she would become stateless only in cases where the nationality has been acquired through fraud. In other cases, withdrawal of nationality is not allowed if the person would become stateless. Deprivation of nationality in cases of dual or multiple nationals is only allowed if the conduct is seriously prejudicial to the vital interests of the State Party. Below this threshold, revoking nationality is not allowed. The referral to "conduct" clarifies that an individual assessment must take place and that application to categories of persons is prohibited. In such cases, it may be invoked only in cases of dual or multiple nationals. The Explanatory report to the ECN (paragraph 67) furthermore suggests that this ground for deprivation of nationality is not automatically established in cases relating to terrorism. It explains that the wording "conduct seriously prejudicial to the vital interests of the State Party" includes treason and other activities directed against the vital interests of the State concerned (for example work for a foreign secret service) but would not include criminal offences of a general nature, however serious they might be. Despite these limitations, terrorist acts as provided for by domestic legislation of some European Union member States take many different forms.[16] Interestingly, the ECN does not include two grounds mentioned in Article 8.3.a.i and 8.3.b of the 1961 Convention, i.e. receiving prohibited emoluments from another State and taking an oath or making a formal declaration of allegiance to another State, and the Explanatory Report to the ECN remains silent on this point. This may be interpreted as excluding these two types of behaviour from the scope of "a conduct seriously prejudicial to the vital interests of the State Party". According to Professor de Groot, national legislation allows for deprivation of nationality on the latter ground in 22 Council of Europe member States, including seven States which have ratified the ECN.

## 5. Case law of the European Court of Human Rights

17. Although the right to a nationality is not as such guaranteed by the European Convention on Human Rights (ETS No. 5, "the Convention") or its Protocols, the European Court of Human Rights ("the Court") has observed that an arbitrary denial of nationality might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual.[17] In the judgment *Mennesson v. France*,[18] the Court recalled that nationality is an element of a person's identity and the worrying uncertainty faced by the two of the four applicants (who were children born from a cross-border surrogacy) as to the possibility of obtaining recognition of French nationality was liable to have negative repercussions on the definition of their personal identity. In the case of *Ramadan v. Malta*,[19] concerning the loss of nationality acquired via marriage, the Court stressed that an arbitrary revocation of nationality could raise an issue under Article 8 of the Convention. However, in this case the deprivation of nationality was not considered arbitrary since it had a legal basis, respected procedural grounds and its effects were not deemed serious enough, since the applicant continued his life in Malta despite losing nationality. In the case of *K2 v. United Kingdom*, the Court examined the issue of nationality deprivation in the context of terrorism and national security considerations. It declared the application inadmissible as being manifestly ill-founded, since the measures in question had respected the procedural safeguards required under Article 8. It also noted that the applicant would not be left stateless by the loss of British nationality, as he had subsequently acquired Sudanese nationality. It is also worth mentioning the elements of the due process "test" that the Court set out, for example in paragraph 50 of the *K2* judgment: "In determining arbitrariness, the Court has had regard to whether the revocation was in accordance with the law; whether it was accompanied by the necessary procedural safeguards, including whether the person deprived of nationality was allowed the opportunity to challenge the decision before courts affording the relevant guarantees; and whether the authorities acted diligently and swiftly (see *Ramadan v. Malta*, cited above, §§ 86-89). "The Court is now examining cases concerning revocation of French nationality in April 2015 of a few individuals who had been convicted for terrorism-related acts.[20]

16. University of Amsterdam, Migration Law Clinic, The legality of revocation of Dutch nationality of dual nationals involved in terrorist organisations, July 2018, p. 27. The report refers *inter alia* to the UK Terrorism Act of 2006.
17. *Karassev v. Finland*, Application No. 31414/96, decision of 12 January 1999 and *Genovese v. Malta*, Application No. 53124/09, judgment of 11 October 2011.
18. Application No. 65192/11 judgment of 26 June 2014.
19. Application No. 76136/12, judgment of 21 June 2016.
20. *Ghoumid v. France,* Application No. 52273 and four other similar applications, communicated on 23 May 2017.

18. Interestingly, the issue of unlawful discrimination between Danish citizens of Danish ethnic origin and Danish citizens of other ethnic origin was examined by the Court in the case of *Biao v. Denmark* under Article 14 of the Convention, which prohibits discrimination.[21] The Court found a violation of Article 14 of the Convention read in conjunction with Article 8, due to the Danish authorities' refusal to grant family reunification to the applicant's wife, who was a naturalised Danish citizen; the refusal was due to the application of an "attachment requirement", which was only available to persons who had had Danish nationality for at least 28 years. The Court found that the "28-year rule" had an indirect discriminatory effect, since it favoured Danish nationals of Danish ethnic origin. In doing so, the Court referred, *inter alia,* to Article 5.2 of the ECN.

## 6. Case law of the Court of Justice of the European Union

19. Whereas the rules for the acquisition of nationality do not fall under the scope of European Union law, the rules on the withdrawal of Union citizenship do. In its judgment of 2 March 2010 in the case of *Rottmann v. Freistaat Bayern,*[22] the Court of Justice of the European Union (CJEU) specified that the situation of a citizen of the European Union becoming stateless as a result of withdrawal of his nationality comes within the ambit of European Union law. In fact, the person concerned would thus lose the status of citizen of the European Union, conferred by Article 20 of the Treaty on the Functioning of the European Union, which is intended to be the fundamental status of nationals of the member States. Concerning the examination of the criterion of proportionality, the CJEU ruled that it is for the national court to take into consideration the potential consequences that such a decision entails for the person concerned and, if relevant, for his family, with regard to the loss of the rights inherent in citizenship of the European Union. In this respect, it is necessary to establish, in particular, whether this decision is justified in relation to the gravity of the offence committed, to the lapse of time between the naturalisation decision and the nationality withdrawal decision and to whether it is possible for that person to recover his original nationality.

## 7. National legislation on nationality withdrawal, with focus on withdrawal for terrorist offences

20. In order to collect additional information on the deprivation of nationality as a measure to combat terrorism, I sent a questionnaire to delegations of national parliaments through the European Parliament Research Service (EPRS) and to national human rights institutions (NHRIs) thanks to the help of the European Network of NHRIs (ENNHRI). I have received replies from 27 member States: Albania, Andorra, Austria, Croatia, Cyprus, the Czech Republic, Estonia, Finland, Georgia, Germany, Greece, Hungary, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Spain, Turkey and "the former Yugoslav Republic of Macedonia". Four NHRIs also replied to my questionnaire: the French National Consultative Commission on Human Rights, the Greek National Commission for Human Rights, the Slovak National Centre for Human Rights and the Ombudsman of Ukraine.

21. The questionnaire consisted of the following questions:

i. In what situation(s) does your legislation permit the withdrawal of nationality?

ii. Does the decision to withdraw a person's nationality depend on how long he/she has been a citizen or how (i.e. by birth, naturalisation, marriage, etc.) the nationality was acquired? If so, what arguments have been given for the different treatment between different categories of citizens?

iii. Is it possible to withdraw a person's nationality if that person would become stateless as a result?

iv. If your legislation permits the withdrawal of nationality for terrorism-related offences or other serious offences, what is the procedure for withdrawal? Please specify the role of the criminal procedure, if applicable.

v. If your legislation does not currently permit the withdrawal of nationality for the above reasons, is there any pending legislative amendment that would allow such a withdrawal?

22. Concerning the first question, it appears from the answers to the questionnaire that some States do not allow the withdrawal of nationality if it is against a person's will. Hence, it is only possible to lose nationality by renunciation and/or by right of choice (in Croatia, the Czech Republic, Poland, the Slovak Republic with some

21. *Biao v. Denmark*, Application No. 38590/10, judgment of 24 May 2016.
22. Case C-135/08, paragraphs 55 and 56.

exceptions, Sweden, "the former Yugoslav Republic of Macedonia" and, to some extent, in Portugal). The Constitutions of Croatia, the Czech Republic, Poland and the Slovak Republic clearly stipulate that a citizen can lose his/her nationality only upon his/her request.

23. Other member States allow involuntary withdrawal of nationality for various reasons foreseen in their legislation such as: acquisition of another State's nationality (Austria, Andorra, Estonia, Georgia, Germany, Greece, Lithuania, Latvia, the Netherlands, Norway, Portugal, the Slovak Republic and Ukraine, as well as Spain under certain circumstances), residence abroad (Greece and the Netherlands); servicing voluntarily in the armed forces or military organisation of another State and/or carrying out services for a foreign country against the interest of the State of nationality (Andorra, Austria, Estonia, France, Georgia, Germany, Greece, Latvia, Lithuania, the Netherlands, Slovenia, Spain, Turkey and Ukraine), refusal to service in the State's military forces (France) or intentionally providing false information or concealing the facts that apply to the conditions for the acquisition of nationality when certifying or during naturalisation (Belgium, Cyprus, Estonia, Finland, Georgia, Germany, Hungary, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Spain and Ukraine). Some States also allow deprivation of nationality for other acts prejudicial to State security: Cyprus, in cases of "showing disloyalty", "disgracing the Republic" or engaging in illegal trade with the enemy in times of war, and Latvia and Slovenia, in cases of activities aimed at reversing the constitutional order.

24. In a few member States, it is possible to withdraw nationality because the person has committed a criminal offence: in Cyprus, for "hideous crimes, involving moral obscenity"; or in Slovenia, if the person is a "persistent perpetrator of criminal offences prosecuted *ex officio* and of offences against the public order".

25. In the Belgium, France, Netherlands, Switzerland and Turkey, withdrawal of nationality may occur if the person has committed a serious offence, including one related to terrorism.

26. In Norway, following a recent amendment to the Nationality Act, as of January 2019, it will be possible to withdraw the nationality of a citizen who "has conducted himself or herself in a manner seriously prejudicial to the vital interests of the State", i.e. has been convicted of crimes such as genocide, crime against humanity, war crimes, violation of national interests or terrorist or terrorism-related acts, if those offences are punishable by more than six years imprisonment.

27. The parliaments and/or NHRIs of some States that allow involuntary loss of nationality have clearly indicated that their national legislation does not permit the withdrawal of nationality for terrorism-related offences (Albania, Andorra, Finland, Germany, Greece, Hungary, Latvia, Lithuania, Slovak Republic, Spain and Ukraine) or for any offences (Hungary).

28. As regards the second question, some replies from member States that allow involuntary loss of nationality indicated that, in general, the decision to withdraw nationality does not depend on how it was acquired (Andorra, Austria, Cyprus, Germany, Greece, Latvia, Switzerland and Turkey). According to others, the way in which nationality was acquired may have some relevance in this context (Norway and Spain). In Belgium, Estonia, France and Luxembourg, it is possible to deprive only naturalised citizens of nationality, and not citizens by birth. No explanation was provided for this differentiation.

29. Some delegations replied that the decision on nationality deprivation does not depend on how long the person has been a citizen of a given State (Germany, Greece, the Netherlands, Norway, Slovenia and Turkey). However, an exception to this rule is often applied in cases of naturalisation by fraud (e.g. Germany, Hungary and Latvia). In Cyprus, if the person has been sentenced to imprisonment for "hideous crimes" during the ten years following the acquisition of nationality, it may be withdrawn.

30. Concerning the third question, most replies indicated that it is not possible to withdraw a person's nationality if that person would become stateless as a result (e.g. Belgium, France, Luxembourg, the Netherlands, Norway and Switzerland). However, the legislation of some member States allows deprivation of nationality even if the person would become stateless, in particular if the nationality was acquired due to fraud or the decision on naturalisation was invalid (Belgium, Germany, Latvia, Norway and the Netherlands).

31. The Turkish reply indicated that Turkish Citizenship Law includes the principle that "Everyone should have citizenship". However, there is no regulation regarding statelessness when the conditions for the loss of nationality are fulfilled, except in the case of loss of Turkish nationality through exercise of the right of choice. The Hungarian delegation has stated that one of the principles of the Act on Hungarian Citizenship is to reduce cases of statelessness; however, "statelessness is not an exclusion factor".

32. As regards the fourth question, the following information has been provided concerning the procedure for nationality withdrawal in case of terrorism-related offences (Belgium, France, the Netherlands, Norway, Switzerland and Turkey) or other serious offences (Cyprus and Slovenia). Austria has indicated that it was

possible to deprive of nationality persons joining foreign military forces or volunteering for an organised combatant group taking part in violent conflicts abroad; the deprivation of nationality is decided following an administrative procedure.

33. In Belgium, according to Articles 23.1 and 23.2 of the Belgian Nationality Code, since July 2015, the deprivation of nationality may be imposed as an ancillary penalty if a person has been convicted of a terrorist offence and sentenced to at least five years of imprisonment. The decision is taken by the *Cour d'appel* at the request of the prosecutor. It may be appealed in the same way as the main sentence, according to the Criminal Procedure Code, and becomes enforceable once the deprivation of nationality has been listed in the civil status register.

34. In Cyprus, on the basis of a decision of the Council of Ministers, it is possible to deprive a person of his/her nationality because he or she has committed a "hideous crime".

35. In France, a person convicted of a terrorist offence can be deprived of his/her nationality if the facts on which the conviction was based occurred before the acquisition of nationality or not later than fifteen years after it (Article 25-1 of the Code civil). According to Article 61 of Decree No. 93-1362 of 30 December 1993, the person must be notified of the legal and factual grounds justifying the deprivation of nationality. He/she has one month to make his/her observations. After the expiry of that deadline, the government may declare, by a decree and following the opinion of the State Council (*Conseil d'État*), that the person is deprived of French nationality. That decision can be appealed before the State Council.[23]

36. In the Netherlands, withdrawal of nationality for terrorist activity can occur in two instances: after final conviction for certain terrorist offences or if a citizen appears to have joined a terrorist organisation abroad that is deemed to pose a threat to national security. In the first case, the decision is taken by the competent minister, who must first inform the person concerned of his/her intention to revoke his/her nationality and allow them the opportunity to make submissions before the decision is made. Subsequently, the decision may be appealed either in an administrative objection procedure or before a court. The length of sentence is of limited importance to the minister. In the second case, i.e. that of "apparent membership of a terrorist organisation abroad", the withdrawal of nationality does not require a criminal conviction. This procedure is applicable if the person has left the Dutch territory and on the basis of his/her behaviour it is beyond reasonable doubt that he/she subscribes to the ideals of a terrorist organisation appearing on a list drawn up by the minister and which so far includes only Islam-related organisations, intends to join that organisation and has acted on its behalf. Citizenship withdrawal must be in the interests of national security. The person concerned will not be informed in advance of a pending decision to revoke his/her nationality, because the government's aim is to prevent the return of such people to the Netherlands. He/she will be entitled to directly appeal to an administrative court. The appeal has to be filed within four weeks after a decision was taken and published. The court will perform a "marginal" (i.e. procedural) review, mostly in the absence of the person concerned This deprivation procedure without the condition of a criminal conviction can be applied to persons aged 16 or older.[24]

37. In Slovenia, according to Article 26 of the Act on the Citizenship of the Republic of Slovenia, a person who is a "persistent perpetrator of criminal offences prosecuted *ex officio* and of offences against the public order", may be deprived of his/her nationality. The deprivation of nationality is decided by the competent administrative body and may be appealed to the Minister of the Interior, and then to the Administrative Court.

38. In Switzerland, the deprivation of nationality may be decided after a criminal conviction, although in some cases the latter is not necessary (e.g. if the criminal proceedings could not result in a conviction due to lack of international co-operation and lack of evidence from abroad). The procedure is launched by the *Secrétariat d'État aux Migrations*, who hears the person concerned before taking its decision on deprivation of nationality. The decision can then be appealed before the administrative court within 30 days of its notification.

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23. After the November 2015 Paris attacks, President Hollande proposed an amendment to the Constitution in order to allow the deprivation of nationality for dual nationals born as French nationals, but this proposal was not followed. See also Venice Commission, Opinion No. 838/2016 on the draft constitutional law on "protection of the nation" of France, CDL-AD(2016)006, and our committee's opinion on the report of the Committee on Political Affairs and Democracy on "Combating international terrorism while protecting Council of Europe standards and values" (rapporteur for opinion: Mr Pierre-Yves Le Borgn', France, SOC), Doc. 13960.

24. Statute Law of 10 February 2017, Amending the Dutch Nationality Act in Connection with the Withdrawal of Dutch Citizenship in the Interest of National Security.

39. In Turkey, following amendment of the Turkish Citizenship Law in 2017, it became possible to withdraw nationality on the basis of crimes related to terrorism and other serious crimes. Accordingly, citizens against whom an investigation before the prosecutor or a criminal procedure before a court is pending for the crimes enumerated in the Turkish Penal Code and who are unable to be contacted because of their presence in a foreign country, shall be notified to the Ministry within one month from the date of the hearing before the prosecutor or the court. If they do not return within three months despite the announcement made by the Ministry of the Interior, they may lose their Turkish nationality by a decision of the President of the Republic.

40. In Norway, according to a new section of the Norwegian Nationality Act that will enter into force in 2019, it will be possible to deprive of their nationality persons convicted of terrorist offences punishable by more than six years imprisonment. Such a decision can be taken after a criminal conviction.

41. As regards the fifth question, most replies indicated that no legislative changes are envisaged by the national parliaments. However, in Finland, Germany and Portugal, there have been some proposals to modify nationality laws in order to introduce a possibility of withdrawing nationality of persons with multiple nationality who have been convicted of terrorist offences. In the Czech Republic, in 2016, the leader of the Freedom and Direct Democracy (SPD) movement tried to launch a discussion on changing the Constitution in order to enable the withdrawal of nationality from convicted terrorists, but his proposal has not been pursued.

42. As regards certain member States which have not replied to my questionnaire, I have obtained information from other sources. According to a document of the EPRS,[25] there are other EU member States which allow deprivation of nationality of persons who have committed serious crimes against the State (Bulgaria and in Denmark), acted against the State's constitutional order and institutions (Denmark), showed disloyalty by act or speech (Malta and Ireland) and, more generally, acted against national interests (Romania and the United Kingdom). In Bulgaria, Ireland and Malta, these grounds may be invoked only in respect of withdrawing nationality from naturalised citizens. Another study revealed that under the Bulgarian Citizenship Act, it is possible to deprive of his/her nationality a naturalised citizen if he/she has been convicted of a "severe crime against the Republic", but only if he/she is abroad and would not become stateless.[26] In Denmark, deprivation of nationality in cases of dual nationality is possible for persons convicted of a terrorism-related offence, including the ancillary offences of preparation, incitement, and recruitment.[27] In the United Kingdom, Section 40 of the 1981 British Nationality Act allows for deprivation of nationality where the Home Secretary has considered it to be "conducive to the public good" and if it would not lead to statelessness. However, following the 2014 Immigration Act, the Secretary of State may deprive a person of nationality if he/she is a naturalised citizen, "has conducted him or herself in a manner which is seriously prejudicial to the vital interests of the United Kingdom, any of the Islands, or any British overseas territory", and if there are "reasonable grounds for believing that the person is able, under the law of a country or territory outside the United Kingdom, to become a national of such a country or territory" (Section 40.4.a of the Act). Conduct considered "seriously prejudicial to the vital interests of the UK" is a higher test than "conducive to the public good" but covers national security and those who take up arms against British or allied forces. The Home Secretary is empowered to deprive a person of British nationality without it being contingent on a criminal conviction. His/her decisions are subject to judicial review and in case of national security concerns they are decided by a special court – the Special Immigration Appeals Commission – and involve a partially secret procedure.

## 8. The Assembly's previous work

43. The Assembly has long experience in nationality-related matters, as shown by Resolution 1989 (2014) on access to nationality and the effective implementation of the European Convention on Nationality. In this resolution, it expressed its regret regarding the low number of ratifications of the ECN by member States and called on all the member States concerned to sign and/or ratify it.

44. In its Resolution 1840 (2011) on human rights and the fight against terrorism, the Assembly considered that terrorism should be dealt with primarily by the criminal justice system, with its inbuilt and well-tested fair trial safeguards to protect the presumption of innocence and the right to liberty of all. It underlined that coercive administrative measures used for preventive purposes should be of limited duration, be applied only as a last resort and be subject to strict conditions, including minimum requirements regarding evidence and judicial or appropriate political oversight.[28]

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25. EPRS, Acquisition and loss of citizenship in EU Member States. Key trends and issues, July 2018, p. 7.
26. European Commission and European Migration Network, Ad-Hoc Query on Revoking Citizenship on Account of Involvement in Acts of Terrorism or Other Serious Crimes, Compilation produced on 26 August 2014, pp. 3 and 7-9.
27. Danish Criminal Code, Chapter 13.

45. In its report on foreign fighters in Syria and Iraq, the Committee on Political Affairs and Democracy underlined that measures to revoke nationality do not appear to work as deterrence and might even have the opposite effect.[29] Similarly, in a report on "Combating international terrorism while protecting Council of Europe standards and values", the same committee argued "against laws stripping dual nationals of their European citizenship as this could create discrimination among the citizens of a European country, between those who hold dual nationality and those who do not". In its view, if such a measure was applied to all nationals, it would lead to statelessness and would not "dissuade any would-be suicide bomber".[30]

## 9. Conclusions and proposals

46. Under international law, the right to nationality is generally considered as "the right to have rights", and therefore as a human right. Statelessness should be avoided and arbitrary deprivation of nationality is prohibited. However, deprivation of nationality per se is not totally precluded. The 1961 Convention on the Reduction of Statelessness, ratified by 32 member States of the Council of Europe, allows it on certain grounds, even if the person would become stateless. The European Convention on Nationality limits these grounds and stipulates that deprivation of nationality leading to statelessness is only acceptable in cases of fraudulent acquisition of nationality, but this convention was ratified by only 21 of the 47 member States of the Council of Europe. Many States concerned by the threat of terrorism, such as Belgium, France and the United Kingdom have not ratified it. Bearing in mind the dangers stemming from the sometimes extensive grounds for nationality deprivation, some States, mainly in central Europe, possibly due to their historical experience with authoritarian regimes, do not provide for such a possibility.

47. Many other States maintain a general ground for deprivation of nationality for serving in a foreign military force and/or due to various forms of a behaviour "seriously prejudicial to the vital interests of the State". Certain States explicitly provide for the possibility of deprivation of nationality of citizens who participated or might have participated in terrorist activities (Belgium, Denmark, France, Switzerland, Turkey and the United Kingdom) and some of them allow it even if a person would become stateless (Turkey and the United Kingdom). The withdrawal of nationality might be either reactive, i.e. following a criminal conviction (e.g. in Belgium, Denmark or France), or preventive, i.e. by an administrative measure based on the participation of the person concerned in a terrorist organisation (in the Netherlands, Turkey and in the United Kingdom). A distinction amounting to (indirect) discrimination is often made between those who are citizens at birth and those who have acquired nationality later in life: in some States, only the latter may be deprived of nationality (Belgium, France, Luxembourg and the United Kingdom). Moreover, the practice of certain States shows that they may withdraw the nationality of dual citizens convicted or suspected of acts of terrorism: this practice has been reported in the Netherlands, where nationality withdrawal is often used as a counter-terrorist measure against dual citizens of Moroccan or Turkish origin, and would amount to indirect discrimination between citizens who have single and dual nationality on the basis of national origin or race. Very often such citizens have dual nationality because they are not allowed to renounce their parents' nationality under the legislation of the other State of nationality (e.g. Morocco), despite the lack of a strong connection with that country of nationality.[31] Thus, there is a trend toward inscribing nationality withdrawal powers within legal frameworks designed to counter terrorism. Some States have recently adopted new legislation to allow greater discretion in withdrawing nationality from persons who might be involved in terrorist activities (e.g. Belgium, the Netherlands, Turkey or, very recently, Norway). Others, like Switzerland, have started applying relevant provisions of old laws on deprivation of nationality to cases of conduct considered seriously detrimental to the State's vital interests.[32]

48. Academics have criticised the use of deprivation of nationality as a measure to combat terrorism, especially if it leads to statelessness.[33] Several human rights concerns may be raised in this context: discrimination against naturalised citizens; indirect discrimination on the basis of origin, race or religion; lack of an effective remedy (especially in the context of preventive deprivation, when there is no judicial remedy or the court's control is limited); the right to a fair trial and to procedural guarantees stemming from Article 6 of the European Convention on Human Rights (especially if there is restricted access to the file in criminal

28. Adopted on 6 October 2011, paragraph 6.
29. Doc. 13937 (rapporteur: Mr Dirk van der Maelen, Belgium, SOC) of 8 January 2016, paragraph 66.
30. Doc. 13958 (rapporteur: Mr Tiny Kox, Netherlands, UEL) of 26 January 2016, paragraph 36.
31. United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Amicus Brief presented before the Dutch Immigration and Naturalisation Service, 23 October 2018.
32. S. Krähenmann, Foreign Fighters under International Law, Academy Briefing No. 7, Geneva Academy of International Humanitarian Law and Human Rights, 2014.
33. G.-R. de Groot and O.W. Vonk, op. cit., p. 32.

proceeding due to State security reasons or if the person is abroad) and the principle of *ne bis in idem* if the decision is based on a previous criminal conviction (Article 4 of Protocol No. 7 to European Convention on Human Rights). If deprivation of nationality is a ground for expulsion, it may also raise issues under Article 3 of the Convention if the person may be sent to a country where he/she would face torture or inhuman or degrading treatment or punishment. It may be problematic under Article 8 of the Convention, which enshrines the right to respect for private and family life. In the opinion of the International Law Commission, the deprivation of nationality for the "sole purpose" of expulsion is "abusive, indeed arbitrary" within the meaning of Article 15.2 of the Universal Declaration of Human Rights.[34] Deprivation of nationality also interferes with the enjoyment of political rights (including the right to vote) and a range of socio-economic rights, including the right to work, social security, adequate housing, health, etc. Preventive deprivation of nationality, decided without a court decision, is particularly controversial. The deprivation of nationality of a parent may also lead to deprivation of the nationality of children and should be avoided, especially if the child risks becoming stateless. The best interests of the child shall be a primary consideration, in line with Article 3 of the United Nations Convention on the Rights of Child. Since in many States it is only possible to withdraw nationality of dual- or multiple-nationals, there is also a risk of a "race" between the States concerned in order to be quicker than the other State in depriving an individual of nationality. This "race" also sets the risk of lowering the due process guarantees.

49. Deprivation of nationality may also provoke the "export of risks", as a convicted or supposed terrorist deprived of his/her nationality may permanently join the "international army of terrorists", by either travelling to or remaining in conflict zones such as those in Syria or Iraq. Therefore, the risk is shifted from a European country to the conflict zone and might be more difficult to erase. Such a practice goes against the principle of international co-operation, established in various United Nations resolutions, and in particular in Security Council Resolution 2178 (2014),[35] which aims at preventing foreign fighters from leaving their country, and regional instruments (such as, for example, the Council of Europe Convention on the Prevention of Terrorism and its Additional Protocol (CETS Nos. 196 and 217)). It can also make more difficult or impossible the monitoring and prosecution of such people. States thus neglect and escape their obligation to investigate and prosecute terrorist offences at the cost of a durable and worldwide security. National security is only protected in the short term and the main threat is moved abroad, exposing local populations to violations of international human rights and humanitarian law.

50. It is not always clear what is the purpose of nationality deprivation in the context of combating terrorism. Where this measure is applied on the basis of criminal conviction, it is mainly aimed at the person's punishment. Where it is preventive, the prevented risk is "exported". This raises doubts about the proportionality of nationality deprivation as a counter-terrorism measure and States should consider using other measures. If the person is under criminal investigation, the competent court should consider the application of adequate provisional measures (e.g. a travel ban, arrest, house arrest, electronic surveillance, etc.) and the nature of the sentence to be imposed. A prison sentence, coupled with adequate ancillary penalties (such as a ban on exercising certain rights), may be sufficient in certain cases. Outside the context of criminal proceedings, some States facing terrorist threats (e.g. France, the Netherlands or the United Kingdom) use certain administrative measures for preventive purposes. There is a large range of such anti-terrorism measures available: travel bans, control orders, assigned residence orders, area restrictions, stripping of social benefits, etc. Although some of these measures are also controversial, they may be preferable alternatives to nationality deprivation if used in compliance with human rights standards.[36]

51. Human rights law makes clear that there is a right to a nationality and a prohibition of arbitrary deprivation of nationality that places significant limitations on the freedom of States to conceive of or treat nationality as a privilege. In light of this international law prohibition, the resurgence of State powers as regards deprivation of nationality of persons suspected of involvement in terrorist activities is highly problematic. Loyalty to the State not only plays a role in decisions on granting nationality, but continues to be an important factor in assessing the individual's behaviour afterwards. In some States, conduct that is "disloyal" to the State, including terrorist activities, may lead to revocation of nationality.[37] That increases the

34. United Nations, International Law Commission, Draft articles on the expulsion of aliens, 2017, Article 8 and commentary to it.
35. Adopted on 24 September 2014.
36. B. Boutin, Administrative Measures against Foreign Fighters. In Search of Limits and Safeguards, International Centre for Counter-Terrorism, The Hague, December 2016.
37. S. Krähenmann, The Challenge of "Foreign Fighters" to the Liberal International Legal Order, in "*How international law works in times of crisis*", edited by George Ulrich and Ineta Ziemele, Oxford University Press, forthcoming (2019).

risk of marginalisation and alienation of dual nationals or naturalised citizens, who might feel that they are treated as second-class citizens. This might eventually provoke radicalisation or even sympathy towards terrorist organisations.

52. To conclude, there are several arguments against deprivation of nationality in general. Nevertheless, States retain this power and some of them have expanded their use of this measure in the fight against terrorism. In the light of the above-mentioned human rights and other considerations, the deprivation of nationality should not occur on grounds of terrorist activities. Nevertheless, those States whose legislation allows it must ensure that deprivation of nationality is not arbitrary. In particular, it should be decided or reviewed by a criminal court, with full respect for all procedural guarantees, should not be discriminatory and should not lead to statelessness. It should be proportionate to the pursued objective and applied only if other measures foreseen in domestic law are not sufficient. The notion of "conduct seriously prejudicial to the vital interests" must be interpreted narrowly and be based on an individual assessment, and national security interests should be carefully weighed against human rights. Terrorism is indeed a serious threat to our societies, but we should not sacrifice our values because of it. Furthermore, deprivation of nationality is not an effective measure to combat terrorism and may even be counter-effective to the goals of counter-terrorism policy.