EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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# Applicants stripped of nationality for terrorism-related offences: no violation of Convention

In today's **Chamber** judgment[1] in the case of **Ghoumid and Others v. France** (application nos. 52273/16, 52285/16, 52290/16, 52294/16 and 52302/16) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 8 (right to respect for private life)** of the European Convention on Human Rights.

The case concerned five individuals, formerly having dual nationality, who were convicted of participation in a criminal conspiracy to commit an act of terrorism. After serving their sentences they were released in 2009 and 2010, then stripped of their French nationality in October 2015.

The Court reiterated the point, already made in a number of judgments, that terrorist violence constituted in itself a serious threat to human rights. As the applicants already had another nationality, the decision to deprive them of French nationality had not had the effect of making them stateless. In addition, loss of French nationality did not automatically entail deportation from France, but if such a measure were to be decided against them they would have the appropriate remedies by which to assert their rights.

Lastly, the Court observed that deprivation of nationality under Article 25 of the Civil Code was not a criminal sanction, within the meaning of Article 4 of Protocol No. 7 (right not to be tried or punished twice), and that this provision was therefore inapplicable.

## Principal facts

The applicants, Bachir Ghoumid, Fouad Charouali, Attila Turk, Redouane Aberbri and Rachid Ait El Haj are Moroccan nationals, except for the third applicant, who is Turkish. Mr Ghoumid, Mr Charouali and Mr Turk live in Mantes-la-Jolie, and Mr Aberbri and Mr Ait El Haj live in Les Mureaux.

In a judgment of 11 July 2007 the Criminal Court of Paris convicted the five applicants for having, during the period 1995 to 2004, participated in a criminal conspiracy to commit an act of terrorism. Mr Turk and Mr Aberbri lodged an appeal with the Paris Court of Appeal, which upheld their convictions on 1 July 2008.

In April 2015 the Minister of the Interior informed the applicants that, in view of the judgment of 11 July 2007 convicting them of an offence constituting an act of terrorism, he had decided to initiate the procedure to have their French nationality revoked, under Articles 25 and 25-1 of the Civil Code.

After the *Conseil d'État* had approved the procedure on 1 September 2015, the Prime Minister, by five decrees dated 7 October 2015, deprived the applicants of their French nationality. The applicants applied to the *Conseil d'État* for an interim measure to stay the execution of the decrees of 7 October 2015 and for their annulment on grounds of misuse of authority. The requests for an

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

interim measure were rejected by five similar decisions on 20 November 2015 and, on 8 June 2016, the *Conseil d'État* rejected the requests for annulment in five similar decisions.

Mr Aberbri and Mr Ait El Haj were interviewed by the Deportation Board of the Yvelines *département* on 8 September 2016. On 21 October 2016 the Prefect of the Yvelines informed them that the Board had given a favourable opinion on their deportation. They were summoned on 26 October 2016 by the police, but they were not notified of a deportation order.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicants argued that the revocation of their nationality had breached their right to respect for their private life. Under Article 4 of Protocol No. 7 (right not to be tried or punished twice), they argued that their loss of nationality was a "disguised punishment" constituting a sanction for conduct in respect of which they had already been convicted and sentenced in 2007 by the Paris Criminal Court.

The application was lodged with the European Court of Human Rights on 2 September 2016.

Judgment was given by a Chamber of seven judges, composed as follows:

Síofra **O'Leary** (Ireland), *President*,
Gabriele **Kucsko-Stadlmayer** (Austria),
Ganna **Yudkivska** (Ukraine),
André **Potocki** (France),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),
Anja **Seibert-Fohr** (Germany),

and also Victor **Soloveytchik**, *Deputy Section Registrar.*

## Decision of the Court

### Article 8

The Court noted that while the removal of an alien from a country in which his or her relatives were living could interfere with his or her right to respect for family life, the deprivation of French nationality had no consequence for the presence on French territory of the person concerned. The applicants had applied for "private and family life" residence permits and had been issued with acknowledgments of those applications, allowing them to live in France. They would be able, if necessary, to challenge in the administrative courts any rejection of their applications and any subsequent deportation measures. It followed that the deprivation of the applicants' nationality did not constitute interference with the exercise of their right to respect for their family life.

Arbitrary deprivation of nationality might, however, engage Article 8 of the Convention because of its impact on the private life of the person concerned. The Court therefore examined the case from that perspective. It looked at two points: it assessed whether the measures taken against the applicants had been arbitrary (whether they were lawful, whether the applicants had been afforded procedural safeguards, including access to appropriate judicial review, and whether the authorities had acted diligently and promptly); and it examined the consequences of the deprivation of nationality for the private life of the applicants.

The Court found that the administrative authorities had not immediately initiated proceedings for deprivation of nationality after the applicants' convictions. It was, however, able to accept that, faced with events of that kind, a State might re-assess, with greater stringency, whether individuals who had been convicted of a criminal offence constituting an act of terrorism still maintained a bond

of loyalty and solidarity with the State, and that it might therefore, subject to a strict proportionality test, decide to take measures against them which it had not initially chosen. The Court accordingly took the view that, in the particular circumstances of the case, the time which had elapsed between the applicants' convictions, enabling the procedure for deprivation of nationality to be initiated under French law, and the date on which that procedure had ultimately been implemented against them was not sufficient in itself to render that deprivation arbitrary.

As to the lawfulness of the measure, the Court noted that, at the time of the events, Article 25-1 of the Civil Code provided that deprivation of nationality could only be ordered within 10 years from the commission of the acts on which the criminal conviction was based.

However, the decisions depriving the applicants of French nationality had been taken in 2015, whereas the most recent events had dated from 2004. The Court noted that the legislature had extended that time-limit to 15 years in January 2006 and that the *Conseil d'État* had taken the view, in accordance with its case-law, that, in matters of administrative sanctions, the administrative and regulatory provisions laying down procedural conditions and formalities applied with immediate effect. The Court thus found that the measures taken against the applicants had been lawful.

The Court found that the applicants had enjoyed substantial procedural safeguards. In accordance with Article 61 of Decree no. 93-1362 of 30 December 1993, the authorities had given them prior notice of their intention to deprive them of French nationality and had explained to them the legal and factual grounds on which that measure would be based. The applicants had then been given one month to submit observations in their defence, which they had done.

The matter was subsequently referred to the *Conseil d'État* for an opinion, which had to give its approval for any deprivation of nationality. Having regard to that approval, the orders depriving the applicants of their nationality were drawn up, giving factual and legal reasoning, and the applicants had been given the opportunity –which they had used – to apply to the urgent applications judge and to the *Conseil d'État* to seek the annulment of the measure on grounds of misuse of authority. They had thus been able to assert their Convention rights, and in the annulment proceedings the *Conseil d'État* had carried out a proportionality review and had issued a reasoned decision.

The Court concluded that the decisions to deprive the applicants of French nationality could not therefore be regarded as arbitrary.

As to the consequences of those decisions for the applicants' private life, it was true that their prospect of remaining in France had consequently become more uncertain; as foreigners on French soil they could now be deported. A measure of that type would be likely to have an impact on their private life as it could lead to a loss of employment, separation from family, and the disruption of any social ties they had forged in France. However, since no deportation order was forthcoming, the Court was of the view that the consequence of the deprivation of nationality for their private life had been the loss of an element of their identity.

That being said, the Court was able to accept the Government's arguments. As it had repeatedly emphasised in previous cases, terrorist violence in itself constituted a serious threat to human rights. It could therefore understand the decision of the French authorities, following the attacks in France in 2015, to show greater firmness with regard to persons convicted of a terrorism offence. The applicants' participation in a criminal conspiracy to commit a terrorist act, of which they were all found guilty, had continued for 10 consecutive years.

The Court also noted that some of the applicants had just acquired French nationality when they had committed the offence in question and that the others had acquired it during the period of the offence. It further observed that all the applicants already had another nationality; the decision to deprive them of French nationality had not therefore had the effect of rendering them stateless.

In addition, loss of French nationality did not automatically entail deportation from France, but if such a measure were to be decided against them they would have the appropriate remedies by which to assert their rights.

The Court accordingly found that the decision to deprive the applicants of French nationality had not had disproportionate consequences for their private life. There had therefore been no violation of Article 8 of the Convention.

## Article 4 of Protocol No. 7

In order for Article 4 of Protocol No. 7 to be engaged, it was necessary, in particular, for an applicant to have been "tried" or "punished in criminal proceedings" for an offence in respect of which he or she had already been finally acquitted or convicted.

It was clear that the applicants had been "convicted", within the meaning of Article 4 of Protocol No. 7, as they had been convicted and sentenced for the offence of conspiring to commit a terrorist act. That conviction, dating from 2007, had in fact become final by the time they were deprived of French nationality, in 2015.

As to whether the measure of deprivation of nationality under Article 25 of the Civil Code was "criminal" in nature, the Court first noted that it was not classified as such under French law. It was provided for in the Civil Code, not the Criminal Code, and fell within the jurisdiction of the administrative courts rather than the criminal courts; the *Conseil d'État* had characterised it as an "administrative sanction".

Secondly, the Court found that, going beyond its punitive connotation, the deprivation of nationality under Article 25 of the Civil Code pursued a specific objective, as it sought to reflect the fact that an individual who had been granted French nationality had subsequently broken the bond of loyalty to France by committing a particularly serious offence, and in the case of terrorism undermining the very foundation of democracy. The measure was thus a solemn confirmation of the severance of the bond between the individual and France.

Thirdly, the Court did not underestimate the seriousness of the message that the State was thus addressing to those concerned or the potential impact on their identity. However, the degree of severity of the measure had to be seen in relation to the fact that deprivation of nationality under Article 25 of the Civil Code was a response to conduct which, when it came to terrorism, constituted an attack on democracy itself. Besides, this measure in itself did not entail the deportation from France of those concerned.

Consequently, deprivation of nationality under Article 25 of the Civil Code was not a criminal sanction, within the meaning of Article 4 of Protocol No. 7, and this provision was therefore inapplicable in the present case.

*The judgment is available only in French.*

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**Press contacts**
echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

**Denis Lambert (tel: + 33 3 90 21 41 09)**
Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Inci Ertekin (tel: + 33 3 90 21 55 30)
Patrick Lannin (tel: + 33 3 90 21 44 18)

**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.