Meijers Committee
standing committee of experts on international immigration,
refugee and criminal law

CM2016 Policy brief on 'Differential treatment of citizens with dual or multiple nationality and the prohibition of discrimination'

6 December 2020

1. Introduction

Over the past decades strong legal standards against discrimination have been developed both at the international and European levels. The prohibition of discrimination, including on the grounds of racial and ethnic origin, is firmly anchored in legal instruments, including but not limited to the International Convention on the Elimination of All Forms of Racial Discrimination, the European Convention on Human Rights (including its Twelfth Protocol), the EU Charter of Fundamental Rights and the EU Racial Equality Directive (2000/43/EC).

Whereas express racial or ethnic discrimination is clearly unlawful, attention must also be paid to rules or practices that do not directly discriminate on the grounds of racial or ethnic origin but that may nevertheless have the effect of putting racial and ethnic minorities at a disadvantage. This policy brief highlights the use of dual nationality as a selection criterion in legislation or administrative practice and the risk that this will negatively affect the equal enjoyment of rights and benefits by citizens of immigrant origin. In several European countries, dual nationals have been subjected to less favourable treatment in legislation or in practice.

One area where this risk is particularly visible is in nationality law. Over the last decade several countries in Western Europe amended their nationality laws in response to so-called homegrown terrorists.[1] New possibilities to withdraw the nationality of citizens who participated in Islamic State or other terrorist organisations were introduced in order to expel or avoid the return of those (ex-)citizens. In most cases these laws, complying with international standards against statelessness, provide that no deprivation is possible if it would result in the person becoming stateless. As a result, the effects of citizenship deprivation are felt only by persons with dual or multiple nationality. Often these dual nationals are citizens of immigrant origin who have lived for a long time (sometimes their whole lives) in the state concerned. On the other hand, 'single nationals' who engage in the same terrorist activities may face criminal prosecution but not the withdrawal of their citizenship.

Yet deprivation of nationality is not the only example of dual nationals being treated less favourably than single nationals. Exclusion of dual nationals from certain political functions or from voting rights has been proposed by populist politicians and is present in the national law

[1] On this development see e.g. A. Macklin & R. Bauböck (eds), 'The Return of Banishment: Do the New Denationalisation Policies Weaken Citizenship?', EUI Working Paper RSCAS 2015/14.

of some countries.[2] Populist parties have also expressed support for the denaturalisation and expulsion of dual nationals who have been convicted for criminal offenses.[3] In 2019, it became known that the Dutch tax authorities had for years used dual nationality as a criterion for withdrawal of child benefits on the ground of suspected fraud or checked income tax returns of dual nationals more strictly than those of single Dutch nationals.[4] Also, in the 2007 German Bill implementing the Family Reunification Directive 2003/86/EU it was suggested that the exemption of the income requirement in cases of reunification of spouses of German nationals should not always be applied in case of German dual nationals who could be expected to live with their spouse in the country of the other nationality.[5] This suggestion was hardly compatible with the position of the *Bundesverfassungsgericht* that the additional citizenship may not result in a restriction of the legal effects of German citizenship, particularly their right to reside in Germany.[6]

A 2019 EU Regulation, establishing an EU wide digital database registering the criminal convictions of third-country nationals in a Member State (ECRIS-TCN), provides that the database shall include citizens of the Union who also hold the nationality of a third country.[7] The dual Union citizens concerned are treated as third-country nationals and, hence, less favourably than single Union citizens.

Where dual nationals are subject to differential treatment, there is a risk that their citizenship will become 'second class' or, in case of withdrawal of nationality, 'conditional citizenship'.[8] This policy brief aims to establish whether, and to what extent, dual nationals are protected against discrimination on the grounds of nationality and, indirectly, on the grounds of racial or ethnic origin. Paragraph 2 provides background information on the causes and occurrence of dual nationality in Europe. The case of citizenship deprivation of dual nationals convicted for or suspected of terrorist activities is then presented as an example to illustrate how distinctions between single and dual nationals affect citizens of immigrant origin and to explore the debates that have taken place in several states, especially with regard to the potentially discriminatory nature of such measures (paragraphs 3-5). Paragraph 6 analyses

[2] E.g. The Netherlands, see Kamerstukken 35144 of 18 February 2019. In *Tanase v. Moldova* the ECtHR held a law preventing elected MPs with multiple nationalities from taking seats in Parliament to be disproportionate and in violation of Article 3 of Protocol No. 1, Grand Chamber judgment 27 April 2010, appl. no. 7/08.
[3] See for example the 2017 election manifesto of the Dutch Freedom Party (PVV) (https://www.pvv.nl/visie.html) and the 2019 election manifesto of the Flemish party Vlaams Belang (https://www.vlaamsbelang.org/wp-content/uploads/2019/04/programma2019.pdf, p. 55).
[4] Autoriteit Persoonsgegevens, *Belastingdienst/Toeslagen, De verwerking van de nationaliteit van aanvragers van kinderopvangtoeslag*, 17 July 2020.
[5] "Dies kommt in besondere bei Doppelstaatlern in Bezug auf das Land in Betracht, dessen Staatsangehörigkeit sie neben der deutschen besitzen", Bundestag Drücksache 16/5065, p. 171. For other restrictions in the same bill affecting especially German citizens on non-German descent, see A. Kiessling, ´Die Funktion der Staatsangehörigkeit als verlässliche Grundlage gleichberechtigter Zugehörigkeit´, *Der Staat*, 2015, p. 32.
[6] BVerfG 4 September 2012, point 30, official translation: www.bverwg.de/040912U10C12.12.0
[7] Article 2 of EU Regulation 2019/816; see Meijers Committee Notes CM1710, https://www.commissie-meijers.nl/sites/all/files/cm1710_note_on_ecris-tcn.pdf and CM1803, https://www.commissie-meijers.nl/sites/all/files/cm1803_letter_libe_1.pdf and J. Bast et al, *Human Rights Challenges to European Migration Policy (REMAP study)*, published online October 2020, p. 108.
[8] See Kiessling 2015, p. 12, 22 and 32-33.

legal standards on non-discrimination in relation to dual nationals; these standards are then applied to the case of citizenship deprivation (paragraph 7). Paragraphs 8 and 9 present our conclusions and recommendations. We submit that these findings can be relevant for other less extreme forms of unfavourable treatment of dual nationals.

2. Dual nationality: causes, acceptance and occurrence of dual nationality

During the first post-war decades, dual nationality was considered a problematic exception to the general rule that a person could and should only have close relations with one state and, thus, one nationality. The 1963 Council of Europe Convention on the Reduction of Cases of Multiple Nationality reflected this dominant idea. In recent decades, dual nationality has become more acknowledged. In 1990 dual nationality was accepted in 5 out of 18 Western European states and in 2010 in 14 of those 18 states.[9] In 2020, only Austria and the Netherlands are mutually bound by the rules against dual nationality in the 1963 Convention. The 1997 European Convention, ratified by 13 EU Member States, is the expression of a development to a more liberal position towards multiple nationalities, a recognition of the fact that persons can have legal and emotional relations with more than one country.[10]

The main causes of dual nationality are migration, equal treatment of men and women in nationality law (children in mixed marriages acquiring one nationality from their mother and another from their father), integration policies and *ius soli* rules.[11] In Germany, since 2000, children of lawfully settled non-German parents acquire German nationality at birth next to the nationality of their parents. The obligation for these German nationals to choose between their two nationalities, once they become of age, was de facto abolished in 2014.[12] In Belgium and the Netherlands, the third generation acquires Belgian or Dutch nationality at birth even if both parents are non-nationals.[13] Thus those children, generally, are dual nationals at birth. This development is also reflected in the increasing number of exceptions to the rule, still in force in some European states, that applicants for naturalisation have to give up their original nationality. The German Constitutional Court concluded in 2008 that recent changes in the legislation indicated that reduction of dual or multiple nationality got less priority and that private interests in the acquisition or retention of dual nationality got the same weight as the public interest in avoiding dual nationality.[14] Between 2015 and 2018, approximately 60% of those who naturalised in Germany retained their first nationality.[15] In the Netherlands, about

[9] Y. Harpaz and P. Mateos, 'Strategic citizenship: negotiating membership in the age of dual nationality', *Journal of Ethnic and Migration Studies* 2019, p. 843-857.
[10] See R. Bauböck et al (eds) (2006), *Acquisition and Loss of Nationality: Policies and Trends in 15 European States: Comparative Analyses*, Amsterdam: Amsterdam University Press; T. Faist (ed.) (2007) *Dual Citizenship in Europe*, Aldershot: Ashgate; D.Thränhardt (2017), *Einbürgerung im Einwanderungsland Deutsland*, Bonn, Fredrich-Ebert-Stiftung, p. 24 and M. Vink, 'The international diffusion of expatriate dual citizenship', *Migration Studies* 2019, p. 362-383, https://doi.org/10.1093/migration/mnz011.
[11] H.U. Jessurun d'Oliveira, 'De normaliteit van dubbele nationaliteit', *Asiel & Migrantenrecht* 2019, p. 432-440.
[12] Act of 13 November 2014, *Bundesgesetzblatt*. I, p. 1714.
[13] Art. 3(3) *Rijkswet op het Nederlanderschap*; Art. 11 *Wetboek van de Belgische nationaliteit/Code de la nationalité belge*.
[14] *Bundesverfassungsgericht* 10 April 2008, 14 BVerwGe, 5 C 28.07.
[15] *12. Lagebericht der Integrationsbeauftragten* (2019) Berlin, *Bundesministerium des Innern*, p. 385.

65% of those naturalised are dual nationals after naturalisation; 20% automatically loses their previous nationality and 15% actually renounces their previous nationality.[16]

Numbers

Data on the number of dual nationals are available for a few countries only. Registration policies vary considerably. In the Netherlands, the registration of dual nationality in the population register was abolished in 2014 because such registration could give rise to discrimination.[17] Of course, the non-registration did not change the legal status of the dual nationals and it is now known that at least the tax authorities continued to illegally register and use information on dual nationality (see paragraph 1). In Germany, registration was introduced in 2015. The previous non-registration obscured among others the dual nationality of hundreds of thousands ethnic Germans (*Aussiedler*) who migrated from Poland, Romania, Russia and Kazakhstan.[18]

The number of dual national Dutch in the Netherlands in 2014 was 1.3 million, i.e. 8% of the total population.[19] Their number doubled since 1998. The German Statistical Office in 2015 estimated the total number of German nationals with another nationality living in Germany to be in between 1.7 million and 4.3 million. According to the Office the first number, based on self-reporting in a micro-census, is probably too low and the second number based on the population registration is probably too high.[20] In 2010, the number of French citizens with dual nationality was estimated, on the basis of census data, at 3.3 million, i.e. 5% of the total population.[21] In the 2011 census in England and Wales 0.6 million residents reported to have two passports.[22] The actual number of UK nationals with dual nationality most probably is far higher.

Predominantly of immigrant origin

In Germany and the Netherlands, about half of the dual nationals acquire dual nationality at birth and the other half later in life.[23] Considering the four main causes of dual nationality -

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[16] G.-R. de Groot & M. Vink (2008), *Meervoudige nationaliteit in Europees perspectief. Een landenvergelijkend overzicht,* Universiteit Maastricht, p. 118 and *Monitor naturalisatie en optie 2014-2017*, The Hague, *Ministerie van Justitie en Veiligheid*, 2018, p. 48-49.
[17] H.U. Jessurun d'Oliveira, 'Vreemde nationaliteit en de Basisregistratie Personen Hoe lang nog schoorvoeten?', *Asiel & Migrantenrecht* 2016, p. 480-483.
[18] Thränhardt 2017.
[19] Centraal Bureau voor de Statistiek (CBS), *Nederlanders; geslacht, dubbele nationaliteit, 1 januari 1998 – 2014*, https://opendata.cbs.nl/statline/#/CBS/nl/dataset/70798ned/table?ts=1602360016541.
[20] Statistisches Bundesamt, *Bevölkerung und Erwerbstätigkeit: Bevölkerung mit Migrationshintergrund: Mikrozensus 2015*, Fachserie 1, Reihe 2.2., Wiesbaden, p. 17 and Thränhardt 2017, p. 18-20.
[21] P. Simon (2010), *Trajectoires et Origines, Enquête sur la diversité des populations en France*, Paris: INED/INSEE, p. 117-122 and Le Monde 24 December 2015.
[22] https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/adhocs/006277ct06442011censusdualpasportukandirishnationaltocountry.
[23] Statistisches Bundesamt 2015, CBS 2014.

birth into a mixed marriage, from naturalised immigrant parents or from non-citizen parents in country with a *ius-soli* system or naturalisation - it is clear that the large majority of dual nationals are of immigrant origin. They are migrants or children of migrants. In countries where the official policy is to avoid dual nationality (e.g. Germany and the Netherlands), exceptions are made for large categories of persons who are not required to denounce their previous nationality at naturalisation, such as refugees, spouses of nationals or for whom renunciation is legally impossible. Due to that last exception almost all Dutch nationals of Moroccan origin are dual nationals. French researchers concluded that 90% of the French dual citizens are immigrants or descendants of immigrants.[24] This fact is relevant for answering the legal question whether unfavourable treatment in legislation or government practice which *de iure* or *de facto* can only be applied to dual nationals is compatible with the prohibition of racial or ethnic discrimination. The overwhelming majority of single Dutch, French or German nationals will be ethnic Dutch, French or Germans. They do not run the risk of being deprived of their nationality however outrageous the terrorist acts they committed may be. The overwhelming majority of dual nationals are of immigrant origin and run the risk of being deprived of their nationality if their engagement in terrorist activities is established.

Many dual nationals do not have the option of getting rid of their second nationality since the countries concerned in law or in practice do not allow their nationals to renounce their nationality. Considering their other nationality, according to the official Dutch statistics, in 2014 more than 350,000 Dutch dual nationals were in that position. In the 2015 official estimate 15% of the German dual nationals had the nationality of a country that does not allow voluntary loss of nationality.

3. Recent legislation on withdrawal of nationality in EU Member States in relation to the fight against terrorism

The differences in treatment experienced by dual nationals are well illustrated by the developments in several EU Member States (and the UK) regarding the withdrawal of nationality in relation to the fight against terrorism. Over the past ten years several Member States have introduced or reinforced legislation enabling the revocation of nationality of citizens who are convicted for or believed to have engaged in terrorist activities. These legislative changes were generally spurred by fears of terrorist acts by nationals of EU Member States who sympathize with Islamic State and/or travelled to Syria or Iraq in connection with the group. The table below shows which Member States have enacted legislation with the specific aim of withdrawing the nationality of (suspected) terrorists. With the exception of France, Denmark and the UK, this new ground for withdrawal was introduced quite recently, in or after 2014 when IS started its activities in Syria. In all States but Italy and the UK revocation of nationality is only possible if this will not result in the person concerned becoming stateless. The consequence of this exemption is that only persons with dual (or multiple) nationality can lose their nationality under the relevant provisions.

[24] Simon 2010.

Country	Year of introduction	Ground for withdrawal	Naturalised citizens only?	Exemption in case of statelessness?	Previous criminal conviction or withdrawal by court
Austria	2015[25]	membership of armed organisation abroad	no	yes	no
Belgium	2015[26]	conviction of min. 5 yrs for terrorist offence(s)	yes (Belgians by birth are exempted)	yes	yes
Denmark	2004[27]; 2019[28]	conviction for crimes against the state, including terrorist offence(s); acts that are seriously detrimental to the country's vital interests	no	yes	court decision not required in case of act seriously detrimental to the country's vital interests[29]
Finland	2019[30]	conviction of min. 5 yrs for terrorist crime against the vital interests of Finland, or the attempt to participate in such a crime	no	yes	yes
France	1998; 2006[31]	conviction for terrorist offence(s) committed before or within 15 yrs after naturalisation.	yes, until 15 yrs after naturalisation	yes	yes
Germany	2019[32]	active involvement with terrorist militia abroad	no	yes	no
Italy	2018[33]	conviction for terrorist offence(s)	yes	no	yes
Netherlands	2010[34]; 2017[35]	conviction for terrorist offence(s);	no	yes	where citizenship is withdrawn

[25] § 33 (2) *Staatsbürgerschaftsgesetz 1985*.
[26] Art. 23/2 *Wetboek van de Belgische nationaliteit/Code de la nationalité belge.*
[27] § 8B (1) *Bekendtgørelse af lov om dansk indfødsret.*
[28] § 8B (3) *Bekendtgørelse af lov om dansk indfødsret.*
[29] Institute on Statelessness and Inclusion, *The World's Stateless. Deprivation of nationality*, March 2020, p. 215-216.
[30] Arts 33(a) and 33(b) 359/2003 *Kansalaisuuslaki*. Information for Finland is partly based on the Finnish contribution to the European Migration Network study *Pathways to citizenship for third-country nationals in the EU Member States*, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/09_finland_pathwayds_to_citizenship_2019_en.pdf.
[31] Arts 25 and 25-1 *Code Civil*. The deprivation ground was introduced in 1998, in 2006 the term within which deprivation can take place was extended to 15 years after naturalisation.
[32] § 28 (2) *Staatsangehörigkeitsgesetz*.
[33] Art. 10-bis *Legge 5 febbraio 1992, n. 91.*
[34] Art. 14 (2) *Rijkswet op het Nederlanderschap.*

		membership of armed organisation abroad posing a threat to national security			because of membership of an armed organisation, this is done by administrative decision
Romania	1991[36]	connection to or support for terrorist organisation	yes	no	no
United Kingdom	2006[37]; 2014[38]	withdrawal of citizenship is conducive to the public good; withdrawal conducive to the public good because of behaviour seriously prejudicial to UK's vital interests	yes, where the ground is behaviour seriously prejudicial to the UK's vital interests	yes, unless the ground is behaviour seriously prejudicial to the UK's vital interests and 'there is reasonable ground to believe that another nationality can be obtained'.	no

Unless otherwise indicated the data presented in this table are taken from the Global Citizenship Observatory (GLOBALCIT) Database on Modes of Loss of Citizenship (last visited 24 November 2020) or from the report 'Withdrawing nationality as a measure to combat terrorism: a human rights compatible approach?', by the Committee on Legal Affairs and Human Rights of the Council of Europe Parliamentary Assembly (PACE), Doc. 14790 of 7 January 2019.

From the table it also appears that in some states (Belgium, France and Italy) only naturalised citizens or those who acquired the nationality after birth in another way (declaration or option) can be deprived of their nationality because of terrorist activities. In France, citizens can be deprived of their nationality until 15 years after naturalisation. In Belgium a similar restriction in time (10 years) applied until 2015. In Austria, Denmark, Germany, Finland and the Netherlands, citizens by birth can be deprived of their nationality. This also applies to the revocation ground most used in the UK (conducive to the public good). Four of the six states having the power to revoke the nationality of citizens by birth may take that decision without a previous criminal conviction. A previous conviction is required in Belgium, France and Italy but also in Denmark and Finland.

4. Practice in four EU Member States and the UK

[35] Art. 14 (4) *Rijkswet op het Nederlanderschap.*
[36] Art. 25 (1)(d) *Legea cetăţeniei române.*
[37] Art. 40 (2) British Nationality Act.
[38] Art. 40 (4A) British Nationality Act.

Between 1998 and 2020, the provision on *déchéance de nationalité* in Article 25 of the **French** Code Civile was applied to 14 naturalised citizens after a criminal conviction for terrorist activities. Seven withdrawals occurred before 2007; none during the Sarkozy presidency (2007-2012); five in 2015 and one in 2019.[39] The 2015 cases concerned five French citizens, four also having Moroccan and one also having Turkish nationality. These cases resulted in the *Ghoumid* judgment of the ECtHR in 2020.[40] A 2016 proposal by president Hollande to expand the possibilities for withdrawal in relation to terrorism was unsuccessful (see paragraph 5).

In **Belgium,** during the decade before the 2015 amendment of the nationality law, less than 10 naturalised Belgian citizens were deprived of the Belgian nationality after a criminal conviction for terrorist acts.[41] The deprivation provision introduced in 2015[42] was applied during its first years in a few cases only, one concerning the leader of the Sharia4Belgium organisation. In 2019 13 naturalised Belgian citizens were deprived of that nationality after a conviction for terrorist crimes.[43]

Between April 2016 and November 2019 the **Dutch** minister of Justice withdrew the Dutch nationality of seven persons after a final criminal conviction for terrorist activities.[44] Four of these persons returned to the country of their other nationality, three of them pending their appeal against the withdrawal decision.[45] Between September 2017 and July 2020, the minister withdrew the Dutch nationality of another 24 persons on the ground of having participated in a terrorist organisation, for which a final criminal conviction is not required. The decisions in these cases were based either on a criminal conviction in absentia or on information of the national intelligence agency (AIVD).[46] On the same day, they were declared to be undesirable aliens, which made future presence in the Netherlands a serious criminal offence. All 24 ex-Dutch nationals were outside the Netherlands at the time the decision was made. On the basis of their family names it is assumed that all 24 were Dutch nationals of immigrant origin; 18 were born in the Netherlands, five in Morocco and one in Iraq.[47]

In the 2017 coalition agreement between the CDU/SCU and the SPD in **Germany** it was agreed that a new rule on deprivation of nationality on the ground of active participation in fighting by a terrorist organisation abroad would be introduced. The relevant provision entered into force in November 2019, six months after Islamic State lost its final territory near the border between Syria and Iraq. Retroactive application is not permitted. So far, no deprivation decision has been taken on this new ground.

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[39] Le Monde 24 October 2019.
[40] ECtHR 25 June 2020, app.no. 52273/16, *Ghoumid and others/France*.
[41] Estimate by Patrick Wautelet in Belga News 29 January 2015.
[42] P. Wautelet, 'Deprivation of citizenship for 'jihadists'. Analysis of Belgian and French practice and policies of the principle of equal treatment', in: P. Kruiniger (ed.), *Jihad, Islam en Recht. Jihadisme en reacties vanuit het Nederlandse en Belgische recht*, RIMO Vol. 30, 2017, p. 49-74.
[43] Minister of Justice Koens in the Parliamentary Commission for Justice on 11 March 2020, https://www.dekamer.be/doc/CCRI/html/55/ic136x.html.
[44] Art. 14 (2)(b) *Rijkswet op het Nederlanderschap*.
[45] TK 29 754, nr. 528, letter of the Minister of Justice and Security of 1 November 2019.
[46] Art. 14 (4) RWN *Rijkswet op het Nederlanderschap*.
[47] Notices in the official journal *Staatscourant.*

In the **UK**, the Home Secretary took deprivation decisions in 36 cases on the ground that deprivation was "conducive to the public good" between 2006 and 2015. Under Theresa May, serving as Home Secretary from 2010 to 2016, the number of deprivation decisions increased considerably. From 2010 until February 2020 about 150 British nationals were deprived of their nationality on those grounds.[48] The available evidence suggests that most of those deprived were citizens originally from Muslim-majority countries. Not all deprivation decisions were taken on terrorism related grounds.[49]

From the above it appears that in Belgium, France, the Netherlands and the UK the provisions on withdrawal are applied in practice, but not in Germany although this may be due to the fact that the provision was only introduced in 2019. The number of withdrawals varies between 14 during three decades in France and 150 over the last ten years in the UK. The available evidence suggests that the new deprivation grounds are applied primarily or almost exclusively to persons who or whose parents originate from majority Muslim countries. For the Netherlands this comes as no surprise as by law only membership of Al Qa'ida, ISIS, Hay'at Tahrir al-Sham and related organisations may result in deprivation of nationality without a final criminal conviction. In the Netherlands, most deprivation decisions were taken in the absence of a final criminal conviction. In the UK, the deprivation ground used in most cases ("conducive to the public good") is not contingent on a criminal conviction. The recent numbers of withdrawals are far lower than the (tens of) thousands of citizens who were deprived of their nationality before, during or shortly after the Second World War in Nazi-Germany and Vichy-France (concerning Jewish citizens) or in Canada and the USA (concerning citizens of Japanese descent).

5. Political and legal debate in France and Germany

In countries with a history of withdrawal of nationality of specific ethnic groups - Jewish citizens, during the Nazi regime in Germany, and the Vichy government in France - recent proposals introducing new grounds for withdrawal triggered a principled debate. In other countries, such as the UK and the Netherlands, that debate started mainly after the new rules were applied in practice.

Debates in France

The current rules on deprivation of French nationality after a criminal conviction for terrorist acts in Article 25 of the *Code Civil* were introduced in 1996, after the attacks by an Algerian extremist group in Paris and other cities in 1995. This provision applies only to citizens who acquired French nationality later in life (by naturalisation or declaration) and, originally, only during the first 10 years after acquisition of that nationality. The *Conseil Constitutionnel* held in 1996 that born and naturalised French nationals have equal rights, but that different

[48] House of Commons Briefing Paper 06820 of 9 June 2017 and Secretary of State Sajid Javid in the House of Commons on 20 February 2020, c1485.
[49] M.J. Gibney, 'Denationalisation and discrimination', *Journal of Ethnic and Migration Studies* 46:12 (2020), p. 2551-2568, DOI: 10.1080/1369183X.2018.1561065.

treatment of naturalised French was justified considering its limitation in time and the extreme seriousness of the acts committed. Without further reasoning, it stated that the proposal did not violate Article 8 ECHR.[50] In 2006, the ten years period was extended to 15 years.[51] In 2010, a Bill proposed by President Sarkozy allowing the withdrawal of the French nationality of each person of foreign origin ("*toute personne d'origine étrangère*") who killed a police officer or another public official was rejected in the Senate. In January 2015, the *Conseil Constitutionnel* confirmed its 1996 position on the constitutionality of the rule in the *Code Civil* but added that a further extension of the 15 years term would violate the constitution.[52]

Shortly after the November 2015 attacks on the *Bataclan*, President Hollande proposed to amend the constitution and the *Code Civil* to enable the deprivation of nationality of born French citizens with a second nationality.[53] This proposal received a positive advice from the *Conseil d'Etat* which considered *inter alia* that the proposal did not violate the equality principle. The *Conseil d'Etat* argued that dual nationals could not be compared to single nationals because the latter would become stateless if they were deprived of their French nationality. Also, the proposal would not result in differential treatment of born and naturalised French citizens as the latter could already be deprived of their nationality in case of a conviction for terrorist acts. The *Conseil d'Etat* found that the proposed legislation could result in the loss of EU citizenship or constitute an interference with the right to respect for private life protected by Article 8 ECHR and could therefore be subject to a proportionality assessment by the CJEU or the ECtHR. However, the *Conseil d'Etat* believed that the legislation would be considered proportionate given the very serious nature of the crimes that would lead to citizenship deprivation. The *Conseil d'Etat* did advise the legislator to adapt the proposal to the effect that only the most serious criminal acts would make the perpetrators liable to losing their French citizenship.[54]

The proposal triggered a strong debate between and within political parties and in the media.[55] The Minister of Justice, Christiane Taubira, herself of immigrant origin, stepped down after the publication of a book in which she criticized the proposed amendments.[56] Emmanuel Macron, at the time Minister of Economic Affairs, also openly criticized the proposal. The *Assemblée Nationale* and the Senate both amended the proposal and adopted different versions with a simple majority. The proposal was withdrawn in March 2016 after it failed to receive the 3/5 majority required for a constitutional amendment. Thus, the 1996 rule in Article 25 Code Civil with the amendment of 2006 is still in force.

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[50] Decision no. 96-377 of 16 July 1996.
[51] Article 21 of Loi no. 2006-64 of 23 January 2006.
[52] Décision n° 2014-439 QPC du 23 janvier 2015. For a critical comment on this decision in English see F.-X. Millet, 'Full-fledged citizens vs. citizens on probation in France. On the Conseil constitutionnel judgment relating to deprivation of nationality', *SIDIblog*, 23 February 2016.
[53] Proposal no. 3381 of 23 December 2015
[54] Advice no. N° 390866 of 11 December 2015.
[55] P. Weil and J. Lepoutre, *Refusons l'extension de la déchéance de la nationalité!,* Le Monde, 3 December 2015; R. Badinter, *La déchéance de la nationalité*, Le Monde, 5 February 2016.
[56] Ch. Taubira (2016) *Murmures à la jeunesse*, Paris: Philippe Rey.

Recent debate in Germany

In Germany, the debate on the issue has been spurred by the amendment, in 2019, of the *Staatsangehörigkeitsgesetz* (StAG) introducing the possibility to withdraw the German nationality of dual nationals who have been actively involved with terrorist militia abroad (see paragraph 3). The debate has largely taken place in the context of a hearing of experts organised by the Home Affairs Committee (*Ausschuss für Inneres und Heimat*) of the German *Bundestag*.[57]

Arguments against the new ground for loss of German nationality mostly focused on the need to avoid second-class citizenship. Opponents of the new provision have argued that it introduces a difference in treatment between dual and single nationals whereby German citizenship is made conditional for dual nationals only. This conditionality is lifelong as the law does not limit the period during which citizenship can be withdrawn (e.g. up to 15 years after naturalisation, as in the case of France).[58] It has also been pointed out that most dual nationals in Germany are immigrants or children of immigrants.[59] Critics have argued that while the new provision may be compatible with international standards against statelessness, this does not mean that it is also compatible with the prohibition of discrimination. These critics put forward that the differential treatment of dual and single nationals is not justified because only dual nationals may be deprived of their German nationality, whereas terrorist acts may be perpetrated by dual and single nationals alike.[60] Finally, it is recalled that the *Bundesverfassungsgericht* has called for particular prudence to be exercised when distinctions are drawn between different groups of citizens and attention has been drawn to the potentially negative effects of such distinctions on integration.[61]

On the other hand, experts arguing **in favour** of the new provision claimed that the distinction between single and dual nationals would not amount to discrimination. They argued that single and dual nationals do not find themselves in relevantly similar situations as the possession of a second nationality constitutes a relevant difference and dual nationals would not become stateless upon withdrawal of their German nationality.[62] One expert argued that dual nationals can avoid differential treatment by giving up their second nationality.[63] It was also submitted that dual nationality does not constitute a suspect discrimination ground under

[57] Deutscher Bundestag, Ausschuss für Inneres und Heimat, *Protokoll der 61. Sitzung vom 24. Juni 2019 (BT-Drucksache 19/61)* available at https://www.bundestag.de/resource/blob/654804/31c6d1554445463979141f092a7f4159/Protokoll-24-06-2019-data.pdf.
[58] K.F. Gärditz & A. Wallrabenstein, 'Staatsangehörigkeit in Geiselhaft', *Verfassungsblog* 16 June 2019.
[59] Gärditz & Wallrabenstein 2019.
[60] Expert opinion by T. Tabbara presented to the Deutscher Bundestag on 24 June 2019, see footnote 57.
[61] Tabbara 2019, referring to BVerfG 116, 24-69.
[62] Expert opinions by U. Vosgerau and W. Kluth presented to the Deutscher Bundestag on 24 June 2019, see footnote 57.
[63] Expert opinion by Ph. Wittmann presented to the Deutscher Bundestag on 24 June 2019, see footnote 57.

German constitutional law.[64] With regard to indirect discrimination on the ground of racial or ethnic origin, it has been argued that this is not a problem as the German provision, unlike French law, does not distinguish between German citizens by birth and those who obtained German citizenship through naturalisation.[65] Finally it was argued that to prohibit differential treatment of single and dual nationals would amount to an absolute prohibition of citizenship deprivation.[66] For a discussion of these arguments see paragraph 7.

6. International instruments relevant for the lawfulness of differential treatment of citizens with dual or multiple nationality

The focus of this paragraph is on international instruments relevant for our central question: does less favourable treatment of citizens with dual or multiple nationality amount to legally prohibited discrimination?

- European Union

Discrimination on the ground of nationality

Article 21(2) of the EU Charter of Fundamental Rights and Article 18 TFEU both provide that any discrimination on grounds of nationality is prohibited, within the scope of application of the treaties. To date, these prohibitions have been interpreted to apply to situations where a national of one Member State is treated in a discriminatory manner as compared with a national of another Member State. Differentiations between EU citizens and third-country nationals are not covered.[67] The Court of Justice has not ruled yet on the question whether the provisions also apply to distinctions between single and dual nationals.

Articles 21(2) CFR and 18 TFEU apply to differences in treatment within the scope of application of the treaties. Assuming that distinctions between single and dual nationals are covered, these provisions could apply, for example, in the situation where a dual Dutch-Turkish national moves to Germany from the Netherlands – thus making use of the right to free movement – and faces differential treatment with regard to social security benefits or tax advantages on account of having a second nationality. With regard to the loss of nationality, the CJEU has made it clear that this comes within the scope of EU law when it results in the loss of EU citizenship and the rights attaching thereto.[68] Assuming that Articles 18 TFEU and 21(2) CFR apply to distinctions between single and dual nationals, they would therefore be applicable in situation where a dual EU-third country national (e.g. French-Moroccan) is deprived of his EU nationality and thereby ceases to be an EU citizen.

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[64] Expert opinion by D. Thym presented to the Deutscher Bundestag on 24 June 2019, see footnote 57.
[65] D. Thym, 'Bürger zweiter Klasse im Einwanderungsland?', *Die Verwaltung* 52 (2019) 3, p. 423.
[66] *Idem*.
[67] CJEU 4 June 2009, *Vatsouras and Koupatantze*, C-22/08 and C-23/08, EU:C:2009:344, paras 51-52 ; CJEU 7 April 2011, *Francesco Guarnieri & Cie*, C-291/09, EU:C:2011:217, para 20; General Court 20 November 2017, *Udo Voigt v. European Parliament*, T-618/15, EU:T:2017:821, paras 80-81 and General Court 20 November 2017, *Andrei Petrov and others v. European Parliament*, T-452/15, EU:T:2017:822, paras 39-40.
[68] CJEU (GC) 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104, para 42 and CJEU (GC) 12 March 2019, *Tjebbes and others*, C-221/17, EU:C:2019:189, para 32.

Discrimination on the ground of racial or ethnic origin

Directive 2000/43 prohibits both direct and indirect discrimination based on racial or ethnic origin in the fields of employment, education, social benefits and the supply of goods, services and housing. Differences in treatment on the basis of nationality are expressly excluded from the scope of the Directive.[69] However, distinctions between single and dual nationals may be covered if they amount to indirect discrimination on the grounds of racial or ethnic origin.

The EU Court of Justice has given a rather restrictive interpretation of the concept of ethnic origin in Directive 2000/43. In the case of *Jyske Finans,* the Court held that the concept of indirect ethnic discrimination is only applicable in situations where persons of a particular ethnic origin are put at a disadvantage.[70] Hence, Directive 2000/43 could cover a distinction between single and dual nationals if the latter are of the same ethnic origin (for example, Dutch-Moroccans) but not if the group of dual nationals consists of persons of mixed ethnic origins (for example British citizens of whom some are of Bangladeshi origin and others of Caribbean origin). As will be discussed below, this narrow understanding of the concept of racial or ethnic origin is at odds with the case law of the European Court of Human Rights (ECtHR), which accepts that 'ethnic origin' can refer to all persons of foreign ethnic origin.

The material scope of Directive 2000/43 does not cover the acquisition and loss of nationality. Article 21(1) EU Charter of Fundamental Rights also prohibits discrimination on the grounds of *inter alia* racial and ethnic origin; like the other fundamental rights in the Charter the scope of this provision extends to all situations within the scope of EU law.[71] As previously mentioned, the CJEU has held that the withdrawal of the nationality of a Member State falls within the ambit of EU law if it results in the loss of Union citizenship and of the rights attached to that status.[72] In these situations Member States must have due regard to EU law including the prohibition of racial and ethnic discrimination laid down in the Charter. Finally, when acting with the scope of application of EU law, Member States must also respect the principle of non-discrimination as a general principle of EU law.[73] Hence, if dual nationals lose their EU citizenship as a result of citizenship deprivation by a Member State, it must be ascertained that such deprivation is not contrary to the prohibition of racial or ethnic discrimination.

- Council of Europe

Articles 5 and 17 (1) European Convention on Nationality

According to Article 7 of the European Convention on Nationality (ECN), a State Party may provide for the loss of its nationality in case of 'conduct seriously prejudicial to the vital

[69] Art. 3 (2) Directive 2000/43; see also recital 13.
[70] CJEU 6 April 2017, *Jyske Finans A/S*, C-668/15, EU:C:2017:278, para 31; see also CJEU 15 November 2018, *Heiko Jonny Maniero*, C-457/17, EU:C:2018:912, para 47.
[71] Article 51 (1) CFR.
[72] *Rottmann* para 42 and *Tjebbes* para 32.
[73] E.g. CJEU 4 June 2015, *P. and S.*, C-579/13, EU:C:2015:369, para 44.

interests of the State Party', unless the person concerned would thereby become stateless. It follows that deprivation of citizenship on this ground can only take place if the person concerned has dual or multiple nationality. At the same time, the ECN provides that dual nationals are entitled to full citizenship in the state of residence, on an equal footing with mono nationals. This follows from Article 17 (1) ECN which states that 'nationals of a State Party in possession of another nationality shall have, in the territory of the State Party in which they reside, the same rights and duties as other nationals of that State Party'.

As dual nationality is often held by people of migrant origin (see paragraph 2), differential treatment of dual and single nationals often equals indirect differential treatment of racial or ethnic minority groups. Article 5(1) ECN provides that the rules of the States Parties on nationality shall not 'contain distinctions or include any practices which amount to discrimination, including on the grounds of race, colour or national or ethnic origin'. Article 5(2) ECN adds that the States Parties 'shall be guided by the principle of non-discrimination between its nationals', regardless of whether the nationality was obtained at birth or subsequently. The latter provision speaks against laws which provide that only naturalised citizens can be deprived of their citizenship (see further paragraph 7).

Articles 8 and 14 ECHR and Article 1 Twelfth Protocol ECHR

A prohibition of discrimination is included in Articles 14 ECHR and 1 Twelfth Protocol ECHR. Whereas Article 14 applies to differences in treatment falling within the ambit of the substantive rights and freedoms guaranteed in the Convention,[74] Article 1 Twelfth Protocol is applicable to all the rights set forth in the law of the State Party concerned. The ECtHR has already established that the denial or loss of a nationality can affect the rights protected by the Convention, in particular the right to private and family life (Article 8 ECHR).[75]

The non-discrimination provisions of the ECHR contain open lists of discrimination grounds. The strength of the justification required in cases of presumed discrimination depends on the discrimination ground at stake, as well as the policy area and the right at issue. In a number of cases concerning equal treatment of long-term resident non-nationals, the ECtHR decided that differences in treatment based exclusively on nationality require 'very weighty reasons' in order to be justified.[76] It has not explained the reasons for this strict test, which makes it difficult to establish whether the same standard applies to differences in treatment between single and dual nationals. We submit that the application of the 'very weighty reasons' test would be justified at least in situations where the dual national has strong ties to the respondent state and is, in that respect, in a comparable position to the majority of single nationals.

[74] E.g. *Carson and others/ United Kingdom*, ECtHR 16 March 2010, app.no. 42184/05, para 63.
[75] Notably *Genovese/Malta*, ECtHR 11 October 2011, app.no. 53124/09, para 30; *Ramadan/Malta*, ECtHR 21 June 2016, app.no. 76136/12, paras 84-85; *Ghoumid and others/France*, ECtHR 25 June 2020, app. nos 52273/16 etc, para 43.
[76] E.g. *Gaygusuz/Austria*, ECtHR 16 September 1996, app.no. 17371/90, para 42; *Andrejeva/Latvia*, ECtHR (GC) 18 February 2009, app.no. 55707/00, para 87; *Ribać/Slovenia*, ECtHR 5 December 2017, app.no. 57101/10, para 53.

Moreover, in *Bah v. the United Kingdom*, the ECtHR explained that a difference in treatment requires a stronger justification if it is based on a characteristic over which the person involved had no choice.[77] This suggests that differential treatment of dual nationals would be subject to strict scrutiny, at least where the person concerned is unable to renounce his or her second nationality. The ECtHR's acknowledgment that the denial or loss of a nationality can affect a person's private and/or family life also means that it may not be proportionate to expect dual nationals to give up one of their nationalities (if at all possible) to avoid differential treatment.

The ECtHR has accepted that the prohibition of discrimination in Articles 14 and 1 Twelfth Protocol ECHR also covers indirect discrimination.[78] In the case of *Biao v. Denmark*, the ECtHR Grand Chamber found that the Danish legislation on family reunification indirectly discriminated against Danish citizens of foreign ethnic origin.[79] This judgment confirms that (indirect) discrimination against citizens of migrant origin is considered by the Court as a form of ethnic discrimination, which can only be justified by very weighty reasons.[80]

In the case of *K2 v. United Kingdom*, concerning a British/Sudanese dual national who was deprived of his British citizenship, the applicant complained under Article 14 ECHR that he was treated differently from British citizens who did not hold a second nationality. This complaint was dismissed on procedural grounds.[81]

In the recent judgment in *Ghoumid and others v. France*, the ECtHR decided complaints concerning violations of Article 8 ECHR and Article 4 of Protocol 7 (ne bis in idem) brought by five former French citizens, whose nationality was withdrawn in 2015 following convictions for terrorist offences.[82] Although all applicants had been treated differently as dual nationals (four also held Moroccan and one Turkish nationality) and as French citizens by naturalisation, their complaints did not concern Article 14 ECHR. Still, the reasoning of the ECtHR regarding the right to private life contains several elements that may also be relevant in relation to the prohibition of discrimination. The ECtHR found that the deprivation of citizenship did not have disproportionate consequences for the private life of the applicants. In reaching this conclusion, it took into account that the applicants were allowed to remain in France – at least for the time being - and that they would have appropriate remedies against an eventual deportation order. It also took into account that some of the applicants had recently acquired French nationality when they committed the offences, whereas others acquired French nationality while involved in a criminal conspiracy to commit terrorist violence. The Court confirmed its standing case law that terrorist violence constitutes in itself a serious threat to human rights. It did not condemn the fact that the decision to deprive the applicants of their citizenship was taken eight years after they were convicted and 11 years after the last offences had been committed.

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[77] *Bah/United Kingdom*, ECtHR 27 September 2011, app.no. 56328/07, para 47.
[78] *D.H. and others/Czech Republic*, ECtHR (GC) 13 November 2007, app.no. 57325/00, para 175.
[79] *Biao/Denmark*, ECtHR (GC) 24 May 2016, app.no. 38590/10.
[80] *Biao/Denmark*, para 114.
[81] *K2/United Kingdom*, ECtHR (dec.) 7 February 2017, app.no. 42387/13, paras 68-70.
[82] *Ghoumid and others/France*, ECtHR 25 June 2020, app.no. 52273/16.

- United Nations

UN Convention on the Elimination of All Forms of Racial Discrimination

The UN Convention on the Elimination of All Forms of Racial Discrimination (CERD) defines racial discrimination in Article 1(1) as 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life'. The Convention does not apply to distinctions between citizens and non-citizens, nor does it concern the laws of the States Parties concerning nationality, citizenship or naturalisation (Articles 1(2) and (3) CERD). However, provisions concerning nationality, citizenship or nationality may not discriminate 'against any particular nationality'. The terms 'purpose or effect' in Article 1(1) CERD make it clear that the Convention prohibits both direct and indirect racial discrimination. Article 5 CERD lists the material scope of the Convention: the prohibition of racial discrimination applies in respect of civil, political and socio-economic rights, including the right to a nationality (Art. 5(d)(iii)). In Article 2(1), the State Parties undertake to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.

In a general recommendation on the position of non-citizens, the Committee on the Elimination of All Forms of Racial Discrimination (CERD Committee) has made it clear that differentiations based on a lack of citizenship status should not be used to undermine the prohibition of racial discrimination.[83] It would be in line with the purpose of the CERD to consider that the same applies with regard to differentiations between single and dual nationals. In the recommendation, the CERD Committee considers that 'differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purpose of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim'.[84] States Parties are also urged to ensure that measures taken in the fight against terrorism, as well as measures to deprive citizens of their nationality, must be taken without discrimination on the basis of race, colour, descent or national or ethnic origin.[85]

The UN Special rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has equally drawn attention to racial discrimination in the context of citizenship, nationality and immigration status.[86] The Special Rapporteur points out

[83] CERD Committee, *General recommendation 30 on discrimination of non-citizens*, para 2.
[84] *Idem*, para 4.
[85] *Idem*, paras 10 and 14.
[86] *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to the Human Rights Council at its 38th session*, 25 April 2018 (A/HRC/38/52).

that racial and ethnic minority groups are often excluded from the enjoyment of human rights on account of their citizenship or immigration status, and that such exclusion violates international human rights law.[87] Regarding deprivation of nationality, the Special Rapporteur recalls that access to citizenship and immigration status has historically been used by States to discriminate against marginalised groups, and that 'institutional and indirect discrimination based on race, colour, ethnicity and religion' continues also in the absence of explicitly discriminatory policies.[88] However, the Rapporteur notes that 'Law, policies and practices that disproportionately exclude or have a negative impact on a particular racial, ethnic or national group should also be considered as a breach of the prohibition of racial discrimination'.[89] Finally the Rapporteur observes that concerns over national security and threats of terrorism typically fuel racially discriminatory policies, including on citizenship withdrawal.[90]

In October 2018, the Special Rapporteur sent an amicus brief to the Dutch Immigration and Naturalisation Service in the case of a dual citizen whose Dutch nationality had been withdrawn after he travelled to Syria and joined a terrorist organisation.[91] The Special Rapporteur took the stance that the Dutch policy of differentiating between single and dual nationals when withdrawing citizenship in response to alleged terrorist activities violates international human rights law, including Article 5(d)(iii) CERD and Article 26 ICCPR. According to the letter, such differentiation is discriminatory as it creates unequal, less secure citizenship for dual nationals.[92] The Rapporteur observed that the differentiation between single and dual nationals is not required in order to protect single nationals against statelessness, as the sanctions applicable to single nationals could be equally applied to dual nationals.[93] Lastly, the Special Rapporteur considered that the Dutch legislation on citizenship deprivation was indirectly racially discriminatory, because Dutch citizens of Moroccan or Turkish national origin are overrepresented amongst those with dual nationality.

The Special Rapporteur repeated this position in the report on her 2019 visit to the Netherlands: 'Although being neutral on the face of it, the Netherlands citizenship-stripping legislation, policies and procedures apply only to citizens with dual nationality and therefore disproportionately affect Netherlanders of Moroccan and Turkish descent. Because of its limited applicability, citizenship-stripping legislation in the Netherlands aggravates stereotypes of terrorism by associating terrorism with people of certain ethnic and national origins. The associated policies and their effects are incompatible with international human rights principles of equality and non-discrimination.'[94]

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[87] *Idem,* paras 6-11.
[88] *Idem*, para 11.
[89] *Idem*, para 27.
[90] *Idem*, para 57.
[91] *Amicus brief presented by the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to the Dutch Immigration and Naturalisation Service*, 23 October 2018, www.ohchr.org/Documents/Issues/Racism/SR/Amicus/DutchImmigration_Amicus.pdf.
[92] *Idem*, para 39.
[93] *Idem*, para 40.
[94] *Report of a Visit to the Netherlands*, 2 July 2020, A/HRC/44/57/Add2, par. 60 at p. 12.

Lastly, the United Nations High Commissioner for Refugees (UNHCR) has warned in its Guidelines on Statelessness that 'States should take steps to ensure that the practical effect of withdrawal of nationality is not that certain groups (e.g. ethnic or religious minorities) are disproportionately affected […].'[95] The UNHCR stressed that compliance with standards against statelessness alone is not enough and that states should equally respect the prohibition of discrimination.[96]

Summary

This paragraph has analysed guarantees against discrimination at the levels of the EU, the Council of Europe and the United Nations. Discrimination on the grounds of nationality is prohibited both in EU law (Art. 21(2) CFR) and under the ECHR. These provisions can be interpreted to cover distinctions between single and dual nationals. Distinctions between single and dual nationals can also amount to indirect discrimination on the grounds of racial or ethnic origin as prohibited under the ECHR and the CERD. It follows from ECtHR case law (*Biao v. Denmark*) that this will be the case where distinctions between citizens predominantly affect citizens of foreign ethnic origin. Such distinctions require very weighty reasons in order to be justified. The UN Special Rapporteur on Racism has explicitly qualified the Dutch policy on denationalisation of (suspected) terrorists, which applies only to dual nationals, as a form of racial discrimination incompatible with the CERD.

7. Citizenship deprivation of dual nationals in the light of the prohibition of (racial and ethnic) discrimination

As mentioned in the introduction, this policy brief originates in the concern that differential treatment of dual nationals undermines equal citizenship and results in *de facto* discrimination on the grounds of racial or ethnic origin. Paragraphs 3 to 5 elaborated on current practices of citizenship deprivation in relation to terrorism, which presently constitute an important source of inequality for persons with dual or multiple nationality. Although persons who are deprived of their citizenship on this ground constitute only a very small group of the population of the countries concerned, the act of citizenship deprivation has far-reaching consequences and is likely to send a powerful signal to a much larger group of dual nationals that their citizenship is not secure.

In paragraph 6 we assessed to what extent existing legal provisions on non-discrimination apply to situations of differential treatment of single and dual nationals as well as to indirect forms of racial and ethnic discrimination. In this paragraph we apply the said provisions to the case of dual nationals who are deprived of their nationality after being convicted for, or suspected of, engaging in terrorist activities. This analysis starts from the position that compliance with the prohibition of statelessness is not sufficient justification for not abiding with other international and human rights obligations, such as the prohibition of

[95] UNHCR Guidelines on Statelessness No. 5, 'Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness', UN Doc. HCR/GS/20/05 of May 2020, para 111.
[96] *Idem* paras 24, 109 and 111.

discrimination on the ground race, ethnic origin or nationality. The prohibition of statelessness does not justify direct or indirect discrimination on these grounds.

Differential treatment of single and dual nationals

Dual (or multiple) nationality is not as such recognised as a prohibited discrimination ground. However, the prohibitions of discrimination in the ECHR are open-ended and can be applied to distinctions between single and dual nationals. As the ECtHR has recognised that a persons' nationality forms part of their personal identity and private life, dual nationals who are deprived of their nationality can submit a complaint under Article 14 read together with Article 8 ECHR. In State Parties which have ratified the Twelfth Protocol to the ECHR complaints can also be submitted under Article 1 of this Protocol.

A first step in determining whether single and dual nationals must be treated equally is to establish whether they find themselves in relevantly similar situations.[97] It has been argued, especially in the German debate, that dual nationals are not in a comparable situation to single nationals as only the latter would become stateless when deprived of their nationality. Dual nationals can moreover be viewed as being in a more favourable position than single nationals as they have access to the territory and citizenship rights of more than one state; along with these benefits however comes the disadvantage of being able to lose one nationality.[98]

On the other hand, it can be stressed that single and dual nationals are in relevantly similar situations as they are both citizens of the same state and, as such, entitled to equal citizenship rights.[99] The principle of equal citizenship for dual nationals is laid down in Article 17(1) ECN and has been recognized by the French *Conseil Constitutionnel* as well as the German *Bundesverfassungsgericht*. In 2006, the latter defined the function of citizenship as 'a reliable basis for national belonging founded on equal rights'.[100] In democratic states, citizenship is generally understood to be egalitarian, protecting an equal package of rights for all citizens.[101]

Among those rights, the right to reside in the country is essential. Dual nationality may be inevitable (if renunciation of the second nationality is not possible) or it may be accepted by a state as a consequence of other values or policies (equal treatment of men and women, integration of immigrants, social or political stability). In both situations dual nationality does not provide a relevant ground for distinguishing between citizens. The available information on recent deprivation decisions in Belgium, France and the Netherlands shows that most of the persons concerned were unable to renounce their other nationality (see paragrapah 4).

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[97] This step is a common element in both the ECtHR's and CJEU's application of the prohibition of discrimination, see for example ECtHR 6 November 2012, app.no. 22341/09, para 45 and CJEU (GC) 1 March 2016, *Alo & Osso*, C-443/14 and C-444/14, EU:C:2016:127, para 54.
[98] Kluth 2019, p. 103 and Wittmann 2019, p. 122.
[99] See also Gärditz & Wallrabenstein 2019.
[100] BVerfG 24 May 2006, BVerfGE 116, 24, p. 44 official translation www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2006/05/rs20060524_2bvr066904en.html.
[101] Gibney 2020, p. 11.

According to official statistics 15% of the German dual nationals and 25% of the Dutch dual nationals have the nationality of countries which do not allow renunciation of their nationality (see paragraph 2).

Finally, it can be argued that comparability should not be determined by looking at the presence or absence of a second nationality but by looking at the effective ties that exist between citizens and their country of nationality. From this perspective, a Dutch-Moroccan national who has lived most of his or her life in Morocco and is integrated into Moroccan society will not be comparable to a single Dutch national who acquired Dutch nationality at birth in the Netherlands and has always been resident in the Netherlands. This is in line with Article 7(1)(e) ECN which allows for the loss of nationality *ex lege* or at the initiative of the State Party if no genuine link exists between the State Party and the national habitually residing abroad.[102] However, a Dutch-Moroccan national who is born and raised in the Netherlands will be in a relevantly similar situation and should therefore not be treated differently without an objective and reasonable justification when it comes to citizenship deprivation.

If single and dual nationals are considered as being in relevantly similar situations, the respondent State Party must offer a justification for the difference in treatment. Under the ECHR, the margin of appreciation enjoyed by the state will depend on whether or not the 'very weighty reasons' test applies to differences in treatment between single and dual nationals. This margin will arguably be smaller if the person concerned cannot get rid of the second nationality as in that case the second nationality amounts to an immutable or inherent characteristic (see paragraph 6). In addition, Articles 18 TFEU and 21(2) EU Charter of Fundamental Rights may be applicable if the withdrawal of nationality results in the loss of EU citizenship.

Differential treatment of born and naturalised citizens

In some EU Member States (Belgium, France and Italy), only naturalised citizens can be deprived of their citizenship in relation to terrorist activities or, in the case of the UK, one of the grounds for deprivation applies only to naturalised citizens. Thus, the question arises whether the *difference in treatment between naturalised and born citizens* is compatible with the prohibition of discrimination. The discriminatory effect of this difference in treatment seems more obvious compared to the distinction between single and dual nationals, as the fact of being naturalised is very closely related to a person's national origin. Paradoxically, however, the personal scope of deprivation regimes that apply only to naturalised citizens is far more limited. Under such regimes the sanction of deprivation cannot be applied to children of immigrants who acquired their nationality at birth. Where deprivation is not restricted to naturalised citizens it can be applied to children of immigrants who acquired the nationality at birth and lived in the country ever since. Generally, they will have a closer link with the country than naturalised citizens.

[102] Cp also the CJEU in *Tjebbes*, para 35 and J. Lepoutre, 'When losing citizenship is fine', *Citizenship Studies* 24:3 (2020), p. 339-354, DOI: 10.1080/13621025.2020.1733259.

At the national level, the French *Conseil Constitutionnel* considered in 2005 that the distinction between naturalised and born citizens was constitutional. In reaching this conclusion, it took into consideration that the distinction did not apply to persons having held French nationality for more than 10 years. After the extension of this period to 15 years, in 2006, the *Conseil* again found the legislation to be in accordance with the constitution but stipulated that a longer period would make its constitutionality doubtful. According to the German *Bundesverfassungsgericht*, loss of nationality should be '*zeitnah*', not too long after acquisition, in order to avoid conditional citizenship.[103] Constitutional practice in both countries thus suggests that, where a ground for citizenship deprivation applies only to naturalised citizens, the applicability of that ground ought to be limited in time. In the same vein, the UN Secretary-General has pointed out that temporal limitations to citizenship deprivation mitigate the vulnerability of naturalised citizens to loss or deprivation of citizenship.[104]

At the European level, there exists little room for distinctions between citizens by birth and those who obtained their citizenship through naturalisation. Article 5(2) ECN provides that the State 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'. In the case of *Biao v. Denmark*, the ECtHR Grand Chamber had to decide on Danish immigration rules that restricted family reunification for persons who had been Danish citizens for less than 28 years. The Grand Chamber established that this '28 year rule' was likely to disadvantage Danish citizens who had received their Danish nationality through naturalisation and who, moreover, 'would generally be of foreign ethnic origin'.[105] The Grand Chamber concluded that the Danish legislation amounted to indirect differential treatment on the ground of ethnic origin, which requires very weighty reasons in order to be justified (see further in the next paragraph).[106] In the same judgment the Grand Chamber noted that Article 5(2) ECN must be seen as evidence of a trend towards a European standard of non-discrimination between citizens by birth and citizens by naturalisation.[107] It is noteworthy that none of the four State Parties that differentiate between born and naturalised citizens (BE, FR, IT and UK) have ratified the ECN, France and Italy have only signed.

Indirect differential treatment on the ground of racial or ethnic origin

[103] *Bundesverfassungsgericht* 24 May 2006, 2 BvR 669/04, BVerfGe 116, 24-69, paras 72 and 76; Tabbara 2019 and Kiessling 2015, p. 1-34.
[104] Report of the UN Secretary-General on Human rights and arbitrary deprivation of nationality of 19 December 2013, UN Doc. A/HRC/25/28 (2013), para 6.
[105] *Biao/Denmark*, para 112.
[106] *Biao/Denmark*, para 114.
[107] *Biao/Dnemark*, para 132.

In the abovementioned *Biao* judgment, the ECtHR Grand Chamber established that differences in treatment between born and naturalised Danish citizens amounted to indirect differential treatment on the grounds of ethnic origin, as naturalised citizens are generally 'of foreign ethnic origin'. This observation equally applies to the situation in other states, naturalisation of former (native) nationals occurs in a minority of cases only. Therefore, deprivation regimes that apply only to naturalised citizens must be considered to differentiate on the grounds of ethnic origin.

In states where all citizens, including those by birth, may be deprived of their nationality in relation to terrorist activities, the extent to which citizens of migrant origin are targeted is less clear from the text of the law. However, the table in paragraph 3 showed that, with the exception of Italy and the UK, these states only allow citizenship deprivation if the person concerned would not become stateless. In practice this means that deprivation is only possible if the person concerned has dual or multiple nationality. Like the fact of being naturalised, the possession of another nationality is an indicator of immigrant origin. As explained in paragraph 2, the occurrence of dual nationality generally results from migration in combination with state policies aimed at gender equality or integration and the coexistence of *ius soli* and *ius sanguinis* regimes for the acquisition of citizenship. From the ECtHR judgment in the case of *Biao* it can be derived that differential treatment of dual nationals, like differential treatment of naturalised citizens, results in a presumption of indirect ethnic discrimination because it predominantly affects persons of foreign ethnic origin.

In addition, many dual nationals are not only of immigrant origin but also belong to groups that are commonly perceived, in the European countries discussed in this policy brief, as racial or ethnic 'others' and suffer discrimination on that ground.[108] In The Netherlands, for example, around three-quarters of all dual nationals belong to the group of so-called 'non-western migrants'.[109] In Dutch political and public discourse and in official documents, these 'non-western' migrants are frequently portrayed as underprivileged and culturally different and as posing risks to the economic welfare and national identity of the Netherlands. The same is true for persons of Turkish or Moroccan origin, who together constitute half of the group of dual nationals. Finally, Muslims in the Netherlands face relatively high levels of discrimination on account of their ethno-religious background.[110] Both the Council of Europe Commissioner for Human Rights and the UN Special Rapporteur on racism have warned against stigmatisation of ethnic and religious minorities, and especially Muslim communities, as a result of Dutch counter-terrorism policies.[111] Despite assurances by the Dutch government that the relevant legislation 'in no way targets specific population groups,'[112] to date all dual nationals who were deprived of their nationality in the Netherlands on account of terrorist activities held a second nationality of a majority Muslim country (see paragraph 4). In this

[108] See also Gärditz & Wallrabenstein 2019.
[109] CBS 2014.
[110] E.g. EU Fundamental Rights Agency, *Second European Minorities and Discrimination Survey (EU-MIDIS). Muslims – Selected Findings*, Luxembourg: Publications Office of the European Union 2017.
[111] Letter of the CoE Commissioner for Human Rights of 2 November 2016, CommDH(2016)40 and *Report of the UN Special Rapporteur on racism on her Visit to the Netherlands*, 2 July 2020, A/HRC/44/57/Add2.
[112] Letter of the Dutch authorities to the CoE Commissioner for Human Rights, CommDH/GovRep(2016)25.

connection it is also relevant that only membership of jihadist armed organisations (as opposed to other ideologies) constitutes a ground for citizenship deprivation.[113]

Lastly, four-fifths of those who lost their Dutch nationality in relation to terrorist activities were assumed to have Moroccan nationality. A recent report shows that the Dutch intelligence agency (AIVD) made a list of Dutch nationals who travelled to Syria to join the jihad, had dual nationality and who could therefore, in principle, have their nationality withdrawn.[114] As dual nationality is no longer registered in the Netherlands (since 2014), the AIVD based its assumption that the persons concerned were Moroccan nationals on the fact that their parents were Moroccan nationals when they acquired Dutch nationality and the knowledge that Moroccan nationality cannot be renounced. This information suggests that Dutch-Moroccan dual nationals were specifically targeted by the authorities when implementing the deprivation of citizenship regime because their dual nationality can be established relatively easily. Such targeting is, however, at odds with Article 1(3) CERD which provides that states may not, in their nationality laws, discriminate against 'any particular nationality'.

Is the differential treatment of (naturalised) dual nationals based on 'very weighty reasons'?

The previous subparagraphs showed that the differential treatment of dual nationals, with regard to deprivation of nationality because of terrorist activities, amounts to direct differential treatment on the ground of nationality and to indirect differential treatment on the ground of ethnic origin. Whereas it is not entirely clear whether differences in treatment between single and dual nationals would be subject to the 'very weighty reasons' test, ECtHR case law has clearly established that compelling or very weighty reasons are required to justify differences in treatment based on ethnic origin. In *Timishev v. Russia* the ECtHR even considered that 'in any event, […] no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures.'[115]

The laws on citizenship deprivation discussed in this policy brief form part of states' anti-terrorism policies. Where perpetrators of terrorist activities are outside the territory of the state concerned, the withdrawal of their citizenship is designed to make it more difficult for them to return and commit terrorist acts within the territory of that state.[116] On a more abstract level citizenship deprivation is also seen as cutting the links between the political

[113] Decision of the Minister of Justice 2 March 2017, *Staatscourant* 2017, 13023.
[114] V. Bex-Reimers et al (2020), *Evaluatie wijziging van de Rijkswet op het Nederlanderschap in het belang van de nationale veiligheid*, July 2020, p. 41-42.
[115] ECtHR 13 December 2005, app.nos 55762/00 and 55974/00, *Timishev/Russia*, para 58; see also ECtHR (GC) 13 November 2007, app.no. 57325/00, *D.H. and others/Czech Republic*, para 176 and *Biao/Denmark*, para 114.
[116] T.L. Boekestein & G.-R. de Groot, 'Discussing the human rights limits on loss of citizenship: a normative-legal perspective on egalitarian arguments regarding Dutch Nationality laws targeting Dutch-Moroccans', *Citizenship Studies* 23:4, p. 320-337, at p. 323, https://doi.org/10.1080/13621025.2019.1616448.

community and those who are considered to lack the loyalty presumed by citizenship through their involvement in terrorist activities.[117]

There is no doubt that the prevention and combating of terrorist violence is a legitimate aim, as has been recognized by the ECtHR since its 1961 judgment in the *Lawless* case.[118] However, the objective of combating terrorism as such does not require the making of a distinction between single and dual nationals. Instead, the reason why most citizenship deprivation laws only target persons with dual or multiple nationality is because states may not withdraw the nationality of their citizens if those citizens would thereby become stateless. This follows from Article 7(3) ECN and the 1961 UN Convention on the Reduction of Statelessness.[119] For most of the states concerned, this has been the reason to provide that citizenship deprivation can only be applied to dual nationals.

The prevention of statelessness obviously constitutes a legitimate aim as well. What the focus on preventing statelessness tends to obscure, however, is that states have a choice of whether or not to use_citizenship deprivation as a means to combat terrorism and that *they must exercise this choice in conformity with the prohibition of discrimination*.[120] Although states tend to present the differential treatment of dual nationals as a necessary consequence of the fact that single nationals cannot be deprived of their nationality, such differential treatment could be avoided if states would refrain from citizenship deprivation altogether and instead would adopt anti-terrorism measures that can be equally applied to all citizens. Examples of such measures, which are already applied in case of single nationals, would be criminal prosecution or administrative measures such as area bans or the confiscation of passports.[121]

It follows that the difference in treatment between single and dual nationals is not justified because other, non-discriminatory measures are available that serve both the aim of combating terrorism and of preventing statelessness. In this situation it must be concluded that the 'very weighty reasons' test is not met. In addition, several other arguments cast doubts on the effectiveness and proportionality of citizenship deprivation regimes that apply only to dual nationals:

- first, the risk that single and dual nationals are confronted with different sanctions following the same behaviour is not merely theoretical. Empirical evidence shows that perpetrators of terrorist violence are also single nationals. For example, it is estimated that 17% of Dutch

[117] As argued by the French government in *Ghoumid and others/France*, para 39.
[118] *Lawless v. Ireland (no. 3)*, 1 July 1961, paras 28–30, Series A no. 3; ECtHR 17 January 2012, app.no. 8139/09, *Othman (Abu Qatada)/ the United Kingdom*, para 83 and the case-law cited in *Ghoumid and others v. France*, para 50.
[119] UNTS vol. 989, p. 175. See also the Report of the UN Secretary-General on Human rights and arbitrary deprivation of nationality of 19 December 2013, UN Doc. A/HRC/25/28 (2013), para 6.
[120] As stressed also by the UNHCR, Guidelines on Statelessness No. 5, 'Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness', UN Doc. HCR/GS/20/05 of May 2020, paras 109-111.
[121] See also C. Paulussen and M. Scheinin, 'Deprivation of nationality as a counter-terrorism measure. A human rights and security perspective', in: Institute on Statelessness and Inclusion, *The World's Stateless. Deprivation of Nationality*, March 2020, available at www.institutesi.org, p. 224.

nationals who joined the jihad in Syria and Iraq were Dutch citizens without a migration background who converted to Islam.[122] As these ethnic Dutch usually have only one nationality, they cannot be deprived of their Dutch citizenship even if they have committed the same terrorist acts as dual nationals. In other countries, notably Belgium, France and Italy, nationals by birth cannot be deprived of their citizenship even if they have nationality of another state (paragraph 3 above), which means that only naturalised dual nationals face the sanction of citizenship deprivation;

- second, withdrawal of nationality will not always have the effect of removing the threat to national security. In France, for example, deprivation of citizenship does not automatically result in expulsion. Thus, the applicants in the case of *Ghoumid and others* were still living in France more than five years after their French nationality was withdrawn.[123] Another example is that of a Moroccan-Dutch woman whose Dutch nationality was withdrawn when she presented herself, together with another Dutch woman and their young children, at the Dutch embassy in Ankara after having escaped from the *Al-Hol* prison camp in Northern Syria. Notwithstanding protest by the Dutch government, the Turkish authorities put the two women and their children on a flight to Amsterdam as they had no right to stay in Turkey, the Dutch criminal authorities made worldwide requests for their arrest with a view to extradition long ago and one of the women and all three minor children had Dutch nationality.[124] The effectiveness of citizenship deprivation measures in combating terrorism has also been questioned by the Dutch intelligence agency (AIVD), which initially took little action to enable the application of these measures. In the agency's view, withdrawal of the Dutch nationality would not take away the potential threat posed by the persons concerned. For two years after the entry into force of the relevant legislation, the AIVD prepared only three reports with a view to withdrawing the nationality of persons they kept track of. It was only after an explicit request by the Dutch Parliament that the service actively checked the files of all Dutch nationals who travelled to Syria to join the jihad and considered withdrawal of their nationality on national security grounds.[125] The effectiveness of citizenship deprivation in combating terrorism has also been questioned by the Dutch prosecutors' office which opposed the intended deprivation of nationality in most cases because it would make investigation and prosecution of the terrorist crimes committed by the Dutch nationals concerned more difficult;[126]

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[122] J. Groen, *Jihadgangers zijn relatief vaak bekeerlingen*, de Volkskrant 5 July 2017. This article cites information from a database with characteristics of 207 of the officially estimated 280 Dutch nationals who joined the jihad in Syria and Iraq. Qualitative empirical research amongst families of Dutch and Belgian jihadists confirms that a considerable share of those jihadists are 'converts', see M. van San, 'Belgian and Dutch Young Men and Women Who Joined ISIS: Ethnographic Research among the Families They Left Behind', *Studies in Conflict & Terrorism* (2018) 41:1, p. 39-58, at p. 42.

[123] *Ghoumid and others/France*, para 42.

[124] Decision of Secretary of State for Justice of 30 October 2019, *Staatscourant* 2019, no. 60309 and TK 29754, nos. 531 and 534

[125] CTIVD, *Toezichtsrapport no. 68, Over het handelen van de AIVD in het kader van intrekking van het Nederlanderschap in het belang van de nationale veiligheid*, 29 April 2020, p. 10-14.

[126] Bex-Reimers et al 2020, p. 7 and 47.

- third, as regards the proportionality of the differential treatment, several states (Austria, Germany, the Netherlands and the UK) allow deprivation of citizenship without a prior criminal conviction. In most cases, the impact of citizenship deprivation on the individual concerned will be very severe. The person is deprived of a central element of his or her identity, of the right to return to that state and to live and work there among family and friends and loses all political rights in and the protection by that state. If dual nationals can be deprived of their citizenship without a prior criminal conviction this will further enhance the insecurity of their citizenship compared to that of single nationals;

- fourth, the difference in treatment between dual and single nationals is especially difficult to justify with regard to dual nationals who are unable to renounce their second nationality. For persons in this situation, citizenship deprivation amounts to a sanction that can be imposed on them because of an element of their identity acquired at birth which they are unable to control.[127] Yet the practice in the Netherlands shows that it is precisely the immutability of this characteristic that has allowed the Dutch authorities to identify dual nationals and propose withdrawal of their Dutch nationality (see paragraph 7, *Indirect differential treatment on the ground of racial or ethnic origin*);

- fifth, deprivation of citizenship will be more difficult to justify where more time has passed since the acquisition of citizenship. It is noteworthy that both the French *Conseil Constitutionnel* and the German *Bundesverfassungsgericht* considered that the possibility of citizenship deprivation should be limited in time to a certain period after the acquisition of citizenship.[128] Otherwise the effect will be that the citizenship of dual nationals, many of whom belong to ethnic minority groups, will always remain conditional. This applies all the more to those who acquired the citizenship by birth. The passage of time since the acquisition of citizenship also forms part of the proportionality analyses conducted by the CJEU and the ECtHR in cases on citizenship deprivation.[129]

8. Conclusions

This policy brief signals that measures aimed specifically at dual nationals constitute a threat to the ideal of equal citizenship, in particular for citizens of immigrant origin. This is especially visible in the area of nationality law: in eight EU Member States and in the United Kingdom dual nationals are at risk of being deprived of their citizenship in relation to (alleged) terrorist activities, a threat that is not felt by single nationals. The practice in these Member States confirms that most persons who are deprived of their citizenship on this ground are members of racial or ethnic minorities. Moreover, the discriminatory effects of citizenship deprivation of dual nationals have been subject to debate in both France and Germany.

In addition to political objections, differential treatment of dual nationals is questionable from a legal perspective. Because dual nationality serves as a proxy for immigrant origin, differential treatment of dual nationals amounts, in principle, to indirect differential treatment on the

[127] Cp. the ECtHR in *Bah/United Kingdom*, para 47 and the CJEU in *Tjebbes*, para 46.
[128] See paras 5 and 7.2.
[129] *Rottmann*, para 56; *Ghoumid and others/France*, para 50.

grounds of racial or ethnic origin. According to the case law of the ECtHR such differential treatment requires very weighty reasons to be justified. The UN Special Rapporteur on Racism has also warned that distinctions between single and dual nationals result in the creation of second-class citizenship for citizens of immigrant origin and in (indirect) racial discrimination. With regard to citizenship deprivation, differential treatment of dual nationals is motivated by reference to obligations of international law that prevent the withdrawal of nationality if the person concerned would become stateless. However, no convincing reasons have been provided that are capable of justifying the disproportionate effect of citizenship deprivation on racial and ethnic minorities. To ensure equal citizenship, including for racial and ethnic minorities, states engaging in the prevention and combating of terrorism should do so by adopting measures that are equally applicable to single and dual nationals.

9. Recommendations

The Meijers Committee makes the following recommendations:

- States should exercise restraint when using dual nationality as a criterion to differentiate between citizens. In principle single and dual nationals should be subject to equal treatment in the field of nationality law as well as in other fields. Where dual nationals are treated differently, states should take due account of the effects of such differential treatment on citizens of immigrant origin and racialised minorities. Where such effects exist, less favourable treatment of dual nationals can only be justified by very weighty reasons.
- Persons with dual or multiple nationality who engage in terrorist activities should be subject to the same human rights compliant sanctions as single nationals. The Meijers Committee fully supports the efforts of states to avoid statelessness but urges them do so without differentiating between groups of citizens. States have to comply both with their obligations under international norms against statelessness and those prohibiting racial discrimination. Administrative and criminal law measures that can be equally applied to all citizens (such as withdrawal of passports and criminal prosecution) constitute preferred means of fighting terrorism compared to citizenship deprivation.
- States that apply citizenship deprivation as an instrument to combat terrorism are urged to limit the scope of deprivation provisions to persons who acquired their nationality later in life (not at birth) and to allow citizenship deprivation only for terrorist activities that have been committed within a limited period after the acquisition of citizenship. To avoid conditional citizenship, it is recommended that citizenship deprivation should no longer be possible after a period of five or maximum eight years after citizenship acquisition. The Meijers Committee recalls that a residence duration of five years is considered sufficient for naturalisation in 12 EU Member States and a residence of six to eight years in another 11 Member States. This may be seen as the timeframe after which non-nationals are entitled to a secure citizenship status.

- If dual nationals are deprived of their citizenship because of engagement in terrorist activities, such deprivation should always be preceded by a final criminal sentence. A criminal sentence in absentia is not sufficient.