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**NATIONALITY ISSUES AND THE DENIAL OF  
RESIDENCE IN THE CONTEXT OF THE FIGHT  
AGAINST TERRORISM - FEASIBILITY STUDY**

**Prepared for the CDCJ by  
Mr Andrew WALMSLEY (United Kingdom)**

**NATIONALITY ISSUES AND THE DENIAL OF RESIDENCE IN THE CONTEXT OF  
THE FIGHT AGAINST TERRORISM**

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## **Introduction**

This Study has been carried out for the attention of the European Committee of Legal Co-operation (CDCJ) in order to consider the Council of Europe's possible action with regard to residence and nationality of persons suspected, prosecuted or convicted of terrorism. The purpose of the Study is to identify the issues where Council of Europe legal instruments could be used in order to eliminate gaps in the existing international/ European legal regulation and to harmonise approaches in the Council of Europe member states. The Study analyses the existing international and European legal standards and relevant national regulation and practices.

Some countries, especially those which have been the victims of terrorism recently, frequently or both, have either just changed their immigration and nationality laws or are at present considering amending them. For example, in the United Kingdom the amendments to nationality and immigration laws introduced in 2006<sup>1</sup> allow the State to deprive a person of nationality or the right of residence if it is considered that the deprivation of such is conducive to the public good. Loss of nationality and the right of residence would then allow the United Kingdom to legally remove the individual from the country. These legislative proposals do not restrict this sort of deprivation solely to terrorists but terrorism is obviously one of the main reasons why such changes in legislation are being considered.

The Study starts with a brief overview of the definition of terrorism and analysis of international law provisions regarding exercise of jurisdiction over terrorists and removal of foreigners from the national territory. It continues with a discussion of international instruments dealing with the stay and removal of foreigners before proceeding to its main part – analysis of national immigration and nationality laws regarding terrorists. The Study ends with conclusions containing suggestions for the Council of Europe's possible future action on nationality and immigration aspects in the fight against terrorism.

### **1. Definition of Terrorism**

Terrorism can be defined as a systematic use of violence to create a general climate of fear in a population in the hope of bringing about a particular political objective. Terrorism has been practised by political organisations with both right and left objectives, by nationalistic and religious groups, by revolutionaries and even by State institutions such as armies, intelligence services, and the police. However, terrorism is not regarded in the prosecution of individuals as a political offence but, instead, as a highly offensive criminal offence.

Definitions of terrorism are usually complex and controversial, and, because of the inherent ferocity and violence of terrorism, the term in its popular usage has developed an intense stigma. The term "terrorism" was first used in the 1790s to refer to the terror used during the French Revolution by the revolutionaries against their opponents. Then terrorism implied an act of violence by a State against its domestic enemies. However, since the 20<sup>th</sup> century the term has been applied most frequently to violence aimed, either directly or indirectly, at governments in an effort to influence policy or topple an existing regime. Furthermore, terrorism has taken place in most countries of the world, either by the country's nationals or foreign persons or both. The extent of terrorism and the nature of those people who have acted as terrorists have prompted international organisations like the United Nations and the Council of Europe to introduce international treaties on the prevention and fight against terrorism.

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<sup>1</sup> [Immigration, Asylum and Nationality Act 2006](#), see in particular Section 56 'Deprivation of citizenship' and Section 57 'Deprivation of right of abode'

Terrorism is not legally defined in all jurisdictions: the national legal definitions that do exist, however, generally share some common elements. Terrorism involves the use or threat of violence and seeks to create fear, not just within the direct victims but among a wide audience. The degree to which it relies on fear distinguishes terrorism from both conventional and guerrilla warfare. Although conventional military forces invariably engage in psychological warfare against the enemy, their principal means of victory is strength of arms. Similarly, guerrilla forces, which often rely on acts of terror and other forms of propaganda, aim at military victory and occasionally succeed. Terrorism proper is thus the systematic use of violence to generate fear, and thereby to achieve political goals, when direct military victory is not possible. This has led to some social scientists to refer to guerrilla warfare as the “weapon of the weak” and terrorism as the “weapon of the weakest”, and a person found guilty of the offence is likely to receive a lengthy prison sentence.

In order to attract and maintain the publicity necessary to generate widespread fear, terrorists must engage in increasingly dramatic, violent, and high-profile attacks. These have included hijackings, hostage takings, kidnappings, car bombings, and, frequently, suicide bombings. Although apparently random, the victims and locations of terrorist attacks often are carefully selected for their shock value. Schools, shopping centres, bus and train stations, and restaurants and nightclubs have been targeted both because they attract large crowds and because they are places with which members of the civilian population are familiar and in which they feel at ease. The goal of terrorism generally is to destroy the public’s sense of security in the places most familiar to them. Major targets sometimes also include buildings or other locations that are important economic or political symbols, such as embassies or military installations. The hope of the terrorist is that sense of terror these acts engender will induce the population to pressure political leaders towards a specific political end.

## **2. International provisions on jurisdiction for terrorism offences and removal of foreigners**

Alleged terrorists could be arrested in the country in which the terrorism offence in question has been committed, in the country of their nationality or habitual residence, or in a third country. Before discussing nationality and immigration issues with regard to terrorists, it is therefore necessary to clarify the obligations of States with regard to prosecution of perpetrators of terrorism offences.

The main interest of the States, and the international community in general, concerning the suppression of terrorism is to ensure that terrorism offences are prosecuted efficiently. Various international treaties stipulate the conditions in which the States have jurisdiction and should prosecute the terrorists or extradite them to other countries that are willing to prosecute. However, there could also be a situation where no country is willing to prosecute the suspected terrorist and the country where the suspected terrorist is found or resides merely seeks to remove him/her from the national territory.

### **2.1. Exercise of jurisdiction over terrorism offences**

#### ***2.1.1. United Nations treaties***

The first United Nations treaty to be mentioned concerning the fight against terrorism is the [Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons](#) of 14 December 1973. This Convention does not refer to “terrorism” explicitly but deals with “murder, kidnapping or other attack” on “internationally protected persons”.

According to Article 3 of the Convention on jurisdiction one of the following countries has the responsibility to prosecute the alleged offender:

- the country in which the crime took place;
- the country of which the offender is a national;
- the country whose representative has been the victim; or
- the country in which the offender is found and from which he/she is not extradited to the country of perpetration of the crime.

The next relevant United Nations international treaty is the [International Convention against the Taking of Hostages](#) of 18 December 1979. This Convention in its Article 5 requires the States to establish their jurisdiction over the hostage-taking offences, which are committed:

- in its territory or on board a ship or aircraft registered in that State;
- by any of its nationals or, if that State considers it appropriate, by those stateless persons who have their habitual residence in its territory;
- in order to compel that State to do or abstain from doing any act; or
- with respect to a hostage who is a national of that State, if that State considers it appropriate.
- where the alleged offender is present in its territory and it does not extradite him to the country of perpetration of the crime

The later [International Convention for the Suppression of Terrorist Bombings](#) of 12 January 1998 uses the term “terrorist” explicitly. It deals with terrorist bombings involving an international element. According to Article 3, this Convention does not apply to purely domestic cases where the offence is committed within a single State, when the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis to exercise jurisdiction.

The jurisdictional matters are dealt with in Article 6 which requires the State Parties to establish jurisdiction over the bombing offences when:

- the offence is committed in the territory of that State; or
- the offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or
- the offence is committed by a national of that State.
- the offender is found in that State and he/she is not extradited to the country of perpetration of the crime.

A State Party may also establish its jurisdiction when:

- the offence is committed against a national of that State; or
- the offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or
- the offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or
- the offence is committed in an attempt to compel that State to do or abstain from doing any act; or
- the offence is committed on board an aircraft which is operated by the Government of that State.

Similar jurisdictional clauses are also included in the [International Convention for the Suppression of the Financing of Terrorism](#) of 9 December 1999 and the [International Convention for the Suppression of Acts of Nuclear Terrorism](#) of 14 September 2005.

### **2.1.2. Council of Europe instruments**

The [European Convention on the Suppression of Terrorism](#) adopted by the Council of Europe on 27 January 1977 requires in Article 6 a Contracting State to establish its jurisdiction over the offences covered by this Convention if the suspected offender is present in its territory and it does not extradite him/her.

The recently adopted [Council of Europe Convention on the Prevention of Terrorism](#) of 16 May 2005 contains in its Article 14 more detailed rules on jurisdiction similar to those of the United Nations International Convention for the Suppression of Terrorist Bombings described above.

### **2.2. Removal of alleged foreign terrorists from the national territory**

One of the purposes of the above-mentioned international treaties on the prevention and fight against terrorism is to ensure that terrorism is considered as an extraditable offence and to provide the legal base for extradition. The States are required to extradite terrorists to countries that are willing to prosecute them and to provide all needed assistance in such prosecutions.

Deportation or expulsion of terrorists is not referred to in these treaties. However, references to the removal of alleged terrorists from the national territory can be found, for example, in the United Nations [Security Council Resolution 1373](#) ‘on Threats to international peace and security caused by terrorist acts’. This Resolution stipulates that States shall “*Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens*” and “*Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens*”.

Nevertheless, it has to be kept in mind that international treaties submit expulsion or deportation of aliens to certain safeguards in favour of the person concerned.

Thus, Article 13 of the [International Covenant on Civil and Political Rights](#) of 1966 stipulates:

*“An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.”*

Also [Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms](#) adopted by the Council of Europe on 22 November 1984 provides for similar legal guarantees with respect to the expulsion of aliens:

#### ***“Article 1 – Procedural safeguards relating to expulsion of aliens***

*1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:*

- a. to submit reasons against his expulsion,*
- b. to have his case reviewed, and*
- c. to be represented for these purposes before the competent authority or a person or persons designated by that authority.*

*2. An alien may be expelled before the exercise of his rights under paragraph 1.a, b and c of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.*

The Council of Europe Parliamentary Assembly has stated the following with respect to measures within the framework of the fight against terrorism affecting movement or stay of foreigners ([Parliamentary Assembly Resolution 1258 \(2001\) on Democracies facing Terrorism](#)):

*“13. The Assembly expresses its conviction that introducing additional restrictions on freedom of movement, including more hurdles for migration and for access to asylum, would be an absolutely inappropriate response to the rise of terrorism, and calls upon all member states to refrain from introducing such restrictive measures.”*

Also the Council of Europe Committee of Ministers has expressed its views on this matter in the [Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism](#) of 15 July 2002, which contain the following provisions with regard to the presence of a person on the national territory:

***“XII. Asylum, return (“refoulement”) and expulsion***

*1. All requests for asylum must be dealt with on an individual basis. An effective remedy must lie against the decision taken. However, when the State has serious grounds to believe that the person who seeks to be granted asylum has participated in terrorist activities, refugee status must be refused to that person.*

*2. It is the duty of a State that has received a request for asylum to ensure that the possible return (“refoulement”) of the applicant to his/her country of origin or to another country will not expose him/her to the death penalty, to torture or to inhuman or degrading treatment or punishment. The same applies to expulsion.*

*3. Collective expulsion of aliens is prohibited.*

*4. In all cases, the enforcement of the expulsion or return (“refoulement”) order must be carried out with respect for the physical integrity and for the dignity of the person concerned, avoiding any inhuman or degrading treatment.”*

Concerning asylum seekers and refugees, the Committee of Ministers has recently adopted a specific instrument – [Recommendation N° R \(2005\) 6](#) on exclusion from refugee status in the context of Article 1 F of the Convention relating to the Status of Refugees of 28 July 1951. This Recommendation calls for a restrictive interpretation of the 1951 Convention clauses concerning rejection of asylum seekers on the grounds provided in the Convention related to criminal activities of the applicant.

Finally, it should be mentioned that on 4 May 2005 the Committee of Ministers of the Council of Europe adopted [Twenty Guidelines on forced return](#) that apply to all categories of persons subject to removal proceedings from the national territory. This instrument comprises a number of safeguards linked to the removal order, such as requirement to check the situation in the State of return. In particular, it prescribes that a person should be removed only after verification that the possible interference with the returnee’s right to respect for family and/or private life is proportionate with and in pursuance of a legitimate aim. If the state of return is not the state of origin, the removal order should only be issued if the authorities of the host state are satisfied that the state to which the person is returned will not expel him/her to a third state where he/she would be exposed to grave risks such as torture or inhuman or degrading treatment.

### **3. Immigration rules and foreign terrorists**

#### **3.1. Non-nationals convicted of terrorism offences**

##### ***3.1.1. Resident foreign nationals***

If a non-national who is resident in a certain country is arrested and convicted for terrorism, this country may wish to consider what to do with him/her when the prison sentence is served. In most cases the country will decide to remove such a person's right to residence and then deport him/her to the country of his/her nationality after release from prison. This seems basically acceptable but there might be conditions in which such deportation could be questioned.

In one case, not involving terrorism, a British national was deported from Australia following his latest conviction as a paedophile sex offender. The man spent his early childhood at an orphanage in Britain and was sent to Australia aged 10 under Britain's child migration scheme in 1948. He was first jailed in 1965 and spent 37 out of the 39 years since his first conviction in prison. Deportation would sound acceptable in this situation except that this person had emigrated from the United Kingdom to Australia when he was a young child. His behaviour as a paedophile did not therefore seem to be down to his birth in the United Kingdom and there was some opposition to his deportation to the United Kingdom when he was 67 years old, 57 years after he had left his country of birth<sup>2</sup>.

Could there be a similar opposition to the deportation of a convicted terrorist to his/her country of nationality? This would depend upon how long the individual has been living in the country in which he/she committed the terrorism offence. If the individual had been taken to the country when he/she was a child, then it is reasonable to think that it was actually living in the host country, which turned him/her into a terrorist. I would not think that the terrorist should be deported if he/she has been living in the country in which the terrorism offence was committed longer than he/she has previously lived in his/her country of origin. In such cases, the host state should bear the consequences and consider why an individual whose family had been previously accepted as immigrants had become a terrorist.

##### ***3.1.2. Non-resident foreign nationals***

In a case where the foreign national is not resident in the country in which he/she has been convicted for terrorism, then there seems to be no reason why he/she should not be deported to his country of origin when the imprisonment has ended. The country of which he/she is a national may well wish such a criminal not to be returned to them but there is no reason why deportation should not take place. In this case, the person's terrorist activities are more likely to have been arranged in his/her country of origin than in the country in which he/she was convicted.

There can also be a more complicated situation where the convicted terrorist has been previously resident in a third country. In this situation, the question arises whether the terrorist should be deported, after serving the sentence, to the country of his/her nationality or rather to the country of his/her residence.

##### ***3.1.3. Stateless persons***

People are stateless if they do not have the nationality of any country. In many cases this is because they have been born in a country where the law does not grant them nationality by birth because the

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<sup>2</sup> Further details of his case can be read in "The Guardian" on-line publications of [30 July 2005](#) and [31 July 2005](#).

parents were foreign nationals, but the child does not acquire the nationality of one of the parents because he/she is born abroad. In the British Nationality Act 1983, for example, a child born abroad only acquires British nationality if one of the parents is a British national other than by descent. If the parent who is British national was also born abroad then the child will not acquire British nationality except in special circumstances. In this situation, if the child does not acquire the nationality of the country in which he/she was born then he/she becomes stateless at birth.

If such a stateless person is convicted as a terrorist, it would not be possible to deport him/her as he/she will have no country of nationality, and the countries of his/her parents are not likely to want to receive this person either.

A person can also be regarded as being stateless because he/she fled the country of origin of which he/she was a national. They would then have obtained a travel document from the country to which they went and could then have travelled to a third country in which they lived and then acted as terrorists. In these cases, the country in which they were initially resident would not want them to be sent back to them.

It should be possible to discuss deporting the terrorist back to the country of which he/she was a national with that country but whether or not to do so would depend upon why the individual fled that country. It is possible, for example, that the terrorist attack was against a person or persons of the country of origin who were visiting or working in the country in which the terrorist was living. In such cases the country must consider what might happen to the terrorist when he/she is returned to the country of origin.

### **3.2. Non-nationals suspected of terrorism offences**

Foreign nationals or stateless persons could also be merely suspected of being terrorists but the country may be refraining from their prosecution (because it may have no jurisdiction or consider that prosecution cannot be successful) and seek instead their removal from the territory.

If another country, which has jurisdiction and is willing to prosecute, submits the extradition request concerning such an individual then the issue is no longer that of immigration but of international co-operation in criminal matters.

However, there might also be cases where the extradition is not requested. In such cases the country in which the foreign nationals are living might well want them to leave, but it would be difficult to justify their deportation solely on the grounds of suspicion of being terrorists.

Suspicion of being involved in terrorism should not in itself allow the state to deport a person. In most states the person would have to be convicted to be subject to deportation. If there is suspicion about the person's involvement in terrorism and the state has jurisdiction, it should prosecute the alleged offender rather than seek deportation. Deportation of suspected terrorists to a country, which is not willing to prosecute them, is likely to result in their impunity. The problem related to the suspect terrorist will not be solved in this way. Arrangements should rather be made between the countries affected by the terrorism offence in question to determine the one that is best placed to ensure effective prosecution, and the suspected terrorist should be extradited to that country.

## **4. Nationality and residence of terrorists**

### **4.1. Deprivation of nationality**

Deportation or expulsion of own nationals is prohibited under international treaties and national law. Therefore, in certain cases a state might consider depriving a terrorist of his/her nationality with the view to enable his/her subsequent deportation or to prevent such a person from entering its territory.

The loss of nationality is regulated in Article 7 of the [European Convention on Nationality](#) adopted by the Council of Europe in 1997. One of the possible grounds for the loss of nationality that could in theory be applied to terrorists is the following:

***“Article 7 – Loss of nationality ex lege or at the initiative of a State Party***

- 1. A State Party may not provide in its internal law for the loss of its nationality ex lege or at the initiative of the State Party except in the following cases:*
- ... d conduct seriously prejudicial to the vital interests of the State Party ...”*

According to paragraph 3 of this article of the Convention, the deprivation of nationality in this case must not result in a person’s statelessness.

However, the Explanatory Report to the Convention appears to suggest that this ground for deprivation of nationality cannot be invoked with respect to terrorism:

*“67. The wording “conduct seriously prejudicial to the vital interests of the State Party” is drawn from Article 8, paragraph 3.a.ii of the [1961 Convention on the Reduction of Statelessness](#). Such conduct notably includes treason and other activities directed against the vital interests of the State concerned (for example work for a foreign secret service) but would not include criminal offences of a general nature, however serious they might be.*

*68. Furthermore, the 1961 Convention stipulates that conduct seriously prejudicial to the vital interests of the State can constitute a ground for deprivation of nationality only if it is an existing ground for deprivation in the internal law of the State concerned, which, at the time of signature, ratification or accession, the State specifies it will retain.”*

The nationality laws of many European States contain no reference to the loss of nationality through a conviction for terrorism or any other crime. The laws of some countries also specify that no one can be arbitrarily deprived of his/her nationality.

However, there are countries whose nationality laws do contain provisions on the loss of nationality that could apply to terrorists. Moreover, certain nationality laws providing for such cases of the loss of nationality do not contain any reference to not removing the nationality if the person is to become stateless.

Some of the grounds for the loss of nationality found in national laws that could apply to terrorists are:

- causing harm to the security of the state;
- conviction of a person resident abroad of a grave crime against the state, provided that he/she does not become stateless;
- attempting to forcibly change the constitutional order of the state;

- demonstrating by act or speech one's disloyalty towards the state;
- committing an act constituting a breach of allegiance to the state;
- membership of a person normally resident abroad in an association pursuing objectives that may seriously undermine social or economic structure of the state, or convicting such a person for an offence involving breach of allegiance to the state;
- conviction of a person of planning, organising, financing, aiding and abetting or committing terrorist acts in any manner whatsoever, or of providing shelter to organisers, perpetrators or participants of terrorist activities;
- membership in an organisation whose activities are directed against the public order and security of the state;
- conviction of a grave crime against the state.

#### **4.2. Terrorists having a single nationality**

In the case where the terrorist has been convicted in the State of his/her sole nationality, it is quite likely that other States will not want to accept a convicted terrorist on their territory after serving his/her sentence. The convicted terrorist will have to remain in the country of his/her nationality after serving the prison sentence. From this point of view, the legal provisions stipulating that the person does not become stateless as a result of deprivation of nationality on one of the above-mentioned grounds appear to be fully justified, not only from the point of view of the prevention of statelessness but also because rendering such persons stateless is not likely to lead to any changes with respect to their residence.

If the terrorist was convicted abroad the State of his/her nationality might want to remove his/her nationality whilst he/she is in prison, so that this person could be prevented from returning to his/her country of nationality. If the terrorist had been resident in the country where the terrorism offence was committed and the conviction took place, the situation and reasoning can be similar to the one discussed above in Chapter 3.1.1. with respect to deportation to the person's State of nationality in circumstances where the justification of such deportation may be challenged.

However, the question is whether the State of nationality could act to prevent such deportation by removing its nationality from the terrorist convicted abroad. Even if there might be a good reason to suggest that the convicted terrorist remains in his/her country of residence after serving the prison sentence, the provisions of the European Convention on Nationality should be kept in mind and they do not allow for deprivation of nationality resulting in statelessness in these conditions.

#### **4.3. Terrorists possessing multiple nationality**

The convicted terrorist may have acquired two or more nationalities at birth because, for example, of the difference in the parents' nationality or due to birth to foreign parents in a State applying *ius soli* principle, or by acquiring nationality of the country of new residence without having to give up his/her existing nationality(ies).

In the case where a multiple national is convicted of terrorism, the States concerned may consider removing his/her nationality with a view to either:

- deporting the convicted terrorist to the country of his/her other nationality after serving his/her sentence; or
- preventing the convicted terrorist from entering its territory or being deported to it after serving his/her sentence.

However, one has to keep in mind that also the other country(ies) whose nationality(ies) the convicted terrorist possesses may want to remove its (their) nationality from the terrorist. If all the countries concerned deprive this individual of nationality, the result will be that the terrorist becomes stateless and the ground for deportation would be lost. As mentioned above, both the European Convention on Nationality and the United Nations 1961 Convention oppose to removal of nationality resulting in a person's statelessness.

There does not appear to be a reason why a person of multiple nationalities should lose the nationality of one country when other individuals convicted of terrorism would not lose their single nationality. In any case there should surely be discussions between the countries of which the individual is a national on this matter. They should discuss which nationalities are to be lost and where the individual is going to remain or be deported to after the imprisonment is over.

As discussed in the previous chapter on immigration, I believe that the States should bear the consequences for the situations where their residents have become terrorists. Therefore, the State where the convicted terrorist habitually resided before his/her conviction should not seek depriving him/her of its nationality. Such a State has no reason to try to hand this person over to the State of his/her other nationality with which this person may have no effective links and which cannot be held responsible for the fact that this person has become terrorist. If the terrorist has been convicted abroad (in the State of the terrorist's other nationality or in a third country), the State of his/her nationality and residence should accept him/her after serving the sentence.

As to the State of the terrorist's nationality where this person is not resident, its willingness to deprive the terrorist of its nationality and to deport him/her after serving his/her sentence to the State of his/her residence and other nationality may be justified. Likewise, this State whose nationality the terrorist possesses but in which he/she is not resident may have a good reason to remove its nationality from a terrorist convicted in the country of his/her other nationality, or in a third country. Apart from the grounds related to the person's terrorist activities, this State may also invoke legal provisions concerning the lack of effective links in order to withdraw its nationality.

Finally, if the terrorist has been convicted in a third country, this third country should have the possibility to deport the terrorist, after serving his/her sentence, to the State of his/her nationality and residence. For this reason, it is clearly necessary that the State of terrorist's residence does not deprive him/her of its nationality.

At the beginning of the 1990s, many States in Europe were single nationality countries but have now accepted dual nationality, although in some cases dual nationality might only be allowed in special circumstances. For example, Germany, Finland and Sweden were basically single nationality countries at the beginning of the 1990s but since then they have changed their nationality laws and accept dual nationality. These changes were not based upon terrorism but were introduced because so many individuals had the right to dual nationality because of the law of the parents' countries. For example, if a child was born in Germany to a father who was a German national but whose mother was a British national, the child would have become a dual national at birth. The parents might have wished the child to lose British nationality but under the British Nationality Act an individual cannot lose British nationality until he/she is 18 years of age or more. In some countries, the fact that the child had the nationality of another country could prevent him/her from acquiring the nationality of his/her other parent, even though the family were living in that parent's country.

For this reason, many European countries have now accepted dual nationality which a child acquires at birth. Whilst this has not been based upon terrorism the existence of multiple nationality gives now those countries the opportunity to remove their nationality from the terrorist. The same

opportunity would become available also with respect to naturalised persons who have later become terrorists if the applicants for naturalisation were allowed to retain their existing nationality.

#### **4.4. Removal of nationality from suspected terrorists**

As already discussed above, the States should be first and foremost under the obligation to prosecute persons suspected of being terrorists if they have jurisdiction. It is noteworthy that nationality laws of several European States contain restrictions on renunciation of their nationality in the case where the applicant for renunciation is being prosecuted for a criminal offence. In this case, it appears that the State considers that the person's possession of its nationality has a positive effect on the success of his/her prosecution. In my opinion the same logic should apply here. The deprivation of nationality on grounds related to terrorism may not serve as a pretext for doing away with the State's responsibility to prosecute a terrorist.

According to the European Convention on Nationality, nationality cannot be lost merely on the basis of suspicion. This would amount to arbitrary withdrawal of nationality prohibited by the Convention. Also, as mentioned above, according to the European Convention on Nationality a person suspected of terrorism, even if convicted, should not lose his/her nationality if he/she were to become stateless.

There are a great number of international treaties that facilitate international co-operation in criminal matters that can be applied in the case where a State cannot extradite its nationals suspected of terrorism. These treaties can certainly help a State in prosecuting its own nationals.

#### **4.5. Naturalisation**

##### ***4.5.1. Criteria, verification and revocation of naturalisation***

Acquiring the nationality in the country of residence could be to the benefit of a terrorist whose extradition might later be sought by his/her country of origin for the offences committed in the past. Considering that the law of his/her country of residence and new nationality may not authorise extradition of nationals, the terrorist would have to be prosecuted in this country where prosecution might be more difficult because of difficulties in providing evidence, for example.

From this point of view, it would be desirable that the country examining the naturalisation application carries out a careful verification in order to be able to reject the naturalisation of terrorists and thus retain the possibility of extraditing such persons to another country that is in a position to prosecute them efficiently.

In cases where an individual is applying for nationality, in most countries the applicants have to be legally resident in that country, the number of years changing from State to State, as well as to fulfil other criteria stipulated in the national law. In particular, the nationality laws of many European States include the requirement related to 'good character' or absence of a criminal record of the applicant. For example, the British Nationality Act requires an applicant for naturalisation to "be of good character". This would normally mean that the person has not been convicted for a criminal offence within a certain period of the application, depending on the nature of the crime and the length of imprisonment. But in some cases, such as when an applicant has been inciting other people to act against the law, then the individual would be regarded as not being of good character, even though he/she has not been prosecuted or convicted.

In other countries, this requirement for naturalisation is more specifically laid down in the national law. In Slovenia, for example, the law requires "*that the person has not been sentenced to a prison*

*sentence longer than one year in the country of which he/she is a citizen or in Slovenia for a criminal offence which is prosecuted by law provided that such an offence is punishable pursuant to the regulations of his/her country as well as pursuant to the regulations of the Republic of Slovenia” whilst in Macedonia the law says that “there should be no criminal proceedings instigated against [the applicant] in the state of his nationality or in the Republic of Macedonia”.*

When individuals apply for naturalisation in their country of residence, most countries, if not all, make enquiries about them. Obviously most of the enquiries will be related to their behaviour in the country of residence, but many enquiries will also be about their behaviour in their country of origin.

Many people who want to move from one country to another have to give details of any convictions in their country of origin or in any other countries in which they have been. Failure to state such convictions which become known to their new State of residence should allow the country to deport them.

However, unfortunately, in many such cases the failure of the applicant to be honest when applying for a visa is not discovered until far later. In many such cases the truth becomes known to the government department which is dealing with the application for naturalisation. Failure to notify the conviction results in the applicant being considered of not being “of good character” or that he/she fails to meet the requirements for naturalisation.

If the convictions only become known after the individual has been naturalised, then the person concerned can be legally deprived of nationality even if he/she became stateless. The European Convention on Nationality specifies that the ground for deprivation of nationality because of “*acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant*” applies even if the person becomes stateless. So, a person who lies about his/her criminal record can be refused nationality upon application for naturalisation or lose it after he/she has been naturalised, regardless of how long it takes for the truth to come through to the country in which he/she is resident and naturalised.

#### **4.5.2. Naturalisation and residence**

Finally, it should be noted that the refusal of naturalisation will not automatically result in the loss of residence as well. The two procedures are quite distinct. According to the immigration laws of many European countries, when a person has become legally permanently resident in the country it is very hard for that to be lost unless there is a conviction resulting in imprisonment.

When the individual is still subject to immigration restrictions then it is fairly easy for the State to refuse an application for an extension of permitted stay or residence because of the failure of the individual to be honest regarding their convictions, although many might then apply for asylum on the basis that the convictions were based upon their political status.

### **Conclusion**

This Study has shown various implications of immigration and nationality laws on suspected and convicted terrorists. They are not resolved in the treaties, which I have referred to, nor in the other documents regarding terrorism. It would therefore be useful for the Council of Europe to look into this matter and, subject to agreement of the member states, draft a legal instrument explaining and clarifying the different problems discussed in this Study. This could be helpful for the various countries involved with the prosecution of a terrorist, namely, the country(s) of nationality, the country of residence (where different), and the country of conviction or where the terrorist is found

(where different). This instrument could show them how to approach each case in a coordinated manner. In particular, it would enable one of the countries to prosecute the terrorist without having to allow him/her to remain on its territory when his/her imprisonment is over because the other States had withdrawn his/her nationality rendering the person stateless with no ability to return to one of these other countries.