

CDDH comments on the Parliamentary Assembly Recommendation 2145(2019) “Withdrawing nationality as a measure to combat terrorism: a human rights-compatible approach?”

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1. The Steering Committee for Human Rights (CDDH) takes note of Parliamentary Assembly Recommendation [2145\(2019\)](#) “*Withdrawing nationality as a measure to combat terrorism: a human rights-compatible approach*”, and of Resolution¹ 2263(2019) that accompanies it.

2. Bearing in mind that the European Convention on Human Rights or its Protocols do not guarantee the right to nationality/citizenship¹ and that, as a result, member States enjoy a wide margin of appreciation when deciding whether to grant or withdraw nationality,² the CDDH wishes to recall that, in its case-law, the Court drew attention to the fact that nationality is an element of the person's identity under Article 8 of the Convention,³ but also on the fact that such a measure should be legal, devoid of arbitrariness⁴ and not have a discriminatory effect.⁵

3. In the same vein, the CDDH wishes to recall the Guidelines of the Committee of Ministers on human rights and the fight against terrorism, adopted by the Committee of Ministers on 11 July 2002 at the 804th meeting of the Ministers' Deputies, which provide that:

- (i) all measures taken by States to fight terrorism must respect human rights and the principle of the rule of law, while excluding any form of arbitrariness, as well as any discriminatory or racist treatment, and must be subject to appropriate supervision;
- (ii) all measures taken by States to combat terrorism must be lawful;
- (iii) when a measure restricts human rights, restrictions must be defined as precisely as possible and be necessary and proportionate to the aim pursued.

4. While noting that the issues concerning counter-terrorism measures relate more directly to the Steering Committee on Counter-Terrorism (CDCT) and the European Committee on Legal Co-operation (CDCJ), the CDDH considers that withdrawing nationality, as a measure to combat terrorism, may potentially raise objective human rights concerns, in particular under Article 8 of the Convention.

¹ Although legal doctrine makes a distinction between these two concepts, in the present comments, they are used interchangeably.

² Bearing in mind the obligations of member States in accordance with other international treaties, in particular articles 7 and 8 of the Convention on the Rights of the Child.

³ See, for example, *Menesson v. France*, Application No. 65192 judgment of /11, judgment of 26 June 2014; *Genovese v. Malte*, Application No. 53/24/09, judgment of 11 October 2011, §33.

⁴ See, for example, *Ramadan v. Malta*, Application No. 76136/12, judgment of 21 June 2016.

⁵ *Biao v. Denmark*, Application No. 38590/10, judgment of 24 May 2016.

5. The CDDH expresses its availability, if necessary:
- (a) to make comments on any comparative study that would focus on existing laws in the member States regarding deprivation of nationality as a measure to combat terrorism;
 - (b) to cooperate in the possible drafting of guidelines (if the comparative study leads to a positive conclusion on the desirability of drafting such guidelines) (i) on the criteria to be applied for the withdrawing of nationality in the context of counterterrorist measures and (ii) on alternative measures that could be envisaged.

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Text of Recommendation 2145(2019)

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

Parliamentary Assembly

1. Referring to its [Resolution 2263 \(2019\)](#) “Withdrawing nationality as a measure to combat terrorism: a human rights-compatible approach?”, the Parliamentary Assembly asks the Committee of Ministers:

- 1.1. prepare a comparative study on Council of Europe member States for the deprivation of nationality, with special focus on deprivation of nationality as a measure to combat terrorism;
- 1.2. draft guidelines on the criteria to be set up for the deprivation of nationality and on other counter-terrorism measures that could be used instead.