



CDDH(2019)05

04/06/2019

STEERING COMMITTEE FOR HUMAN RIGHTS (CDDH)

Recommendation of the Parliamentary Assembly transmitted by the Ministers' Deputies to the CDDH

**Text of the Recommendation and draft comments suggested by the Bureau
for consideration by the CDDH at its meeting of June 2019
concerning Recommendation of the Parliamentary Assembly 2145(2019) –
*Withdrawing nationality as a measure to combat terrorism:
a human rights-compatible approach?***

Introduction

1. Following the decisions of the Ministers' Deputies adopted at their 1336th meeting (6-7 February 2019), the text of the following Recommendation of the Parliamentary Assembly, adopted at its Winter Plenary Session (21-25 January 2019), has been transmitted to the CDDH for information and possible comments:

- Recommendation 2145 (2019) "*Withdrawing nationality as a measure to combat terrorism: a human rights-compatible approach?*"

2. The present document contains the text of this Recommendation as well as draft comments suggested by the Bureau at its 101st meeting (Helsinki, 15-17 May 2019) for possible CDDH comments. These draft comments will be examined by the CDDH at its 91st meeting (18-21 June 2019).

* * *

Recommendation of the Parliamentary Assembly 2145(2019) - *Withdrawing nationality as a measure to combat terrorism: a human rights-compatible approach?*

Text of the Recommendation

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

1.1. prepare a comparative study on Council of Europe member States’ laws allowing for 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.

[Draft comments by the CDDH]

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 Resolution 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, 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,² but also on the fact that such a measure should be legal, devoid of arbitrariness³ and not have a discriminatory effect.⁴

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;

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

² See, for example, *Mennesson 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.

³ See, for example, *Ramadan v. Malta*, Application No. 76136/12, judgment of 21 June 2016.

⁴ *Biao v. Denmark*, Application No. 38590/10, judgment of 24 May 2016.

- (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.

5. The CDDH expresses its availability, if necessary:

- (i) to make comments on any comparative study that would focus on existing laws in the member States regarding deprivation of nationality in the fight against terrorism;
- (ii) to cooperate in the possible drafting of guidelines (if the comparative study leads to a positive conclusion on the desirability of drafting such guidelines) on the criteria to be applied for the withdrawing nationality in the context of the fight against terrorism and on alternative measures that could be envisaged.

* * *