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Citizenship deprivation as a counterterrorism measure: a comparative analysis

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Introduction

On 27 December 2019, the United Kingdom Home Office decided to deprive a woman, known only as D4, of her British citizenship. D4, who had been detained at Camp Roj, Syria, since January 2019, and who had allegedly travelled to Syria to side with the Islamic State, was deprived of her nationality on the grounds that the decision was conducive to the public good, and that the decision had been reached on information that should have not been made public in the interest of national security. As a matter of fact, the British authorities did not disclose the full details of this assessment or the evidence against the woman, nor was the deprivation case brought before a judge before the deprivation order was issued. Only in September 2020, when the lawyers of D4 asked the Foreign and Commonwealth Office for assistance with her repatriation, the Home Office informed them that the woman had indeed been deprived of her citizenship. This was the first time that the deprivation of citizenship was communicated to D4 or her lawyers. Whilst D4 filed an application for judicial review claiming that deprivation orders issued against her had no legal effect, the decision to denationalize her effectively left her in legal limbo, unable to return to the UK and thus effectively stranded in Syria. Although the removal of citizenship on national security grounds was in accordance with UK law, the UK High Court and Court of Appeal held that the failure to notify the removal of the woman's citizenship until the government was contacted by her lawyers invalidated the decision. As a response, in July 2021, the UK government started to work on a new Nationality and Borders Bill which included a retroactive provision – essentially intended at nullifying the effects of the Court's decision – to allow the Home Secretary to deprive people of their citizenship without giving them any notice. On 28 April 2022, the Bill received Royal Assent and became an Act of Parliament.

The episode that occurred in the UK is not an exception when examined within the broader - and relatively recent – trend whereby Western countries, and particularly European countries, are increasingly resorting to the removal of citizenship as a counterterrorism measure, either by introducing provisions of this kind into their legal systems or, where these provisions are already present, by seeking to expand the power of governments in this direction. This trend has emerged as a consequence of the 9/11 terrorist attacks and spread with greater impetus as a result of the 2015 Paris attacks. Indeed, while in 2001 it was still possible to think of Islamist terrorism as the work of jihadis from faraway places, the attacks of 2015 shed light on the issue of so-called Foreign Terrorist Fighters (FTFs), and governments became evermore aware that terrorists were often home-grown. This issue, coupled with the limitation that States encounter *vis-à-vis* their own citizens, namely the fact that they cannot be expelled, nor can they be prevented from re-entering if they express the will to do so, prompted States to enact citizenship deprivation laws.

Notably, the dubious compatibility of these kinds of measures with human rights under international law (especially when also targeting *suspected* terrorists), together with the fact that not even Italy has remained untouched by this trend, are the main factors that sparked my curiosity around this topic. Consequently, the main question that this research project aims to answer is whether it is feasible to resort to the removal of citizenship on security grounds without violating fundamental human rights as well as States' international obligations, or whether this type of measure is itself a violation of both. Around and within this question, other interrogatives arise: what is the potential value of the measure, and what are its criticalities? Is their significance equivalent or is it possible to say that one outweighs the others? What are the actual limits that international law imposes on States that wish to strip terrorists, and suspected terrorists, of their citizenship? What margins do the Courts, both domestic and European, leave for States? How have European countries introduced – or expanded – deprivation powers, and what issues have emerged?

To systematically answer these questions, this research has been divided into three chapters.

The first chapter will first examine the historical background and development of the measure, before and after 9/11 and following the 2015 momentum, as well as the actual spread of the trend to resort to citizenship stripping laws. Then, the chapter will move on to an analysis of the main arguments advanced by the two sides of the academic debate on the usefulness and effectiveness of the measure. In particular, the main arguments of the measure's supporters will first be examined. Because of its particular relevance in this context, a specific focus will be placed on the potentially symbolic value of the measure and the broader context, within which it fits, of symbolic legislation. Finally, the chapter will analyse the main arguments advanced by the critics of the measure, firstly on the issue of effectiveness and on its inherently counterproductive nature, and, secondly on the consequences and impact of the measure on human rights and human dignity.

The second chapter, given the potentially heavy impact that measures of nationality deprivation can entail on the human rights of individuals concerned, will analyse the supranational limits that States encounter in resorting to this kind of provision. Specifically, the chapter will start by describing the international law framework and, then, it will focus on the European Convention on Human Rights (ECHR). To this end, four cases of the European Court of Human Rights (ECtHR) will be thoroughly examined, namely *Ramadan v. Malta, K2 v. the United Kingdom, Ghoumid and Others v. France* and *Johansen v. Denmark.* Finally, the chapter will take into account the supranational limits that can be imposed on States willing to resort to deprivation measures by virtue of the law of the European Union (EU), by looking specifically at the European Court of Justice's (CJEU) ruling on the *Rottmann*'s case.

The third and final chapter will conduct a comparative analysis of how specific legal systems in Europe resorted to citizenship deprivation as a counterterrorism measure. After an in-depth study of the issue, three countries were selected as case studies: the United Kingdom (UK), France, and Italy. Hence, following a run-through of the international limits and standards that appear to be the most relevant with regard to the chosen cases, this chapter will first look at the case of the UK which is, arguably, the most emblematic case in the context of the expansions of citizenship deprivation powers for counterterrorism purposes. Then, the chapter will consider the French case where, interestingly, despite a high number of terrorist attacks, attempts to expand these powers stopped relatively early, and the recorded cases of deprivation turned out to be low. Then, the chapter will examine the Italian case, not only because Italy is one of the European countries that have most recently introduced a provision to remove nationality on security grounds, but also because this provision was introduced by one of the most characterizing acts of a government (the "Conte I" government) characterized by a major securitarian turn, and which has made security its warhorse. A section of comparative analysis will follow the individual cases, highlighting the main similarities and differences that emerged, both in terms of legislative evolution and contents, and an attempt will be made to identify a common thread behind all cases.

Finally, in the conclusions section, the main findings that emerged from each chapter will be recalled, and an attempt will be made to provide an answer to the questions that guided the development of this research project, and in particular to the main research question.

With regard to the approach to the analysis and the methodology employed, a deductive approach was preferred, thus starting with a general analysis of the topic, and then considering the particular features of individual cases. Concerning, specifically, the types of sources, extensive use was made of academic literature and reports, available case law, policy documents and media reporting, as well as public statements by key politicians and state officials, state practices and parliamentary debates.

In the wealth of available sources, some were particularly important for the elaboration of this work. In the first chapter, with regard to quantitative data analysis aimed at reconstructing the evolution and the spread of the use of citizenship removal as a counter-terrorism measure, due to the scarcity of official governmental data on the subject, an invaluable contribution to the analysis was provided by the "*Instrumentalizing citizenship in the fight against terrorism*" report developed by the human rights NGO Institute on Statelessness and Inclusion (ISI) and the online observatory and research network Global Citizenship Observatory (GLOBALCIT), published in March 2022. In the second chapter, to reconstruct the international and the European law frameworks, particular reference was made to the instructive works "*The Legal Limits of Citizenship Deprivation as a*

Counterterror Strategy" by Elke Cloots, and "*The Prohibition of Arbitrary Deprivation of Nationality under International Law and EU Law: New Perspectives*" by Tamás Molnár. Finally, in the third chapter, special reliance was made upon Sandra Mantu's work "*'Terrorist' citizens and the human right to nationality*" for the analysis of the British and French cases, and upon Luigi Viola's work "*La revoca della cittadinanza dopo il Decreto Sicurezza*" for the Italian case.

Chapter 1: Deprivation of citizenship as a counterterrorism measure

1. Introduction to the chapter

Provisions of citizenship deprivation have been contemplated by national legislations of a large number of States well before the 9/11 terrorist attacks. However, following this historic event, and with renewed force after the 2015 Paris attacks, the removal of citizenship has been progressively adopted by States as a counterterrorism measure, targeting both suspect and convicted terrorists. The recourse to this kind of measure was fundamentally driven by the need for states to overcome the constraint they face *vis-à-vis* their citizens, as the latter cannot be expelled, nor can they be denied re-entry if they express the will to do so. Notably, after 2015, following the rise and then fall of the Islamic State (IS) in Syria and Iraq and the appeals of terrorist leaders to radicalised individuals to build terrorist networks in their home countries, States realized and increasingly feared the consequences of returning Foreign Terrorist Fighters (FTFs). This has provided an additional incentive to explore and expand the use of deprivation of citizenship as a security tool. With this in mind, following the present introduction, the second section of this chapter (2) will examine the historical background and development of the measure, before and after 9/11 and following the 2015 momentum. It should be noted that, in reconstructing the development of the measure and, in particular, in the analysis of quantitative data, due to the scarcity of official governmental data on the subject of interest, particular reference will be made to the "*Instrumentalizing citizenship in the fight against terrorism*" report developed by the Institute on Statelessness and Inclusion (ISI) and the Global Citizenship Observatory (GLOBALCIT).

Furthermore, an interesting academic debate has developed around the measure to identify its potential or, on the contrary, its ineffectiveness and counter-productive nature as a counterterrorism measure. Taking into consideration, as a due premise, that the general orientation of legal research globally tends to be negative towards the measure, the following sections of the chapter will examine both its potential and its criticalities, trying to assess whether one outweighs the others. In particular, the following section of the chapter (3) will first analyse the main arguments put forward by the supporters of the measure (3.1). Then, given its relevance, the same section will place a specific focus on the potentially symbolic value of the measure (3.2) and the broader context of symbolic legislation (3.3).

The subsequent section (4) will analyse the criticism of the measure by first considering the question of effectiveness (4.1) and presenting counterarguments to what was presented in section 3, and then by considering the consequences and impact of the measure on human rights and human dignity (4.2).

Finally, the last section (5) will go over the most salient points discussed in the chapter as well as provide some conclusions on the potential value and effectiveness of the measure.

2. Historical background and development of the measure

Even though national security has always been a key priority for States, the terrorist attacks of 11 September 2001 in New York and Washington can be referred to as a major historical watershed event. They not only led to the declaration of a global war on terror by the George W. Bush administration but also brought the issue of terrorism to the forefront of security concerns in the West[1]. Behind the driving force of the United States, military forces, law enforcement agencies, and intelligence services worldwide began to develop common databases, exchange personnel, conduct joint operations and training, share intelligence, technology and expertise, and States started to implement a wide range of policy measures to address the new common threat while redefining the global approach to counterterrorism practices[2]. In the following decades, further terrorist attacks - including those in Madrid, London, Paris, Brussels and Berlin - as well as the rise and then fall of ISIS in Syria and Iraq, have contributed to the growth of new efforts to strengthen (inter)national security, leading to a so-called 'legislative fever'[3] with which many governments have responded to contemporary terrorism threats. Alongside the unquestionable value of new counterterrorism practices which, by virtue of their most basic and immediate ends, aim at saving human lives and guaranteeing the security of States and their citizens, it must also be emphasized that such renewed resort to all sorts of counterterrorism practices has at times resulted in evermore blurred lines between war, terror and human rights. In this context, one trend that is particularly interesting to analyse, not least because of its controversial nature, is the adoption or expansion of nationality deprivation powers as a counterterrorism measure. To this end, an attempt will be made in the present chapter to first reconstruct the history, evolution and diffusion of the measure, and to subsequently present an analysis of contrasting perspectives and points of view, both in favour and against the measure, in order to try to elaborate a position on the issue that is as much as possible the result of a comprehensive approach and informed reasoning.

Before diving deeper into the merits of the chapter, it is useful to start by defining a few key concepts. Nationality – or citizenship – can be defined, according to the renowned definition given by the International Court of Justice (ICJ), as "*a legal bond* [between a citizen and a State] *having as its basis a social fact of attachment, a genuine connection of existence, interest and sentiments,*

[1] Williams, P. D. (2012). Security studies: An introduction. In Security Studies (p. 396). Routledge.
[2] The 9/11 Effect and the Transformation of Global Security. (n.d.). Council of Councils. Retrieved September 20, 2022, from https://www.cfr.org/councilofcouncils/global-memos/911-effect-and-transformation-global-security
[3] Paulussen, C. (2018). Countering terrorism through the stripping of citizenship: Ineffective and counterproductive. International Centre for Counter-Terrorism (ICCT).

together with the existence of reciprocal rights and duties"[4]. These two terms, nationality and citizenship, will be used interchangeably throughout this research. Thus, nationality is determined by one's social ties to a given country, and when such a bond is established, it gives rise to rights and duties on the part of the State, as well as on the part of the citizen[5].

Another concept that is crucial to define is that of deprivation of nationality – or denationalization –, which refers to the unilateral act through which a State withdraws an individual's nationality, formally breaking the aforementioned legal bond. There are two different modalities by which non-voluntary withdrawal of nationality can be achieved, namely loss and deprivation[6]. The former is negative in nature and is most commonly used to describe the automatic forfeiture of nationality if specific conditions laid down by law are met, without further intervention by the State (examples are residing abroad several consecutive years or voluntarily acquiring a different nationality). The latter, by contrast, is positive in nature and refers to the non-automatic withdrawal of nationality by an authority—often either a court or the Minister of Justice or Interior— empowered to do so under certain circumstances[7]. The present research will use the term deprivation in its broader sense to refer to any act of (positive) withdrawal of citizenship, no matter the modality through which it is achieved.

Although nationality deprivation measures have attracted a lot of attention in the last two decades in the context of anti-terrorism, it is important to note that, from an historical perspective, these measures have been widely diffused in national legislation even before 9/11, also on security grounds. In 1759, for instance, it was decreed by a Portuguese court that 11 citizens be denaturalized for plotting against the life of King Joseph I[8]. More recently, in 1958, the International Law Commission (ILC) carried out a survey of domestic legislation that showed that the revocation of nationality was enshrined in the domestic law of almost all the States under consideration[9]. At the

[4] Nottebohm Case (Liechtenstein v. Guatemala); Second Phase, International Court of Justice (ICJ), 6 April 1955, ICJ Reports 1955, p. 4; General List, No. 18.

[5] Edwards, A. (2014). The meaning of nationality in international law in an era of human rights: procedural and substantive aspects. Nationality and statelessness under international law, 11.

[6] UN High Commissioner for Refugees (2014) Expert Meeting: Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality. https://www.refworld.org/pdfid/533a754b4.pdf.

[7] Jaghai, S., & Waas, L. V. (2020). Stripped of citizenship, stripped of dignity? A critical exploration of nationality deprivation as a counter-terrorism measure. In Human dignity and human security in times of terrorism (pp. 153-179). TMC Asser Press, The Hague.

[8] Sentença de Exautoração, e desnaturalização, que proferio a Suprema Junta da Inconfidencia antes de proceder a Sentença definitiva (13 de Janeiro de 1759), in: Julio Firmino Judice Biker, Collecção dos Negocios de Roma no reinado de el-Rey Dom José I, ministerio do Marquez de Pombal e pontificados de Benedicto XIVe Clemente XIII, Vol. 1, Imprensa Nacional, 1874, pp. 64-66 [in Portuguese], available at: https://www.digitale-sammlungen.de/en/view/bsb11185212?page=68,69, as found in Institute on Statelessness and Inclusion & Global Citizenship Observatory. (2022, March). Instrumentalizing citizenship in the fight against terrorism. https://files.institutesi.org/Instrumentalising_Citizenship_Global_Trends_Report.pdf".

[9] See International Law Commission (1953) Nationality, including Statelessness – National Legislation Concerning Grounds for Deprivation of Nationality – Memorandum Prepared by Mr. Ivan S. Kerno, Expert of the International Law

time, reasons for resorting to this measure included changes in personal status, such as marriage, but also actions like illegal border crossing, emigration, military desertion or voting in a foreign election.

A wistful yet significant parenthesis of the historical use of citizenship removal before 9/11 relates to its use for mass denationalization, targeting ethnic and religious minorities and resulting in gross violations of human dignity and human security. The most notorious example is, in this case, the deprivation of citizenship against German Jews during the Nazi regime, which led to harsh condemnation by the international community[10]. Such association with totalitarian regimes led to denationalization as a security instrument of States to virtually disappear in the West after 1945[11].

Nonetheless, since 9/11, there has been a remarkable resurgence of interest concerning nationality deprivation on security grounds. Today, according the Institute on Statelessness and Inclusion (ISI) and the Global Citizenship Observatory (GLOBALCIT), there are four grounds of deprivation, as catalogued in the GLOBALCIT Citizenship Law Dataset[12], that have been identified as relating to national security, namely:

- disloyalty (occurs when an individual engages in behaviour or offence based on a concept of disloyalty or damage to the interests or security of the country of which the individual is a citizen);
- military service to a foreign country (occurs when an individual renders military service to a foreign country or armed group);
- other services to a foreign country (occurs when an individual renders nonmilitary services to a foreign country, except for those performing such service with permission or on behalf of their country of citizenship);
- other offences[13].

Commission, UN Doc. A/CN.4/66/, as found in Jaghai, S., & Waas, L. V. (2020). Stripped of citizenship, stripped of dignity? A critical exploration of nationality deprivation as a counter-terrorism measure. In Human dignity and human security in times of terrorism (pp. 153-179). TMC Asser Press, The Hague.

[10] Jaghai, S., & Waas, L. V. (2020). Stripped of citizenship, stripped of dignity? A critical exploration of nationality deprivation as a counter-terrorism measure. In Human dignity and human security in times of terrorism (pp. 153-179). TMC Asser Press, The Hague.

[11] Such claim, expressed in the Institute on Statelessness and Inclusion & Global Citizenship Observatory. (2022, March). Instrumentalizing citizenship in the fight against terrorism. https://files.institutesi.org/Instrumentalising_ Citizenship_Global_Trends_Report.pdf, that the measure virtually disappeared after 1945, is apparently contradictory when compared with the ILC survey of 1958, which continued to note the presence of this measure in several States' legislation. It is presumable that the report referred to the fact that the *use* of the measure virtually disappeared, although the legislative provision remained in several legal systems – as documented by the ILC - for cases such as change of personal status, military desertion, military or other services to a foreign country.

[12] The GLOBALCIT Citizenship Law Dataset includes information on the different ways in which citizenship can be acquired and lost across the world. The Dataset is organized around a comprehensive typology of modes of acquisition and loss of citizenship, which outlines, in a systematic way, 28 ways in which citizenship can be acquired and 15 ways in which citizenship can be lost.

[13] Institute on Statelessness and Inclusion & Global Citizenship Observatory. (2022, March). Instrumentalizing citizenship in the fight against terrorism. https://files.institutesi.org/Instrumentalising_Citizenship_Global_Trends_Report.pdf

According to the report, individuals can be stripped of their citizenship on at least one security-related deprivation ground in 79% of considered countries yet, as of January 2020, disloyalty was the most common security-related ground for nationality deprivation all around the globe[14]. Disloyalty, being a broad category that includes provisions penalizing a range of conduct or offences that harm the interests or security of the State, also includes acts of treason or terrorism and, accordingly, its primacy among contemporary security-related grounds comes as no surprise if seen as a direct consequence of 9/11 and, more recently, 2015 terrorist attacks. Indeed, in 2015, the world was shocked by brutal terrorist attacks such as those on the Charlie Hebdo offices and the Bataclan concert hall in Paris, and it saw clearly how the threat of terrorism, despite the wide array of counterterrorism measures taken in the aftermath of the 9/11 attacks, had all but disappeared.

On the contrary, the 2015 attacks made the limitation that characterizes the State's position vis-a-vis its citizens all the more evident, as a State cannot deport or expel its citizens, nor can it deny them permission to return if they express their will to do so. This renewed problematic nature of the State-citizen relationship emerged as the terrorist attacks brought to light the phenomenon of foreign fighters, in France as well as in the rest of Europe. Foreign Fighters can be defined as "*individuals, driven mainly by ideology, religion and/or kinship, who leave their country of origin or their country of habitual residence to join a party* engaged in an armed conflict"[15]. As is known, the conflict in Syria and Iraq attracted an extraordinary number of foreign fighters[16]: on November 28, 2017, the United Nations Undersecretary-General and head of the Counter-Terrorism Office, Vladimir Voronkov, briefed the UN Security Council affirming that "*at one stage, more than 40,000 foreign terrorist fighters from 110 countries might have travelled to join the conflict in Syria and Iraq*"[17]. Because a huge number of these foreign fighters joined terrorist organizations, the focus quickly shifted from foreign fighters as such to foreign terrorist fighters (FTFs), which the UN Security Council defined as "*individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict*"[18]. To respond to the issue of foreign fighters, and especially FTFs and the terrorist groups

[14] Ibidem
[15] De Guttry, A., Capone, F., & Paulussen, C. (Eds.). (2016). Foreign fighters under international law and beyond (p. 2.). The Hague: TMC Asser Press.
[16] Paulussen, C. (2021). Stripping foreign fighters of their citizenship: International human rights and humanitarian law considerations. International Review of the Red Cross, 103(916-917), 605-618.
[17] UN Security Council, 8116th Meeting (PM), Greater Cooperation Needed to Tackle Danger Posed by Returning Foreign Fighters, Head of Counter-Terrorism Office Tells Security Council, SC/13097, 28 November 2017, available at: https://www.un.org/press/en/2017/sc13097.doc.htm As found in Paulussen, C. (2021). Stripping foreign fighters of their citizenship: International human rights and humanitarian law considerations. International Review of the Red Cross, 103(916-917), 605-618.
[18] UN Security Council, "Preambular", in Resolution 2178 (2014), S/RES/2178 (2014), 24 September 2014, available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/547/98/PDF/N1454798.pdf?OpenElement (p.2)

they joined, States, as well as international and regional organizations, started to develop a wide range of measures, from actual military campaigns to criminal and administrative measures. It is worth noting that, more recently, in the area of criminal law, the emphasis has switched from a perspective that was first limited to counterterrorism – according to which foreign fighters were mainly prosecuted for joining terrorist groups - to broader incriminations, showing a renewed awareness that foreign fighters could have also committed crimes as individuals participating in hostilities, such as war crimes. However, as criminal law standards can be difficult to respect, especially if one takes into account how challenging it can be to obtain evidence in post-conflict situations, States have increasingly turned to administrative measures such as the deprivation of citizenship.[19] Moreover, while in 2001 it was still possible to think that Islamist terrorism was the work of jihadis from faraway places, the attacks of 2015 clearly showed how terrorists were often home-grown: the 2015 Paris attacks were committed by French and Belgian citizens, as was the shooting at the Jewish Museum in Brussels in May 2014. The acknowledgement that acts of Islamic terrorism were increasingly being carried out by citizens against their State and fellow nationals has, therefore, played a crucial role in prompting States to enact citizenship deprivation laws[20], to overcome the limit that prevents them from expelling their own citizens. Consequently, a huge number of States have lately made it possible, or easier, to denationalize (suspected) terrorists.

To fully understand the post-9/11 global trends in the spread of these measures, it is crucial to analyse not only how many countries introduced – or expanded - denationalization powers in their national legislation, but also in how many countries these powers have either never been used or have been reduced or abandoned. The following reconstruction of the geographical spread of nationality deprivation powers is based on the "*Instrumentalizing citizenship in the fight against terrorism*" report[21] and the 190 countries considered therein. As of 1 January 2000, 67 of the 190 countries had no legal provisions allowing for the deprivation of citizenship for disloyalty. By 1 January 2020, this number had dropped to 61 and, by 1 January 2022, to 56[22]. The fact that about 30% of the countries analysed do not provide the removal of citizenship for disloyalty is a statistic that is worth

[19] Paulussen, C. (2021). Stripping foreign fighters of their citizenship: International human rights and humanitarian law considerations. International Review of the Red Cross, 103(916-917), 605-618.
[20] Cloots, E. (2017). The legal limits of citizenship deprivation as a counterterror strategy. European Public Law, 23(1).
[21] Institute on Statelessness and Inclusion & Global Citizenship Observatory. (2022, March). Instrumentalizing citizenship in the fight against terrorism. https://files.institutesi.org/Instrumentalising_Citizenship_Global_Trends_Report.pdf
[22] Institute on Statelessness and Inclusion & Global Citizenship Observatory. (2022, March). Instrumentalizing citizenship in the fight against terrorism. https://files.institutesi.org/Instrumentalising_Citizenship_Global_Trends_Report.pdf. The 56 countries are: Argentina Armenia Bolivia Burundi Cambodia Canada Cabo Verde Chile China Democratic Republic of the Congo Costa Rica Croatia Cuba Czech Republic Ecuador Eswatini Ethiopia Georgia Guatemala Hungary Iceland Iran Japan Liberia Luxembourg Mexico Micronesia Mongolia Mozambique Nepal North Korea North Macedonia Palau Panama Papua New Guinea Paraguay Peru Poland Portugal Russia Serbia Slovakia South Africa Spain Sri Lanka Suriname Sweden Taiwan Tajikistan Trinidad and Tobago Turkmenistan Tuvalu Ukraine Uruguay Vanuatu Zambia

highlighting, in that it shows that citizenship deprivation is by no means a universally accepted practice[23]. More specifically, powers of deprivation of citizenship for disloyalty are the least common in the Americas (these powers are absent in 43% of countries), whereas, in Europe and the Asia-Pacific region, roughly one-third of countries do not provide for deprivation powers for disloyalty. In Africa, 1 in 5 countries do not provide for the use of such measures, and the same goes for only 1 in 18 countries analysed in the Middle East and North African (MENA) region. In this context, it is significant to note that some countries constitutionally protect citizenship from involuntary removal, as is shown by the example of Peru: art. 53 of the 1993 Constitution states that "*Peruvian nationality is not lost, except by express renunciation before a Peruvian authority*"[24]. Consequently, it is not possible to deprive a Peruvian citizen on security-related grounds either. Moving ahead, the report highlights that 15 countries repealed or significantly limited the power to deprive citizenship for disloyalty between 2000 and 2022: 4 countries in the Americas (Trinidad and Tobago, Peru, Chile and Ecuador), 5 in the Asia-Pacific region (Sri Lanka, Nepal and Tuvalu, the Lao People's Democratic Republic and Samoa) and 4 in the African region (Burundi, the Democratic Republic of Congo, Kenya and Mali). Significantly, in Europe, only Luxembourg repealed its citizenship deprivation provisions in 2017, in stark contrast to the tendency of many European countries to expand or introduce new powers. Similarly, in the MENA region, no country took legislative steps to repeal or narrow deprivation powers during those years but, on the contrary, a majority of countries actually expanded their denationalization powers.

In this context, Canada is an exception that is worth briefly exposing. In 2014, following a terrorist accident in Africa which involved Canadian citizens, the conservative Harper administration introduced The Canadian Citizenship Enhancement Act. The act introduced new grounds for the removal of Canadian citizenship, including national security and terrorism offences, essentially leaving denationalization powers in the hands of the Minister, thus significantly restricting the Federal Court's powers. Nevertheless, only three years later, Canada abandoned these provisions as the then premier candidate Justin Trudeau made the repeal of parts of the Act a key focus of his campaign, on the basis that the law created two classes of citizens. Trudeau argued that every Canadian's citizenship would be devalued if made conditional for anyone, uttering the famous sentence "*a Canadian is a Canadian*"[25] and, through subsequent amendments, he ensured that dual citizens convicted of national

[23] Institute on Statelessness and Inclusion & Global Citizenship Observatory. (2022, March). Instrumentalizing citizenship in the fight against terrorism. https://files.institutesi.org/Instrumentalising_Citizenship_Global_Trends_Report.pdf

[24] Ibidem

[25] Video: "A Canadian is a Canadian is a Canadian": Harper, Trudeau spar over right to revoke citizenship. (2015, September 28). The Globe and Mail. https://www.theglobeandmail.com/canada/video-video-a-canadian-is-a-canadian-is-a-canadian-harper-trudeau-spar/

security offences would be sanctioned under ordinary criminal law and not deprived of citizenship. If one takes into consideration the time frames during which most countries have repealed or restricted denationalization laws, an interesting picture emerges: more than half of the countries belonging to this category introduced these changes between 2000 and 2010, at a time when - in spite of the rise of global terrorism - such events could still be perceived as isolated or carried out by international terrorist cells based abroad, without any perception of significant security threats from within. Since 2011, however, there has been a noticeable decline in the number of countries repealing or restricting nationality removal laws, which can be linked to the onset of the civil war in Syria, the rise of ISIS and the emergence of the phenomenon of foreign fighters[26].

Although 132 countries, i.e. the clear majority of all countries covered by the report, did not amend nationality deprivation powers on grounds of disloyalty, it is significant that more countries have introduced or extended these powers compared to those that have repealed or reduced them. In fact, 20 countries have introduced grounds for deprivation of citizenship related to disloyalty[27], while another 17 have expanded the scope of existing grounds[28]. Overall, this means that 1 in 5 countries have introduced or enhanced provisions to deprive citizens of nationality on grounds of disloyalty, introducing in almost all cases grounds related to national security or terrorism.

Europe clearly emerged from the report as the epicentre of expanding powers, with 18 European States expanding their powers since the year 2000[29], therefore accounting for nearly half of all countries globally that changed their legislation in that direction. Remarkably, more than 9 of them also included terrorism as an explicit cause in their laws, directly relating new deprivation powers to national security and counterterrorism measures[30]. Again, if one examines more closely the timing, as well as the content, of legislative reforms, a link between the expansion of deprivation powers and the upsurge in global terrorism clearly emerges. Indeed, the acceleration of legislative reforms by countries to introduce or expand deprivation powers that occurred between 2016 and 2022 shows a clear link to the issue of how to handle ISIS returnees - a challenge the whole international community was trying to address[31].

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[26] Institute on Statelessness and Inclusion & Global Citizenship Observatory. (2022, March). Instrumentalizing citizenship in the fight against terrorism. https://files.institutesi.org/Instrumentalising_Citizenship_Global_Trends_Report.pdf

[27] Ibidem. These countries are Albania, Austria, Belarus, Bosnia and Herzegovina, Denmark, Fiji, Finland, Germany, Honduras, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, the Netherlands, Norway, Seychelles, South Korea, Tonga and Uzbekistan.

[28] Ibidem. These countries are Algeria, Angola, Australia, Azerbaijan, Bahrain, Belgium, Estonia, Libya, Morocco, Oman, Qatar, Romania, Saudi Arabia, Solomon Islands, Uganda, United Arab Emirates and the United Kingdom.

[29] Ibidem. Bosnia and Herzegovina, Albania, Austria, Azerbaijan, Belarus, Belgium, Denmark, Estonia, Finland, Germany, Italy, Kazakhstan, Latvia, Liechtenstein, the Netherlands, Norway, Romania and the United Kingdom

[30] Ibidem. These include Denmark, the Netherlands, Germany, Italy, Finland and Kazakhstan.

[31] Cfr. note 17

As for the actual frequency with which deprivation powers have been used globally as a counterterrorism measure, available data are rather scarce, as very few governments have released official data on the use of these powers and press reports tend to focus on a reduced number of individual cases that have acquired public prominence. Nonetheless, the "*Instrumentalizing citizenship in the fight against terrorism*" report offers some quantitative data[32] on the topic. By drawing a geographical limit to the analysis - that is, taking into consideration only the European continent - as well as a temporal limit - from 2000 to 2022 - the picture that emerges is as follows:

- Uk – 212 cases
- Belgium – 52 cases
- Netherlands – 21cases
- France – 16 cases
- Denmark – 6 cases
- Estonia – 2 cases
- Austria – 1 case

An important finding that can be derived from these data is that deprivation-of-nationality powers have been used against relatively few citizens, with the notable exceptions of the United Kingdom. Still, given the manifest tendency of Western countries to use citizenship deprivation powers as a counterterrorism measure, an interesting academic debate has developed around the measure, with one side arguing for its usefulness and effectiveness, and the other pointing not only to its ineffectiveness but also to its inherently counterproductive nature. The wide distance among these perspectives is the factor which renders the removal of citizenship a measure that is as controversial as interesting to analyse and, to this end, the most prominent arguments that have been put forward so far, both in defence and against the measure, will now be presented.

3. Potential of the measure

3.1 Effectiveness and practical usefulness

Although pertaining to the minority side within the academic debate, the consensus on the effectiveness of the removal of citizenship as an anti-terrorism measure is sufficiently widespread among supporters of the measure. An analysis of the main arguments that politicians, practitioners

[32] Cfr. Institute on Statelessness and Inclusion & Global Citizenship Observatory. (2022, March). Instrumentalizing citizenship in the fight against terrorism. https://files.institutesi.org/Instrumentalising_Citizenship_Global_Trends_Report.pdf, footnotes 62 to 71.

and commentators have put forward in defence of the use of this measure reveals the existence of three main broad justifications or objectives in relation to its effectiveness and practical usefulness[33]:

a) *Deprivation of citizenship, as a pre-emptive measure, makes the return more complex and keeps potential terrorists out of the country.*

If the States' political priority is to keep FTFs out of the country and to prevent the risk of terrorist attacks by returnees, it appears that citizenship removal perfectly serves such scopes by keeping threats outside the country's territory and, therefore, being beneficial to both the national security of the individual State and its citizens. This justification was extensively used by the Dutch government during parliamentary debates concerning the relevance of the measure as an anti-terrorism measure[34]: through an Explanatory Memorandum[35], the government emphasized how this measure was necessary to prevent terrorist activities in the Netherlands since FTFs, who were ready and willing to resort to violence by virtue of their ideologies, posed a threat to the Netherlands upon their return. Therefore, to protect national security, FTFs had to be stripped of their nationality to prevent terrorist attacks. Moreover, to complicate the repatriation of FTFs and help protect national security, their denationalisation also included an order to exclude them from the Dutch territory by declaring them "*undesirable aliens*". The Memorandum also made an explicit differentiation between the above administrative measure and existing criminal law, which does not prevent FTFs from returning to the Netherlands. It follows that the removal of nationality should not occur when the terrorist has returned and been convicted, yet they should be denied the enjoyment of Dutch nationality and the rights and obligations that result from it, including the right to enter into Dutch land as they represent an urgent threat to national security[36].

In the academic debate, a more cautious and less clear-cut stance, but still in line with the essence of this argument, was expressed by Peter H. Schuck, in his essay "*Should those who attack the nation have an absolute right to remain its citizens?"*[37]. In the essay, Schuck emphasizes that there is no logical or just reason why a State should be powerless to protect itself and its people from an imminent and existential threat, if properly defined, from an individual who has committed a vicious attack, if properly defined and rigorously proven, on itself and its people. Likewise, claims Schuck, there is no logical or just reason why a State should not defend itself and its people against

[33] Institute on Statelessness and Inclusion. (2020, March). The World's Stateless: Deprivation of nationality. https://files.institutesi.org/WORLD's_STATELESS_2020.pdf
[34] Ibidem
[35] Ibidem
[36] Ibidem
[37] Schuck, P. H. (2018). Should Those Who Attack the Nation Have an Absolute Right to Remain Its Citizens?. In EUI Working Papers, RSCAS 2015/14 "The Return of Banishment" (pp. 9-10).

such an attack, even by breaking the legal link that binds the aggressor with a State with which he is evidently at war, thus making it much more difficult for him to succeed in that war. The individual's interest in maintaining that bond, in this case, would probably only be tactical and cynical; therefore, it should by no means have to outweigh the nation's interest in protecting its own security and that of its citizens. According to Schuck, this is an obvious logical reasoning based not only on a utilitarian balance but on a deontological principle: the nation's fundamental duty to protect its people.

b) *Deprivation of citizenship entails legal consequences that may work as deterrents for terrorist activity.*

This argument refers to the usefulness of the measure by virtue of its direct consequence of increasing the opportunity cost for a potential terrorist to return to his country of origin to carry out an attack, with the purpose of affording higher levels of protection to the public and deterring terrorist activity. This argument has often been used by the United Kingdom: on 9 October 2002, during the debate on the deprivation of citizenship in the House of Lords, Lord Filkin pointed out that deprivation must necessarily have practical consequences for the person concerned, so that he or she is made aware of the aversion with which his or her conduct is regarded and is prevented or deterred from engaging in such conduct in the future[38]. The argument in question is substantially similar to the previous one, except for a slight difference in perspectives: the former regards denationalisation as an instrument aimed at keeping terrorists out when they attempt to return to carry out an attack, conversely, the latter considers the possibility that, by virtue of the legal consequences it entails, the removal of citizenship plays an active role in deterring the terrorist from returning and carrying out the attack.

c) *Deprivation of nationality protects the integrity of citizenship, as terrorism acts as a destructive force against the fundamental values of democratic societies.*

The argument that the removal of citizenship is justified on the grounds that terrorist acts are contrary to Western democratic values is also among those commonly put forward by the UK. An example consists of the statements made in 2018 by the British Defence Secretary, Gavin Williamson, when he commented on the possible return of the "*Beatles of ISIS*" to the UK. Two British men, Alexanda Kotey and El Shafee Elsheik, alleged to be members of ISIS and accused of being executioners in Syria and Iraq, were stripped of their British citizenship and lamented the impossibility of receiving due process as a result of their denationalisation. In this regard, Williamson

[38] Gibney, M. (2014). The deprivation of citizenship in the United Kingdom: a brief history. Journal of Immigration Asylum and Nationality Law, 28(4), 326-335. As found in Institute on Statelessness and Inclusion. (2020, March). The World's Stateless: Deprivation of nationality. https://files.institutesi.org/WORLD's_STATELESS_2020.pdf

stated that the two should not go back to the UK because they had "*turned their backs on British ideas and values*[39]". On a different occasion, the Defence Secretary also publicly stated that *"the jihadists hate everything Britain stands for*"[40], as well as the country's values and the very fact that Britain is a reference point to the world on democracy, thus causing damage to the integrity of citizenship as a concept. Something similar was also expressed by Neil Basu, Senior National Coordinator for Counterterrorism Policing in the UK, who advocated removing the citizenship of FTFs because of their long-term exposure to extreme ideologies that aim to destroy Western society[41]. Although this argument refers to the concrete usefulness of the measure in protecting the concept of citizenship and democratic values, the idea of stripping someone of his or her citizenship on the basis that he or she has "*turned his or her back on the ideas and values*" of the nation also shows a strong symbolic component and it calls for a deeper analysis of actual relevance of the symbolic value of denationalization measures.

3.2 Symbolic value

The highly symbolic value commonly attributed to the use of deprivation of citizenship in the context of counterterrorism deserves special attention both because of the importance attached to it as a factor in justifying and explaining the use of the measure and because it is highly controversial. As seen, the rationale most cited by States to justify denationalization is that of disloyalty. Behaviours and acts that can be defined as disloyal to the State, including also acts of terrorism aimed at undermining its security, lead to the breaking of the bond[42] between the State and the individual. In particular, if one draws on one of the most popular definitions of citizenship, namely "*the right to have rights*"[43], it is possible to understand the symbolic value of depriving an individual of his or her nationality. Breaking this bond, in fact, sends a clear message to citizens: those who join terrorist organizations lose their rights. Moreover, the strong symbolic value has the merit for liberal and democratic States to convey the image of a united community against those who, by joining terrorist organizations and acting contrary to its values, decide to turn their backs on it.

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[39] Drury, I. (2018, February 9). As Britain washes its hands of notorious terror cell, it tells America: YOU put them on trial. Mail Online. https://www.dailymail.co.uk/news/article-5374167/Britain-washes-hands-notorious-terror-cell.html, as found in Jaghai, S., & Waas, L. V. (2020). Stripped of citizenship, stripped of dignity? A critical exploration of nationality deprivation as a counter-terrorism measure. In Human dignity and human security in times of terrorism (pp. 153-179). TMC Asser Press, The Hague.

[40] Brits Fighting For Islamic State Should Be "Eliminated", Gavin Williamson Says. (2017, December 7). HuffPost UK. https://www.huffingtonpost.co.uk/entry/britons-islamic-state-eliminated-gavin-williamson_uk_5a28f0a6e4b0b185e539540c

[41] WARNING: UK could be flooded by 100 ISIS jihadis but we are ready, terror officer says. (2018, February 17). Express.Co.Uk. https://www.express.co.uk/news/uk/920162/isis-uk-police-warning-neil-basu-syria-iraq-caliphate

[42] Cfr. note 4

[43] Arendt, H. (1973). The origins of totalitarianism [1951]. New York.

Denationalization supporters thus use powerful rhetoric of symbolism and identity to claim that citizens who have aligned themselves with terrorist organisations can no longer be considered members of the political community. When the UK's deprivation powers were strengthened, and an increasing number of people individuals were targeted for denationalization, the Home Office stated that "*citizenship is a privilege, not a right*."[44] What was expressed by Theresa May finds broad agreement within the academic debate on the topic: if nationality is seen as a status/privilege that people deserve, and not as something to which everyone is entitled, it follows that those who aim to destroy society are not loyal and should lose that status. Deprivation of citizenship is seen, according to such logic, as a just punishment that is commensurate with the offence. This argument was strongly endorsed by political sociologist Christian Joppke, particularly in his essay "*Terrorists Repudiate Their Own Citizenship*"[45], and is fundamentally based on the premise that the novel and distinct character of contemporary terrorism can justify denationalisation. Indeed, the removal of citizenship is a response to a type of terror that crosses borders and is committed by individuals who voluntarily and explicitly place themselves outside the political community of the Nation-States, as loyalty to the community of believers (*ummah*) is deliberately mobilised against the latter. In front of academics who claim that "*citizenship deprivation weakens citizenship*"[46], Joppke laments the drawing of a blind and idyllic picture that assumes singular and unique ties between terrorists and the citizenship they despise; the author goes as far as to state that those who say that intrinsically grave harm is inflicted on those deprived of their citizenship evidently feel more compassion for the perpetrators than for their victims. According to Joppke, then, the effectiveness of denationalisation in the context of anti-terrorism takes a back seat with respect to the fundamental question of whether citizenship should be unassailable for proven terrorists, not just suspected or potential ones, who are literally at war with Western State and their citizens. Besides the changing nature of terrorism, the changing nature of citizenship should also be considered: as being born in the *wrong* State, one which cannot guarantee the physical safety and the elementary means of survival of its citizens, is a grave injustice that affects the majority of the population, it should be a source of anger to see citizenship portrayed as something that an individual should never be able to lose, no matter what a particular individual has done to undermine or even destroy this very citizenship and the State that guarantees it[47]. Finally, against

[44] Theresa May strips citizenship from 20 Britons fighting in Syria. (2013, December 23). The Guardian. https://www.theguardian.com/politics/2013/dec/23/theresa-may-strips-citizenship-britons-syria

[45] Joppke, C. (2018). Terrorists repudiate their own citizenship. In EUI Working Papers, RSCAS 2015/14 "The Return of Banishment" (pp. 11-13).

[46] See, for example, Macklin, A. (2015). Kick-off contribution. In EUI Working Papers, "The Return of Banishment" (pp. 1-6).

[47] Joppke, C. (2018). Terrorists repudiate their own citizenship. In EUI Working Papers, RSCAS 2015/14 "The Return of Banishment" (pp. 11-13).

claims that denationalization is "*superfluous and anachronistic*"[48], given that nowadays States have criminal justice systems to rehabilitate and reintegrate criminals within the State, Joppke contends the inherent and misleading paternalism of such statements: international terrorists are not criminals but warriors who do not want to be reintegrated and, therefore, States should "*eye to eye*"[49] recognise their claims by withdrawing what they have *de facto* given up and actually seek to destroy.

3.3 The broader context of symbolic legislation

The interpretation of the removal of citizenship as a measure with strong symbolic connotations is part of a more general tendency on the part of State legislatures to enact so-called symbolic legislation. The utility of the latter is strongly contested, and it is worth opening a parenthesis to better contextualize what has been analysed so far. In his work "*Symbolic Legislation: An Essentially Political Concept*" [50], Bart van Klink presents a reconstruction of the theoretical opposition between symbolic law in its positive and negative interpretations. According to van Klink, symbolic legislation does not commonly enjoy a good reputation, as the term is usually employed to refer to instances of legislation that are largely ineffective and serve other political and social goals than those officially proclaimed[51]. In particular, in the context of legal sociology, a specific case of legislation is usually called "symbolic" if the law is enacted to function primarily as a symbol. Quoting the work of Umberto Eco, the author explains that, in semiotic terms, symbols are understood to be a special type of connotative signs, that is, signs that, in addition to their literal or conventional meaning, convey another secondary meaning[52]. A given unit of expression, or signifier, and content, or meaning, which together constitute an ordinary sign, function as an expression of new content. To explain this concept, a reference is made to the sign "*sun*," which not only retains the primary meaning of "*celestial body*" but also connotes fecundity or warmth. Symbols represent an intangible content that is important to human life: values of higher spiritual order are often at stake, and when a case of legislation is regarded as symbolic legislation, the law in question means something more than what appears at first. Through the mere enactment of the law, the legislature aims to create a sign whose meaning transcends the enacted norms. Specific values are attached to the law so that it gains additional value at the semantic level for certain groups or for the entire society. A law is

[48] Ibidem
[49] Ibidem
[50] Van Klink, B. (2016). Symbolic legislation: an essentially political concept. In: Bart van Klink, Britta van Beers and Bart van Klink (eds.), Symbolic Legislation Theory and Developments in Biolaw, Springer: Cham 2016 (p. 19-35).
[51] Ibidem. The example given by the author is that of the Housemaid Law of 1948, as studied by Vilhelm Aubert, according to whom the legislation in question was never intended to be effective but it was enacted to give recognition to maids' rights on an intangible or "symbolic" level. It served to show that these rights were taken seriously, at least on paper, while, in reality, not much changed in the position of maids.
[52] Ibidem

conventionally understood as a set of substantive provisions prescribing, prohibiting or permitting specific types of conduct, and such provisions are often supported by further provisions aimed at ensuring that the rules of conduct are complied with, e.g. by providing a penalty for non-compliance.

As far as symbolic legislation is concerned, this primary or literal layer of meaning is integrated by a second layer of meaning. Hence, symbolic legislation, like the symbol itself, possesses a layered structure of meaning: in the primary or literal layer is the conceptual content of the substantive provisions, that are the rules of conduct, and the rules to ensure compliance with the law (i.e. the rules for enforcing these rules of conduct), while the secondary or symbolic layer contains references to intangible values that are linked to said conceptual content. Thus, in the case of symbolic legislation, the secondary meaning attributed to it substitutes or largely overshadows the superficial or apparent meaning of the law. Essentially, then, the main purpose of the law is not to be respected, but to give expression to values in the political sphere. This is why the legislator intentionally does not provide adequate instruments to enforce the law. Moreover, symbolic legislation often consists of vague, unclear rules that are open to multiple or even contradictory interpretations. Unlike traditional instrumental legislation, symbolic legislation does not aim to enforce the rules of behaviour promulgated but, in general, it can be enacted to achieve three types of effects that the author calls negative-symbolic: the confirmation of the value system defended by a particular group; the demonstration or simulation of power by the government; and the resolution of a social conflict between two or more groups or political parties[53]. Accordingly, symbolic legislation can actually serve instrumental objectives and, against popular opinion, is not the polar opposite of instrumental legislation or merely ineffective legislation. Symbolic laws influence social reality, although in distinct ways compared to ordinary instrumental laws, and it achieves different objectives, such as the pacification of rival groups, the simulation of power in circumstances of emergency or the (re)distribution of status in society[54].

Nevertheless, as mentioned, the negative conception of symbolic law is not the only existing one. In fact, a positive conception of symbolic legislation was developed during the 1990s, notably within the Dutch school of legal theory[55]. This interpretation similarly intended to give an alternative to the instrumental regulatory approach, but this time through dialogue and interaction rather than deception and simulation of power, as in the negative notion. According to this communicative or interactive approach, a law is referred to as "symbolic" in a positive sense if it has acquired extraordinary significance within the legal and political communities. The law, then, is not only a set of rules but is also a symbol of something higher and more valuable and gives expression to values

[53] Ibidem
[54] Ibidem
[55] Ibidem

that are fundamental to the community. Moreover, in the positive conception, a law is called 'symbolic' because of the general clauses it contains, which are preferred because they are supposed to make the law more versatile and are supported by fairly soft enforcement mechanisms that are supposed to foster debate and increase awareness in society[56]. An interesting contribution in the context of positively understood symbolic legislation is provided by French-British political analyst Catherine Fieschi who, although recognising the potential issue associated with its use, especially in case it leads to political interference in the zealous or non-zealous enforcement of laws, nevertheless emphasized how symbolism is an intrinsic part of the law, stressing that it could be affirmed that all legislation is at least partially symbolic. Mostly symbolic legislation has the positive feature of encouraging a re-examination of the law as a trigger and shaper of political debate and contributes favourably to the shaping of political society[57]. Against those who argue that symbolic legislation fails because it often fails to achieve its objectives - either because it is the wrong instrument or because it does not reassure as it should - the author argues that legislating often has more than just one objective and, while the core goals of a law, whether declared or perceived, are not always fully realized, legislation can have significant side effects. Furthermore, the notion that the law should be an instrument that gives clear-cut orders and is applied with equal vigour in each case, is a narrow view that perceives the law as an entity above society, encompassing certainty and detached from human and social concerns. Since contemporary societies are characterised by rapid change and uncertainty, it is understandable why this view can be attractive: when everything is constantly changing, one turns to the law as a source of certainty. But paradoxically, the profound transformations that lead one to look to the law for such reassurance also explain the necessary shift to a more communicative legislative style. Partly because the application and enforcement of the law become elusive in ever more borderless situations, the tendency, and not only in law, is to move away from sanctions and punishments towards changing attitudes and behaviour. Governments are increasingly convinced that attitudes and behaviours will change in part due to moral persuasion and discussion fostered by legislation.[58]

Returning to van Klink's contribution, the author concludes that because legislation has several functions and effects, both instrumental and symbolic in nature, it is never entirely symbolic or entirely instrumental, but rather it is "*a dynamic and unstable mixture of both*"[59]. Critical sociological studies that focus exclusively or predominantly on the negative-symbolic effects

[56] Ibidem
[57] Fieschi, C. (2006). Symbolic laws. Available at https://www.demos.co.uk/files/File/Prospectfeb.pdf
[58] Ibidem
[59] Van Klink, B. (2016). Symbolic legislation: an essentially political concept. In: Bart van Klink, Britta van Beers and Bart van Klink (eds.), Symbolic Legislation Theory and Developments in Biolaw, Springer: Cham 2016

analysed above ignore or downplay the possible positive-symbolic effects on discourse and thought that are essential to the functioning of law, thus missing the sensitivity to the sophisticated hermeneutic processes that inevitably accompany the making and implementing of a law. Additionally, in most cases, no concrete alternative is offered to legislation that is dismissed as symbolic.

An in-depth analysis of denationalisation as an anti-terrorism measure in its characterisation as symbolic legislation has not yet been carried out and is beyond the scope of this research. However, to conclude this digression, it could be argued that denationalisation may indeed represent, through its secondary layer of meaning, the defence of crucial democratic values - in this case, citizenship is seen as a privilege, and those seeking to undermine democratic values should not enjoy the democratic rights it entails – while also serving to demonstrate resolve and unity against those who act against these values. Yet, it is undeniable that these measures often risk remaining little more than an ineffective stance, instrumentalised by governments to make noise about an issue that concerns the security of all citizens, who consequently expect a resolute response. Moreover, as will be further examined in the next section when analysing the main criticisms of the measure, not only do provisions for nationality stripping often lack clear definitions, leaving plenty of room for personal interpretations by those who are in charge of making decisions on the matter, but it is also true that, contrary to van Klink's assertion that effective alternatives to symbolic laws are often absent, many more effective alternatives are feasible in the fight against terrorism. Finally, the argument advanced by Fieschi, that the law can have more than one objective, appears, in the case of denationalization, certainly true; for example, provisions for denationalization do possess the merit of sending a strong message of unity and resoluteness to the community. However, it is also possible to argue that this merit, along with the potential to bring about constructive social discussion on the issue, takes a back seat in the face of such a crucial problem as terrorism, in relation to which the need for a law that entails more concrete effects is certainly prevalent.

4. Criticism of the measure

4.1 The question of effectiveness

Most critics within the academic debate point to the fundamental and substantial ineffectiveness of denationalization measures. As a premise to the following section, it should be noted that, while the effectiveness of security measures is generally understood as their ability to achieve their intended objectives[60], the question of how to specifically assess the effectiveness of

[60] Institute on Statelessness and Inclusion. (2020, March). The World's Stateless: Deprivation of nationality. https://files.institutesi.org/WORLD's_STATELESS_2020.pdf

counterterrorism policies and measures remains open. From a theoretical perspective, the ISI suggested that this question should be understood within different scopes and levels[61]:

- specific/general
- short-term/long-term
- territorial/global

The first level refers to the objectives of a particular measure. Specific objectives are usually intended to be achieved in the short-term, they are explicitly stated during legislative debates and can be deduced from the content of the measure itself[62]. To assess the effectiveness of a measure in the context of counterterrorism, however, these specific objectives cannot be viewed in isolation, and the general and long-term goals associated with protection against terrorism, such as general security from terrorist threats and the preservation of democratic principles, must also be considered. Therefore, critics stress how the narrow motivations that politically justify given measures cannot be the benchmark for effectiveness.

Another variable proposed by the evaluation method developed by the ISI is the geographical scope: although measures are usually justified and used in a national context, their effectiveness in the global fight against terrorism should also be evaluated. A further factor to be considered in relation to the three levels outlined above is that of unintended consequences: many counterterrorism measures and policies are justified by specific, short-term goals, but if a measure that succeeds in achieving its direct security objectives simultaneously and unpredictably also leads to negative consequences, it cannot be considered entirely effective. Finally, as counterterrorism measures do not function as stand-alone instruments, the interaction between several measures must be considered when assessing effectiveness. For instance, in this case, it can be observed that deprivation of citizenship is often applied in conjunction with expulsion or refusal of entry measures, with potential implications for direct short-term effectiveness (e.g. if the person cannot be expelled according to the principle of non-refoulment) and overall long-term effectiveness (e.g. if a person that is considered a threat is simply transferred abroad). The effectiveness of counterterrorism measures and policies must therefore be seen as a set of complementary and interrelated levels: it is not enough to achieve the set of specific goals at the national level, but general, global and long-term perspectives must also be taken into account.

From a more practical perspective, the ISI has stressed how, although many countries have adopted new legislative instruments in the context of counterterrorism, their effectiveness has rarely

[61] Ibidem

[62] Institute on Statelessness and Inclusion. (2020, March). The World's Stateless: Deprivation of nationality. https://files.institutesi.org/WORLD's_STATELESS_2020.pdf Entry bans, for instance, have the direct and specific objective of preventing certain individuals from entering the territory of a state.

been evaluated. Indeed, while governments often claim that new measures are necessary for national security, efforts to demonstrate their effectiveness remain limited and, in general, counterterrorism should be evaluated on the basis of realistic success rates, as is the case for ordinary crimes. From this perspective, the occurrence of terrorist attacks could not in itself justify the adoption of more stringent measures[63]. This is, however, a particularly problematic point that is worth stressing before turning to the exposition of the main arguments against the use of the measure. While it is true that the occurrence of a terrorist attack does not in itself justify the adoption of a specific measure, it is also true that one cannot wait for an attack to occur to demonstrate the necessity of a measure. From this point of view, it is interesting to consider the opinion of British Judge Lord Bingham who, in expressing his opinion regarding the case of *A and others v. Secretary of State for the Home Department*[64], referring to the Attorney General's opinion, pointed out that if an attack was credibly threatened by a group like Al-Qaeda, that had proven its ability and willingness to carry it out, where the attack might be executed at any time and without notice, an emergency could legitimately be seen to be imminent. Specifically, "*the Government, responsible as it was and is for the safety of the British people, need not wait for disaster to strike before taking necessary steps to prevent it striking*"[65]. Thus, while critics of the measure believe that even the concrete occurrence of an attack does not justify the need for a strong anti-terrorist measure, there is also a further point of view based on anticipating the risk, whereby, even before an attack is committed, its threat alone is sufficient to demonstrate the need for certain measures.

Resuming the analysis of the criticism of the measure, it must be said the academic literature developed on this side of the debate is extensive, and many writings produced on the subject intersect and overlap in their logical processes and identified consequences; thereby, for the sake of clarity, the overall question of effectiveness will now be unpacked by setting out the main arguments put forward by critics in such a way as to respond to the arguments previously analysed in favour of the effectiveness of the measure, namely that deprivation of citizenship, as a pre-emptive measure, makes the return more complex and keeps potential terrorists out of the country; that deprivation of citizenship entails legal consequences that may work as deterrents for terrorist activity; that deprivation of nationality protects the integrity of citizenship, as terrorism acts as a destructive force against the fundamental values of democratic societies.

The main assumptions as regards the ineffectiveness of the measure are the following:

[63] Institute on Statelessness and Inclusion. (2020, March). The World's Stateless: Deprivation of nationality. https://files.institutesi.org/WORLD's_STATELESS_2020.pdf
[64] A and others v Secretary of State for the Home Department [2004] UKHL 56
[65] Ibidem, §25

a) Deprivation of citizenship is not effective because it neither reduces nor eliminates the actual threat of a terrorist attack. Rather, it makes it more complex to bring perpetrators to justice, and it results in the State not taking responsibility for prosecuting those who commit acts contrary to national and international law.

A central element of the academic literature on the deprivation of nationality as a counterterrorism measure is the focus on its use for the purpose of reducing or eliminating the threat of a terrorist attack. Among scholars who do not support the use of the measure there is a general agreement that deprivation of nationality is seldom the best way to reach the intended objective, primarily because it does not eliminate the risk that the individual concerned remains a potential threat to national security and public safety if they are deprived of their nationality but not of their liberty.

According to some commentators, deprivation of nationality is based on the dubious assumption that it enhances security, also known as the "*security fallacy*"[66]. Yet, existing literature strongly agrees that the threat of a terrorist attack is not reduced nor eliminated by denationalising people, and that is for two reasons: first, on the short term/territorial level, it is not that easy to get the person concerned out of the country. Indeed, as shall be further analysed in chapter two, if a person becomes stateless due to denationalisation, deporting or otherwise removing the stateless person to another country would amount to a violation of international law[67]. Furthermore, as art. 12 of the International Covenant on Civil and Political Rights (ICCPR) protects a person's right to return to his or her own country[68], individuals who become stateless as a result of being deprived of their sole nationality may have a valid claim that the country indeed remains "*their country*" for the purposes of art. 12. In the context of the European Union (EU), if the individual holds the nationality of another EU Member State, he or she holds the right to move and reside freely throughout the entire territory of the EU, including the State of which he or she was a national[69]. Additionally, as per unintended consequences, critics agree that provisions of denationalization make it harder to bring suspects to justice[70]: indeed, the State has a responsibility to protect national security and bring perpetrators to justice, but denationalisation makes it more challenging for the State to hold terrorists accountable. For this reason, deprivation of citizenship can be understood as an avoidance of the moral and legal

[66] Ibidem
[67] Institute on Statelessness and Inclusion. (2020, March). The World's Stateless: Deprivation of nationality. https://files.institutesi.org/WORLD's_STATELESS_2020.pdf
[68] UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: https://www.refworld.org/docid/3ae6b3aa0.html see art. 12(4)
[69] Ibidem
[70] Institute on Statelessness and Inclusion. (2020, March). The World's Stateless: Deprivation of nationality. https://files.institutesi.org/WORLD's_STATELESS_2020.pdf; Jaghai, S., & Waas, L. V. (2020). Stripped of citizenship, stripped of dignity? A critical exploration of nationality deprivation as a counter-terrorism measure. In Human dignity and human security in times of terrorism (pp. 153-179). TMC Asser Press, The Hague.

responsibility to deal with terrorists[71]. Deprivation of citizenship is commonly justified by national security interests, yet crimes against public security are punishable under criminal law, often whether they are committed by a citizen or not. Since ensuring security and prosecuting those who jeopardise it is the primary function of the State, resorting to the expedient of removing an individual's citizenship in order to expel him or her from the territory or prohibit his or her return likely accounts for the failure of the State to prosecute those who violate the criminal law[72]. Moreover, denationalisation offers no guarantee that individuals will undergo processes of rehabilitation: conversely, prosecution and detention, as punitive measures, not only bring people to justice but can also lead to orientation and rehabilitation. Finally, an individual suspected of being a terrorist who is denationalised may never attempt to return to his or her home State, making it more difficult for the home State to arrest him or her. More likely, deprivation of nationality would instead create new obstacles in legal processes if it turns the person into a foreigner or makes him or her stateless[73].

Second, on a long-term/global level, even if the individual concerned can be removed from the country, the threat to global security persists. Indeed, the planning, funding and orchestration of terrorist atrocities cannot be mitigated by denationalisation in the country of origin or abroad. Most importantly, as was emphasized in the so-called Anderson Report[74], citizenship deprivation amounts to "*a policy of catch and release, setting up today's convicts as tomorrow's foreign fighters*"[75], relocating these individuals to places where they can actually do more harm because, as opposed to their home country, they cannot be monitored. Anderson also stressed that such power encourages a perilous delusion that terrorism is – or can be made into - a "*foreign threat and problem*"[76], diminishing the incentive to deal with it domestically while increasing what critics have defined as a "*pass the buck mentality*"[77], which renders States more inclined to exporting the risk instead of addressing it. If exporting the risk was an answer, the argument that exile equals greater security through the removal of dangerous people knows no limit, and it is unclear why countries would not

[71] Jayaraman, S. (2016). International terrorism and statelessness: Revoking the citizenship of ISIL foreign fighters. Chi. J. Int'l L., 17, 178.
[72] Institute on Statelessness and Inclusion. (2020, March). The World's Stateless: Deprivation of nationality. https://files.institutesi.org/WORLD's_STATELESS_2020.pdf
[73] Ibidem. e.g. a person can only be tried under more restrictive circumstances if they do not hold that nationality, so it may be harder to obtain an arrest warrant for a non-national.
[74] Anderson, D. (2013). Citizenship Removal Resulting In Statelessness: First Report Of The Independent Reviewer On The Operation Of The Power To Remove Citizenship Obtained By Naturalisation From Persons Who Have No Other Citizenship. http://terrorismlegislationreviewer.independent.gov.uk.
[75] Ibidem
[76] Ibidem
[77] Institute on Statelessness and Inclusion. (2020, March). The World's Stateless: Deprivation of nationality. https://files.institutesi.org/WORLD's_STATELESS_2020.pdf; Institute on Statelessness and Inclusion & Global Citizenship Observatory. (2022, March). Instrumentalizing citizenship in the fight against terrorism. https://files.institutesi.org/Instrumentalising_Citizenship_Global_Trends_Report.pdf

just exile all citizens who commit violent crimes[78]. The removal of citizenship does not also remove the threat of terrorist attacks, and, in the long term, the individuals affected by the measure may become a risk to the national security of the depriving country and of the people under its jurisdiction by disappearing from the radar and being able to re-enter the country that turned its back on them. In this case, when politicians claim that stripping terrorists of their nationality will enhance national security, as the individuals concerned will be physically removed from the territory or will be made unable to re-enter it, they arguably demonstrate the adoption of a limited perspective of the concept of security - both in terms of time and place - that appears to be at odds with the reality of today's hyper-connected world[79].

b) Deprivation of citizenship is not effective because it does not deter terrorists from deciding to commit a terrorist act. On the contrary, the measure is even counterproductive, as it may encourage further radicalisation processes, thus reinforcing the phenomenon it aims to eliminate.

While supporters of the removal of citizenship as a counterterrorism measure point out its potential as a deterrent, critics suggest that the measure is not only ineffective in this regard, but it is even counterproductive. Indeed, even if the measure were to achieve its direct security objectives - and this is widely contested - it simultaneously leads to unintended consequences, so it can hardly be considered wholly effective. What David Anderson defined as the dangerous illusion that terrorism is a foreign threat could likely have repercussions that go beyond the development and maintenance of a pass-the-buck mentality, and it serves here as a premise to introduce the measure's potential side effects that, as mentioned, render it ineffective and counterproductive. In fact, through the use of denationalization measures, the risk of identifying terrorism as a foreign phenomenon implies, in turn, the risk of fostering the development of markedly populist, divisive, and xenophobic rhetorics[80]. Furthermore, the narrow applicability of citizenship deprivation as a counterterrorism measure – as it usually targets citizens with a foreign background (either dual nationals or naturalised citizens) – not only engenders inequality[81] but is also fuels a process of "*othering*"[82] that can damage social cohesion. The combination of these factors can easily lead to marginalization and isolation by

[78] Institute on Statelessness and Inclusion. (2020, March). The World's Stateless: Deprivation of nationality. https://files.institutesi.org/WORLD's_STATELESS_2020.pdf
[79] Ibidem.
[80] Europe: Dangerously disproportionate: The ever-expanding national security state in Europe. (2021, June 1). Amnesty International. Retrieved July 5, 2022, from https://www.amnesty.org/en/documents/eur01/5342/2017/en/
[81] Cfr. argument c) Deprivation of citizenship is not effective because of its inherent issue of inequality, as a result of which it is the measure itself that undermines the democratic values it seeks to defend, p. 30.
[82] Jaghai, S., & Waas, L. V. (2020). Stripped of citizenship, stripped of dignity? A critical exploration of nationality deprivation as a counter-terrorism measure. In Human dignity and human security in times of terrorism (pp. 153-179). TMC Asser Press, The Hague.

affected citizens, potentially contributing to processes of terrorist radicalisation. A vicious cycle is thus created whereby these kinds of policies risk reinforcing the very phenomenon they are supposed to combat.

Even if an in-depth investigation of the correlation between deprivation of citizenship and radicalisation processes appears to be absent from the debate, it is sufficient to refer to the theories of some of the most prominent radicalisation theorists to get an idea of the extent to which marginalisation and isolation are causal factors of radicalisation. The United Nations Office on Drugs and Crimes, drawing on theorist Andrew Silke's work, identified marginalization as one of the main drivers[83] for radicalisation. In his work "*Becoming a terrorist*[84]", Silke stressed that, before an individual is willing to participate in violent activities, he or she must first belong to a section of society that perceives itself as marginalised. He further suggested that, if such a marginalised group is discriminated against, "*within such communities there will always be those who will be receptive to radical ideologies*"[85]. In essence, marginalisation can cause an individual to lose interest in maintaining a connection with society while acting as a driving force towards extremism. Another example that can be mentioned in this context is the "*Bunch of guys theory*"[86] developed by radicalisation theorist Marc Sageman, which conceives radicalisation as a process of resocialization and is focused on how group dynamics take over individual paths to terrorism[87]. According to Sageman, radicalisation is a bottom-up process, as it is not the organization that seeks recruits, but it is the individual that ends up looking for the organization. A remarkable fact in the context of Sageman's theory is that most of the individuals within his sample, who eventually joined the Global Salafist movement, were mainly wealthy young people who entered the movement while living and studying abroad. At the time of their entry into the group, these young people lived far from their original environment and many of them were nostalgic, lonely, and felt alienated. Although skilled and educated, they were marginalized from the rest of their society, as well as underemployed and excluded from the upper classes. Sageman noted how, even though they were not religious, many individuals in his sample approached mosques or other places of worship and gatherings to find companionship: there, they would meet friends or relatives with whom they went to live and, as time passed, their resentment towards Western society, from which they felt excluded, became more and

[83] Counter-Terrorism Module 2 Key Issues: Drivers of Violent Extremism. (2018, July). UNODC. Cfr. General Assembly report A/70/674, §§. 23, 32-37, available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/456/22/PDF/N1545622.pdf?OpenElement

[84] Silke, A. (2003). Becoming a terrorist. Terrorists, victims and society: Psychological perspectives on terrorism and its consequences, 29, 53.

[85] Ibidem (p. 39)

[86] Sageman, M. (2004). Understanding terror networks. University of Pennsylvania press.

[87] Orsini, A. (2020). What everybody should know about radicalization and the DRIA model. Studies in Conflict & Terrorism, 1-33.

more radical until they found a way to establish contact with a terrorist organization[88]. A crucial aspect of marginalization and social isolation that risks further fostering radicalisation is the lack of any so-called *negative feedback*[89], that is a lack of possibility on the part of the individual/terrorist, in the absence of confrontation with the outside society, to receive a type of feedback that, by referring to the values of the outside world, can shake his beliefs[90]. Consequently, by only interacting with other members of his or her identified community, the individual/terrorist can only progressively strengthen his or her beliefs and adherence to an extreme ideology[91].

Finally, according to some critics, deprivation of citizenship may also cause further radicalisation if it leads to being trapped in a conflict zone, as deprivation of citizenship makes individuals vulnerable and more prone to recruitment by terrorist organizations, and may even force their return to terrorist groups. In the event that the individual who wants to leave the conflict is rendered stateless by one of these measures, the State that removes his or her citizenship increases the cost for the individual to leave the conflict, as the individual may have no choice but to remain committed to his or her terrorist organisation[92].

c) *Deprivation of citizenship is not effective because of its inherent issue of inequality, as a result of which it is the measure itself that undermines the democratic values it seeks to defend.*

Critics of deprivation of nationality argue that, as a consequence of the international prohibition of statelessness, some citizens are often more exposed to the possibility of denationalisation than others. Indeed, in many States, the power to deprive a citizen of his or her nationality can only be invoked against persons who acquired that nationality by naturalization. If States conceive naturalization – that is the voluntary act by which an adult transfers allegiance to a State other than his or her State of origin, usually accompanied by an oath - as a form of contract, then an individual who subsequently engages in terrorist activities may be seen as breaching the terms

[88] Ibidem

[89] Orsini, A. (2011). Anatomy of the red brigades: The religious mind-set of modern terrorists. Cornell University Press. (pp. 103-128). Orsini first delves into the concept of negative feedback in Anatomy of the Red Brigades, referring to it as subversive-revolutionary feedback. Specifically, according to Orsini, the eversionary-revolutionary feedback is a type of interaction aimed at reinforcing revolutionary conduct. Only in a revolutionary sect does it happen that (...) the place of intersection between objective data and subjective data, instead of modifying the mental universe of the individual, confirms it in every aspect.

[90] Orsini, A. (2016) ISIS. I terroristi più fortunati del mondo e tutto ciò che è stato fatto per favorirli. Rizzoli, p. 174. Here, too, Orsini elaborates on the concept of negative feedback in the context of his theory of radicalization, namely the DRIA Model. Through different explanatory examples, Orsini explains how the end of the negative feedback consists in the lack of possibility on the part of the terrorist, in the absence of confrontation with the outside society, to receive a type of feedback that, by referring to the values of the outside world, shakes his beliefs - that is, indeed, negative.

[91] Orsini, A. (2017). Sacrifice. In Sacrifice. Cornell University Press. See chapter 3, "The Construction Of The Parallel World", and how the symbolic and cultural mission - what the author calls the construction of the parallel world—is achieved.

[92] Jayaraman, S. (2016). International terrorism and statelessness: Revoking the citizenship of ISIL foreign fighters. Chi. J. Int'l L., 17, 178.

of that contract, hence justifying its termination. However, States often seem to hold a different conception of the nature of citizenship by birth, or by origin, and such category of citizens may be immune from deprivation of citizenship, or at least subject to fewer grounds for denationalization. Critics have argued, in this context, that no empirical evidence has been provided in favour of citizens by birth posing a lower security threat than naturalized citizens. For this reason, it is believed that nationality deprivation turns citizenship into a "*less secure and more precarious status*"[93], while emptying the fundamental democratic values it seeks to protect. In this context, strong criticism stems from political philosophers, who argue that the removal of citizenship clashes with fundamental liberal principles. Indeed, stripping "*bad*" citizens of their nationality is based on a fundamentally flawed conception of citizenship, which should be a unique and stable legal status, based on a special bond between an individual and his or her country, and on objective facts, such as birth or long-term residence in the country's territory. A citizen cannot lose this special bond with his country simply by misbehaving, as bad citizens are also citizens.[94]. In turn, by weakening citizenship through deprivation, States damage democratic institutions, systems, processes, and principles, thus achieving the very goals that terrorist groups aim to achieve.

The fact that democratic values, such as equality before the law, are eroded by citizenship deprivation is precisely due to these kinds of measures not being equally applied to everyone: here lies the measure's inherent issue of inequality. As Matthew J. Gibney has argued, "*the status of citizenship, as the grounding principle of State membership, simply ought to be a status which admits of no gradations or rankings. Citizenship worth its name entails equal standing among the members of the political community*"[95]. The result of the unequal position naturalised citizens often find themselves in under citizenship deprivation regimes is that, as a counterterrorism measure, its scope is limited to a (small) subgroup of a country's citizens.

The same conclusion is reached when looking at a second predominant form of inequality that is commonly found in deprivation provisions, that is its application to dual citizens. The fact that an individual who does not possess another nationality should be spared from denationalisation is still the result of the obligation of States to avoid statelessness, so this approach is approved or even imposed by the norms of international law and is generally seen as an appropriate safeguard that States must maintain[96]. It is undeniable that a single citizen is in a different situation from a dual

[93] Institute on Statelessness and Inclusion. (2020, March). The World's Stateless: Deprivation of nationality. https://files.institutesi.org/WORLD's_STATELESS_2020.pdf
[94] Cloots, E. (2017). The legal limits of citizenship deprivation as a counterterror strategy. European Public Law, 23(1).
[95] Gibney, M. (2011). Should Citizenship be Conditional? Denationalization and Liberal Principles. Denationalization and Liberal Principles (August 2, 2011).
[96] Institute on Statelessness and Inclusion. (2020, March). The World's Stateless: Deprivation of nationality. https://files.institutesi.org/WORLD's_STATELESS_2020.pdf

citizen, and while such a difference may partially justify a difference in treatment, the consequences for a dual citizen can be particularly perverse because, especially in the case of terrorism charges, both States whose nationality the individual holds are incentivised to act first, so that the other State becomes responsible[97]. Moreover, if the measure only targets dual nationals, it disproportionately affects people who hold the citizenship of a country that does not provide the possibility of opting out, i.e. who cannot choose monocitizenship. As a consequence, what appears to be an objective criterion, namely the possession of dual nationality, may lead to indirect discrimination, e.g. on the basis of national or social origin.

Hence, many commentators agree that nationality deprivation as a counterterrorism measure proves to be inherently unequal in its scope, and targeting naturalized and/or dual nationals generates a challenge in terms of non-discriminatory enforcement. In fact, most citizens cannot be deprived of their nationality even if they have committed the same kind of terrorist atrocity that prompted the expansion of these powers. More generally, critics have concluded that measures providing for the removal of nationality lead to the creation of a "*two-tiered system that allows States to discriminate against citizens on the basis of their ethnicity, race, and religion*"[98]. Minorities, then, end up being confined in the category of citizens that Bridget Anderson defined as "*tolerated citizens*"[99], namely citizens that are accepted on a contingent basis, but who must continually demonstrate their belonging to the community by speaking out and condemning terrorism[100]. Even those individuals whose citizenship would never be removed are implicated as they belong to a group that continues to be "*othered*", where the sense of belonging is not gauged by obtaining the citizen's status but through something much more complex to grasp and easier to exploit for populist or nationalist narratives. This entails repercussions for both human dignity and security for the individual whose "true" citizenship is questioned, and it results in further degradation of the values that States seek to protect from terrorist attacks. For these reasons, critics off the measure widely agree that the inherent issue of inequality which characterizes deprivation of nationality as a counterterrorism measure likely represents the most serious challenge to the legitimacy, usefulness, and appropriateness of such an instrument[101].

[97] Ibidem
[98] Jaghai, S., & Waas, L. V. (2020). Stripped of citizenship, stripped of dignity? A critical exploration of nationality deprivation as a counter-terrorism measure. In Human dignity and human security in times of terrorism (pp. 153-179). TMC Asser Press, The Hague.
[99] Anderson, B. (2013). Us and them?: The dangerous politics of immigration control. OUP Oxford, as quoted in Choudhury, T. (2017). The radicalisation of citizenship deprivation. Critical Social Policy, 37(2), 225-244.
[100] Ibidem
[101] Ibidem

4.2 Consequences and impact on human rights and human dignity

Among critics of citizenship deprivation as a counter-terrorism measure, the second most frequently highlighted reason as to why the measure should not be employed, besides its lack of effectiveness, refers to the impact it has on human rights and human dignity. What most of these critics claim appears to be perfectly exemplified by the reasoning that was put forward by the US Supreme Court's Justice Earl Warren in the context of the *Trop v. Dulles* decision of 31 March 1958[102]. When the Court was called upon to decide whether citizen Albert Trop could be deprived of his American citizenship as punishment for deserting the army, Justice Warren begun his reasoning by referring to the already seen definition of citizenship as the "*right to have rights"*[103], from which it follows that the loss of citizenship consists in the loss of the right to have rights, especially when it results in statelessness. In the words of Justice Warren himself,

"[deprivation of citizenship is] the total destruction of the individual's status in organized society. It is a form of punishment more primitive than torture, for it destroys for the individual the political existence that was centuries in the development. The punishment strips the citizen of his status in the national and international political community. His very existence is at the sufferance of the country in which he happens to find himself. While any one country may accord him some rights and, presumably, as long as he remained in this country, he would enjoy the limited rights of an alien, no country need do so, because he is stateless. Furthermore, his enjoyment of even the limited rights of an alien might be subject to termination at any time by reason of deportation. In short, the expatriate has lost the right to have rights [...]. It subjects the individual to a fate of ever-increasing fear and distress. He knows not what discriminations may be established against him, what proscriptions may be directed against him, and when and for what cause his existence in his native land may be terminated. He may be subject to banishment, a fate universally decried by civilized people. He is stateless, a condition deplored in the international community of democracies."[104]

This brief passage is extremely useful in analysing the far-reaching consequences that the deprivation of nationality can cause.

First, Justice Warren characterises nationality as something that transcends the bond between an individual and the State, that is, as the foundation of a person's status within the national and international political community. When analysing this particular consequence of Justice Warren's

[102] US Supreme Court, Trop v Dulles, Decision, 31 March 1958, 356 US 86.
[103] Cfr. note 43
[104] US Supreme Court, Trop v Dulles, Decision, 31 March 1958, 356 US 86.

reasoning, S. Jaghai and L.V. Waas state that the revocation of nationality then leads to what Hannah Arendt has described as "*the deprivation of a place in the world that makes opinions meaningful and actions effective*" and to "*civil death*"[105].

Second, the importance of the legal and political status of nationality must be seen in connection with the fact that it guarantees to the individual the enjoyment of even the most basic rights. In this sense, nationality can be understood as an "*enabling right*"[106], and the spill-over effects of its removal can be clearly identified: indeed, it not only impairs the enjoyment of political rights, such as the right to vote in elections or the right to run in an election, but it also makes access to rights such as education, employment and its associated labour protections, the right to property and to adequate housing, health care, social security, freedom of expression and assembly, freedom of movement, legal remedies and other rights particularly complex[107].

Third, Chief Justice Warren emphasised the "*fate of ever-increasing fear and distress"* that would result from citizenship deprivation. Through the lens of human dignity, the loss of status and place, as well as the loss of rights, can have an undoubtedly profound impact on the human experience[108]. Moreover, such a state of insecurity can be further exacerbated by the permanent nature of the act of deprivation as, unlike a temporary suspension of rights, e.g. the right to freedom of movement or liberty through the confiscation of a passport or the imposition of a period of imprisonment, the permanence of the deprivation of citizenship has prompted some critics to go so far as comparing it to a sentence of life imprisonment without the possibility of parole or to the death penalty, neither of which is a predefined or predominant form of punishment in democracies[109].

Finally, it is noteworthy how Justice Warren stressed the link between this measure and the phenomena of exile and statelessness, which he described as universally deplored by civilised people

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[105] Arendt, H. (1973). The origins of totalitarianism [1951]. New York.

[106] Jaghai, S., & Waas, L. V. (2020). Stripped of citizenship, stripped of dignity? A critical exploration of nationality deprivation as a counter-terrorism measure. In Human dignity and human security in times of terrorism (pp. 153-179). TMC Asser Press, The Hague.

[107] Ibidem; Institute on Statelessness and Inclusion. (2020, March). The World's Stateless: Deprivation of nationality. https://files.institutesi.org/WORLD's_STATELESS_2020.pdf

[108] Jaghai, S., & Waas, L. V. (2020). Stripped of citizenship, stripped of dignity? A critical exploration of nationality deprivation as a counter-terrorism measure. In Human dignity and human security in times of terrorism (pp. 153-179). TMC Asser Press, The Hague, highlights how "*The loss of status and of place, as well as the loss of rights, has an unquestionably deep impact on the human experience. This fact has also been recognised in related jurisprudence before international bodies, such as in the case brought by Amnesty International against Zambia in the 1990s in response to the arbitrary removal of citizenship and deportation of two prominent political figures, William Steven Banda and John Luson Chinula: "by forcing Banda and Chinula to live as stateless persons under degrading conditions, the Government of Zambia has deprived them of their family and is depriving their families of the men's support, and this constitutes a violation of the dignity of a human being." In Sangita Jaghai and Laura van Waas "Stripped of Citizenship, Stripped of Dignity? A Critical Exploration of Nationality Deprivation as a Counter-Terrorism Measure*"

[109] Cohen, E. F. (2016). When Democracies Denationalize: The Epistemological Case against Revoking Citizenship. Ethics & International Affairs, 30(2), 253-259, as quoted in Jaghai, S., & Waas, L. V. (2020). Stripped of citizenship, stripped of dignity? A critical exploration of nationality deprivation as a counter-terrorism measure. In Human dignity and human security in times of terrorism (pp. 153-179). TMC Asser Press, The Hague.

and as a regrettable condition in the international community of democracies[110]. Thus, contemporary trends regarding the use of deprivation of citizenship as a counterterrorism measure represent a challenge to human dignity and human security, as States are enthusiastically embracing the deprivation of citizenship specifically as a means through which to achieve exile, while the commitment to avoid statelessness fades[111].

5. Conclusions of the chapter

The first part of the present chapter analysed the development that led to the removal of citizenship being employed, particularly in the European context, as an anti-terrorism measure was analysed. Crucial to the development of the measure in this sense was the problem of FTFs, which prompted states to find a solution to the problem of being unable to expel and prevent the return of their citizens if considered a threat to national security. However, most crucially, the chapter had the purpose of understanding the potential value and the criticalities of employing to this kind of provision, and it did so by looking at the reasons given both by the measure's supporters (that deprivation of citizenship, as a pre-emptive measure, makes the return more complex and keeps potential terrorists out of the country; that deprivation of citizenship entails legal consequences that may work as deterrents for terrorist activity; and that deprivation of nationality protects the integrity of citizenship, as terrorism acts as a destructive force against the fundamental values of democratic societies) and the arguments of its critics both in terms of effectiveness (that deprivation of citizenship is not effective because it neither reduces nor eliminates the real threat of a terrorist attack, making it more complex to bring perpetrators to justice; that deprivation of citizenship is not effective in deterring terrorists from committing an attack but also risks encouraging radicalisation processes; that deprivation of citizenship is not effective because of its inherent inequality problem, itself undermining the democratic values it seeks to defend) and in terms of its impact on human rights and dignity (if citizenship is seen as an enabling right, its removal has spill-over effects that can lead to "civil death").

Thus, after considering the arguments on both sides of this wide-ranging debate, it is complex not to recognize the greater weight that drawbacks have over advantages. Since, as in most things, the truth is rarely to be found on one side only, it is important to recognize that the symbolic value of

[110] Ibidem. The authors affirm that "*Once more, subsequent international jurisprudence has supported this concern, as in the case of John K. Modise who was simultaneously rendered stateless and exiled from Botswana: The complainant was deported four times to South Africa, and on all of these occasions, he was rejected. He was forced to live for eight years in the 'homeland' of Bophuthatswana, and then for another seven years in 'no man's land', a border strip between the former South African Homeland of Bophuthatswana and Botswana. These acts exposed him to personal suffering and indignity in violation of the right to freedom from cruel, inhuman or degrading treatment*".
[111] Ibidem

these measures is important and should not be underestimated. Indeed, measures to remove citizenship can send the strong message that those who voluntarily disavow democratic values, and actively fight against them, do not deserve the recognition of a bond with the Western state they so despise, nor to enjoy the rights that derive from this bond. As and when this rhetoric is applied solely to satisfy the – fair – thirst for reassurance that people need at a time when their and the State's security is at stake, the risk of this measure becoming a means of gaining political consensus is all too real. Similarly, if the real purpose of States is – as seen – to overcome the limitation of power they have towards their citizens, not being able to expel them, the measure demonstrates a concrete goal that has little or nothing to do with the desire to deliver a strong message.

The arguments against effectiveness seem more reasonable than those in favour. However, for the purposes of this research, the potential impact of these measures on human rights, and in particular when they also apply to suspected terrorists and not only to those already convicted, is a key factor in taking a stand in the debate. The legal limbo and the "*civil death*" in which a suspect terrorist may end up, following the loss of citizenship as an enabling right, entail consequences that are in contrast with international law. Notably, as stated in the 2006 UN Global Counter-Terrorism Strategy, not only "*effective counterterrorism measures and the protection of human rights are not conflicting but complementary and mutually reinforcing objectives*"[112], but counterterrorism measures employed by the States must be consistent with their commitments under international law, "*including human rights law, refugee law, and international humanitarian law"*[113].

At this point, it appears crucial to examine what limits international law imposes on states wishing to resort to the removal of nationality as a counter-terrorism measure. Thus, the second chapter in its entirety will be devoted to this analysis.

[112] UN Global Counter-Terrorism Strategy (A/RES/60/288). Office of Counter-Terrorism. (2006). UN Office of Counterterrorism. https://www.un.org/counterterrorism/un-global-counter-terrorism-strategy
[113] Ibidem

Chapter 2: Supranational limits to citizenship deprivation

1. Introduction to the chapter

Given the potentially heavy impact that measures of nationality deprivation can entail on the human rights of individuals concerned, it appears crucial to turn the analysis to the supranational limits that States encounter in resorting to this kind of provision, and to what margins of action the Courts leave for States. To this end, by primarily relying on the instructive work "*The Legal Limits of Citizenship Deprivation as a Counterterror Strategy*"[114] by Elke Cloots, and on the work "*The Prohibition of Arbitrary Deprivation of Nationality under International Law and EU Law: New Perspectives*"[115] by Tamás Molnár, the present chapter will take into consideration both the international law framework and, more specifically, the European legal framework, by taking into account the European Convention on Human Rights (ECHR) and the law of the European Union (EU).

Following the present introduction, the second section of the present chapter (2) will analyse the international law framework concerning nationality deprivation, expounding the main relevant sources, including hard and soft law provisions, and the fundamental principles that States have agreed to abide by in this context, namely the prohibition against arbitrary deprivation of citizenship and the prohibition of statelessness and, additionally, the principle of non-discrimination.

Since from the analysis carried out in the previous chapter Europe emerged as the epicentre of the trend to resort to citizenship deprivation as a counterterrorism measure, the following section (3) of this chapter will be mainly devoted to the ECHR, to the jurisprudence that the European Court of Human Rights (ECtHR) has developed so far (3.1) and to the approach adopted by the Court (3.2). To this end, four cases will be exposed: *Ramadan v. Malta, K2 v. the United Kingdom, Ghoumid and Others v. France* and *Johansen v. Denmark.* From the analysis of these cases, an assessment of the Court's approach on nationality deprivation as a counterterrorism measure will be set out. Then, a more concise but equally relevant analysis will be made of the limits that can be imposed on States willing to resort to deprivation measures by virtue of EU law (3.2), by looking specifically at the European Court of Justice's (CJEU) ruling on the *Rottmann*'s case.

Finally, some conclusions will be drawn in light of the analysis carried out throughout the whole chapter (4).

[114] Cloots, E. (2017). The legal limits of citizenship deprivation as a counterterror strategy. European Public Law, 23(1).
[115] Molnár, T. (2014). The Prohibition of Arbitrary Deprivation of Nationality under International Law and EU Law: New Perspectives. Hungarian YB Int'l L. & Eur. L., 67.

2. The international law framework

2.1 Citizenship as a (limited) *domaine resérvé* of the State

International law recognizes the regulation of nationality as a prerogative of States. Indeed, traditionally, specific questions of nationality, such as the acquisition, loss, renunciation, or deprivation thereof, do fall under the domestic jurisdiction (*domaine resérvé*) of States[116]. As noted by Tamás Molnár[117], the Permanent Court of International Justice (PICJ)[118] had already affirmed such doctrine in 1923, in the context of an advisory opinion on *Nationality Decrees Issued in Tunisia and Morocco*, when it stated that "*in the present state of international law, questions of nationality fall, in the Court's opinion, in principle within this reserved domain*"[119]. However, it is interesting to note that the PCIJ did not limit itself to this affirmation, but it left an open door by referring to possible future developments in international law, by affirming that "*the question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations*"[120]. The Court also made clear how this State prerogative was not to be considered absolute, in that even with regard to a matter such as nationality, which is not, in principle, governed by international law, the right of a State to use its discretionary power is nevertheless limited by the obligations that the State may have entered into *vis-à-vis* other States, and it identified limits set by international law, including both customary law and the general and particular law of treaties[121].

The idea that the discretion of States is limited by international law is now settled, as confirmed by the jurisprudence of numerous human rights courts, such as the Inter-American Court of Human Rights[122]. However, this approach was first codified by the 1930 Hague Convention on

[116] Jaghai, S., & Waas, L. V. (2020). Stripped of citizenship, stripped of dignity? A critical exploration of nationality deprivation as a counter-terrorism measure. In Human dignity and human security in times of terrorism (pp. 153-179). TMC Asser Press, The Hague; Molnár, T. (2014). The Prohibition of Arbitrary Deprivation of Nationality under International Law and EU Law: New Perspectives. Hungarian YB Int'l L. & Eur. L., 67.

[117] Molnár, T. (2014). The Prohibition of Arbitrary Deprivation of Nationality under International Law and EU Law: New Perspectives. Hungarian YB Int'l L. & Eur. L., 67.

[118] The establishment of the Permanent Court of International Justice (PCIJ), the predecessor of the International Court of Justice, was provided for in the Covenant of the League of Nations. It held its inaugural sitting in 1922 and was dissolved in 1946. The work of the PCIJ, the first permanent international tribunal with general jurisdiction, made possible the clarification of a number of aspects of international law, and contributed to its development. Source: https://www.icj-cij.org/en/pcij

[119] Nationality Decrees Issued in Tunis and Morocco (French Zone) on 8th November, 1921, PCIJ, Ser. B. No. 4, 1923, Para. 40. As quoted in Molnár, T. (2014). The Prohibition of Arbitrary Deprivation of Nationality under International Law and EU Law: New Perspectives. Hungarian YB Int'l L. & Eur. L., 67.

[120] Ibidem

[121] Ibidem

[122] Ibidem. As an example, Molnár suggests: Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica, Inter-American Court of Human Rights, Advisory Opinion OC-4/84 of January 19, 1984, Series A No. 4, Para. 32: '[...] despite the fact that it is traditionally accepted that the conferral and regulation of nationality are matters for each state to decide, contemporary developments indicate that international law does impose certain limits on the broad powers enjoyed by the states in that area, and that the manners in which states regulate matters bearing on nationality cannot today be deemed within their sole jurisdiction; those powers of the state are also circumscribed by their obligations

Certain Questions Relating to the Conflict of Nationality Laws. Indeed, according to artt. 1 and 2 of the Convention,

1. *It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality.*
2. *Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of the State*[123].

In essence, the manner in which a State exercises its right to determine its nationals should be in accordance with the relevant norms of international law, at least if such nationality is to be accepted and considered valid by other States[124]. According to Paul Weis, one can refer to such restrictions set by international obligations as "*negative international nationality law*"[125]: the violation of such restrictions does not render nationality invalid, but it excludes its enforceability against other States and precludes its invocation in international judicial fora[126]. It is possible to conclude that, although questions of nationality are primarily governed by national legislation, today their regulation is of direct concern to the international legal order[127] because, as was also affirmed by the International Law Commission, "*the competence of States in this field may be exercised only within the limits set by international law*"[128].

2.2 The process of "*humanrightization*" of international law

In the course of the 20th century, a process that Molnar referred to as a "*humanrightization of international law*"[129] led to an enrichment of the limitations deriving from international treaties,

to ensure the full protection of human rights.' Reiterated in case of the Yean and Bosico Children v. The Dominican Republic, Inter-American Court of Human Rights, Judgment of September 8, 2005, Series C No. 130, Para. 138.

[123] League of Nations, Convention on Certain Questions Relating to the Conflict of Nationality Law, 13 April 1930, League of Nations, Treaty Series, vol. 179, p. 89, No. 4137, artt. 1-2. Available at: https://www.refworld.org/docid/3ae6b3b00.html

[124] Molnár, T. (2014). The Prohibition of Arbitrary Deprivation of Nationality under International Law and EU Law: New Perspectives. Hungarian YB Int'l L. & Eur. L., 67.

[125] Weis, P. (1979). Nationality and statelessness in international law (Vol. 28). Brill.

[126] Molnár, T. (2014). The Prohibition of Arbitrary Deprivation of Nationality under International Law and EU Law: New Perspectives. Hungarian YB Int'l L. & Eur. L., 67.

[127] Human Rights and Arbitrary Deprivation of Nationality, Report of the Secretary-General. A/HRC/13/34, 14 December 2009, Para. 19.

[128] Draft Articles on Nationality of Natural Persons in relation to the Succession of States with commentaries (Yearbook of the International Law Commission, 1999, Vol. II, Part 2, p. 24).

[129] Molnár, T. (2014). The Prohibition of Arbitrary Deprivation of Nationality under International Law and EU Law: New Perspectives. Hungarian YB Int'l L. & Eur. L., 67.

customary law and generally recognized principles of law on citizenship through a gradual expansion of the international protection of human rights. Such evolution was clearly acknowledged by the Inter-American Court of Human Rights in 1984, when it stated that "*the classic doctrinal position, which viewed nationality as an attribute granted by the State to its subjects, has gradually evolved to a conception of nationality which, in addition to being the competence of the State, is a human right*"[130] and by the ILC, which, in turn, affirmed that the development of international human rights law has significantly modified the classical doctrine on the primacy of the interests of States over those of individuals[131].

The acknowledgement of the right to nationality as a fundamental human right, as well as the inclusion of the prohibition on arbitrary deprivation of nationality in the 1948 Universal Declaration of Human Rights (UDHR) was crucial to this evolution. In particular, art. 15 UDHR states that:

1. *Everyone has the right to a nationality.*
2. *No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality*[132].

Art. 15 UDHR carries the legacy left by the Second World War during which, as mentioned in the previous chapter, the removal of citizenship had been used to persecute entire communities, as in the case of the Nazi laws that had contributed to the persecution of the Jewish people, leaving thousands of people stateless and forcefully demonstrating the problematic nature of allowing States total freedom to decide who could remain a citizen. As a consequence, States committed to respecting some fundamental principles, namely the prohibition of statelessness and that of arbitrary deprivation of nationality, aimed at guaranteeing human dignity and security also in relation to the issue of citizenship as an enabling right, on which the enjoyment of a large number of other rights is dependent.

These key principles were given renewed importance in 1961 by the UN Convention on the Reduction of Statelessness[133], which is the main international instrument aimed at establishing the

[130] Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica, Inter-American Court of Human Rights, Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, Para. 33., as quoted in Molnár, T. (2014). The Prohibition of Arbitrary Deprivation of Nationality under International Law and EU Law: New Perspectives. Hungarian YB Int'l L. & Eur. L., 67.

[131] International Law Commission, Articles on Nationality of Natural Persons in Relation to the Succession of States (With Commentaries), 3 April 1999, Supplement No. 10 (A/54/10), available at: https://www.refworld.org/docid/4512b6dd4.html

[132] UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), art.15. Available at: https://www.refworld.org/docid/3ae6b3712c.html

[133] UN General Assembly, Convention on the Reduction of Statelessness, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: https://www.refworld.org/docid/3ae6b39620.html

rules for conferring and revoking nationality to prevent cases of statelessness. In relation to deprivation of nationality, it is important to consider art. 8 of the Convention which, in paragraph 1, States that "*a contracting State shall not deprive a person of his or her nationality if such deprivation renders him or her stateless"*. The following two paragraphs of art. 8 enumerate a number of exceptions to this rule, allowing for denationalization to result in statelessness in certain limited circumstances, which include cases where the individual obtained nationality by false declaration or fraud (art. 8(2)) or has, inconsistently with his duty of loyalty to the Contracting State, engaged in conduct "*seriously prejudicial to the vital interests of the State*" (art. 8(3)(a)(ii))[134]. Notably, however, this latter ground can only lead to statelessness in case, at the time of signature, ratification, or accession, the contracting State has made a declaration to this effect. For what concerns arbitrary deprivation, the 1961 Convention contains, in art. 8(4), the obligation for contracting States not to exercise a power of deprivation as permitted by paragraphs 2 or 3 except in accordance with the law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body[135].

Over time, the prohibition of arbitrary deprivation of citizenship has been further embedded in several UN human rights conventions: the 1957 Convention on the Nationality of Married Women[136], the 1965 Convention on the Elimination of All Forms of Racial Discrimination (CERD)[137], the 1966 International Covenant on Civil and Political Rights (ICCPR)[138], the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[139], the

[134] Ibidem, art. 8

[135] Ibidem

[136] UN General Assembly, Convention of the Nationality of Married Women, 29 January 1957, A/RES/1040, available at: https://www.refworld.org/docid/3b00f0674.html, artt. 1-2: "*Each Contracting State agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife. [...] Each Contracting State agrees that neither the voluntary acquisition of the nationality of another State nor the renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the wife of such national.*"

[137] UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, available at: https://www.refworld.org/docid/3ae6b3940.html, art. 5 lit. (d) (iii): "[...] *States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: [...] (d) Other civil rights, in particular: [...] The right to nationality*."

[138] UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: https://www.refworld.org/docid/3ae6b3aa0.html, art. 12: (2) "*Everyone shall be free to leave any country, including his own. (3) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Covenant. (4) No one shall be arbitrarily deprived of the right to enter his own country.*"

[139] UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: https://www.refworld.org/docid/3ae6b3970.html, art. 9(1): "[...] *neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless [...]."*

1989 Convention on the Rights of the Child (CRC)[140], and the 2006 Convention on Rights of Persons with Disabilities (CRPD)[141] all implicitly or explicitly refer to such prohibition. Additionally, when looking at the regional level of the international law framework, it is possible to conclude that specific attention to the issue of arbitrary deprivation has been paid in almost every continent: examples of relevant regional treaties include art. 20(3) of the American Convention on Human Rights[142], art. 4(c) of the European Convention on Nationality (ECN)[143], art. 29(1) of the Arab Charter on Human Rights[144] , art.18 of the Association of Southeast Asian Nations Human Rights Declaration[145], and art. 24(2) of the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms[146].

As noticed by Tamás Molnár, among *de lege ferenda* proposals of universal character, the same prohibition is affirmed in a variety of contexts[147]. First, it is possible to consider the ILC Draft Articles on Citizenship of Individuals in Relation to State Succession of 1999[148] which, in art. 16, stipulates the prohibition of arbitrary citizenship decisions, including the prohibition to be arbitrarily deprived of the citizenship of the previous State when state succession occurs. Furthermore, art. 8 of the Draft Articles on the expulsion of aliens drafted by the ILC in 2014 states that "*a State shall not make its national an alien, by deprivation of nationality, for the sole purpose of expelling him or*

[140] UN Commission on Human Rights, Convention on the Rights of the Child., 7 March 1990, E/CN.4/RES/1990/74, available at: https://www.refworld.org/docid/3b00f03d30.html, art. 8(1): "*States Parties undertake to respect the right of the child to preserve his or her identity, including nationality [...] without unlawful interference*."

[141] UN General Assembly, Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106, available at: https://www.refworld.org/docid/45f973632.html, art. 18(1) lit. (a) expressly stipulates: "1. *States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities: [...] (a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability*."

[142] Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969, available at: https://www.refworld.org/docid/3ae6b36510.html, art. 20(3): "*No one shall be arbitrarily deprived of his nationality or of the right to change it."*

[143] Council of Europe, European Convention on Nationality, 6 November 1997, ETS 166, available at: https://www.refworld.org/docid/3ae6b36618.html, art. 4(c): "*The rules on nationality of each State Party shall be based on the following principles: (…) no one shall be arbitrarily deprived of his or her nationality."*

[144] League of Arab States, Arab Charter on Human Rights, 15 September 1994, available at: https://www.refworld.org/docid/3ae6b38540.html, art. 29(1): "*Everyone has the right to nationality. No one shall be arbitrarily or unlawfully deprived of his nationality."*

[145] Association of Southeast Asian Nations (ASEAN), ASEAN Human Rights Declaration, 18 November 2012, available at: https://www.refworld.org/docid/50c9fea82.html, art. 18: "Ever*y person has the right to a nationality as prescribed by law. No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality."*

[146] Regional Treaties, Agreements, Declarations and Related, Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms, 26 May 1995, available at: https://www.refworld.org/docid/49997ae32c.html, art. 24(2): "*No one shall be arbitrarly deprived of his citizenship or of the right to change it.*"

[147] Molnár, T. (2014). The Prohibition of Arbitrary Deprivation of Nationality under International Law and EU Law: New Perspectives. Hungarian YB Int'l L. & Eur. L., 67.

[148] International Law Commission, Articles on Nationality of Natural Persons in Relation to the Succession of States (With Commentaries), 3 April 1999, Supplement No. 10 (A/54/10), available at: https://www.refworld.org/docid/4512b6dd4.html

her"[149], going on to regulate a further aspect of this harsh violation of human rights. This principle is especially important in the context of the fight against terrorism, as denationalization is used to remove dangerous nationals from the territory of the State and prevent foreign fighters from returning to their home countries. Terrorist denationalization thus becomes a form of expulsion[150].

While it is clear that the international materials presented above possess remarkable authoritative value, it is important to stress that their legally binding force can be limited: notwithstanding their importance, the UDHR and the Draft Articles are not legally binding instruments, while other Conventions, including the 1961 Convention and the 1997 ECN have not been that comprehensively ratified. Yet, all these international instruments can have indirect effects within all legal systems, as they embody principles that are also protected by customary international law, Convention rights and EU law[151].

To complement to the sources outlined above, it is also possible to identify a significant body of soft laws such as UN General Assembly (UNGA) resolutions adopted since the mid-90s[152], resolutions of the former UN Commission on Human Rights[153] and the Human Rights Council[154], comments and recommendations of various treaty bodies[155].

2.3 The 5-step approach

Through a doctrinal reconstruction that has been developed on the basis of international law as it stands today, it is possible to affirm that States are required to fulfil five specific requirements

[149] International Law Commission, Draft articles on the expulsion of aliens, with commentaries, 2014, available at: https://www.refworld.org/docid/5539ef8e4.html

[150] Cloots, E. (2017). The legal limits of citizenship deprivation as a counterterror strategy. European Public Law, 23(1).

[151] Ibidem

[152] UN General Assembly, Office of the United Nations High Commissioner for Refugees : resolution / adopted by the General Assembly, 9 February 1996, A/RES/50/152, available at: https://www.refworld.org/docid/3b00f31d24.html, as found in Molnár, T. (2014). The Prohibition of Arbitrary Deprivation of Nationality under International Law and EU Law: New Perspectives. Hungarian YB Int'l L. & Eur. L., 67.

[153] UN Commission on Human Rights, Human rights and arbitrary deprivation of nationality., 11 April 1997, E/CN.4/RES/1997/36, available at: https://www.refworld.org/docid/3b00f09e44.html; UN Commission on Human Rights, Resolution 2005/45 on Human Rights and Arbitrary Deprivation of Nationality, 19 April 2005, E/CN.4/RES/2005/45, available at: https://www.refworld.org/docid/429c3b694.html, as found in Molnár, T. (2014). The Prohibition of Arbitrary Deprivation of Nationality under International Law and EU Law: New Perspectives. Hungarian YB Int'l L. & Eur. L., 67.

[154] UN Human Rights Council Resolutions 7/10 of 27 March 2008 (A/HRC/RES/7/10); 10/13 of 26 March 2009 (A/HRC/RES/10/13); 13/2 of 24 March 2010 (A/HRC/RES/13/2); 20/5 of 16 July 2012 (A/HRC/RES/20/5). As found in Molnár, T. (2014). The Prohibition of Arbitrary Deprivation of Nationality under International Law and EU Law: New Perspectives. Hungarian YB Int'l L. & Eur. L., 67.

[155] Molnár, T. (2014). The Prohibition of Arbitrary Deprivation of Nationality under International Law and EU Law: New Perspectives. Hungarian YB Int'l L. & Eur. L., 67. The author suggests to see, for instance, UN Human Rights Committee, CCPR General Comment No. 27: Article 12 (Freedom of Movement), 2 November 1999, CCPR/C/21/Rev.1/Add.9; UN Committee on the Elimination of Racial Dis- crimination, CERD General Recommendation XXX on Discrimination Against Non-Citizens, 1 October 2002; or UN Committee on the Elimination of Discrimination Against Women, CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations, 1994, CEDAW/C/1995/7, Annex, Appendix, chapter III B. These general comments and recommendations may be conceived as the authentic interpretation of the respective conventions.

when they want to resort to the revocation of nationality. This 5-step test is clearly set out by Sangita Jaghai and Laura van Waas in their essay "*Stripped of Citizenship, Stripped of Dignity? A Critical Exploration of Nationality Deprivation as a Counter-Terrorism Measure*"[156] where, by relying upon a report developed by the Human Rights Council in 2013[157], they affirm that a situation of withdrawal of nationality, in order not to be considered arbitrary, must:

1. *Have a firm legal basis*
2. *Meet due process guarantees*
3. *Have a legitimate purpose*
4. *Be the least intrusive means*
5. *Be proportionate*

The proposed test is cumulative in nature; hence, each condition must be met in order for the arbitrary nature of a deprivation measure to be excluded.

First, a deprivation measure must have a solid basis in national law, i.e. it must be clearly provided for in national law and must be foreseeable. Deprivation cannot be subject to analogical interpretation (i.e. applied to facts of a case or situation that are clearly not covered by the wording of the provisions in question). This also means that deprivation provisions cannot be applied retroactively, nor can a provision relating to the acquisition of nationality be repealed or restricted retroactively[158].

Second, a provision must meet due process guarantees, meaning that an individual must have access to effective remedies in case of violation, thus decisions on the revocation of citizenship must be subject to effective administrative or judicial review, which may be carried out by a competent court or another independent body. Some States provide an effective right of appeal in cases of citizenship revocation, while others delegate entire authority to the executive branch without offering any right to appeal. In the context of terrorism, if the deprivation order is implemented as an administrative measure, the appeal should be filed soon after the ruling. Procedure safeguards include making sure that decisions are reached in a timely manner and that eventual costs associated with the proceedings do not hinder the right to be heard. Furthermore, until a definitive decision on nationality withdrawal has been reached, the affected person should continue to benefit from his or

[156] Jaghai, S., & Waas, L. V. (2020). Stripped of citizenship, stripped of dignity? A critical exploration of nationality deprivation as a counter-terrorism measure. In Human dignity and human security in times of terrorism (pp. 153-179). TMC Asser Press, The Hague.
[157] UN Human Rights Council, Human rights and arbitrary deprivation of nationality: Report of the Secretary-General, 19 December 2013, A/HRC/25/28, available at: https://www.refworld.org/docid/52f8d19a4.html
[158] Ibidem

her nationality—and associated rights. If an erroneous decision was made on a deprivation, the State is required to make every attempt to restore the situation as it was.

Third, the deprivation of nationality must have a legitimate purpose that is "*consistent with international law and, in particular, the objectives of international human rights law*[159]." The use of nationality deprivation as a weapon against individuals in response to their lawful exercise of rights and freedoms, such as freedom of expression, is reportedly not covered by this provision, according to Jaghai and Van Waas, given its somewhat vague formulation.

Fourth, the measure has to be the least intrusive of the means to achieve the desired result. In order to assess whether it is indeed the least intrusive means, the authors refer to the use of a further two-step test. Firstly, one has to verify whether there are other measures that would have less impact on the person's rights and freedoms; secondly, one must consider whether there is a link between the instrument and the intended purpose. In the context of terrorism, the authors note, this is particularly complicated because the test leads one to examine whether deprivation of nationality is the least intrusive means to achieve its purpose, be it the protection of society by deterring people from committing terrorist acts or by punishing them; to prove that deprivation is, in fact, the least intrusive means, one must answer the complex but crucial question of its effectiveness as a CT measure.

Fifth, the measure must be subject to the principle of proportionality, which "*requires balancing the impact on the rights of the individual and the proven benefit for the interest of the State"*[160]. Considerations of this kind can include the seriousness of the act for which a person is denationalized; the severity of the connection between the individual and the State; the time when the act was committed; the consequences of the deprivation of nationality for the individual and for his or her family, including the consequences in case the deprivation of nationality leads to statelessness or if it affects the individual's right to reside in the country[161].

Finally, in addition to the deprivation of statelessness and of arbitrary deprivation, a third core principle can be identified: the principle of non-discrimination. The principle of non-discrimination is a crucial element in many human rights law instruments and also applies to nationality issues[162]; it

[159] UN High Commissioner for Refugees 2014, para 19, as quoted in Jaghai, S., & Waas, L. V. (2020). Stripped of citizenship, stripped of dignity? A critical exploration of nationality deprivation as a counter-terrorism measure. In Human dignity and human security in times of terrorism (pp. 153-179). TMC Asser Press, The Hague.
[160] Ibidem, par. 20
[161] Jaghai, S., & Waas, L. V. (2020). Stripped of citizenship, stripped of dignity? A critical exploration of nationality deprivation as a counter-terrorism measure. In Human dignity and human security in times of terrorism (pp. 153-179). TMC Asser Press, The Hague.
[162] League of Nations, Convention on Certain Questions Relating to the Conflict of Nationality Law, 13 April 1930, League of Nations, Treaty Series, vol. 179, p. 89, No. 4137, available at: https://www.refworld.org/docid/3ae6b3b00.html, art. 1; Advisory Opinion No. 4, Nationality Decrees Issued in Tunis and Morocco, 4, Permanent Court of International Justice, 7 February 1923, available at: https://www.refworld.org/cases,PCIJ,44e5c9fc4.html; International Law Commission (1999) Report of the Commission to the General Assembly on the work of its fifty-first session, 1999 Yearbook of the International Law Commission II(2),

is considered part of customary international law, and some even consider it an international norm of *jus cogens*, i.e. an imperative, mandatory norm[163]. In 2016, UN Human Rights Council (HRC) affirmed that deprivation of citizenship on discriminatory grounds, such as "*race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status, including disability*", is a violation of human rights and fundamental freedoms[164]. This principle is also enshrined in the 1961 Convention which, in art. 9, prohibits deprivation of nationality on the basis of racial, ethnic, religious or political grounds[165]. Also, the Convention on the Elimination of Racial Discrimination sets out that deprivation of nationality on the basis of race, colour, descent, or national or ethnic origin is a violation of the Convention. To conclude, as deprivation of nationality is arbitrary under international law if it is discriminatory, it is possible to consider the non-discriminatory character to be an additional requirement to the 5-steps test.

3. The European legal framework

Since Europe has emerged as the epicentre of the renewed tendency to resort to measures of citizenship deprivation in the context of counterterrorism, and is consequently the geographical area on which the present work will maintain its focus - especially in the following final chapter -, it appears at this point essential to analyse the European legal framework, and in particular the European ECHR together with the most relevant jurisprudence on citizenship deprivation developed by the ECtHR, as well as EU law and the CJEU's jurisprudence on the matter.

3.1 The European Convention on Human Rights

The right to a nationality is not explicitly provided for by the ECHR, nor by its Protocols. Consequently, as the Court itself affirmed in the context of the case *Ramadan v. Malta*, for many years, it consistently rejected cases of loss of nationality, whether already acquired or born into, as incompatible *ratione materiae* with the provisions of the Convention itself, in the absence of such a right being guaranteed by the Convention[166]. However, in recent years, the Court came to the

UN Doc. A/CN.4/SER.A/1999/Add.l (Part 2), p 24. Available at: https://legal.un.org/ilc/publications/yearbooks/english/ilc_1999_v2_p2.pdf

[163] Jaghai, S., & Waas, L. V. (2020). Stripped of citizenship, stripped of dignity? A critical exploration of nationality deprivation as a counter-terrorism measure. In Human dignity and human security in times of terrorism (pp. 153-179). TMC Asser Press, The Hague.

[164] UN General Assembly (2016) Human Rights Council: Resolution adopted by the Human Rights Council on 30 June 2016. Human rights and arbitrary deprivation of nationality, UN Doc. A/HRC/RES/32/5, para 4. Available at: https://www.right-docs.org/doc/a-hrc-res-32-5/

[165] UN General Assembly, Convention on the Reduction of Statelessness, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: https://www.refworld.org/docid/3ae6b39620.html

[166] Ramadan v. Malta, Application no. 76136/12, Council of Europe: European Court of Human Rights, 21 June 2016, available at: https://www.refworld.org/cases,ECHR,57ff5080ae3.html. See, as examples, X. v. Austria, no. 5212/71, Commission decision of 5 October 1972, Reports of Decisions 43, p. 69.

conclusion that, although the right to nationality is not as such protected by the Convention or its Protocols, it cannot be ruled out that arbitrary denial of nationality may, in certain circumstances, because of the impact of such a denial on the individual's private life[167], raise an issue under art. 8 of the Convention, which provides as follows:

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

Indeed, the majority of the nationality cases heard by the Court have concerned applicants claiming the right to acquire nationality and the refusal to recognise that nationality[168], as opposed to the loss of nationality already acquired or born into. However, the Court considered that the loss of citizenship already acquired or born into could have the same impact - and perhaps a greater impact - on a person's private and family life. From such reasoning, it follows that there is no reason to distinguish between the two situations and that, therefore, the same approach must be applied to judge whether a measure of arbitrary removal of nationality has raised issues under art. 8[169].

This research will now turn to the analysis of the jurisprudence developed so far by the ECtHR on the subject under consideration, presenting four specific cases that appear particularly illustrative for the purpose of understanding the Court's approach: the case of (a) *Ramadan v. Malta* will be presented first, in order to get a sense of the Court's approach to cases of citizenship deprivation outside the context of terrorism and national security; the cases of (b) *K2 v. the United Kingdom* and (c) *Ghoumid and Others v. France* will then be exposed, as they provide a clear understanding of the standard approach adopted by the Court in cases of nationality deprivation as a matter of national security; finally, the case of (d) *Johansen v. Denmark* will also be taken into account, as it not only is the most recent case decided by the Court on the matter in analysis, but also because it led, among scholars, to contestations to the Court's approach.

[167] cfr. Karassev and Family v. Finland, 31414/96, Council of Europe: European Court of Human Rights, 12 January 1999; Genovese v. Malta, Application no. 53124/09, Council of Europe: European Court of Human Rights, 11 October 2011.
[168] see, for example, Karassev and Family v. Finland, 31414/96, Council of Europe: European Court of Human Rights, 12 January 1999, available at: https://www.refworld.org/cases,ECHR,45d076a92.html
[169] Ramadan v. Malta, Application no. 76136/12, Council of Europe: European Court of Human Rights, 21 June 2016.

a) Ramadan v. Malta

The applicant, Louay Ramadan, born in 1964 in Egypt and resident in Malta, was originally an Egyptian national but had acquired Maltese nationality by marriage to a Maltese national in 1993. Ramadan had to subsequently renounce his Egyptian nationality as, at the time, dual citizenship was not allowed under either Egyptian or Maltese law. The marriage was then annulled 5 years later, on the ground that it was fictitious and that the only reason he had married was to remain in Malta and acquire Maltese nationality. Referring to this decision, on May 2006, the applicant was informed that an order was to be made to deprive him of his Maltese citizenship under art. 14(1) of the Maltese Citizenship Act – "the Citizenship Act". The authorities then revoked Ramadan's citizenship in July 2007, concluding that he had obtained Maltese citizenship by fraud. The applicant challenged that decision, arguing that it was false that he fraudulently got his marriage and emphasizing that he had three Maltese children. Consequently, proceedings were instituted to investigate the applicant's situation and the authorities heard Ramadan, represented by a lawyer, before making a decision and after considering oral and written submissions and evidence, including witness statements. He later unsuccessfully mounted a constitutional challenge to that decision. On July 2007, the Minister of Justice and Internal Affairs ordered that the applicant be deprived of his citizenship with immediate effect. In the meantime, Ramadan had remarried in 2003 to a Russian citizen with whom he had two children, both of Maltese nationality, and with whom he still resided in Malta, where he had also obtained a business licence and ran his business[170].

Mr. Ramadan complained about the decision to be deprived of his Maltese citizenship on the basis of art. 8 of the ECHR (right to respect for private and family life), claiming, *inter alia*, that he had become stateless as a consequence of such a decision, as he had had to renounce his Egyptian nationality in order to become a Maltese citizen and that he was currently at risk of deportation[171]. The application was submitted to the European Court of Human Rights in November 2012, and the Court ruled on the matter in June 2016.

Beginning its reasoning, the Court noted that an arbitrary withdrawal of nationality could, under certain circumstances, raise a problem under art. 8 of the Convention because of its impact on an individual's private life[172]. Therefore, the Court proceeded to examine whether the decision of the Maltese authorities could be deemed arbitrary and what consequences it had on the individual concerned.

[170] Ramadan v. Malta, Application no. 76136/12, Council of Europe: European Court of Human Rights, 21 June 2016. §§ 7-30
[171] Ibidem, § 49
[172] Ibidem, § 84

First, to assess the arbitrariness of the decision, the Court emphasised the clear legal basis of the measure, namely art. 14 of the Maltese Nationality Law; the measure had also been accompanied by the necessary procedural guarantees, as Mr. Ramadan had had the opportunity to first defend himself in a procedure accompanied by hearings and during which he had been represented by a lawyer, and then before the constitutional court offering the relevant guarantees. Although it could be questioned whether in the case in question the authorities acted diligently and swiftly, the delay between the annulment of the marriage and the adoption of the revocation decision had not disadvantaged Mr. Ramadan, who had continued to take to profit from the situation. The Court, therefore, concluded that the decision of the Maltese authorities to strip the applicant of his Maltese citizenship was not arbitrary, also bearing in mind the fact that the situation under scrutiny came about as a result of the applicant's fraudulent behaviour and that any consequences complained of were to a large extent a result of his own choices and actions[173].

Second, for what concerned the consequences of the revocation, the Court noted that Mr. Ramadan had not been threatened with expulsion from the country. The applicant had been able to conduct his business activities and to remain in Malta and he still could have applied for a work permit and a residence permit, eventually becoming eligible for citizenship. Furthermore, he had not persuaded the Court that he had renounced his Egyptian nationality nor had he proven that he would be unable to re-acquire it if he had done so[174].

In the light of the above reasoning, the Court confirmed that the assessment of the State's negative obligations under art. 8 was not justified in the present case, whereas there was no need even to assess the State's positive obligations, since in the present state of affairs the applicant was not in any danger of being expelled. Accordingly, the Court found no violation of art. 8 of the Convention.

b) K2 v. the United Kingdom

The applicant, referred to as K2, was born in Sudan and arrived in the United Kingdom as a child, becoming a naturalised UK citizen in 2000. It was unclear, at the time, whether K2 travelled directly to Sudan from the UK or whether he first travelled with to Somalia two extremist associates, where he engaged in terrorism-related activities linked to Al- Shabaab. In June 2010, the Home Secretary, after notifying K2 of the intention to do so, issued an order stripping him of his British citizenship. On the same day, the Home Secretary notified K2 of the decision to exclude him from the UK, due to his terrorism-related activities and links to extremists. It was widely believed that he was in Sudan at the time. K2 initiated two proceedings to challenge these decisions: a judicial review

[173] Ibidem, §§ 84-89
[174] Ibidem, §§ 90-92

against the exclusion decision and an appeal against the decision to deprive him of citizenship. In the judicial review proceedings, K2's main complaint was that his exclusion from the UK had compromised his ability to challenge the deprivation of citizenship in court. However, the High Court dismissed the appeal in July 2011, the Court of Appeal upheld the ruling on appeal and the Supreme Court refused a further leave to appeal in February 2013. The citizenship issue was referred to the Special Immigration Appeals Commission (SIAC)[175]. Although certain elements of the case against K2 were kept secret for security reasons, his special counsel had had access to this information and K2 was aware of the nature of the case. K2 claimed that he could refute the allegations of terrorism-related activities but not as long as he was in Sudan, and said he believed that his communications were being monitored by the Sudanese authorities and that communicating about his case would expose him to the risk of harm from them.

The SIAC rejected this argument in December 2014 and it found that there were at least three valid means of communication between K2, his lawyers and the SIAC, namely discreet communications with lawyers in Sudan, internet communications such as email or Skype and visits to friends or relatives. There was therefore no valid reason why K2 could not instruct his lawyers and participate in the case. A year later, the SIAC ruled on the substantive part of the appeal, finding that there was indisputable evidence that K2 had established associations with known extremists and had travelled to Somalia in their company to engage in terrorism-related activities. Furthermore, the Court determined that the terrorism-related acts were, at least in part, clearly linked to Al-Shabaab, and that the Home Secretary was fully right in deciding to deprive K2 of his British citizenship, dismissing the appeal. The Court of Appeal rejected K2's request to appeal the ruling in July 2016[176].

K2 claimed that the decisions to remove his British nationality and exclude him from the UK had violated his rights under art. 8 (right to private and family life), and he further complained under art. 14 (prohibition of discrimination) - read in conjunction with art. 8 - that he had been treated differently from British citizens considered a threat to national security who did not hold a second nationality.

The application was lodged with the ECtHR in June 2013, and the Court pronounced itself in March 2017. As was the case with *Ramadan v. Malta*, to determine whether the revocation of citizenship was indeed in breach of art. 8, the Court proceeded by addressing two issues: whether the revocation was arbitrary, and what the consequences of revocation were for the applicant[177].

[175] Cfr. chapter 3, section 3.3 [175] Ramadan v. Malta, Application no. 76136/12, Council of Europe: European Court of Human Rights, 21 June 2016, available at: https://www.refworld.org/cases,ECHR,57ff5080ae3.html.
[176] K2 v. The United Kingdom, Application no. 42387/13, Council of Europe: European Court of Human Rights, 7 February 2017, §§ 3-45.
[177] Ibidem, § 49

In determining arbitrariness, the Court took into consideration whether the revocation was in accordance with the law; whether the authorities acted diligently and swiftly; and whether the measure was accompanied by the necessary procedural safeguards[178]. First, the Court found that the revocation was in accordance with the law by virtue of art. 40(2) of the British Nationality Act of 1981. Second, the authorities had acted swiftly and diligently, as evidence showed that K2 had left the UK in October 2009 and was involved in terrorist-related activities in Somalia, and the Home Secretary had deprived him of his citizenship in June 2010. Third, the Court noted that K2 had enjoyed adequate procedural safeguards in relation to the decision, as he had had a statutory right of appeal to SIAC[179]. Regarding K2's claim that he was denied the opportunity to actually participate in the proceedings because of his exclusion from the country, as communicating with his lawyers from Sudan would have put him at risk of harm from the Sudanese authorities, the Court stated that an out-of-country appeal does not necessarily render a decision to revoke citizenship arbitrary, and art. 8 could not be interpreted to impose a positive obligation on States to facilitate the return of any person deprived of citizenship in order to pursue an appeal against such a decision[180].

Concerning the consequences of the decision for the Applicant, the Court noted that K2 had not been rendered stateless by the decision, as he was entitled to (and had since obtained) a Sudanese passport. Furthermore, the Court acknowledged SIAC's findings that K2 had left the UK before the deportation order; that his wife and kid were no longer resident in the UK and could readily go to Sudan; and that the applicant's own natal family could - and did - visit him quite frequently. In light of these circumstances, the Court ruled that K2's allegation that his deprivation of citizenship violated art. 8 was manifestly ill-founded[181].

As for K2's complaint about his expulsion from the country, the Court subjected the decision to the proportionality test and concluded that, given the limited nature of the interference and SIAC's clear findings regarding the scope of its terrorism-related activities, the decision to exclude him was not disproportionate to the legitimate objective of protecting the public from the threat of terrorism. Consequently, this part of K2's appeal was also found by the Court to be manifestly unfounded[182].

Finally, with regard to K2's complaint in relation to art. 14, namely that he was treated differently from British nationals considered to be a threat to national security - by virtue of holding

[178] Here, the Court itself makes an explicit reference to the reasoning developed in Ramadan v. Malta, Application no. 76136/12, Council of Europe: European Court of Human Rights, 21 June 2016. §§ 86-89
[179] Ibidem, §§ 52-56
[180] Ibidem, §§ 56-61
[181] Ibidem, §§ 62-64
[182] Ibidem, §§ 65-67

a second nationality - the Court noted that this argument had not been raised in the domestic courts and K2 had therefore not exhausted the domestic remedies available to him[183].

c) Ghoumid and Others v. France

The applicants, Bachir Ghoumid, Fouad Charouali, Attila Turk, Redouane Aberbri and Rachid Ait El Haj were Moroccan nationals, except for the third applicant, who was Turkish. In July 2007, the Paris Criminal Court convicted the five applicants for participating in a criminal conspiracy to commit an act of terrorism in the period 1995-2004. Turk and Aberbri appealed to the Paris Court of Appeal, which confirmed their convictions in July 2008. In April 2015, the Minister of the Interior informed the appellants that, in view of the 2007 sentence, he had decided to initiate the procedure to revoke their French nationality, pursuant to art. 25 and 25(1) of the Civil Code. After the *Conseil d'État* had approved the procedure in September 2015, the Prime Minister deprived the applicants of their French nationality. The applicants applied to the *Conseil d'État* for an interim measure to suspend the execution of the decrees of 7 October 2015 and their annulment for abuse of authority. The applications for interim measures were rejected in November 2015 and, in June 2016, the *Conseil d'État* rejected the applications for annulment. Mr Aberbri and Mr Ait El Haj were questioned by the Yvelines Department Expulsion Commission in September 2016 and, in October, the Prefect of Yvelines informed them that the commission had given a favourable opinion on their expulsion. In October 2016, they were summoned by the police, but were not notified of an expulsion order[184].

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

The application was lodged with the ECtHR in September 2016, and the Court pronounced on the matter in June 2020. In line with the other cases considered so far, to assess whether there had been a violation of art. 8, the Court moved to analyse whether the revocation was arbitrary (whether it was lawful, whether the authorities had acted diligently and swiftly, and whether the applicants had been afforded procedural safeguards), and what were the consequences for the applicants.

Concerning the arbitrariness of the decision, the Court first noted that, even if the administrative authorities had not immediately initiated a procedure for deprivation of nationality

[183] Ibidem, §§ 68-72 Ramadan v. Malta, Application no. 76136/12, Council of Europe: European Court of Human Rights, 21 June 2016,

[184] Ghoumid And Others V. France, Application no. 52273/16 and 4 others, Council of Europe: European Court of Human Rights, 25 September 2020. §§ 1-18

after the applicants' convictions, when faced with events of this kind, a State may reassess whether persons who have been convicted of an offence constituting an act of terrorism still maintain a bond of loyalty and solidarity with the State, and may therefore decide to adopt at a later date, subject to a strict proportionality test, measures that it had not initially chosen. In the circumstances of the present case, the time elapsing between the applicants' convictions and the date on which the removal procedure was finally implemented against them was not in itself sufficient to render deprivation arbitrary[185]. Concerning the lawfulness of the measure, the Court noted that, although at the time of the facts, art. 25(1) of the Civil Code provided that deprivation of nationality could only be ordered within 10 years of the commission of the acts on which the criminal conviction was based, and the decisions to deprive the applicants of French nationality had been taken in 2015 (whereas the most recent facts dated back to 2004), the legislature had then extended this term to 15 years in January 2006. The Court, therefore, held that the measures taken against the applicants were lawful[186]. Moreover, the Court found that the applicants had enjoyed substantial procedural guarantees. Pursuant to art. 61 of Decree No. 93-1362 of 30 December 1993, the authorities had informed them in advance of their intention to deprive them of French nationality and had clarified the factual and legal grounds for such action. The applicants were then given a month to provide observations in their defence, which they had done, thus the decisions to strip them of French nationality could not be deemed arbitrary[187].

On the consequences of these decisions for the applicants' private lives, the Court noted that all the applicants had another nationality and were therefore not rendered stateless by the decision. Moreover, since no deportation order had been issued, the only consequence of the deprivation of nationality for their private lives was the loss of an element of their identity. Hence, the Court accepted the government's arguments and its decision to show greater firmness towards persons convicted of terrorism offences, especially in view of the 2015 attacks in France[188].

Finally, for the applicants' complaints concerning the violation of art. 4 of Protocol No. 7 to be considered admissible, it was necessary for the applicants to have been tried or punished in criminal proceedings for an offence for which they had already been finally acquitted or convicted. The applicants had in fact been convicted within the meaning of art. 4 of Protocol No. 7 and that conviction, dating from 2007, had in fact become final at the time of the deprivation of French nationality in 2015. On the question of whether the measure of deprivation of nationality under art. 25 of the Civil Code was criminal in nature, the Court firstly observed that it was not classified as

[185] Ibidem, §45
[186] Ibidem, §46
[187] Ibidem, §§ 47-48
[188] Ibidem, §§ 49-50

such under French law, being provided for in the Civil Code. The Court also noted that, beyond its punitive connotation, the deprivation of nationality under art. 25 of the Civil Code served a specific purpose, namely to reflect the fact that an individual who had been granted French nationality had subsequently broken the bond of loyalty to France by perpetrating a particularly grave crime and, in the case of terrorism, undermining the very foundations of democracy. The measure was, therefore, a confirmation of the breaking of the bond between. Finally, the Court took into account the importance of the message that the State was sending to those concerned and the potential impact of the message on their identity, but the degree of severity of the measure had to be taken into account in relation to the fact that the deprivation of citizenship was a response to conduct that, when it involved terrorism, constituted an attack on democracy itself. Additionally, the measure did not in itself provide for the expulsion and, consequently, deprivation of nationality under art. 25 of the Civil Code was not a criminal sanction, within the meaning of art. 4 of Protocol No. 7, and the provision was not applicable to the case[189].

d) Johansen v. Denmark

The applicant, Adam Johansen, was born in Denmark in 1990 to a Danish mother and a Tunisian father and held dual citizenship. The applicant was arrested in April 2016, shortly after the Danish intelligence services had received from the Interpol a list of people who were believed to have been recruited by Isis, which included Mr. Johansen. Johansen was subsequently convicted of travelling to Syria in September 2013 - returning to Denmark in February 2014 - and accepting recruitment and training by Isis to commit terrorist acts. A district court sentenced him to four years imprisonment but found no basis for depriving him of Danish citizenship or for deportation. This sentence was upheld by the High Court in April 2018. However, the Supreme Court overturned the decisions of the lower courts in November 2018, ruling that, in view of the seriousness of the offences committed, the man should be deprived of Danish citizenship and expelled from Denmark with a permanent ban on re-entry, and that these penalties would not be disproportionate, considering that the man had links not only to Denmark but also to Tunisia. Although he was born, raised and educated in Denmark, his mother and brothers lived there, he was married to a Danish woman and they had a child together, he was also familiar with Tunisian culture and spoke and read Arabic. Moreover, the applicant's partner, who had converted to Islam at the age of 18, and their son, who had attended an Islamic school in Denmark, were not entirely unprepared to accompany him to Tunisia, and could in

[189] Ibidem, §§ 53-74

any event visit him and communicate by telephone and via the Internet. The applicant had served his sentence and was at the time in a pre-departure centre, awaiting deportation[190].

Johansen complained that the removal of his Danish citizenship and the deportation order, with a permanent ban on return, infringed his rights under art. 8 (right to private and family life).

The application was filed with the European Court of Human Rights on 10 May 2019, and the Court ruled in March 2022. The Court proceeded to consider, in order to assess the potential violation of art. 8, the arbitrariness of the decision – as in other cases, it did so by looking at whether the decision was lawful, whether the authorities had acted diligently and swiftly, and whether the applicant had been afforded procedural safeguards – and its consequences on Mr. Johansen.

Concerning arbitrariness, the Court found that the decision to deprive the applicant of his Danish citizenship was based on section 8(b) of the Act on Danish Nationality and was therefore in accordance with the law[191]. In addition, the Court noticed that the authorities acted diligently and swiftly between the applicant's arrest in 2016 and his conviction in 2018, and that the applicant had a possibility to challenge the request of the investigating authorities to strip him of his Danish citizenship before the domestic courts at three levels of jurisdiction, but that he had not claimed any procedural deficiencies in this regard. Accordingly, the applicant was afforded the procedural safeguards as provided for by art.8[192]. Before concluding that the Supreme Court's decision to deprive the applicant of his Danish nationality was not arbitrary, the Court emphasised that it considered it legitimate for the Contracting States to take a firm stance against those who contributed to terrorist acts[193].

As for the consequences of the measure on the applicant, the Court found that the domestic courts at three levels found that the applicant held dual nationality – while the applicant did not provide any evidence for the Court to reach a different outcome – and was therefore not rendered stateless by the decision. Furthermore, the domestic courts meticulously considered the implications of the revocation of the applicant's citizenship in view of his ties to Denmark and Tunisia. The Supreme Court also stated that if the applicant's Danish nationality was revoked, he would be expelled, unless the expulsion would be contrary to Denmark's international obligations (section 26(2) of the Aliens Act then in force, read in conjunction with art. 8 of the Convention). In conclusion, the Supreme Court determined that deprivation of the applicant's Danish nationality would not be a

[190] Johansen v. Denmark, Application no. 27801/19, Council of Europe: European Court of Human Rights, 1 February 2022 §§ 5-20
[191] Ibidem, § 47
[192] Ibidem, § 48
[193] Ibidem, §§ 50-51. Cfr. Ghoumid And Others V. France, Application no. 52273/16 and 4 others, Council of Europe: European Court of Human Rights, 25 September 2020.

disproportionate punishment based on an overall balancing test[194]. In the present case, the Court was satisfied that the Supreme Court diligently addressed the consequences of depriving the applicant of his Danish citizenship and did not disclose any appearance of arbitrariness or omission regarding the applicant's arguments. Consequently, this part of the application was rejected as manifestly ill-founded[195].

Concerning the expulsion order and the ban on re-entry, the Court started its analysis with a short reference to art. 3 of the 4th Protocol to the ECHR that prohibits the expulsion of nationals and acknowledged that Mr. Johansen could therefore initially not be expelled, but it immediately rebutted that once deprived of his nationality, Mr. Johansen could indeed be expelled, since States have the right to expel aliens, as long as such a measure is compatible with art. 8 of the ECHR. The Court noticed that the Danish Supreme Court had subjected the decision to a strict test of proportionality, based on whose result the expulsion order could not be said to be disproportionate to the legitimate aim pursued, namely the protection of the public from the threat of terrorism. Consequently, this part of the application was also rejected by the Court as manifestly ill-founded.

3.2 The ECtHR's approach to citizenship deprivation

From the analysis of the presented case law, it is possible to notice that the ECtHR maintained a consistent approach concerning cases of citizenship deprivation, specifically in the context of terrorism. Indeed, the Court appears to consider nationality stripping as an art. 8 related issues, if found to be resorted to in an arbitrary manner. To check if a deprivation measure raises an issue under art. 8, the Court has been applying a two-step test: the first step is to determine the arbitrary nature of the measure, by taking into consideration whether the measure is in accordance with the law, meaning that it has a firm basis in national legislation; whether the national authorities acted diligently and swiftly; and whether the necessary procedural safeguards were put in place. The second step is to evaluate if the consequences of the deprivation measure on the individual were proportionate in comparison to the intended objective, which usually implies ascertaining whether the individual was rendered stateless and/or whether the measure also implied an expulsion order.

From the considerations above, it emerges that the Court leans toward affording Contracting States a consistent margin of appreciation when it comes to nationality deprivation. In particular, the recent decision on *Johansen v. Denmark*, which had attracted attention given its controversial nature and because it was the first case of deprivation of citizenship of a Danish citizen with a very strong connection to the country, led to the emergence of criticism among some scholars: notably, Samuel

[194] Ibidem, § 66
[195] Ibidem, § 71

Hartwig and Maria Martha Gerdes, in their article "*The Permissive Approach of the ECtHR towards Deprivation of Nationality and Subsequent Expulsion in the Fight against Terrorism*"[196], stressed that *Johansen* highlights the Court's unwillingness to address issues raised by nationality deprivations in terrorism cases. Instead of establishing explicit limitations on such measures based on the rights protected by the Convention, the Court does not appear to be inclined to interfere with measures connected to national security, regardless of how severe the consequences can be for the individual.

In analysing the case, the authors focus specifically on the second step of the two-step test employed by the Court, and begin by stressing that the decisive element for the Court has always been whether there was a threat of expulsion and/or statelessness as a result of the deprivation measure[197]. Such an approach can be glanced by *Ghoumid*, where, in the absence of an expulsion order, the only consequence for the applicants was said to be a loss of identity. What makes *Johansen* different, in the eyes of the author, is not only that the applicant had very strong ties with Denmark and very weak ties with Tunisia, but also that an expulsion order accompanied the order of deprivation. Given that Mr. Johansen is a Danish citizen who was born there, spent his entire life there with his mother and siblings, is married to a Danish woman, and has a Danish son, there appears to be a significant intrusion on not only the applicant's family and private life but also that of his wife and child. Yet, regrettably, the Court totally deferred the Danish Supreme Court's arguments, which emphasized Mr. Johansen's connections to Tunisia, without making its own proportionality assessments or challenging the Danish Court's evaluation.

Additionally, the authors stress that the case gave the Court a chance to comment on the limitations it imposes on expulsion once nationality is revoked. In fact, the Court did begin this part of its reasoning by making a reference to art. 3 of Protocol 4 of to the ECHR, which prohibits the expulsion of nationals and logically acknowledged that Mr. Johansen could not have been expelled. Yet, the Court immediately added that, when he was deprived of his nationality, he could have been expelled on the basis that "*Contracting States have the power to expel an alien convicted of criminal offences*"[198]. What is contested by the authors is that such an approach would rob art. 3 of the 4th Protocol of much of its meaning, as it gives the impression that States are free to deprive someone of his or her citizenship to evade its application. The Court therefore utterly missed the opportunity to expound on the matter of the possible causal link between citizenship deprivation and expulsion,

[196] Gerdes, M. M., & Hartwig, S. (2022). Anything Goes?: The Permissive Approach of the ECtHR towards Deprivation of Nationality and Subsequent Expulsion in the Fight against Terrorism.
[197] Ghoumid And Others V. France, Application no. 52273/16 and 4 others, Council of Europe: European Court of Human Rights, 25 September 2020, §§. 49-51; K2 v. The United Kingdom, Application no. 42387/13, Council of Europe: European Court of Human Rights, 7 February 2017, §§. 62-63; Ramadan v. Malta, Application no. 76136/12, Council of Europe: European Court of Human Rights, 21 June 2016, §§. 90-93.
[198] Johansen v. Denmark, Application no. 27801/19, Council of Europe: European Court of Human Rights, 1 February 2022, §. 73

namely in situations when a deprivation order is solely issued to achieve the ultimate purpose of expulsion. Moreover, according to the authors, while it is true that Contracting States can indeed expel aliens convicted of crimes, the Court failed to consider that, at the time of its conviction, Johansen was not an alien, but he was still a Danish citizen. The conviction itself was only the justification for the measures imposed by the Supreme Court, however, Mr. Johansen's expulsion and the re-entry ban were only made possible by the order stripping him of his Danish nationality, which raises the very questions of a causal connection between the two measures. The Court focused on the effects of expulsion after a deprivation of nationality on the applicant rather than addressing the issue and attempting to clarify when it might be considered to have happened specifically for the purpose of expulsion. As a result, its analysis focuses on whether the expulsion is consistent with art. 8 of the ECHR, a dispute that the Court resolves by balancing a series of criteria set by its case law. While the Court accepts that "*very serious reasons*" are necessary for deportation, as Denmark is the centre of Mr. Johansen's entire family's life, it still reiterates its long-standing position that safeguarding the public from the threat of terrorism is of paramount concern [199]. The Court's evaluation of Mr. Johansen's connections to Denmark makes it clear what this balancing ultimately amounts to. It minimizes Mr. Johansen's ties to Denmark right away by calling him "*a settled migrant [...] who spent his whole childhood and youth in the host country*"[200] as opposed to calling him a (former) national who was born on Danish soil, acquired Danish nationality at birth, and grew up in his native country. Concerning the impact of expulsion paired with a lifelong re-entry ban on the right to respect for his family life, the Court gave a lot of importance to the Supreme Court's argument that Mr. Johansen's wife had converted to Islam and his son had attended an Islamic school, drawing the unlikely conclusion that the two of them "*were not entirely unprepared*"[201] to follow Mr. Johansen to Tunisia even though they had no connection to the country. But even if they chose not to follow him, there would be no issue since they could visit or stay in touch by resorting to contemporary technologies. If this approach is considered valid, it is difficult to envision that expulsion will ever interfere with the right to respect for family life given how easy it is to employ contemporary technology in today's society. In this regard, the authors stress how, according to such perspective, the importance of even very strong personal and familial ties is insignificant in relation to the overriding goal of fighting terrorism. Therefore, it is difficult to see how, through this reading, art. 8

[199] K2 v. The United Kingdom, Application no. 42387/13, Council of Europe: European Court of Human Rights, 7 February 2017, § 66; Ghoumid And Others V. France, Application no. 52273/16 and 4 others, Council of Europe: European Court of Human Rights, 25 September 2020, § 50
[200] Johansen v. Denmark, Application no. 27801/19, Council of Europe: European Court of Human Rights, 1 February 2022, §. 76
[201] Ibidem, §. 82

of the ECHR could ever present a barrier to the expulsion of undesirable individuals from a State's territory.

The core takeaway from Hartwig and Gerdes's take on the Court's latest decision on citizenship deprivation as a counterterrorism measure, is that this ruling is the most recent example of the Court's unwillingness to address concerns highlighted by nationality deprivations in terrorism cases. Rather than entering a thorough examination of specific rights protected by the Convention, the Court appears to generally accept States' arguments in these cases and is very cautious to challenge the motivations for such measures and their actual application. Although the Court seeks to prevent statelessness, it nevertheless appears to be willing to accept even the weakest ties to a different nation as justification for deprivation and subsequent expulsion. The result is that the Court appears reluctant to restrict States' discretion in combating terrorism, and, more crucially, that individual rights do not appear to matter much when measured against this objective[202].

In addition, from the analysis of the four judgments presented as well as from Hartwig and Gerdes's criticism, it seems possible to frame the Court's approach towards the removal of citizenship within a broader trend that the doctrine refers to as "*procedural review*". The Court appears to no longer be concerned only with the reasonableness of the balance achieved by national authorities, but also (or additionally) to the fairness and care shown in the national procedures leading up to a limitation[203]. This tendency has emerged, among other things, as a result of the fact that the Court has often been criticised for being too intrusive towards national jurisprudence; hence the tendency not to review the merits of the case as much as whether the courts have examined the reasons put forward by the plaintiff and, if they have, whether they have done so in the appropriate manner. If the answer is positive, and the Court discerns this guarantee, it tends to agree with the decision of the national court. Significantly, in the *Von Hannover v. Germany*[204] case, the Court affirmed that "*where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case law, the Court would require strong reasons to substitute its view for that of the domestic courts*"[205]. Indeed, having developed some specific criteria for assessing whether a case of removal of nationality raises an issue under art. 8 ECHR, the Court proceeds, in all presented cases, to more or less accurately assess whether national authorities acted in accordance with these criteria; if it is found they did, the Court places itself in a position of general deference to the decisions of domestic courts. The just-used expression "more or less accurately" refers to the fact that, although in *K2 v. the United Kingdom* and *Johansen v. Denmark* the Court found that the authorities had indeed

[202] Gerdes, M. M., & Hartwig, S. (2022). Anything Goes?: The Permissive Approach of the ECtHR towards Deprivation of Nationality and Subsequent Expulsion in the Fight against Terrorism.
[203] Gerards, J. H., Gerards, J., & Brems, E. (2017). Procedural Review by the ECtHR: A Typology.
[204] Von Hannover v. Germany (no. 2) [GC] - 40660/08 and 60641/08. Judgment 7.2.2012 [GC]
[205] Ibidem, § 107

acted diligently and swiftly, the situation appears more ambiguous in the cases of *Ramadan v. Malta* and *Ghoumid and others v. France*: in the former case, although acknowledging that the way authorities had proceeded could be questioned, the Court was satisfied with the fact that the delay between the annulment of the marriage and the adoption of the revocation decision had not disadvantaged Mr. Ramadan; similarly, in the latter case, the Court recognized that the administrative authorities had not immediately initiated a procedure for deprivation of nationality, yet it was satisfied with the fact that, when faced with events of this kind, a State can reassess whether it still maintains a bond of loyalty and solidarity with a person who have been convicted of an offence constituting an act of terrorism, and it could therefore decide to adopt at a later date measures that it had not initially chosen. Deference to the decisions of national courts is also particularly visible in *Johansen v. Denmark* where, as also noted by Hartwig and Gerdes, the Court makes extensive reference to the Danish Supreme Court's ruling, and it remains very cautious to challenge its decision and generally accepting the State's motivations for the measures adopted and their actual application, on the basis that the criteria developed by the court's jurisprudence were respected by the national authorities.

3.3 EU Law

In addition to the supranational limits analysed so far, EU member States willing to enact measures of citizenship deprivation in the context of antiterrorism must also take into consideration limitations stemming from EU law. This may come as a surprise if one considers that the EU still does not have competences in nationality matters, as no provision is contained neither in the founding treaties of the EU nor in secondary EU law to regulate the acquisition or loss of citizenship of Member States[206] and that, consequently, determinations on nationality matters remain within the discretion of each Member State. Yet, Member States must pay attention when exercising their competences in situations which may be covered by EU Law: an example of such a situation is a case in which the withdrawal of nationality can entail the loss of both national citizenship and European citizenship, as well as the specific rights attached to it. The Court of Justice of the EU (CJEU) affirmed that such a situation would, "*by reason of its nature and its consequences*", fall within the ambit of EU law in the context of the leading *Rottmann* case[207]. As for the background of the case, Janko Rottmann was an Austrian national which, in 1995, moved to Germany and, without disclosing to the authorities that criminal proceedings had been instituted against him, applied for German nationality. In 1999, German authorities granted Mr. Rottmann German nationality by way of naturalization and he *ex lege*

[206] Cloots, E. (2017). The legal limits of citizenship deprivation as a counterterror strategy. European Public Law, 23(1); Molnár, T. (2014). The Prohibition of Arbitrary Deprivation of Nationality under International Law and EU Law: New Perspectives. Hungarian YB Int'l L. & Eur. L., 67.
[207] Case C-135/08, Rottmann, EU:C:2010:104. § 42

lost his Austrian citizenship, in line with Austrian Nationality Law. When informed about the criminal proceedings, German authorities revoked Rottmann's German citizenship on the grounds that he obtained it fraudulently. As a consequence, Mr. Rottmann was not only rendered stateless by the decision, but he also lost his status of EU citizen, and the fact that the domestic decision to withdraw nationality also deprived him of European citizenship was sufficient to bring the issue within the scope of EU law. Eventually, the German Federal Administrative Court decided to refer the case to the CJEU for a preliminary ruling.

When pronouncing on the *Rottman* case, the CJEU first recalled the norms of international law applicable to the case, namely that the competence on nationality matter falls within Member States and that arbitrary deprivation of citizenship is prohibited[208]. Secondly, as already mentioned above, the Court stressed that, even in such circumstances where the specific competences on nationality matters belong to the Member States, they must act with due regard to EU law[209]. Specifically, because Rottmann lost his status as a EU citizen, this case fell within the scope of EU law. Third, the CJEU took into consideration the prohibition of arbitrary deprivation under EU law: when a State deprives an individual of his or her nationality because of acts done with the purpose of deception, and if legally established, such deprivation cannot be considered arbitrary. In this regard, the Court affirmed that an act of deprivation that is in accordance with international law is not contrary to EU law, but it proceeded to introduce a further requirement, namely a test of proportionality. The test is to be conducted by National Courts and not by the CJEU which, regrettably, as was emphasized by Tamás Molnár, risks undermining the uniformity of EU law application; yet, perhaps to avoid this, the Court gave further instructions on how to conduct the proportionality test, indicating the following as evaluation items:

4. *The consequences that the decision can have for the individual concerned and, if relevant, for his or her family*
4. *The significance of the offence committed by the individual*
4. *The time elapsed between the naturalization and removal decision*
4. *The ability to re-obtain the original nationality*

In conclusion, notwithstanding the fact that this is not a judgment specifically elaborated on citizenship deprivation as a counterterrorism measure, the CJEU's opinion in the context of the *Rottmann* judgment is nonetheless useful for understanding what supranational limits such a measure

[208] Ibidem, §§ 14, 39, 53.
[209] Ibidem, § 41

might encounter in the specific context of EU law. In particular, this ruling entails two important consequences: first, the fact that a national deprivation of liberty measure falls within the scope of EU law is particularly significant in that it means that the measure is susceptible to judicial review carried out in light of EU law. Although such review must be exercised by national courts, the latter can or even must refer questions to the CJEU regarding the interpretation of EU legal provisions governing the conditions under which a EU citizen can lose his or her citizenship status. This makes the Court of Justice the ultimate judge of the conditions for the loss of citizenship, that is, in situations where the withdrawal of citizenship by a member State would result in the deprivation of Union citizenship. Second, the Court also further elaborated on the procedural standards of lawful deprivation of citizenship, including proportionality as a general principle of EU law for the purpose of assessing the arbitrariness of a measure of deprivation of citizenship[210].

4. Conclusions of the chapter

This chapter has examined the supranational limits that states encounter in the application of nationality removal measures, especially given the constraints that such measures may impose on the human rights and human dignity of the persons concerned, and what limits the Courts leave for States.

Following the process of the "*humanrightization*" of international law during the 20th century, there has been an enrichment of the limitations deriving from international treaties, customary law and generally recognized principles of law on citizenship. Through a gradual expansion of international human rights protection, states have committed themselves to certain fundamental principles, namely the prohibition of statelessness and the prohibition of arbitrary deprivation of citizenship, aimed at guaranteeing human dignity and security.

Since from the analysis carried out in the previous chapter Europe emerged to be the area most affected by the increased use of citizenship removal measures as counterterrorism measures, the second part of the chapter took into account the European legislative framework, focusing first on the ECHR and ECtHR jurisprudence. The analysis of the four cases presented revealed a consistent approach employed by the Court to evaluate the cases of citizenship removal in relation to art. 8 ECHR, namely the right to respect for private and family life. In all the cases analysed, the Court used a two-step test to assess whether the removal cases raised an issue under art. 8, first taking into account whether the measure was arbitrary (the revocation must be in accordance with the law; the authorities must have acted diligently and swiftly; the measure must be accompanied by the necessary procedural safeguards) and, second, whether the consequences on the individual were proportionate.

[210] Cloots, E. (2017). The legal limits of citizenship deprivation as a counterterror strategy. European Public Law, 23(1); Molnár, T. (2014). The Prohibition of Arbitrary Deprivation of Nationality under International Law and EU Law: New Perspectives. Hungarian YB Int'l L. & Eur. L., 67.

A particularly interesting position of criticism on the court's jurisprudence, whose certainly very permissive approach leaves a wide margin of appreciation to the States, has emerged among scholars as a consequence of the Court's decision on the case *Johansen v. Denmark:* despite the applicant's strong connection to Denmark and the very weak one to Tunisia, the Court completely deferred to Danish Supreme Court's decision, implying that even very strong personal and familial ties are of minor importance when compared to the primary goal of fighting terrorism.

About Hartwig and Gerdes' criticism, it must be acknowledged that the Court's deferential approach does not, as a matter of fact, appear particularly incisive, as no infringement by States was found in cases of citizenship deprivation. It should be noted, however, that the Court has established certain limits of non-negligible importance. Indeed, in all the cases analysed, in addition to the criteria for assessing the arbitrariness of a decision, the Court has always considered the consequences of the decision on the lives of the individuals concerned, and in particular, whether they had been rendered stateless by the measure, establishing the avoidance of statelessness as a certain parameter.

A second parameter established by the Court is that of expulsion. While in *Ramadan* and *Ghoumid* there was no expulsion order, the situation was slightly different in *K2* and *Johansen*. In these two cases, there being a possibility of deportation, the court applied a proportionality test to determine whether the consequences on the individual were disproportionate to the objective the State wanted to achieve. Since national security was at stake in both cases, expulsion was not considered disproportionate to the end.

Yet, one element that, in line with what has been advanced by Hartwig and Gerdes, does indeed appear liable to criticism is the fact that, although the Court did set specific standards, it has not always systematically applied them. A first example, as seen discussing the Court's procedural review, is that there were ambiguities regarding the criterion of swift and diligent action on the part of national authorities. Even more interesting, however, is what the Court stated in the *Johansen* judgment. In assessing the impact of the expulsion order on Mr. Johansen's right to respect for family life, the Court referred to the Danish Supreme Court's reasoning that not only was Mr. Johansen's family in a position to follow him out of the country but that, even if his family did not wish to do so, they could easily communicate with him via telephone and the internet. This appears to be a particularly weak point: it is indeed deeply objectionable that an internet connection is sufficient to maintain interpersonal ties in a way that does not interfere with one's right to respect for family life.

As for the trend of procedural review, or what Başak Çali referred to as the development of a "*responsible courts doctrine*"[211], it should be noted that it entails both positive and negative aspects.

[211] Çalı, B. (2016). From flexible to variable standards of judicial review: the responsible domestic courts doctrine at the European Court of Human Rights. Shifting Centres of Gravity in Human Rights Protection, Rethinking Relations between the ECHR, EU, and National Legal Orders, 144-160.

Indeed, this doctrine certainly has the positive consequence of fostering a collaborative process between the ECtHR and domestic courts, offering the latter an interpretive space as co-authors of international human rights law, especially as a response to accusations that the Court is too intrusive in the jurisprudence of the domestic courts, eroding their interpretive discretion[212]. At the same time, the Court should sanction, where necessary, the work of national courts, while through a procedural review it perhaps risks forfeiting some of its authority. Moreover, another potentially problematic aspect concerns the Court's interpretative dynamism: unlike a case-by-case approach, procedural review binds the Court to its past case law, potentially hampering dynamism.

Finally, mention was also made of the limits imposed by EU law, particularly in relation to the *Rottmann* judgment: although issues of nationality fall within the competence of the Member States, the CJEU affirmed that, since there is a risk that an individual may lose, along with his or her nationality, also the status of European citizen, measures to remove nationality fall within the merit of EU law. Moreover, national deprivation decisions falling within the scope of EU law are subject to additional legal standards, apart from those set by international law and the ECHR, as the withdrawal decision must observe the European principle of proportionality.

[212] Ibidem

Chapter 3: A comparative analysis: the case studies of the UK, France and Italy

1. Introduction to the chapter

Generally speaking, it is possible to identify a convergence of the legal standards that States must consider when attempting to deprive people of their nationality, thanks to the linkage of nationality issues to human rights[213]. The previous chapter attempted to provide an overview of what these standards are, both at the international and European level. In particular, it was seen that the prohibition of arbitrary deprivation of nationality, which might include cases in which a person is deprived in order to make expulsion or deportation possible, and the prohibition of statelessness, constitute the fundamental pillars of the protection of the individual in this context. Even within Europe, however, states have not ratified the same instruments, and national preferences and national manifestations of sovereignty continue to influence how people are protected from losing their citizenship status.

This chapter aims to conduct a comparative analysis of how specific legal systems in Europe introduced – or expanded – deprivation powers, and what issues have emerged. After an in-depth study of the issue, three countries were selected as case studies: The United Kingdom (UK), France, and Italy. Hence, following a run-through of the international limits and standards that appear to be the most relevant with regard to the chosen cases (2), this chapter will start the analysis by looking at the UK (3): the reason this country was selected is that it is, arguably, the most emblematic case in the context of the expansions of citizenship deprivation powers for counterterrorism purposes. In fact, the UK has developed particularly stringent legislation that, in its evolutionary path, has been referred to as a *race to the bottom*[214]. Therefore, the relevant section will consider the evolution of British legislation, dwelling on particularly relevant case law, as well as on the main issues concerning the statutory provisions. Then, the chapter will move on to the analysis of the French case (4) which was selected consequently to some of its peculiarities: the French legislation followed a process of expansion of deprivation powers that was, to some extent, similar to the British experience; however, although it was the territory of a large number of terrorist attacks, the attempts to expand the powers stopped relatively early, and the recorded cases of deprivation turned out to be low. Accordingly, the section devoted to the French case will analyse the legislative development and the reasons for its discontinuation, while also going through the most relevant jurisprudence on the subject. Then, Italy was selected as the last case study (5) out of personal academic curiosity to find out whether and how

[213] Mantu, S. (2018). 'Terrorist'citizens and the human right to nationality. Journal of Contemporary European Studies, 26(1), 28-41.

[214] Institute on Statelessness and Inclusion & Global Citizenship Observatory. (2022, March). Instrumentalizing citizenship in the fight against terrorism. https://files.institutesi.org/Instrumentalising_Citizenship_Global_Trends_Report.pdf

far we are from a reality that, as a matter of fact, is not that far from us. In addition to the fact that Italy is among the European countries that have most recently introduced a provision to remove nationality, it should be emphasized that such a provision was introduced by one of the most characterizing acts of a government (the "Conte I" government) characterized by a major securitarian turn, and which has made security its warhorse. To this end, the dedicated section will consider the Italian legislation not so much in its evolution - in fact, as will be seen, there has not been an evolutionary process such as that which characterized the British and French experiences, but rather a sudden introduction of the norm on terrorism grounds - but in the criticalities and the issues it raised both in terms of effectiveness and application, and in terms of constitutional compatibility and compatibility with international standards. It is important to note here that, among the variety of sources used for the development of this chapter, special reliance was made upon author Sandra Mantu's work "*'Terrorist' citizens and the human right to nationality*"[215] regarding the British and French cases, and upon author Luigi Viola's work "*La revoca della cittadinanza dopo il Decreto Sicurezza*"[216] for the Italian case. A section of comparative analysis (6) will follow the individual cases, underlining the main similarities and differences that emerged, both in terms of legislative evolution and contents. Finally, a conclusive section will go over the chapter's main findings and it will try to identify a common thread behind all the case studies (7).

2. Overview of international standards applicable to the three case studies

Since the actions and decisions of individual States regarding citizenship can produce legal effects both within their own domestic legal system and at the international level, States have recognised the need to agree on a set of citizenship rules that define their powers of action in this field[217]. Since governments have the authority to withdraw citizenship against the will of the individual in question, provided that certain legal protections are observed, the deprivation of citizenship is not necessarily arbitrary under the current state of development of international law. These guarantees come from several sources that have been ratified on an international, regional, and national level. Before moving on to the analysis of the selected case studies, it is useful to present a run-through of the main limitations arising from international law that bind the UK, France, and Italy,

[215] Mantu, S. (2018). 'Terrorist'citizens and the human right to nationality. Journal of Contemporary European Studies, 26(1), 28-41.
[216] Viola, L. (2021). La revoca della cittadinanza dopo il decreto sicurezza. Diritto, Immigrazione E Cittadinanza, 1. https://www.dirittoimmigrazionecittadinanza.it/archivio-saggi-commenti/saggi/fascicolo-n-1-2021-1/707-la-revoca-della-cittadinanza-dopo-il-decreto-sicurezza
[217] Kesby, A. (2012). The right to have rights: citizenship, humanity, and international law. Oxford University Press; Spiro, P. J. (2011). A new international law of citizenship. American Journal of International Law, 105(4), 694-746. As found in Mantu, S. (2018). 'Terrorist'citizens and the human right to nationality. Journal of Contemporary European Studies, 26(1), 28-41.

and are significant to legislators, authorities responsible for taking citizenship decisions, and the courts or other bodies who review those decisions.

As seen, art.15 of the UDHR, which affirms that everyone has the right to a nationality and forbids its arbitrary deprivation, serves as the cornerstone of the international legal framework protecting the right to nationality. Based on a UN Human Rights Council Report, in the previous chapter, a comprehensive 5 step-test was exposed to assess whether a citizenship removal situation is arbitrary; specifically, a measure of citizenship deprivation must meet the requirements of having a firm legal basis; meeting due process guarantees; having a legitimate purpose; being the least intrusive means; and being proportionate.

Additionally, there are several UN human rights Conventions which contain provisions on the nationality of specific groups (e.g. children, women, persons with disabilities) to which the Uk, France and Italy are parties to; these include 1965 Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1966 International Covenant on Civil and Political Rights (ICCPR), 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1989 Convention on the Rights of the Child (CRC) and 2006 Convention on Rights of Persons with Disabilities (CRPD).

To conclude on UN standards, mention should be made of the 1961 Convention on the Reduction of Statelessness, which is another legal source affecting state power in the field of nationality law, and which prohibits the creation of statelessness by creating positive obligations for States to eliminate and prevent statelessness in their nationality laws. France is a signatory to the convention, whereas Italy and the UK have acceded/ratified the convention. Notably, as mentioned above, deprivation of nationality that results in statelessness is not in itself arbitrary and against international law and jus cogens norms. Indeed, in exceptional circumstances, 1961 Convention art. 8 allows the loss of nationality leading to statelessness, including when the national has shown loyalty to another State or when he or she has acted in a manner seriously prejudicial to the vital interests of the State. United Nations High Commissioner for Refugees (UNHCR) Guidelines on the interpretation of the 1961 Convention[218] provide a definition of "*conduct seriously prejudicial to the vital interests of the State*" as a threat to the "*foundations and organisation of the State*"[219] in question. Acts of treason, espionage, or terrorism may be covered by this ground of loss, whereas general crimes are not thought to be encompassed, as what is sanctioned are actions against the duty of loyalty. As a result, "terrorist" nationals may be stripped of their nationality and become stateless, as

[218] UN High Commissioner for Refugees (UNHCR), Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ("Tunis Conclusions"), March 2014, available at: https://www.refworld.org/docid/533a754b4.html
[219] Ibidem, § 67

long as the legislation of their State of nationality, as in the case of the UK[220], provided this specific ground for loss at the time of admission accession to the 1961 UN Convention.

In addition to UN standards, regional human rights treaties like the European Convention on Human Rights (ECHR) and the European Convention on Nationality[221] (ECN) establish requirements regarding nationality. The UK, France and Italy are all parties to the ECHR, but only France and Italy have signed the ECN. The ECN goes the furthest in limiting State authority to revoke citizenship, as seriously prejudicial conduct can result in loss of citizenship, but unlike the 1961 UN Convention, the person in question cannot be rendered stateless. Despite the fact that a human right to a nationality is not provided for by the ECHR, the ECtHR has recognized an arbitrary denial of nationality may, in certain circumstances, because of the impact of such a denial on the individual's private life[222], raise an issue under art. 8 of the Convention.

Finally, when resorting to measures of citizenship deprivation, as EU Member States, France and Italy – as was the case for UK before 2020 - are obliged to comply with EU law regardless of the fact that the EU has no competences in the field of nationality law, as was stressed by the CJEU in the *Rottmann* sentence. The CJEU also affirmed that national deprivation decisions falling within the scope of EU law are subject to additional legal standards, apart from those set by international law and the ECHR, as the withdrawal decision must observe the European principle of proportionality.

From the discussion above, it follows that there exists a convergent trend in international, human rights and EU law creating obligations for governments to prevent statelessness and refrain from arbitrarily depriving people of their nationality. However, "*a potential tension between nationality as a corollary of state sovereignty and the far-reaching effects that state nationality decisions can have for the person concerned and for the international community"* can be perceived[223]. The next sections will show how, when political concerns about terrorism, immigration, and national security clash with international legal standards, the potential limits of the current system of protection may become more apparent at the national level[224].

[220] Mantu, S. (2018). 'Terrorist'citizens and the human right to nationality. Journal of Contemporary European Studies, 26(1), 28-41.
[221] Council of Europe, European Convention on Nationality, 6 November 1997, ETS 166, available at: https://www.refworld.org/docid/3ae6b36618.html
[222] cfr. Karassev and Family v. Finland, 31414/96, Council of Europe: European Court of Human Rights, 12 January 1999; and Genovese v. Malta, Application no. 53124/09, Council of Europe: European Court of Human Rights, 11 October 2011
[223] Kesby, A. (2012). The right to have rights: citizenship, humanity, and international law. Oxford University Press, as found in Mantu, S. (2018). 'Terrorist'citizens and the human right to nationality. Journal of Contemporary European Studies, 26(1), 28-41.
[224] Mantu, S. (2018). 'Terrorist'citizens and the human right to nationality. Journal of Contemporary European Studies, 26(1), 28-41.

3. The United Kingdom

Removal of citizenship in the UK is currently regulated by Section 40 of the 1981 British Nationality Act (BNA). According to this provision, "*the Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good*" except in case "*he is satisfied that the order would make a person stateless".* However, an individual can be rendered stateless if

a) *the citizenship status results from the person's naturalisation,*
b) *the Secretary of State is satisfied that the deprivation is conducive to the public good because the person, while having that citizenship status, has conducted him or herself in a manner which is seriously prejudicial to the vital interests of the United Kingdom, any of the Islands, or any British overseas territory, and*
c) *the Secretary of State has reasonable grounds for believing that the person is able, under the law of a country or territory outside the United Kingdom, to become a national of such a country or territory.*[225]

Such formulation of Section 40, whose conditions are cumulative, is the final result of a series of legislative developments that, starting from the 9/11 terrorist attacks, and especially between 2002 and 2015, have led to a considerable expansion in the scope and use of nationality removal measures. According to an analysis developed by European Migration Law scholar Sandra Mantu, the legislative development concerning the stripping of nationality can be framed in the broader context of the redesign of citizenship laws with the aim of limiting immigration and, more generally, of renewed priority for national security. Moreover, Mantu emphasised the importance of public and political debates that, over the last two decades, have increasingly focused on the need to rediscover - in general - the meaning of citizenship and - in this particular case - of *Britishness*, as a status that had to be earned in a context dominated by debates on multiculturalism and failed integration, as well as the occurrence of race riots in 2001[226]. An attempt will now be carried out to reconstruct the most salient moments of what has been defined as UK's *race to the bottom*[227] in expanding the powers of the executive to remove citizenship.

Although citizenship deprivation had long been used to target those considered to be a danger for national security in the UK[228], its use was revived under the (original) BNA of 1981, Section 40,

[225] British Nationality Act 1981. Available at: https://www.legislation.gov.uk/ukpga/1981/61/section/40
[226] Zedner, L. (2016). Citizenship deprivation, security and human rights. European Journal of Migration and Law, 18(2), 222-242.
[227] Institute on Statelessness and Inclusion & Global Citizenship Observatory. (2022, March). Instrumentalizing citizenship in the fight against terrorism. https://files.institutesi.org/Instrumentalising_Citizenship_Global_Trends_Report.pdf
[228] Zedner, L. (2016). Citizenship deprivation, security and human rights. European Journal of Migration and Law, 18(2), 222-242. The author highlights that, in the UK, on the outbreak of the First World War, the British Nationality and Status

which provided for denaturalization in case the individual concerned had been sentenced to a prison term of at least 12 months during the first five years of naturalization, unless the deprivation would render the individual stateless[229]. At the outset, the government's discourse focused on the need to reformulate the citizenship law with regard to two separate objectives, namely the need to align British law with international law – specifically with the ECN and the UN Convention on the Reduction of Statelessness –, and to express more starkly the executive's migration goals and develop a clearer understanding of the true meaning of citizenship[230].

Then, however, 9/11 and the UK's involvement in the war on terror redirected the executive's attention towards security and terrorism[231]. Indeed, the first key development in the evolution of citizenship deprivation legislation took place in 2002 after, as a consequence not only of 9/11 but also of race riots[232], a white paper entitled *Secure Borders, Safe Haven Integration with Diversity in Modern Britain*[233] was published, during the second Blair ministry, with the aim to "*develop a stronger understanding of what [British] citizenship really means"*, and stressing that "*the Government considers that deprivation action would at least mark the UK's abhorrence of [people involved in terrorism] crimes*" and "*would make it clear that the UK is not prepared to welcome [people involved in terrorism crimes] as its citizens*"[234]. During the same year, the Nationality, Immigration and Asylum Act (NIAC) amended Section 40 of the 1981 BNA to allow the Home Secretary to deprive a British citizen of his or her status "*if satisfied that the person has done anything seriously prejudicial to the vital interests of—*

a) *the United Kingdom, or*

b) *a British overseas territory*."[235]

In addition, the powers were extended to British citizens by birth, while retaining the prohibition for the Home Secretary to issue a deprivation order making a person stateless. Such extension is particularly relevant if considered as a result of a desire to end discrimination related to the manner in which nationality was acquired and in line with the ECN's non-discrimination

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of Aliens Act 1914 provided for revocation of naturalized citizenship on a number of grounds, including fraud and misrepresentation. The British National and Status of Aliens Act 1918 further extended the grounds for denaturalization but in practice these powers were only rarely used.

[229] Ibidem

[230] Ibidem

[231] Mantu, S. (2018). 'Terrorist'citizens and the human right to nationality. Journal of Contemporary European Studies, 26(1), 28-41.

[232] Institute on Statelessness and Inclusion & Global Citizenship Observatory. (2022, March). Instrumentalizing citizenship in the fight against terrorism. https://files.institutesi.org/Instrumentalising_Citizenship_Global_Trends_Report.pdf

[233] A white paper is a policy documents produced by the Government to set out proposals for future legislation. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/250926/cm5387.pdf

[234] Ibidem

[235] Nationality, Immigration and Asylum Act 2002. Available at https://www.legislation.gov.uk/ukpga/2002/41/section/4

provisions. At the same time, the prohibition to render an individual stateless represented an important safeguard, the effect of which was that only dual nationals could be deprived of citizenship, to respect the prohibition of statelessness. Since the British government wanted to ratify the ECN, the provision also included the introduction of appeal rights with suspensive effect and procedural safeguards. In view of the specificity of the British system whereby deprivation of citizenship can occur in the absence of a criminal conviction, which gives the executive wide discretion in deciding what types of actions can be sanctioned by deprivation of citizenship, limiting that discretion through judicial review was provided for to ensure that deprivation was not arbitrary. In particular, appeals concerning national security must be decided by a Special Immigration Appeals Commission (SIAC), through a partly secret procedure in which the evidence of terrorist involvement is not disclosed by the government to the person concerned. In this context, Mantu noted how, together with the ambiguous character of the phrase "*serious prejudice to the vital interests of the United Kingdom*", this meant that statelessness became the main ground of appeal against citizenship deprivation orders[236].

A new development occurred in 2004, as a consequence of the case of Abu Hamza, a radical cleric who held dual British and Egyptian nationality. In 2003, the Secretary of State gave notice to Hamza of the decision to deprive him of his British citizenship but, because of delays in UK legal proceedings and the subsequent removal of his Egyptian nationality, it was illegal to also remove his British nationality, as he would be rendered stateless. Consequently, the law was further amended to allow for deprivation orders to have immediate effect, eliminating the suspensive right of appeal[237].

Deprivation powers were strengthened again through the 2006 Immigration, Asylum and Nationality Act (IANA), which further lowered the threshold in order to allow for a citizenship deprivation order to be issued if this was "*conducive to the public good*"[238]. Although the act had been presented before the London terrorist attacks of 2005, the fact that they had been carried out by "*home grown, terrorist citizens*"[239], did have a relevant influence on the related parliamentary negotiations. Some scholars have noted that, following the IANA, deprivation was no longer intended to punish citizens whose behaviour allowed the State to withdraw from the social contract, but rather to pre-emptively target citizens whose behaviour might endanger the "public good" because, according to the new threshold, it was no longer necessary for the targeted individuals to have actually

[236] Mantu, S. (2018). 'Terrorist'citizens and the human right to nationality. Journal of Contemporary European Studies, 26(1), 28-41.
[237] 2004 Asylum and Immigration Act. Available at: https://www.legislation.gov.uk/ukpga/2004/19/schedule/2.
[238] Immigration, Asylum and Nationality Act 2006. Available at: https://www.legislation.gov.uk/ukpga/2006/13/section/56
[239] Mantu, S. (2018). 'Terrorist'citizens and the human right to nationality. Journal of Contemporary European Studies, 26(1), 28-41.

done something before having their citizenship revoked. As a result, the measure's goal changed from being "*punitive*" to being "*preventive*"[240].

In 2014, the law was once again amended as a consequence of the *Secretary of State for the Home Department v Al-Jedda* case[241], which concerned section 40 of the 1981 BNA, under which – as seen - the Secretary of State could not deprive a person of British citizenship on the ground that it is conducive to the public good if satisfied that it would render that individual stateless. As for the background of the case, Mr Al-Jedda was an Iraqi national who, in 2000, lost Iraqi citizenship when he acquired British citizenship. Al-Jedda returned to Iraq in 2004 and was imprisoned for three years by British forces on suspicion of terrorism., and British citizenship was removed by the Secretary of State in 2007, just before his release from detention. In 2008, Mr. Al-Jedda filed an appeal against the order depriving him of his citizenship on the grounds that it would render him stateless and, in 2013, after the Special Immigration Appeals Commission (SIAC) had rendered two judgments against him, the Court of Appeal decided in favour of Mr. Al-Jedda. The Secretary of State argued, in an appeal to the Supreme Court, that Mr. Al-Jedda had the option of applying to reacquire his Iraqi citizenship at the time the deprivation order was issued. Therefore, he had become stateless due to his failure to submit the application rather than due to the deprivation order. The Supreme Court dismissed the appeal with unanimous agreement and determined that statelessness under section 40(4) is merely determined by whether the person has another nationality as of the date of the order stripping him of his British citizenship, based on a straightforward interpretation of the legislation and accompanying guidelines[242].

As a consequence of the Al-Jedda case, the government sought new changes to its deprivation powers and, while defending the introduction of the 2014 Act's in Parliament, the then Home Secretary Theresa May made direct reference to case of Al-Jedda as a justification for eliminating the prohibition on statelessness[243]. As a consequence of the Immigration Act (IA) 2014[244], where an

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[240] Lavi, S. (2010). Punishment and the revocation of citizenship in the United Kingdom, United States, and Israel. New Criminal Law Review, 13(2), 404-426, as found in Mantu, S. (2018). 'Terrorist'citizens and the human right to nationality. Journal of Contemporary European Studies, 26(1), 28-41.

[241] Secretary of State for the Home Department v Al-Jedda [2013] UKSC 62. Then Home Secretary Theresa May explicitly stated that this amendment was "*a consequence of a specific case*": Al-Jedda.

[242] United Kingdom: Supreme Court clarifies circumstances in which deprivation of citizenship will render a person stateless | European Database of Asylum Law. (2013, October 21). European Database of Asylum Law. https://www.asylumlawdatabase.eu/en/content/united-kingdom-supreme-court-clarifies-circumstances-which-deprivation-citizenship-will

[243] House of Commons Debate, 30 January 2014, col. 1040. Mrs. May: "*The new clause is a consequence of a specific case. The power to deprive on conducive grounds is such that even when I consider the first and arguably the most important part of the test to be met—that it would be conducive to the public good to deprive—I am still prevented from depriving a person of their citizenship if they would be left stateless as a result. That was the point explored in the Supreme Court case of al-Jedda.*"
Available at https://publications.parliament.uk/pa/cm201314/cmhansrd/cm140130/debtext/140130-0002.htm

[244] Immigration Act 2014. Available at: https://www.legislation.gov.uk/ukpga/2014/22/contents/enacted

individual acts in a manner seriously prejudicial to the vital interests of the UK, the Home Secretary can deprive him or her of citizenship even if the individual is rendered stateless, provided that nationality was obtained through naturalization and that the Home Secretary has reasonable grounds to believe that the person can acquire a new nationality when making the order. Since the UK Government has no authority to influence other countries' decisions regarding their citizens' nationalities, and because regaining a previously held nationality is not guaranteed by international standards, there is no assurance that the concerned individual won't continue to be stateless[245]. Interestingly, by partially removing the safeguards against statelessness provided for in 2002, the Immigration Act of 2014 made it clear that the UK was ultimately not going to ratify the ECN.

Within the House of Commons, as was the case for the 2002 and 2006 amendments, the 2014 powers were debated on procedural issues, the inefficacy of citizenship deprivation in preventing terrorism and fundamentalism, and on equality issues related to the treatment of naturalized citizens and citizens by birth[246]. However, even though the House of Commons passed the measure relatively quickly, allowing little time for examination, the House of Lords was more critical[247]. For example, on 17 March 2014, Lord Pannick noted how "*It is a matter for considerable regret that the United Kingdom, which has played so significant a role in the battle to reduce statelessness, should now, if the Government have their way, condone the creation of statelessness, even for people who have damaged the public good. Such people should be put on trial, punished if there is evidence of criminal offences and deported if there is a safe country to which they can be sent. However, to deprive them of nationality and thereby render them international outcasts is simply indefensible. (...) My current view is that Clause 60 is so fundamentally flawed, so in breach of international law and so damaging in its practical consequences for the security of this country that it should be removed from the Bill*"[248] Similarly, Lord MacDonald emphasized how the proposal was "*not only ugly in the sense identified so many years ago by Hannah Arendt; it not only associates the United Kingdom with a policy beloved of the world's worst regimes during the 20th century; but it threatens illegal and procedural quagmire hardly compatible with the comity of nations, still less with solidarity between free countries in the face of terrorism*"[249].

[245] Harvey, A. (2014). Recent developments on deprivation of nationality on grounds of national security and terrorism resulting in statelessness. J. Immigr. Asylum Natl. Law, 28(4), 336, as found in Mantu, S. (2018). 'Terrorist'citizens and the human right to nationality. Journal of Contemporary European Studies, 26(1), 28-41.

[246] House of Commons Debates, 30 January 2014, cols 1039-1052 and 1104. Available at https://publications.parliament.uk/pa/cm201314/cmhansrd/cm140130/debtext/140130-0002.htm

[247] Van Waas, L. E., & Paulussen, C. (2014). UK measures rendering terror suspects stateless: A punishment more primitive than torture. ICCT Commentary.

[248] As quoted in Van Waas, L. E., & Paulussen, C. (2014). UK measures rendering terror suspects stateless: A punishment more primitive than torture. ICCT Commentary.

[249] Ibidem

The plans of the government were likewise met with intense scepticism by external critics: for example, Kat Craig, former Legal Director of Reprieve, a US non-governmental organization that pursues legal action, said how May's intentions would set "*a dreadful example around the world*"[250].

Deprivation powers were further expanded in 2018 when Regulation 10(4) of the British Nationality (General) Regulations 2003[251] was amended, weakening the requirement to give notice of the deprivation order to the individual concerned by allowing the Home Office to serve the order simply by placing a copy of it on a person's file - but only in cases where their whereabouts were unknown. Yet in 2021, following the case of "*D4*"[252], a new change of legislation was proposed. The case concerned a woman known as "D4" who was born in the UK in 1967 and was a dual British-Pakistani citizen. She had been held at Camp Roj in Syria for the previous three years and was considered to have travelled to Syria to align with the Islamic State. On December 27, 2019, the government issued an order removing D4's British citizenship in accordance with section 40(2) of the 1981 Act. The formal decision to do so was made by Sajid Javid, Chancellor of the Exchequer, in the absence of the Home Secretary. D4's attorneys wrote to the government in September 2020 to request assistance getting her out of the camp, to which the government replied that she was no longer a British citizen, and her situation was not the responsibility of the British government. The deprivation of citizenship had never before been mentioned to D4 or her advisors.

In July 2021, the High Court found that Regulation 10(4) of the British Nationality (General) Regulations 2003 was *ultra vires*; sections 40(5) and 41(1) of the British Nationality Act 1981 were, therefore, void and of no effect[253]. Accordingly, the order to deprive D4 of her British citizenship was made in breach of Section 40(5) of the 1981 Act and so was also void and of no effect, and D4 was from that date, and remained, a British citizen. In sum, the text of the 1981 British Nationality Act required the Home Secretary to make efforts to notify individuals of their citizenship loss. Interestingly, in the final paragraph of the decision, the High Court provided for an interim suspension of the effect of the declarations[254]. Critics[255] suggested that this latest step was intended to allow the Home Office attorneys more time to find a way out, and it seems that they did find a way out through a

[250] Ibidem

[251] The British Nationality (General) Regulations 2003. Original text available at: https://www.legislation.gov.uk/uksi/2003/548/contents Amended text available at: https://www.legislation.gov.uk/uksi/2018/851/regulation/3/made

[252] The Queen (on the application of D4) (NOTICE OF DEPRIVATION OF CITIZENSHIP) v. Secretary of State for the Home Department. [2022] EWCA Civ 33. [2022] EWCA Civ 33. Available at: https://www.bailii.org/ew/cases/EWCA/Civ/2022/33.html

[253]The Queen (on the application of D4) v. Secretary of State for the Home Department. [2021] EWHC 2179 (Admin). Available at: https://www.bailii.org/ew/cases/EWHC/Admin/2021/2179.html

[254] Ibidem, § 70

[255] See Pougnet, R. (2022, January 26). Clause 9 of the Nationality and Borders Bill. Verfassungsblog. https://verfassungsblog.de/clause-9-of-the-nationality-and-borders-bill/;
And Rozenberg, J. (2021, August 1). Pulling the plug on void decisions. A Lawyer Writes. https://rozenberg.substack.com/p/pulling-the-plug-on-void-decisions

change in the legislation that contained a retroactive clause to nullify the implications of the D4 decision. In July 2021, the UK government started to work on a new Nationality and Borders Bill (NBB) and, more interestingly for the purposes of this analysis, on the inclusion in the Bill of the so-called Clause 9 to allow the Home Secretary to deprive people of their citizenship without giving them notice – at all.

Notably, in January 2022, by a two to one majority, the Court of Appeal upheld the ruling of the High Court that the failure to notify D4 of her citizenship deprivation until the government was contacted by her lawyers nullified the decision[256]. It is interesting to look at the words of Lady Justice Whipple, who said "*I conclude that regulation 10(4) is ultra vires. The 1981 Act does not confer powers of such breadth that the Home Secretary can deem notice to have been given where no step at all has been taken to communicate the notice to the person concerned and the order has simply been put on the person's Home Office file. To permit that would be to permit the statute to be subverted by secondary legislation. Only Parliament can decide that the requirement for notice contained in the 1981 Act should be altered in this way*[257]. Indeed, that is exactly the direction in which the Parliament was going with the inclusion of Clause 9 in the NBB. When commenting on the Court's ruling, Maya Foa, current Joint-Director of Reprieve, said that the Court's decision "*confirms that stripping a British national of their citizenship in secret is illegal. But the government is already cynically attempting to circumvent the courts by using clause 9 of the Nationality and Borders Bill to render this ruling moot, making a mockery of the rule of law. Ministers should change course and recognise that depriving people of their citizenship without even telling them is an affront to British principles of justice and fairness*".[258]

On 28 April 2022, the NBB received Royal Assent and became an Act of Parliament[259]. The then Home Secretary, Priti Patel, said how "*this is a huge milestone in our commitment to our promise to the British – a fair but firm immigration system"*[260]. Section 10 of the Bill states that Section 40(5) of the 1981 BNA, which requires notice to be given to a person to be deprived of citizenship, does not apply if:

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[256] Siddique, H. (2022, January 26). UK unlawfully stripped woman of citizenship without telling her – court. The Guardian. https://www.theguardian.com/politics/2022/jan/26/uk-unlawfully-stripped-woman-of-citizenship-without-telling-her-court

[257] The Queen (on the application of D4) (NOTICE OF DEPRIVATION OF CITIZENSHIP) v. Secretary of State for the Home Department. [2022] EWCA Civ 33. Available at: https://www.bailii.org/ew/cases/EWCA/Civ/2022/33.html, § 61

[258] Siddique, H. (2022, January 26). UK unlawfully stripped woman of citizenship without telling her – court. The Guardian. https://www.theguardian.com/politics/2022/jan/26/uk-unlawfully-stripped-woman-of-citizenship-without-telling-her-court

[259] Nationality and Borders Act 2022. Available at: https://www.legislation.gov.uk/ukpga/2022/36/contents/enacted

[260] Devine, L. (2022, April 30). Nationality and Borders Bill becomes law. Laura Devine Immigration. https://www.lauradevine.com/news/nationality-and-borders-bill-becomes-law/

a) the Secretary of State does not have the information needed to be able to give notice under that subsection,

b) the Secretary of State reasonably considers it necessary, in the interests of—

(i) national security,

(ii) the investigation or prosecution of organised or serious crime,

(iii) preventing or reducing a risk to the safety of any person, or

(iv) the relationship between the United Kingdom and another country,

that notice under that subsection should not be given.

4. France

In France, loss of nationality is allowed where the loyalty and allegiance of the individual concerned are disputed. The law distinguishes between *perte* (loss), regulated by art. 23 of the Civil Code[261], applicable to all citizens, and *décheancé* (deprivation), regulated by art. 25 of the Civil Code[262], only applicable to naturalized citizens and as long as they are not rendered stateless. All the modifications discussed or enacted in the past 20 years or so concern art. 25 Civil Code, which seeks to punish disloyalty and is only applicable in the following situations:

a) conviction for acts against the fundamental interests of the nation;
b) conviction for crime or offence constituting acts of terrorism;
c) conviction for crimes considered to be crimes against the public administration (crimes committed by persons holding a public office);
d) acts of insubordination; and
e) engaging, for the benefit of a foreign State, in acts that are incompatible with the status of French citizen and commission of acts that are prejudicial to the interests of France[263].

As an additional safeguard, in all cases except for the last one (e), it is necessary to be first found guilty of a specific offence before losing citizenship[264].

Over the past twenty-five years, French nationality law has undergone several changes, and an attempt to reconstruct such evolution will now be carried out. The topic of citizenship deprivation has strongly taken over the public scene in the context of the 1996 public debates concerning a proposed bill dealing with counterterrorism issues, after the Algerian Armed Islamic Group

[261] French Civil Code. Available at: https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070721/LEGISCTA000006136084/#LEGISCTA000006136084
[262] Ibidem
[263] Ibidem
[264] Mantu, S. (2018). 'Terrorist'citizens and the human right to nationality. Journal of Contemporary European Studies, 26(1), 28-41.

perpetrated attacks at the Saint-Michel metro station in Paris[265]. Within the new law (Loi 96-647[266]), which was adopted to give French authorities enhanced legal means to combat terrorism, Section 12 added a new provision to the second paragraph of art. 25 of the Civil Code, introducing the possibility that citizens who acquired French nationality may be deprived of that nationality, if convicted of a crime or offence that constituted an act of terrorism. According to the 1996 text, deprivation was only permitted if the person had been convicted no later than 10 years after acquiring French citizenship for conducts which were considered a crime by French law and carried a sentence of at least five years imprisonment. Another maximum of ten years could lapse between the facts and the deprivation.

Before proceeding with the analysis of the main developments that the legislation has undergone over the years, it is interesting to note that, after the adoption of the law, a minority of MPs raised a direct challenge before the *Conseil Constitutionnel*[267] to review the constitutionality of the Act. To better understand the *Conseil*'s stance on the subject, a concise summary of its reasoning is helpful.

The applicants made two separate complaints concerning the constitutionality of Section 12 of the Act: first, the provision was in violation of the principle of equality, as the way in which the perpetrator of the act of terrorism acquired French nationality would not justify any difference in treatment under criminal law; second, there a was in violation of the principle that penalties must be necessary, as the provision, which was in the nature of a penalty provision, was neither necessary nor useful for the upholding of public order[268].

On the alleged violation of the principle of equality, the *Conseil* stressed that "*the principle of equality does not preclude the legislature from treating different situations differently nor from derogating from equality for reasons of general interest, provided in both cases that the difference of*

[265] Fargues, É. (2017). The revival of citizenship deprivation in France and the UK as an instance of citizenship renationalisation. Citizenship Studies, 21(8), 984-998.
[266] Act N° 96-647 of 22 July 1996 "*tendant à renforcer la répression du terrorisme et des atteintes aux personnes dépositaires de l'autorité publique ou chargées d'une mission de service public et comportant des dispositions relatives à la police judiciaire*", published in J.O., 23 July 1996. Available at: https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000367689/
[267] Within the French legal system, the Constitutional Council is first and foremost responsible for ensuring compliance with the Constitution, which is the supreme standard in French law. To this end, it reviews the constitutionality of laws and international treaties, i.e. it verifies their conformity with the Constitution (Articles 54 and 61 of the Constitution). Since the constitutional revision of July 2008, the Council may also be seized, on referral from the Council of State or the Court of Cassation, when it is argued in the course of legal proceedings that a legislative provision infringes the rights and freedoms guaranteed by the Constitution (Article 61-1). This measure allows any citizen to bring an objection before the Council in respect of a law that has already entered into force, which was previously impossible. Individuals therefore have a new right: the priority question of constitutionality (QPC). The Constitutional Council is also the judge of the regularity of national consultations (Articles 58, 59 and 60 of the Constitution) and, more exceptionally, it is called upon to issue opinions and to note the existence of certain situations (impediment or vacancy of the presidency of the Republic, situation justifying the granting of exceptional powers conferred by Article 16 of the Constitution on the President of the Republic). Source: https://www.vie-publique.fr/fiches/19551-quel-est-le-role-du-conseil-constitutionnel
[268] Conseil const., Decision no. 96-377 DC of 16 July 1996 § 22

treatment is in relation to the object of the statute providing for it"[269]. The Conseil proceeded by stressing that, in relation to the law governing nationality, persons having acquired French nationality and persons who enjoyed French nationality by birth were in the same situation; Notwithstanding, given the avowed goal of combating terrorism, it was appropriate to provide that administrative authorities could have deprived a person of French nationality for a limited time without the resulting difference in treatment being a violation of the principle of equality; given the serious intrinsic gravity of terrorism offences, it was not contrary to art. 8 of the Declaration of Human and Civic Rights for the legislature to provide for such provisions[270].

Returning to the analysis of the evolution of the French nationality law, in 1998, to comply with ECN standards, the so-called "Law Guigou" (Loi 98-170) invalidated the loss of nationality resulting from a general offence and established safeguards against statelessness, introducing the notion that only French nationals who are also nationals of another country may be deprived of French nationality[271]. Consequently, only dual nationals could be deprived of nationality based on art. 25.

In 2003, loss of citizenship was made possible even for events that took place before the person acquired French nationality (Loi 2003-1119). The general rule of art. 25 was that the facts attributable to the person in question had to have occurred either before acquiring nationality or within ten years of acquiring it, in addition to the usual safeguard against statelessness. Moreover, deprivation could also only be declared within 10 years after the facts were committed[272].

Again, in 2006, the time limit was further expanded (Loi 2006-64)[273]: for acts of terrorism or acts against the fundamental interests of the Nation, the maximum time lapse between the acquisition of French citizenship and the deprivation was brought to fifteen years. The same time lapse applies between the moment the facts are committed and the actual deprivation. The new limit only applies to people whose nationality was obtained through naturalization, marriage to a French citizen, or reintegration into the French nationality[274]. It also mandates that the person in question be informed of the government's intention to revoke his or her citizenship, be given the chance to express any objections, and be given the opportunity to mount a defence. The decision to impose a restriction must be motivated, and the authorities can only do so with the *Conseil d'État*'s approval. In addition,

[269] Ibidem, § 23
[270] Ibidem, § 24
[271] LOI n° 98-170 du 16 mars 1998 relative à la nationalité. Available at: https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000754536
[272] Sandra Mantu, "Deprivation of Citizenship in France: Paper Frenchmen, Universal Citizenship and the Principle of Assimilation"
[273] Loi n° 2006-64 du 23 janvier 2006 relative à la lutte contre le terrorisme et portant dispositions diverses relatives à la sécurité et aux contrôles frontaliers. Available at: https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000454124/
[274] Mantu, S. (2018). 'Terrorist'citizens and the human right to nationality. Journal of Contemporary European Studies, 26(1), 28-41.

loss based on this article solely affects future events[275]. The need to enhance French counterterrorism capabilities in the wake of the attacks in Madrid and London served as the justification for the new legislative measures enacted in 2006. Although France had not been affected, riots occurred in several suburbs in 2005. Notably, members of the opposition emphasized the risk that the public could link counterterrorism measures to violence in the suburbs and their negative impacts[276]. Members of the then-ruling party (*Union pour un Mouvement Populaire,* or UMP) had publicly demanded that those who had taken part in the 2005 riots be stripped of their French citizenship, arguing that the failure of integration and terrorism justified the expansion of government powers. The French government also said that citizenship deprivation was needed since it allowed them to remove those who had been found guilty of terrorist offences or crimes against the country's basic interest: like in the UK, the goal was to physically remove the "terrorist" citizen from state territory rather than merely stripping him or her of citizenship[277]. In the *Tebourski* case[278], the applicant contested his expulsion to Tunisia after being stripped of his citizenship before the Committee supervising the implementation of the UN Convention against Torture. The Committee determined that the applicant had been stripped of his nationality in order to turn him into an irregular immigrant subject to deportation. It is important to note that French courts have refused to recognize any connections between expulsion and citizenship deprivation orders. Arguments that a citizenship deprivation order that resulted in expulsion was in breach of art. 8 ECHR were rejected on the grounds that the citizenship deprivation orders do not forcibly remove a person from France; rather, it is the separate expulsion order that does so. Politically, at least, it is obvious that there is a connection between deprivation and expulsion given how the French government has explained the necessity to reform citizenship deprivation powers[279].

Interestingly, following the 2006 legislative developments, little to no recourse to deprivation of citizenship took place; indeed, there was not any citizenship deprivation case from 2007 to 2013. However, in 2014, one case resulted in a *Question Prioritaire de Constitutionnalité* (QPC)[280], giving

[275] Mantu, S. (2015). Deprivation of Citizenship in France: Paper Frenchmen, Universal Citizenship and the Principle of Assimilation. In Contingent Citizenship (pp. 234-281). Brill Nijhoff.
[276] Ibidem
[277] Ibidem
[278] Adel Tebourski v. France, CAT/C/38/D/300/2006, UN Committee Against Torture (CAT), 11 May 2007
[279] Mantu, S. (2018). 'Terrorist'citizens and the human right to nationality. Journal of Contemporary European Studies, 26(1), 28-41.
[280] The priority question of constitutionality is the right recognized to any person who a party to a trial or proceeding to argue that a legislative provision infringes the rights and freedoms guaranteed by the Constitution. If the conditions for admissibility of the question are met, it is up to the Constitutional Council, seized on referral by the Council of State or the Court of Cassation, to give a ruling and, if necessary, to repeal the legislative provision. Before the constitutional reform of 23 July 2008, it was not possible to challenge the conformity with the Constitution of a law that had already come into force. From now on, individuals have this right under Article 61-1 of the Constitution. Source: https://www.conseil-constitutionnel.fr/decisions/la-qpc

the *Conseil Constitutionnel* the opportunity to rule on citizenship deprivation provisions for the second time, following the already-seen decision of 1996.

Ahmed Sahnouni, a French-Moroccan citizen, had been sentenced to seven years in jail in March 2013 after being found guilty of participating in a criminal organization that managed the recruitment of jihadists to fight in Afghanistan, Iraq, Somalia, and the Sahel region. He was naturalized in 2003, and on May 28, 2014, an order was signed removing him from French citizenship. The order was challenged before the *Conseil d'État*, and the main argument that was put forward was that the citizenship deprivation provisions, which only applied to naturalized citizens, would subject them to unfair treatment. The applicant's lawyer contended that the executive sought to deprive him of his citizenship in order to extradite him to Morocco, where he would face further punishment for the same crimes[281]. The *Conseil d'État*, on behalf of Mr. Ahmed, agreed to ask the *Conseil Constitutionnel* a preliminary question on the compatibility of conformity of art. 25(1) and art. 25-1 of the Civil Code with the rights and freedoms guaranteed by the Constitution.

The *Conseil Constitutionnel* took into consideration three claims by the Applicant: that the contested provisions violated the principle of equality, the principles that punishment must be necessary and proportionate and the objective that the law should be accessible and intelligible; moreover, according to the intervener association, the removal of nationality would also contrary to the right to respect for private life and the principle of legal certainty[282]. To address the first claim, the *Conseil* made extensive reference to the already seen Decision no. 96-377 of 1996[283]: although persons who acquired French nationality and French-born citizens are in the same situation, on the basis of the 1996 decision, the legislature was able to provide, by virtue of the objective of strengthening the fight against terrorism, that the administrative authorities may, for a limited period, withdraw French nationality from individuals who have acquired it without violating the principle of equality. By also taking into account the fact that, since the decision of 16 July 1996 as a consequence of Loi 2003-1119, revocation may be ordered in relation to events that occurred before the acquisition of nationality, without there being an extension of the period during which French nationality may be called into question and that, moreover, Loi 2006-64 extended the maximum time lapse between the acquisition of French nationality and the deprivation, and that this period of fifteen years provided for, the extension of which would cause a disproportionate violation of the requirement of equality between persons who have acquired French nationality and French-born citizens, is only applicable

[281] Sandra Mantu, "Deprivation of Citizenship in France: Paper Frenchmen, Universal Citizenship and the Principle of Assimilation"
[282] Conseil const., Decision no. 2014-439 QPC of 23 January 2015 § 3
[283] Conseil const., Decision no. 96-377 DC of 16 July 1996

in relation to particularly grave offences[284], according to the *Council* it follows that the objection relating to the breach of the principle of equality was to be rejected[285].

With regard to the second claim, namely that the provision was in breach of the principles that punishment must be necessary and proportional, the *Conseil Constitutionnel* took into consideration art. 61(1) of the Constitution, which does not confer on the Council a general power of appreciation and decision of the same nature as that of Parliament, but only confers on it the power to pronounce on the compatibility of legislative provisions submitted to it for examination with the rights and freedoms guaranteed by the Constitution; whereas, although the requirement to attach penalties to offences falls within Parliament's power of appreciation, it is for the *Conseil Constitutionnel* to ensure that there is no manifest imbalance between the offence and the penalty imposed[286]. The *Conseil* then considered that the contested provisions made the deprivation of nationality conditional on the person having been convicted of an act of terrorism, that they could not have the effect of making the person stateless and that, having regard to the particular gravity inherent in acts of terrorism, the contested provisions established a penalty whose punitive nature was not manifestly disproportionate. Accordingly, the objection alleging a breach of the principles that the punishment must be necessary and proportionate was to be rejected[**287**].

Concerning the remaining claims – that the objective that the law should be accessible and intelligible, and that the deprivation of citizenship would also violate the right to respect for private life and the principle of legal certainty – the *Conseil* stressed that Parliament is at all times free, when deciding on matters within its competence, to amend previous legislation or to repeal it and replace it with new legislation, as the case may be; yet, in doing so, it may not deprive constitutional requirements of legal guarantees, as that, in particular, it would be against art. 16 of the Declaration of the Rights of Man and of the Citizen of 1789, if it were to affect acquired rights in a manner not justified by a sufficient reason of general interest. The *Conseil* then took into consideration that, in stipulating the conditions under which the acquisition of nationality may be called into question, the contested provisions did not encroach upon any acquired rights: the deprivation of the nationality of a person did not call into question his or her right to private life and, accordingly, the objection alleging a breach of the right to respect for private life was misconstrued; the challenged provisions, which were not in any case unintelligible, did not infringe on any other right or freedom guaranteed by the Constitution and, therefore, they were to be upheld as constitutional[288].

[284] Conseil const., Decision no. 2014-439 QPC of 23 January 2015 Pars. 13-15
[285] Ibidem, § 16
[286] Ibidem, §§ 17-18
[287] Ibidem, § 19
[288] Ibidem, §§ 20-23

Although, as mentioned, the use of deprivation of nationality in France has been minimal, since the adoption of the 2006 law, several other proposals have been made to make deprivation of nationality easier, not all of them related to the fight against terrorism *per se*[289]. Indeed, deprivation of citizenship became a particularly hotly debated topic in 2010, which saw the failure of two proposals to change the rules to allow deprivation of citizenship as a sanction for polygamy and to punish foreign-born citizens convicted of murdering a person invested with public authority if they had been a citizen for less than 10 years. The first stemmed from an incident in which the police fined a French woman for wearing a full headscarf (niqab), a measure that the woman contested. Investigations into her past revealed that she was married to a member of a radical Islamic movement who had acquired French citizenship through their marriage in 1999. Investigations also revealed that her husband lived with three other women and had a total of twelve children. All the women received social benefits for single parents and wore the full veil, two facts that provoked angry reactions from the government[290]; the second proposal was linked to riots and violent clashes between the police and the inhabitants of the 'banlieues' that happened in the summer of 2010, when a police officer was shot dead, triggering an escalation of violence[291].

Since 2012, France has suffered terrorist attacks committed by French-born citizens with dual nationality which could not be removed because it was acquired at birth. Historically, indeed, French citizens by birth never came within the scope of the legal provisions on the removal of nationality. This led to new proposals to facilitate the removal of citizenship for French citizens who had committed attacks in France or travelled abroad to fight in Syria or Mali[292]. In 2014, the UMP put forward a new proposal to deprive all French people with dual citizenship of their citizenship if arrested, captured or identified while fighting against the French armed forces, their allies or the French police force; The proposal also sought to abolish the time limit for citizenship revocation and to allow the government to deprive citizenship without the permission of the *Conseil d'État*. The proposal, however, was rejected by the French Parliament's Constitutional Law Commission and did not receive a sufficient number of votes during debates in the National Assembly[293].

The last and best-known attempt at reform in this direction came about in 2016, following the November 2015 Paris attacks, at the behest of French President François Hollande. On 10 February

[289] Mantu, S. (2015). Deprivation of Citizenship in France: Paper Frenchmen, Universal Citizenship and the Principle of Assimilation. In Contingent Citizenship (pp. 234-281). Brill Nijhoff.
[290] Mantu, S. (2018). 'Terrorist'citizens and the human right to nationality. Journal of Contemporary European Studies, 26(1), 28-41.
[291] Ibidem
[292] Ibidem
[293] Ibidem

2016, the French *Assemblée Nationale*[294] adopted a bill – *Constitutional Law to Protect the Nation*[295] – which aimed at amending art. 34 of the Constitution, clarifying that the legislator had the authority to regulate nationality law, including the conditions under which an individual could be stripped of French nationality or the associated rights if the person had been convicted of a crime or offence constituting a serious violation of the nation's life or an act of terrorism, and that any French citizen, regardless of how he or she acquired nationality, could be subject to a citizenship deprivation measure[296]. Deprivation of citizenship was meant to function as an additional sanction, applicable in situations involving the direct financial support of terrorism, individual terrorist activities, and membership in the creation of a criminal organization with the intention of committing terrorist acts. However, because the prohibition on causing statelessness was still in place, the new regulations would have mainly affected French citizens who also possessed another nationality, thereby alluding to their own or their parents' immigrant origin. Given that France is bound by several human rights conventions, Additional concerns were raised that citizenship deprivation might result in the creation of *de facto* stateless people, namely people who have lost their nationality but cannot be expelled because their country of origin does not recognize them as citizens or will not accept them back. After the two houses of Parliament were unable to agree on a similar text, President Hollande eventually decided to withdraw the Constitutional Bill on March 30, 2016[297].

5. Italy

Italy is among the countries that most recently introduced the revocation of citizenship as a counterterrorism measure. Admittedly, Italy had already started following in the footsteps of many Western countries that, since the threat of international terrorism emerged in 2001, have often reacted by blurring the line between counterterrorism measures and measures actually aimed to address the issue of migration. In 2005, Italy's Decree Law 144/2005, converted into Law 155/2005, gave the Minister of the Interior the power to expel foreigners who perpetrated terrorism-related crimes or were under suspicion for facilitating terrorist organisations or activities[298]. However, more recently, Italy has joined the large number of Western countries that have resorted to the removal of citizenship,

[294] Within the French legal system, the National Assembly, together with the Senate, form the legislative power whose mission is to legislate and control the Government. Together with the Senate, it forms the legislative power whose mission is to make the law and control the Government. Source: https://www.assemblee-nationale.fr/dyn/role-et-pouvoir-de-assemblee

[295] Pouvoirs publics: protection de la Nation. Projet de loi constitutionnelle de protection de la Nation, n° 3381, déposé le 23 décembre 2015. Available at: https://www.assemblee-nationale.fr/14/dossiers/protection_nation.asp

[296] Mantu, S. (2016). Citizenship deprivation in France: Between nation and the Republic. Jurist.

[297] Mantu, S. (2018). 'Terrorist'citizens and the human right to nationality. Journal of Contemporary European Studies, 26(1), 28-41.

[298] Vedaschi, A. (2019). Citizenship Revocation in Italy as a Counter-Terrorism Measure. Verfassungsblog: On Matters Constitutional.

and it did so through the so-called *Decreto Sicurezza*[299] (Decree Law 113 of 2018), entitled "*Urgent provisions on international protection and immigration, public security, as well as measures for the functionality of the Ministry of the Interior and the organisation and functioning of the National Agency for the administration and destination of assets seized and confiscated from organised crime*" and converted into law, with amendments, by Law No. 132 of 2018[300].

Among the numerous, and extremely heterogeneous, contents of the decree-law[301], there were a series of modifications to the institution of citizenship undoubtedly characterised by the not-so-hidden purpose of making its granting more difficult and guaranteeing the administration a longer deadline for the definition of the relative applications. Arguably, however, the most significant and problematic innovation is that stemming from art. 14(1)(d) of Decree Law no. 113/2018 which, through the insertion of a new art. 10-bis of Law No. 91 of 1992, introduced into the Italian legal system the possibility of ordering the revocation of Italian citizenship acquired pursuant to art. 4(2) (relating to foreigners born in Italy who have resided there legally without interruption until they reach the age of majority and who have declared their intention to acquire Italian nationality within a year of the aforementioned date), art. 5 (relating to the spouse of an Italian citizen who has fulfilled the conditions stipulated in the aforementioned article) and art. 9 (relating to foreigners who have been granted, for various reasons, Italian nationality by decree of the President of the Republic) of the same law, in the case of a final conviction for the offences referred to in art. 407(2)(a)(4) of the Code of Criminal Procedure (offences committed for the purpose of terrorism or subversion of the constitutional order), as well as for the offences referred to in art. 270-ter (assistance to associates) and art. 270-quinquies (embezzlement of seized property or money to prevent the financing of conduct with the purpose of terrorism) of the Criminal Code. In this case, "*the revocation of citizenship is adopted, within three years from the final passage of the sentence of conviction for the offences referred to in the first sentence, by decree of the President of the Republic, at the proposal of the Minister of the Interior*"[302].

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[299] Translatable to "Security Decree", often also called the "Salvini Decree", after its initiator the then Interior Minister Matteo Salvini.

[300] Law No. 132 of 2018. Available at: https://www.gazzettaufficiale.it/eli/id/2018/12/03/18G00161/sg

[301] See Viola, L. (2021). La revoca della cittadinanza dopo il decreto sicurezza. Diritto, Immigrazione E Cittadinanza, 1. https://www.dirittoimmigrazionecittadinanza.it/archivio-saggi-commenti/saggi/fascicolo-n-1-2021-1/707-la-revoca-della-cittadinanza-dopo-il-decreto-sicurezza. "*Well summarised in the title of the measure and further increased in the conversion (from the initial 40 articles, divided into 101 paragraphs of the decree-law, to the 74 articles, divided into 185 paragraphs, of the conversion bill approved at first reading by the Senate)... (with the further) addition at the time of conversion of two legislative delegations - on the roles and careers of personnel of the armed forces and the police respectively*", in S. Curreri, Prime considerazioni sui profili d'incostituzionalità del decreto legge n. 113/2018 (c.d. "decreto sicurezza"), in federalismi.it, www.federalismi.it, no. 22.2018, p. 3.

[302] Viola, L. (2021). La revoca della cittadinanza dopo il decreto sicurezza. Diritto, Immigrazione E Cittadinanza, 1. https://www.dirittoimmigrazionecittadinanza.it/archivio-saggi-commenti/saggi/fascicolo-n-1-2021-1/707-la-revoca-della-cittadinanza-dopo-il-decreto-sicurezza

The provision had already sparked a number of criticisms during hearings by constitutionalists before the Senate Constitutional Affairs Committee, which were later joined by the voices of virtually all the doctrine that had addressed the issue[303]. In fact, Viola concedes that it was almost a shock for a cultural environment which, after the abrogation of the institution of the loss of citizenship for anyone who "*commits or contributes to committing abroad an act intended to disturb public order in the Kingdom, or which may cause damage to Italian interests or diminish the good name or prestige of Italy, even if the act does not constitute a crime*" provided for by the single article of Law no. 1086 of 1926[304] (now definitively abrogated by art. 26 of Law no. 91 of 1992[305]) had, by that time, accepted a solution that, in some cases, even raised the possibility of some form of irrevocability for the citizenship-granting measure, leading to a judgment that the provision was a "*dangerously unprecedented in our system, admitting a revocation discriminated against in consideration of the previous method of acquisition*"[306].

In reality, however, despite the fact that the Italian legislative framework on the subject has been more blurred and characterized, for a long period of time, by less recourse to provisions contemplating the loss of citizenship, it has continued to provide for such rules. Suffice it to think of art. 12 of Law 91 of 1992, which continued to maintain the institute of the loss of nationality for those who, "*having accepted a public employment or public office from a foreign State or public body or from an international body in which Italy is not a participant, or performing military service for a foreign State does not comply, within the time limit set, with the notice that the Italian Government may issue to him to abandon the employment, office or military service*"[307] (in the case of war, even in the absence of notice and on the basis of the simple fact of having accepted the nationality of the State in question); or again to paragraphs 3 and 4 of art. 3 of the same law, which provides for the loss of citizenship following the revocation of the adoption of a minor. In this case, the revocation of

[303] Ibidem. "*Without any claim to completeness, see, in this regard":* A. Algostino, Il decreto "sicurezza e immigrazione" (decreto legge n. 113 del 2018): estinzione del diritto di asilo, repressione del dissenso e diseguaglianza, in costituzionalismo.it, www.costituzionalismo.it, n. 2.2018, p. 167; D. Bacis, Esistono cittadini "di seconda classe"? Spunti di riflessione in chiave comparata a margine del d.l. n. 113/2018, in DPCE on line, www.dpceonline.it, n. 1.2019, p. 935; C. Bertolino, Paradossi della cittadinanza nella legge di conversione del decreto legge c.d. "Sicurezza", in federalismi.it, www.federalismi.it, n. 3.2018; M. Borraccetti, Le misure di revoca della cittadinanza nazionale e il controllo di proporzionalità: la prospettiva europea, in questa Rivista, n. 3.2019, p. 190; E. Cavasino, Ridisegnare il confine fra «noi» e «loro»: interrogativi sulla revoca della cittadinanza, in questa Rivista, n. 1.2019, p. 1; R. Palladino, Cittadinanza europea, perdita della cittadinanza nazionale e "due regard" per il diritto dell'Unione europea, in federalismi.it, www.federalismi.it, n. 20.2019; E. Xhanari e T. Spandrio, Brevi considerazioni sui profili problematici delle nuove disposizioni normative di cui al D.L. 113/2018, in Dirittifondamentali.it, www.dirittifondamentali.it, n. 2.2018.

[304] Royal d.l. no. 1086 of 17 July 1931 Available at: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto.legge:1931-07-17;1086

[305] Law 5 February 1992, n. 91. Available at: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1992;91

[306] Viola, L. (2021). La revoca della cittadinanza dopo il decreto sicurezza. Diritto, Immigrazione E Cittadinanza, 1. https://www.dirittoimmigrazionecittadinanza.it/archivio-saggi-commenti/saggi/fascicolo-n-1-2021-1/707-la-revoca-della-cittadinanza-dopo-il-decreto-sicurezza

[307] Law 5 February 1992, n. 91. Available at: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1992;91

the adoption "*due to the fact of the adoptee*" means, in fact, for the adoptee the loss of "*Italian citizenship, provided that he/she holds another citizenship or regains it*". In the first case, the rule is applicable to all Italian citizens and not only to those who have subsequently acquired Italian nationality, and is therefore based on a different logic with respect to that of the new art. 10-bis of Law no. 91 of 1992, as it is not subject to the same systematic issues, especially with regard to the issue of the creation of two different classes of citizens. In the second case, however, beyond the qualification in terms of loss and not of revocation of citizenship, the provision moves in a logic not dissimilar compared to that of the new art. 10-bis of Law no. 91 of 1992; in particular, completely analogous is the limitation to only one "slice" of citizens. Considering the above, Viola interestingly noted that the problems associated with the new provision set forth in art.10-bis of Law No. 91 of 1992 should start from the more concrete analysis of the purposes of the law, its issues in terms of application, and its constitutional and international compatibility, rather than in the absolute terms of "*a dangerous novelty*" in the legal system[308].

As a counterterrorism measure, one first issue concerns the maximum period of three years from the final passage of the criminal sentence provided for the application of the measure. The provision appears to be characterised by a "wait-and-see" logic, which is suboptimal in relation to its preventive purpose. As stressed by Viola, accepting that the measure responds to a logic of public security and thus intends to prevent a socially dangerous individual from continuing to pose a threat to the community, one can wonder why the revocation is not automatically ordered by the legal authority at the time the penalty is applied[309].

A second issue concerns the possibility of expelling the individual concerned by the measure. The Italian law does not, in fact, automatically provide that the person can be expelled because expulsion must take place toward a third nation, which necessitates the signing of appropriate bilateral agreements. Additionally, expulsion to countries where the person would seriously risk being exposed to torture and/or cruel and degrading treatment is prohibited by ECHR article 3[310].

The provision of a potentially excessively long application period and, on the other hand, the substantial lack of a consequential and automatic link with the expulsion from the national territory, therefore, "*depotentiate*"[311] or preclude the measure's preventive effectiveness, running the risk of enabling a system in which a citizen who may be dangerous for internal security continues, in reality, to remain on the national territory. Accordingly, it seems likely that the norm pertains to more of a

[308] Viola, L. (2021). La revoca della cittadinanza dopo il decreto sicurezza. Diritto, Immigrazione E Cittadinanza, 1. https://www.dirittoimmigrazionecittadinanza.it/archivio-saggi-commenti/saggi/fascicolo-n-1-2021-1/707-la-revoca-della-cittadinanza-dopo-il-decreto-sicurezza
[309] Ibidem
[310] Ibidem
[311] Ibidem

symbolic logic, rather than to an effective logic of prevention, whereby, by engaging in terrorist activities, the individual behaves in a way that breaks the bond of loyalty with his or her political community.

On what concerns issues of uncertain constitutional compatibility, as already mentioned, doubts had already emerged during the hearing of some constitutionalists at the Senate Constitutional Affairs Committee. These doubts concerned both general problems affecting the entire structure of the Decree, and specific problems of possible unconstitutionality affecting exclusively the new hypothesis of revocation of citizenship envisaged by art. 14(1)(d) Decree Law no. 113 off 2018.

First, for what concerns more general issues, the entire structure of the Decree was challenged under the two profiles of the lack of the requirements of exceptionality and urgency and the homogeneity of the contents necessary for the recourse to the urgent decree. In this sense, the argumentative path started from the historical sentence by the Constitutional Court. (23.5.2007, n. 171) concerning the possibility for judges to review the actual existence of the "*extraordinary cases of necessity and urgency*" necessary for the recourse to the decree-law, in order to contest its existence in the concrete case, "*in light of the ascertained decrease of migration flows in our country, compared to the peak reached in 2015-1620*" and, in any case, in light of the lack of an effective motivation on the actual existence of the requirements of necessity and urgency in the whole structure of the decree-law and the conversion law.

Moreover, in Corte Cost. 16.2.2012, no. 2222, it is further stated that every extraordinary case of necessity and urgency must be matched by a decree-law, and if there are multiple extraordinary cases, there must be multiple decrees-law. In light of this, it is hard to ignore that the title and then the preamble of the decree-law in question indicate that there are several extraordinary cases envisaged. Similarly, it is hard to understand what homogeneity and urgency can be found in a decree-law that mixes, already in the title, many heterogeneous objectives, including the destination of goods confiscated from organized crime, the reorganisation of the Ministry of the Interior, as well as immigration and public security[312].

These are, in essence, the general issues raised by Decree Law no. 113 of 2018 that were highlighted by a large part of the legal scholarship that dealt with the issue, but which were also considered by some of the appeals submitted by the Regions to the Constitutional Court against the Security Decree. The appeals, however, have not been addressed on the merits because of the lack of the requirement of motivation regarding the redundancy of the issue on the exercise of regional competences[313].

[312] Ibidem
[313] Ibidem

Second, regarding the specific issues of art. 14, the main issue is the discrimination between the Italian citizen by birth and the foreigner who has acquired citizenship. In fact, while an Italian citizen by birth, committing the crimes provided for in the rule, would not lose citizenship, the foreigner who acquired citizenship in another way would lose it in these cases. So, the fact that the same crime carries different penalties depending on the way citizenship was acquired seems to constitute a violation of the principle of equality.[314].

An in-depth analysis of the compatibility of the law with the standards imposed by international law is beyond the scope of this chapter[315]. Yet, it seems relevant to mention one last issue with the provision that appears to put it at odds with international law. Such an issue derives from the wording of art. 10-bis of Law no. 91 of 1992, which, by making no reference to the requirement of a dual nationality for citizenship removal, makes it theoretically possible for an individual to be rendered stateless.

The first reaction, the doctrine pointed out how the new provision was in contrast with the 1961 UN Convention on the Reduction of Statelessness. Part of the doctrine, however, disagreed with this observation, stating that the Italian legislation does not seem to have taken into consideration the problem of the potential statelessness of the recipients of the revocation as, unlike France, Belgium, and the Netherlands, but similarly to the UK, Italy placed a reservation on art. 8(3) of the 1961 Convention. Yet, this position has been clearly refuted by Salvatore Curreri, who noted how one must necessarily take into consideration the fact that this is a hypothesis of revocation of citizenship that was not foreseen at the time of the ratification of the Convention, and it was introduced into the legal system only at a later time. Consequently, with reference to the prohibition of creating situations of statelessness, the prospect of a frontal contrast with the 1961 Convention on the Reduction of Statelessness appears well-founded.

[314]Vedaschi, A. (2019). Citizenship Revocation in Italy as a Counter-Terrorism Measure. Verfassungsblog: On Matters Constitutional.; Viola, L. (2021). La revoca della cittadinanza dopo il decreto sicurezza. Diritto, Immigrazione E Cittadinanza, 1. https://www.dirittoimmigrazionecittadinanza.it/archivio-saggi-commenti/saggi/fascicolo-n-1-2021-1/707-la-revoca-della-cittadinanza-dopo-il-decreto-sicurezza

[315] For a more in-depth analysis in this context, see Viola, L. (2021). La revoca della cittadinanza dopo il decreto sicurezza. Diritto, Immigrazione E Cittadinanza, 1. https://www.dirittoimmigrazionecittadinanza.it/archivio-saggi-commenti/saggi/fascicolo-n-1-2021-1/707-la-revoca-della-cittadinanza-dopo-il-decreto-sicurezza (pagg. 15-28)

6. A comparative analysis

	UK	France	Italy
Relevant legal provisions	Section 40 of the British Nationality Act of 1981	Art. 25 of the Civil Code	Art. 10-bis of Law no. 91 of 1992
Relevant grounds for deprivation	Secretary of State is satisfied that deprivation is conducive to the public good (40(2))	Conviction for acts against the fundamental interests of the nation (25(1)); crimes or offences constituting acts of terrorism (25(2))	Conviction for the offences referred to in art. 407(2)(a), no. 4 of the Code of Criminal Procedure, as well as for the offences referred to in Articles 270-ter and 270-quinquies of the Criminal Code
Key moment of expansion of deprivation powers in relation to terrorism	• 1981: Introduction • 2002: 'Seriously prejudicial' standard • 2006: 'Conducive to the public good' standard • 2014: Exception in protection against statelessness • 2022: removal of the obligation to give notice of the deprivation order	• 1996: Introduction • 1998: establishment of safeguards against statelessness • 2003: Extension of time limits between commission of crime and moment of naturalisation • 2006: Further extension of time limits	• 2018: Introduction
Who can be affected by the provision?	Both naturalized and natural-born citizens	Only naturalized citizens	Only naturalized citizens or those who acquired Italian nationality because they married an Italian citizen or were born and resided in Italy until the age of 18
Is a criminal conviction required?	No	Yes	Yes
Time limit	No	Deprivation can be ordered for offences committed within 15 years (previously 10) following acquisition of citizenship and within 15 (previously 10) years following the offence	Deprivation is adopted, within 3 years from the final passage of the sentence of conviction for the offences specified in the article
Can the concerned individuals be rendered stateless?	• Naturalized citizens: Yes, if believed to be able to acquire another State's citizenship • British-born citizens: No	No	No mention about the avoidance of statelessness so, theoretically, yes
Who takes the decision?	Secretary of State	Council of Ministers, after consulting Council of State	By decree of the President of the Republic, at the proposal of the Minister of the Interior

Table 1. Overview of the evolution of citizenship removal legislations, and their main contents, in the three case studies.

From a comparative analysis of the three presented case studies - the UK, France and Italy - it is possible to draw a general picture aimed at identifying some similarities and differences of

particular interest for the purposes of this research. In particular, it is first of all possible to make a comparison of both the evolutionary processes that the norms governing the removal of citizenship have gone through in the three legal systems and of their main contents as resulted from such processes, as can be inferred from the summary table above (Table 1).

To begin with, for what concerns the different evolutional processes of the norms, a clear pattern of evolution can be seen in the UK, where amendments to existing statutes were almost every time triggered by judicial decisions, which precluded the Home Office from issuing deprivation orders (Abu Hamza in 2004, Al-Jedda in 2014, D4 in 2021). This expansion, which culminated with this year's approval of the NBB, accelerated UK's *race to the bottom*, clearly pursuing the goal of expanding the powers of the executive. In this sense, it is possible to identify similarities between UK and France, as French legislation has also undergone a process aimed at expanding deprivation powers. However, it is particularly interesting to note that, even though France has suffered a great number of terrorist attacks since 2001, the evolution of legislation in an expansive direction stopped relatively early. Admittedly, attempts in this direction, as seen, have not been lacking in the course of time, mainly aiming at extending deprivation to French-born citizens, in which case the French legal framework would have moved closer to the British one[316]; nonetheless, all the proposals eventually failed.

Concerning the process of legislative evolution, Italy presents some striking differences with respect to the other two countries: first, it did not witness an evolution of the norm but rather, one might say, its sudden appearance as, although rules on the removal of citizenship had been envisaged by the legal system since 1992, the terrorism ground for removal was only introduced in 2018. Moreover, these kinds of reform, particularly for anti-terrorism purposes, have generally been introduced in the wake of terrorist attacks suffered by the countries, and originated from the phenomenon of Islamist radicalisation and the consequent emergence of the figure of foreign fighters, often envisaging the revocation of citizenship as an indispensable measure to be able to expel them from the territory of the State. In joining such an extremely thorny debate, that is only relatively new, having already led, as seen, to judgments of the ECtHR, the Italian case represented an exception, given that the introduction of the rule was not directly consequential to a terrorist attack. Indeed, Italy has not faced a particularly severe threat from jihadist terrorism, and the country has substantially lower levels of domestic radicalisation than the majority of other European and Western nations. Since 9/11, there have not been any successful terrorist attacks on Italian soil, with the exception of a few low-level schemes that were prevented or failed, and this trend has persisted since the formation

[316] É Fargues, É. (2017). The revival of citizenship deprivation in France and the UK as an instance of citizenship renationalisation. Citizenship Studies, 21(8), 984-998.

of the self-declared Islamic State (IS) in 2014[317]. Rather, Decree Law 113 of 2018 originated in a national political context characterized by the expansion of populist and xenophobic discourse.

Concerning the content of the norms, it is possible to identify Italy as a contact point between the other two case studies, having some commonalities with both the UK and France, which, by contrast, do not share many similitudes with each other. One first point that is common to both France and Italy lies in the personal scope of the norm: in both legal systems, only naturalized citizens can be deprived of their citizenship, although France requires dual nationality (this point will be further expanded in the next paragraph when dealing with the issue of statelessness). The personal scope of the UK norm is somewhat different as, with the discriminants set out in paragraph 3.3, both UK-born citizens and naturalized citizens can be stripped of their nationality.

In terms of safeguards, French legislation is probably the most comprehensive. A first point of contact between France and Italy, in this context, is the fact that, for an individual to be deprived of citizenship, there must first be a criminal conviction. Here one can notice another clear difference with the UK where, following the passing of the IANA in 2006, the standard for deprivation was lowered to the Home Secretary's satisfaction that it would be "*conducive to the public good*". This ground for deprivation constitutes a much lower threshold, compared to both French and Italian law and to UK law before 2006, since the targeted individuals no longer needed to actually have done anything prior to having their citizenship revoked. Apparently, after this change, deprivation orders no longer aimed at punishing citizens but at preventively targeting those citizens whose behaviour may have endangered the "*public good*"[318], and the objective shifted from a "*punitive*" to "*preventive*"[319] one.

A second point in terms of safeguards on which the UK appears distant from France and Italy is the provision of a time limit for citizenship deprivation. Indeed, whereas such a limit is absent within UK law, both French and Italian legislation contain provisions to this effect, although not of the exact same nature. In France, Loi 2006-64 extended the time limit whereby deprivation can be ordered for crimes committed within 15 years (previously 10) of acquiring citizenship and within 15 (previously 10) years from the commission of the crime. In Italy, art. 14(1)(d) of Decree Law no. 113 of 2018, inserted a new art. 10-bis of Law 91 of 1992 which states that a deprivation order is adopted within 3 years from the final passage of the sentence of conviction.

In addition, French law provides for a third safeguard that not Italy nor the UK provide for. According to French law, an individual cannot be rendered stateless as a consequence of a deprivation

[317] Vidino, L., & Marone, F. (2017, November). The Jihadist Threat In Italy: A Primer. ISPI. https://www.ispionline.it/sites/default/files/pubblicazioni/analisi318_vidino-marone.pdf
[318] Fargues, É. (2017). The revival of citizenship deprivation in France and the UK as an instance of citizenship renationalisation. Citizenship Studies, 21(8), 984-998.
[319] Ibidem

order. As seen, France witnessed several proposals of provisions that, if enacted, would have extended deprivation to people who were born in France, bringing French law closer to British law. Still, such proposals did not include any requirement of dual nationality for removal, and statelessness remained a red line for France: the principle of its avoidance, which had been incorporated into the Civil Code in 1998 as a result of France's signing of the ECN, was indisputable[320].

On statelessness, Italy seems somewhat closer to the UK. In the UK, after the IA 2014 partially annulled the safeguards against statelessness put in place in 2002, the Home Secretary may deprive someone of their citizenship, even if they are rendered stateless, if they act in a way that is seriously prejudicial to the vital interests of the UK, and there are grounds to believe that they can obtain a new nationality at the time the order is made. The government defended the clause when it was criticized during parliamentary debates in 2014 by citing a statement the UK had made in 1966 when it ratified the 1961 Convention. According to this statement, made in reference to art. 8 of the Convention, a naturalized citizen might be stripped of their citizenship if they "*conducted himself in a manner seriously prejudicial to the vital interests of Her Britannic Majesty*"[321].Besides this legal justification, the government contended that it was also objectively reasonable to allow for the possibility of statelessness because naturalized citizens have chosen to adhere to British values and have been granted citizenship based on their good character, and it is therefore appropriate to restrict a measure with such severe implications as becoming stateless to naturalised citizens[322]. For what concerns Italian legislation, art. 10-bis of Law 91 of 1992 makes no reference to statelessness, *de facto* allowing for such possibility. It is interesting to stress again that, although Italy has placed a reservation on art. 8(3) of the 1961 Convention as well, the hypothesis of revocation introduced by art. 10 bis had evidently not been anticipated at the time the Convention was ratified and was only subsequently incorporated into the legal framework.

A final observation that can be drawn by the analysis of the case studies, that is only applicable to France and the UK, given the absence of relevant data in this sense in Italy, concerns the removal of dangerous individuals. Indeed, Deprivation has been connected to removal as the ultimate goal in both countries. Citizenship removal appears to have been utilized in British deprivation cases since 2002 as a way to keep out people who were considered dangerous. However, the French government also employed deprivation to expel people who were deemed to be a major threat to national security. However, it is interesting to observe that the French and British governments did not use the same removal strategies. In France, deportation orders were typically issued after people

[320] Ibidem
[321] Ibidem
[322] Fargues, É. (2017). The revival of citizenship deprivation in France and the UK as an instance of citizenship renationalisation. Citizenship Studies, 21(8), 984-998.

had been deprived of their citizenship while, in the UK, the government leaned towards depriving individuals of their citizenship while abroad, thereby preventing them from returning freely to the country. In practice, as noted by Émilien Fargues, both the British and the French governments attempted to combine the revival of deprivation with the "*return of banishment*"[323]. In both nations, attaching material significance to deprivation has led to a disregard for people's rights, sometimes even the most fundamental ones, such as the right to life (art. 2 ECHR) or the prohibition of inhumane and degrading treatment (art. 3 ECHR)[324].

7. Conclusions of the chapter

This chapter has analysed the UK, France and Italy as case studies to investigate how European countries introduced – or expanded – deprivation powers, and what issues have emerged. In particular, after providing an overview of the most relevant sources of international law applicable to the three cases considered, the evolution (or, in the case of Italy, the introduction) of the norm in each legal system was examined, as well as the relevant national jurisprudence and the issues raised by the measure.

Following the examination of the three cases, a comparative analysis paragraph was developed, identifying the main differences and similarities between the three systems, both at the level of the introduction and development of the norm and in terms of content, envisaged safeguards and employed enforcement strategies.

After conducting the comparative analysis, it is possible to identify a potential common thread among the three countries considered, which is based on an interesting point raised by Émilien Fargues. In his paper "*The revival of citizenship deprivation in France and the UK as an instance of citizenship renationalisation*"[325], Fargues argues that it is false to assume, as many do, that the UK and French models are opposite models of deprivation, in that the French one has been considered a punitive model, while the British one has been considered a preventive one. For the purposes of this research, although Fargues does not take Italy into account, the Italian model could likely be assimilated to the punitive French model, based on the need for a previous conviction. Fargues argued that, however much the legal frameworks for deprivation differ in the countries he analysed, a common trend emerged: deprivation forms an instance of citizenship "*renationalisation"* in both cases. Renationalisation, in Fargues paper, can be broadly defined as a reaction to "*denationalisation*" that seeks to strengthen the control of sovereign States over individuals' rights (migrants' rights in

[323] Macklin, A. (2015). Kick-off contribution. In EUI Working Papers, "The Return of Banishment".
[324] Fargues, É. (2017). The revival of citizenship deprivation in France and the UK as an instance of citizenship renationalisation. Citizenship Studies, 21(8), 984-998.
[325] Ibidem

particular). When applied to citizenship policies specifically, it captures a trend that goes against their citizenship lightening in at least three respects: it upholds the "*conditionality*" of citizenship (emphasising the idea that there is no right to it and that it must be earned); it maintains or reinforces the "*consequentiality*" of citizenship rights, showing that they still have material significance for individuals; it presents the national community as a homogeneous entity whose social cohesion needs to be protected from dangerous foreigners.

Indeed, deprivation policies in the three case studies do meet these three conditions.

First, deprivation has made citizenship conditional on non-involvement in terrorism and, in all three countries, the idea that citizenship must be earned is strongly present. In the UK, former Prime Minister Theresa May clearly stated how British *citizenship is a privilege, not a right*[326]. In France, the repetition of debates on national identity, especially during the presidential term of Nicholas Sarkozy, has strongly emphasised citizenship as a condition that should not be taken for granted, something that "*is not just about changing passports*" but "*is also about reaping the benefits of a history, and in the particular case of France, of a democratic history whose benefits have been paid for dearly*"[327], leading some to define the logic of French action as based on a *"philosophie de pureté nationale"*[328]. In Italy, the concept is perfectly embodied in the populist discourses of politician Matteo Salvini (as seen, the promoter of the Security Decree) essentially based on a xenophobic and populist dialectic of opposition between "*us*" and "*them*".

Second, governments make sure that deprivation has serious consequences for the targeted individuals, specifically removal from the territory.

Third, conditionality and consequentiality only apply to citizens with a foreign background (British-born dual nationals and British naturalised citizens; French and Italian naturalised citizens) – in other words, deprivation produces different categories of citizenship along thick, ethnic lines.

To conclude, Mantu is correct in stating that terrorism initiated a process of renegotiation of the social pact which resulted in the evolution of the very model of citizenry, the remaking of which is as much a social and political process as a legal one, which depends on law to set ideas of how citizens should behave and what are the consequences when they misbehave. In accordance with Daniele Salerno's observation that "*the politics of identity and belonging are preliminary to any*

[326] Cfr. chapter 1 note 43

[327] As quoted in Geisser, V. (2015). Déchoir de la nationalité des djihadistes "100% made in france": qui cherche-t-on à punir?. Migrations Société, (6), 3-14: "*The lawyer François Sureau writes: « Cette position n'est pas entièrement indéfendable. Acquérir la nationalité, ce n'est pas seulement changer de passeport. C'est aussi recueillir les bénéfices d'une histoire, et dans le cas particulier de la France, d'une histoire démocratique dont les acquis ont été chèrement payés ». SUREAU, François, "La déchéance de la nationali- té : deux catégories de Français ?*" in Études, tome 414, n° 4, novembre 2011, pp. 475-486 (voir p. 475).

[328] Geisser, V. (2015). Déchoir de la nationalité des djihadistes "100% made in france": qui cherche-t-on à punir?. Migrations Société, (6), 3-14.

security action"[329], it is not unexpected that, because of its intimate linkages to the concept of identity, nationality legislation has emerged as an instrument used to reshape citizenry by allowing the expulsion of "terrorist" nationals. The three case studies, then, demonstrate how citizenship deprivation powers have been transformed to this end, with political concerns about national security taking precedence over human rights and obligations arising from international law.

[329] Salerno, D. (2017). The politics of response to terror: the reshaping of community and immunity in the aftermath of 7 July 2005 London bombings. Social Semiotics, 27(1), 81-106.

Conclusions

The present research project analysed the trend that, over the last two decades, has spread among Western countries to resort to the removal of citizenship as a counterterrorism measure. The aim of the research was to answer whether States can remove the citizenship of (suspected) terrorists on security grounds without violating their international obligations and fundamental human rights. To find an answer to this main question, a number of other questions also had to be answered.

The first chapter essentially aimed at addressing the question of what is the potential value of using the removal of citizenship as a security measure and what are its criticalities, as well as whether they are equivalently significant or if one outweighs the others. After a historical reconstruction of the origins and evolution of the measure, with the main purpose of providing a sense of how, and how widely, the measure has been used, specifically within the European continent, the chapter considered the main arguments of the supporters and critics of the measure. In particular, it emerged that the main arguments put forward by supporters of the measure are that that deprivation of citizenship, as a pre-emptive measure, makes the return more complex and keeps potential terrorists out of the country; that deprivation of citizenship entails legal consequences that may work as deterrents for terrorist activity; and that deprivation of nationality protects the integrity of citizenship, as terrorism acts as a destructive force against the fundamental values of democratic societies. Additionally, among the strengths of the measure, that of its symbolic value emerged clearly. To understand this symbolic value, one must consider the fact that those behaviours that can be defined as disloyal to the State, including also acts of terrorism aimed at undermining its security, lead to the breaking of the bond between the State and the individual. In particular, if one draws on Arendt's definitions of citizenship as "*the right to have rights*", it is possible to understand how the symbolic rupture of the bond sends a clear message: those who join terrorist organizations lose their rights. Moreover, the symbolic value has the advantage, for liberal and democratic States, to convey the image of a community that stands united against those who, by joining terrorist organizations and acting contrary to its values, decide to turn their backs on it.

Having inscribed this measure, in view of its symbolic value, in the broader context of symbolic legislation, the chapter looked at the main arguments against the use of citizenship stripping on security grounds, showing how critics mainly contend that deprivation of citizenship is not effective because it neither reduces nor eliminates the real threat of a terrorist attack, making it even more complex to bring perpetrators to justice; that deprivation of citizenship is not effective in deterring terrorists from committing an attack but also risks encouraging radicalisation processes; and that deprivation of citizenship is not effective because of its inherent issue of inequality, as it itself undermines the democratic values it seeks to defend. Apart from issues of ineffectiveness, critics also

highlight its impact on human rights and dignity: if citizenship is seen as an enabling right, its removal has spill-over effects that can lead to "civil death".

After delving into all the arguments on both sides of such a wide-ranging debate, it was possible to conclude that the criticalities of the measure outweigh its advantages. Admittedly, the symbolic value of these measures should not be downplayed. It would indeed be difficult to argue that States should not be sending a strong message to those who voluntarily disavow their democratic values, and that they should be enjoying the same rights as other citizens. Yet, there exists an all-too-real risk that this rhetoric is employed by politicians who want to ride a wave of fear to gain political consensus. Similarly, if the ultimate goal of States is to overcome the limitation of power they have towards their citizens, not being able to expel them, the measure demonstrates a concrete goal that has little or nothing to do with the desire to deliver a strong message. Apart from the observation that arguments pointing against the effectiveness of the measure seem more reasonable than those in favour, what appears to be a key factor for the purposes of this research, and to take a side in the debate, is the potential impact of these measures on human rights, and in particular, whether they also apply to suspected terrorists and not only to those already convicted. The legal limbo and the "*civil death*" in which a suspect terrorist may end up, following the loss of citizenship as an enabling right, entail consequences that are potentially in contrast with international law.

Consequently, the second chapter aimed at addressing the question of what actual limits international law imposes on States that wish to strip terrorists, and suspected terrorists, of their citizenship, as well as what margins the Courts leave for States.

To address the first question, the chapter analysed the process that Tamás Molnár defined as the "*humanrightization*" of international law which led, during the 20th century, to an enrichment of the limitations deriving from international treaties, customary law and generally recognized principles of law on citizenship. As seen, a key moment in this process was the acknowledgement of the right to nationality as a fundamental human right, as well as the inclusion of the prohibition on arbitrary deprivation of nationality in the 1948 Universal Declaration of Human Rights (UDHR), after which States committed to respecting some crucial principles, namely the prohibition of statelessness, the prohibition of arbitrary deprivation and the principle of non-discrimination. These key principles were given renewed importance in several UN human rights conventions, and particularly in the 1961 Convention on the Reduction of Statelessness.

Then, to also address the second question – i.e. what limits the Courts set to the States – the chapter extensively analysed the ECHR and the jurisprudence developed by the ECtHR through the exposure of four cases: *Ramadan v. Malta*, *K2 v. the United Kingdom*, *Ghoumid and Others v. France* and *Johansen v. Denmark.* The chapter clearly showed how the ECtHR has developed a consistent

approach to cases of citizenship deprivation, applying a two-step test to assess whether the deprivation orders raise an issue under art. 8 ECHR, taking into account whether a deprivation order was arbitrary (the revocation must be in accordance with the law; the authorities must have acted diligently and swiftly; the measure must be accompanied by the necessary procedural safeguards) and, second, whether the consequences on the individual were proportionate.

A particularly interesting position of criticism on the Court's jurisprudence, whose certainly very permissive approach leaves a wide margin of appreciation to the States, was expressed by Samuel Hartwig and Maria Martha Gerdes as a consequence of the Court's decision on the case *Johansen v. Denmark*. It should be acknowledged that the Court's deferential approach does not appear particularly incisive, as no infringement by States was found in cases of citizenship deprivation. Yet, at the same time, it should also be noted that the Court did establish certain limits of non-negligible importance. Indeed, in all the cases analysed, in addition to the aforementioned criteria for assessing the arbitrariness of a decision, when considering the consequences that the deprivation order had on the lives of the individuals concerned, the Court always paid attention to whether the deprivation order had rendered the individual stateless and whether the individual faced the threat of expulsion, thus establishing certain parameters.

Yet, in line with Hartwig and Gerdes's position, one aspect of the Court's approach that does indeed appear liable to criticism is the fact that, although it did set specific standards, it has not always systematically applied them. One critical example is its deference to the Danish Supreme Court in the *Johansen v. Denmark*. Indeed, when assessing the consequences of the deprivation on Mr. Johansen's life, the Court agreed with the Danish Supreme Court's reasoning that, even if the appellant's family refused to follow him abroad, they could easily communicate with him via telephone and the internet. This appears to be a particularly weak point, as it is indeed deeply objectionable that an internet connection is sufficient to maintain interpersonal ties in a way that does not interfere with one's right to respect for family life.

Moreover, the chapter has argued that the Court's approach to instances of citizenship deprivation on security grounds can be inscribed within the more general trend of "procedural review". Even though this approach could foster a collaborative process between the ECtHR and domestic courts, offering the latter an interpretive space as co-authors of international human rights law especially as a response to accusations that the Court is too intrusive in the jurisprudence of the domestic courts, thus eroding their interpretive discretion, the Court should nonetheless be sanctioning, where necessary, the work of national courts, and by limiting itself to a procedural review it risks forfeiting some of its authority and hampering its interpretative dynamism.

The chapter also made reference to the limits imposed by EU law, particularly in relation to the *Rottmann* judgment: although issues of nationality fall within the competence of the Member States, the CJEU affirmed that, since there is a risk that an individual may lose, along with his or her nationality, also the status of European citizen, measures to remove nationality fall within the merit of EU law. Moreover, national deprivation decisions falling within the scope of EU law are subject to additional legal standards, apart from those set by international law and the ECHR, as the withdrawal decision must observe the European principle of proportionality.

To conclude on the question of the margins that the Courts leave to the States, it can be affirmed that the ECtHR has set important parameters - statelessness and expulsion - but that its approach seems far too deferential to States and, for the time being, not incisive enough. Concerning the CJEU, it is difficult to draw conclusions since it has not yet ruled on cases of removal of citizenship on security grounds. The position it has generally taken towards the removal of citizenship appears, however, relevant for the purposes of this research, as it shows how the hypothesis of also losing European citizenship has shifted the matter from the exclusive competence of Member States to the scope of EU law.

Finally, the third chapter aimed at addressing the question of how European countries introduced – or expanded – deprivation powers, and what issues have emerged. To this end, the chapter took into account three case studies: the UK, France and Italy. After reconstructing the introduction of the norm for the removal of citizenship as a counterterrorism measure in all three legal systems, as well as the subsequent legislative development (if any) in the direction of expanding deprivation powers and the respective content, the chapter provided a comparative analysis between the three countries to identify the main similarities and the main differences.

Beyond the differences and similarities pertaining to the content of the norms, which have been set out in detail within the chapter, the most interesting conclusions can be drawn concerning the legislative development and the envisaged safeguards. Concerning the evolutional processes of the norms, the chapter showed how a clear pattern of evolution could be seen in the UK, where amendments to existing statutes were almost every time triggered by judicial decisions, which precluded the Home Office from issuing deprivation orders (Abu Hamza in 2004, Al-Jedda in 2014, D4 in 2021). French legislation has also undergone a similar process aimed at expanding deprivation powers. Yet, interestingly, even though it has suffered a great number of terrorist attacks since 2001, the evolution of legislation in an expansive direction stopped relatively early and, despite attempts in this direction, all the proposals eventually failed. In this context, Italy presented some striking differences: first, it did not witness an evolution of the norm but, rather, its sudden appearance as, although rules on the removal of citizenship had been envisaged by the legal system since 1992, the

terrorism ground for removal was only introduced in 2018. Moreover, measures of citizenship removal for counterterrorism purposes have generally been introduced in the wake of terrorist attacks suffered by the countries, while, in Italy, the introduction of the rule was not directly consequential to a terrorist attack, as the Country has not faced a particularly intense challenge from jihadist terrorism. Rather, the norm originated in a national political context characterized by security-focused government and the expansion of populist and xenophobic discourse.

In terms of safeguards, French legislation is probably the most comprehensive. Both in France and in Italy, a criminal conviction is necessary to strip an individual of his or her citizenship. Conversely, in the UK, following the passing of the IANA in 2006, the standard for deprivation was lowered to the Home Secretary's satisfaction that it would be "conducive to the public good". This ground for deprivation constitutes a much lower threshold, compared to both French and Italian law and to UK law prior to 2006, since the targeted individuals no longer needed to actually have done anything to have their citizenship revoked. Besides a time-limit safeguard, envisaged by both Italy and France but not by the UK, French law provides for a third safeguard that not Italy nor the UK provide for: an individual cannot be rendered stateless as a consequence of a deprivation order.

Finally, an interesting consideration that could be deduced by the comparative analysis of the case studies, and by relying on Émilien Fargues' paper "*The revival of citizenship deprivation in France and the UK as an instance of citizenship renationalisation*", is that is possible to identify a potential common thread among all cases. Indeed, no matter how much the legal frameworks for deprivation differed, a common trend did emerge: deprivation formed an instance of citizenship "renationalisation" in all cases. When applied to citizenship policies specifically, renationalisation captures a specific trend: it upholds the "conditionality" of citizenship, advancing the idea that there is no right to have it and that it must be earned; it maintains or reinforces the consequentiality of citizenship rights, demonstrating that they still have material meaning for individuals; on a more symbolic level, it presents the national community as a homogeneous entity whose social cohesion must be protected from dangerous foreigners. Indeed, the deprivation policies in the three case studies fulfil these three conditions.

First, the idea that citizenship must be earned is strongly present in all three countries, and former UK Prime Minister Theresa May's assertion that British citizenship is a privilege, not a right, appears emblematic. Second, the governments considered ensured that deprivation had severe consequences for the individuals targeted, particularly removal from the territory. Third, conditionality and consequentiality apply only to citizens with foreign backgrounds (British citizens and naturalized British citizens; French citizens and naturalized Italians) - in other words, deprivation

produces different categories of citizenship along ethnic lines that aim to "othering" dangerous foreigners.

Having set out the main findings of the three chapters that make up this research, it is possible to draw some overall considerations aimed at answering the main research question, that is whether it is feasible to resort to the removal of citizenship on security grounds without violating fundamental human rights as well as States' international obligations, or whether this type of measure is itself a violation of both.

If one refers to what US Supreme Court's Justice Earl Warren affirmed about deprivation of nationality – that its revocation leads to what Hannah Arendt has described as "*the deprivation of a place in the world that makes opinions meaningful and actions effective*" and to "*civil death*", and that, given its nature of enabling right, its removal not only impairs the enjoyment of political rights, but makes the enjoyment of other fundamental rights particularly complex – it is hard to affirm that deprivation measures are not, in themselves, a violation of the fundamental right to nationality and other fundamental human rights stemming from it. It is true that Justice Warren, in making these statements, was particularly concerned about cases in which the citizen remains stateless, and that safeguards exist to avoid this circumstance. However, this research has shown how often the urgent need of states to protect national security - or at least the need to be seen doing so - has put the prohibition of statelessness on the back burner, generating a race to see who can remove citizenship first and leading States to rely less on the importance of guaranteeing individuals their right to a nationality and more on bureaucratic loopholes to offload the fact that they have been left stateless onto other States - or onto the individual himself.

However, if one wishes to set aside Justice Warren's reasoning, which in any case does not appear unfounded, one must recognise that, despite questions of nationality - such as the acquisition, loss, renunciation, or deprivation thereof - traditionally fall under the domestic jurisdiction of States, States must exercise their power in compliance with their international obligations. As a matter of fact, international law, Convention rights and even EU law do place considerable restrictions on the exercise of this power by establishing specific higher standards. Yet, these higher standards are not impossible to comply with, and the possibility remains for States to draft a legally admissible denationalization law. Therefore, the answer to the main research question is that measures to remove citizenship on security grounds do not *automatically* violate international law and the human rights it guarantees. However, it is essential to stress that, as the research has shown, even a perfectly drafted law is not without problems.

First, it has been seen how these measures are unlikely to produce the expected benefits in terms of deterrence and security; indeed, it has even been seen how, by only applying to citizens with

foreign backgrounds, they risk encouraging radicalisation processes and having counterproductive effects with respect to its intended objective. This is a particularly interesting aspect that has emerged from this research, and on which the academic literature has not yet expressed itself comprehensively, but whose in-depth study goes beyond the scope of this analysis and could, therefore, be the subject of further research.

Second, it has been seen that when States operate within a nationality – immigration – security nexus, the lines between these factors begin to blur, and respect for fundamental rights seems to take a back seat; in such cases, it is easy for states to yield to the pressure to expand denationalisation laws, especially in times of terror, with a real risk of overstepping the boundaries of what is legally permissible, particularly the prohibition of arbitrary deprivation and the prohibition to render an individual stateless, which are – or should be - the outer limits of States' powers to remove citizenship.

In this regard, it should also be stressed that international and European human rights bodies should play a stronger role in ensuring the protection of the human right to citizenship and, where necessary, challenge state practices that diverge from established standards. Notwithstanding the potential symbolic value of deprivation measures, the attempt to circumvent existing legal standards on nationality, in general terms, deserves a firmer commitment from the international community.

To conclude, a final consideration that can be drawn from this research is that, in agreement with what was affirmed by Sandra Mantu, terrorism initiated a process of renegotiation of the social pact which resulted in an evolution of the very model of citizenry, the remaking of which is as much a social and political process as a legal one, which depends on law to set ideas of how citizens should behave and what happens to them when they misbehave. In accordance with Daniele Salerno's observation that "*the politics of identity and belonging are preliminary to any security action*", it is not unexpected that, because of its intimate linkages to the concept of identity, nationality legislation has emerged as an instrument used to reshape citizenry by allowing the expulsion of "terrorist" nationals. The three case studies, then, demonstrate how citizenship deprivation powers have been transformed to this end, with political concerns about national security generally taking precedence over human rights and obligations arising from international law.

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Executive summary

Introduction

Over the past 20 years, Western countries – and, particularly, European countries – started to increasingly resort to the removal of citizenship as a counterterrorism measure, either by introducing provisions of this kind into their legal systems or, where these provisions were already present, by seeking to expand the power of governments in this direction. This trend emerged as a consequence of the 9/11 terrorist attacks, and it spread with greater impetus as a result of the 2015 Paris attacks. Indeed, while in 2001 it was still possible to think of Islamist terrorism as the work of jihadis from faraway places, the attacks of 2015 shed light on the issue of so-called Foreign Terrorist Fighters (FTFs), and governments became evermore aware that terrorists were often home-grown. This issue, coupled with the limitation that States encounter *vis-à-vis* their own citizens, namely the fact that they cannot be expelled, nor can they be prevented from re-entering if they express the will to do so, prompted States to enact citizenship deprivation laws.

Notably, the dubious compatibility of these kinds of measures with human rights under international law (especially when also targeting *suspected* terrorists), together with the fact that not even Italy has remained untouched by this trend, are the main factors that sparked my curiosity around this topic. Consequently, the main question that this research project aims to answer is whether it is feasible to resort to the removal of citizenship on security grounds without violating fundamental human rights and States' international obligations, or whether this type of measure is itself a violation of both. Around and within this question, other interrogatives arise: what is the potential value of the measure, and what are its criticalities? Is their significance equivalent or is it possible to say that one outweighs the others? What are the actual limits that international law imposes on States that wish to strip terrorists, and suspected terrorists, of their citizenship? What margins do the Courts leave for States? How have European countries introduced – or expanded – deprivation powers, and what issues have emerged?

To systematically answer these questions, this research is divided into three chapters.

The first chapter examines the historical background and development of the measure, before and after 9/11 and following the 2015 momentum. Then, the chapter moves to the analysis of the main arguments advanced by the two sides of the academic debate around citizenship deprivation, starting with the ones put forward by supporters of the measure and placing a specific focus on its potentially symbolic value, also by framing it within the broader context of symbolic legislation. Finally, the chapter analyses the main arguments advanced by the critics of the measure, both on the issue of effectiveness and on its inherently counterproductive nature, and on the consequences and impact of the measure on human rights and human dignity.

The second chapter analyses the supranational limits that States encounter in resorting to citizenship deprivation on security grounds. Specifically, the chapter initially describes the international law framework and, then, it focuses on the European legal framework by taking into account the European Convention on Human Rights (ECHR) and the jurisprudence developed by the European Court of Human Rights (ECtHR). To this end, four cases are thoroughly examined, namely *Ramadan v. Malta, K2 v. the United Kingdom, Ghoumid and Others v. France* and *Johansen v. Denmark.* Finally, the chapter takes into account the supranational limits that can be imposed on States willing to resort to deprivation measures by virtue of the law of the European Union (EU), by looking specifically at the European Court of Justice's (CJEU) ruling on the *Rottmann*'s case.

The third and final chapter conducts a comparative analysis of three case studies: the United Kingdom (UK), France, and Italy. Hence, after a run-through of the international limits and standards that are particularly relevant with regard to the chosen cases, the chapter begins by looking at the case of the UK which is, arguably, the most emblematic case in the context of the expansion of citizenship deprivation powers for counterterrorism purposes. Then, the chapter considers the French case where, despite a high number of terrorist attacks, attempts to expand the powers stopped relatively early. Lastly, the chapter examines the Italian case, as Italy is one of the European countries that most recently introduced a provision to remove nationality on security grounds, under a government that made security its warhorse. A section of comparative analysis follows the exposition of the individual cases, highlighting the main similarities and differences that emerged and attempting to identify a common thread behind all cases.

Finally, in the conclusions section, the main findings that emerged from each chapter are recalled, trying to provide an answer to the questions that guided the development of this research project and, in particular, to the main research question.

With regard to the approach to the analysis and the methodology employed, the research follows a deductive approach, starting from a general analysis of the topic and then considering the particular features of individual cases. Concerning, specifically, the types of sources, extensive use was made of academic literature and reports, available case law, policy documents and media reporting, as well as public statements by key politicians and state officials, state practices and parliamentary debates.

Chapter 1

The terrorist attacks of 11 September 2001 in New York and Washington, the subsequent brutal attacks of the following decades - including those in Madrid, London, Paris, Brussels and Berlin - as well as the rise and then fall of ISIS in Syria and Iraq, contributed to the growth of new

efforts to strengthen (inter)national security, leading to the so-called "legislative fever" with which many governments responded to contemporary terrorist threats by introducing a wide range of new counterterrorism practices.

In this context, one trend that is particularly interesting to analyse, not least because of its controversial nature, is the adoption or expansion of nationality deprivation powers as a counterterrorism measure. To this end, this chapter first reconstructs the history, evolution, and diffusion of the measure, and subsequently presents an analysis of contrasting perspectives and points of view, both in favour and against the measure.

Although nationality deprivation measures attracted a lot of attention in the last two decades in the context of anti-terrorism, it is important to note that, from an historical perspective, these measures were widely diffused in national legislation even before 9/11, also on security grounds, but most often in relation to changes in personal status, such as marriage, and actions like illegal border crossing, emigration, military desertion or voting in a foreign election.

Nonetheless, since 9/11, there was a remarkable resurgence of interest concerning nationality deprivation on security grounds. Today, according to the comprehensive "*Instrumentalizing citizenship in the fight against terrorism"* report developed by the Institute on Statelessness and Inclusion and the Global Citizenship Observatory, there are four main grounds of deprivation: disloyalty, military service to a foreign country, other services to a foreign country and other offences. Disloyalty, being a broad category that includes provisions penalizing a range of conduct or offences that harm the interests or security of the State, also includes acts of treason or terrorism and, accordingly, its primacy among contemporary security-related grounds comes as no surprise if seen as a direct consequence of 9/11 and 2015 terrorist attacks. Indeed, in 2015, the world witnessed some brutal terrorist attacks, such as those on the Charlie Hebdo offices and the Bataclan concert hall in Paris, and it saw clearly how the threat of terrorism, despite the array of counterterrorism measures taken in the aftermath of 9/11, had all but disappeared. On the contrary, the attacks of 2015 shed light on the issue of so-called Foreign Terrorist Fighters (FTFs), and governments became evermore aware that terrorists were often home-grown.

Thanks to the mentioned "*Instrumentalizing citizenship in the fight against terrorism*" report, it is also possible to get a sense of how widely deprivation powers have been used. Among the 132 countries considered by the report, it emerged that 1 in 5 countries introduced or enhanced provisions to deprive citizens of nationality on grounds of disloyalty, introducing in almost all cases grounds related to national security or terrorism. Europe clearly emerged from the report as the epicentre of expanding powers, with 18 European States expanding their powers since the year 2000, therefore accounting for nearly half of all countries globally that changed their legislation in that direction. If

one looks more closely at the timing, as well as the content, of legislative reforms, a correlation between the expansion of deprivation powers and the upsurge in global terrorism clearly emerges, as the acceleration of legislative reforms by countries to introduce or expand deprivation powers that occurred between 2016 and 2022 shows a clear link to the issue of how to handle ISIS returnees - a challenge the whole international community was trying to address.

Given the manifest tendency of Western countries to use citizenship deprivation powers as a counterterrorism measure, an interesting academic debate developed around the measure. Although the general orientation of legal research globally tends to be negative towards the measure, interesting points are raised by both its supporters and critics.

The arguments that politicians, practitioners and commentators put forward in defence of the use of this measure reveals the existence of three main broad justifications or objectives in relation to its effectiveness and practical usefulness:

d) Deprivation of citizenship, as a pre-emptive measure, makes the return more complex and keeps potential terrorists out of the country.

e) Deprivation of citizenship entails legal consequences that may work as deterrents for terrorist activity.

f) *Deprivation of nationality protects the integrity of citizenship, as terrorism acts as a destructive force against the fundamental values of democratic societies.*

Regarding the measure's potential, its supporters also emphasise its profound symbolic value. Behaviours and acts that can be defined as disloyal to the State, including also acts of terrorism aimed at undermining its security, lead to the breaking of the bond between the State and the individual. In particular, if one draws on one of the most popular definitions of citizenship, namely "*the right to have rights*", it is possible to understand the symbolic value of depriving an individual of his or her nationality. Breaking this bond, in fact, sends a clear message to citizens: those who join terrorist organizations lose their rights.

The interpretation of the removal of citizenship as a measure with strong symbolic connotations is part of a more general tendency on the part of State legislatures to enact so-called symbolic legislation. Even though symbolic legislation does not commonly enjoy a good reputation, as the term is usually employed to refer to instances of legislation that are largely ineffective and serve other political and social goals than those officially proclaimed, some contend that laws are not only a set of rules but also symbols of something higher and more valuable and, as such, give expression to values that are fundamental to the community.

On the other side of the debate, critics of the measure focus on the ineffectiveness of the measure, advancing the following counterarguments:

g) *Deprivation of citizenship is not effective because it neither reduces nor eliminates the actual threat of a terrorist attack. Rather, it makes it more complex to bring perpetrators to justice, and it results in the State not taking responsibility for prosecuting those who commit acts contrary to national and international law.*

h) *Deprivation of citizenship is not effective because it does not deter terrorists from deciding to commit a terrorist act. On the contrary, the measure is even counterproductive, as it may encourage further radicalisation processes, thus reinforcing the phenomenon it aims to eliminate.*

i) *Deprivation of citizenship is not effective because of its inherent issue of inequality, as a result of which it is the measure itself that undermines the democratic values it seeks to defend.*

Additionally, critics also focus on the impact the measure can have on human rights and human dignity. This issue was perfectly expressed by US Supreme Court's Justice Earl Warren in 1958, when he contended that deprivation of citizenship *"is the total destruction of the individual's status in organized society".* The revocation of nationality can lead to what Hannah Arendt described as "*the deprivation of a place in the world that makes opinions meaningful and actions effective*" and to "*civil death*". Then, if understood as an "*enabling right*", on which the enjoyment of other fundamental rights depends, its removal can have severe spill-over effects. Finally, Justice Warren emphasised the "*fate of ever-increasing fear and distress"* that would result from citizenship deprivation; through the lens of human dignity, the loss of status and place, as well as the loss of rights, can have an undoubtedly profound impact on the human experience.

After considering the arguments on both sides of this wide-ranging debate, the chapter acknowledges that the criticalities of measures of citizenship removal on security grounds outweigh the advantages. Although it should be stressed that the measure may have important symbolic value, there is a real risk that politicians will exploit this rhetoric for the sole purpose of gaining political consensus. Moreover, besides the fact that the arguments against effectiveness seem more reasonable than those in favour, for the purposes of this research, the potential impact of citizenship deprivation on human rights and human dignity is a key factor in taking a stand in the debate.

Chapter 2

Although international law recognizes the regulation of nationality to fall under the domestic jurisdiction (*domaine resérvé*) of States, the right of a State to use its discretionary power is nevertheless limited by its international obligations. Notably, in the course of the 20th century, a process that Tamás Molnar referred to as a "*humanrightization of international law*" led to an enrichment of the limitations deriving from international treaties, customary law and generally recognized principles of law on citizenship through a gradual expansion of the international

protection of human rights. Crucial to this evolution was the acknowledgement of the right to a nationality as a fundamental human right, as well as the inclusion of the prohibition on arbitrary deprivation of nationality in the 1948 Universal Declaration of Human Rights (UDHR). After the Second World War, during which the removal of citizenship had been used to persecute entire communities, States committed to respecting some fundamental principles, namely the prohibition of statelessness, the prohibition of arbitrary deprivation of nationality and the principle of non-discrimination, which were given renewed importance by the 1961 UN Convention on the Reduction of Statelessness, several UN human rights conventions and other international instruments.

Finally, through a doctrinal reconstruction that was developed on the basis of international law as it stands today, it is possible to affirm that States are required to pass a 5-step test, clearly set out by Sangita Jaghai and Laura van Waas, according to which a situation of withdrawal of nationality, in order not to be considered arbitrary, must have a firm legal basis, meet due process guarantees, have a legitimate purpose, be the least intrusive means and be proportionate.

Given that Europe emerged as the epicentre of the renewed tendency to resort to measures of citizenship deprivation in the context of counterterrorism, the chapter then turns to the analysis of the European legal framework, in particular the ECHR and the most relevant jurisprudence on citizenship deprivation developed by ECtHR, as well as the law of the EU and the CJEU's jurisprudence on the matter.

Although the right to a nationality is not explicitly provided for by the ECHR, nor by its Protocols, in recent years, the Court concluded that it cannot be ruled out that arbitrary denial of nationality may, in certain circumstances, because of its impact on the individual's private life, raise an issue under art. 8 of the Convention. Concerning the jurisprudence developed so far by the ECtHR on the subject under consideration, the chapter examines four cases that appear particularly illustrative to understand the Court's approach: *Ramadan v. Malta, K2 v. the United Kingdom, Ghoumid and Others v. France* and *Johansen v. Denmark.*

In all four cases, the applicants complained about the decision to deprive them of their citizenship on the basis of art. 8 ECHR (right to respect for private and family life). In all cases, the Court assessed both the arbitrariness of the decision and the consequences of the revocation on the applicants' rights under art. 8. On the arbitrariness, the Court considered whether the revocation was in accordance with the law, whether the authorities acted swiftly and diligently, and whether the applicants enjoyed sufficient procedural safeguards in relation to the decision. In all four cases, the Court concluded that the decision was not arbitrary. Concerning the consequences of the decision for the applicants, the Court assessed whether the deprivation order rendered the individual stateless or if the individual faced a threat of expulsion, and it did not find any violation. Specifically, when the

cases did involve a removal order, the Court subjected the decision to the proportionality test, each time finding that deprivation orders were not disproportionate to the aim pursued, namely the protection of the public from the threat of terrorism.

From the analysis of the presented case law, it is possible to notice that the ECtHR maintained a consistent approach concerning cases of citizenship deprivation, specifically in the context of terrorism. The Court considers nationality stripping as an art. 8 related issue, if found to be resorted to in an arbitrary manner. To check if a deprivation measure raises an issue under art. 8, the Court applies a two-step test to determine the arbitrary nature of the measure (taking into consideration whether the measure is in accordance with the law, whether national authorities acted diligently and swiftly, and whether the necessary procedural safeguards were in place) and to assess if the consequences of the deprivation were proportionate in comparison to the intended objective, usually ascertaining whether the individual was rendered stateless and/or whether the measure also implied an expulsion order.

From the considerations above, it emerges that the Court leans toward affording Contracting States a substantial margin of appreciation when it comes to nationality deprivation, and it was criticised for not being sufficiently incisive. It should be acknowledged that the Court's deferential approach does not indeed appear particularly incisive but, at the same time, the Court did establish certain limits of non-negligible importance – statelessness and expulsion - as definite parameters. One aspect of the Court's approach that does indeed appear liable to criticism is the fact that, although it did set specific standards, it has not always systematically applied them. In *Johansen v. Denmark*., for example, when assessing the consequences of the deprivation on Mr. Johansen's life, the Court agreed with the Danish Supreme Court's reasoning that, even if the appellant's family refused to follow him abroad, they could easily communicate with him via telephone and the internet. This appears to be a particularly weak point, as it is indeed deeply objectionable that an internet connection is sufficient to maintain interpersonal ties in a way that does not interfere with one's right to respect for family life.

Moreover, the chapter argues that the Court's approach to instances of citizenship deprivation on security grounds can be inscribed within the more general trend of "procedural review". Even though this approach could foster a collaborative process between the ECtHR and domestic courts, offering the latter an interpretive space as co-authors of international human rights law (especially as a response to accusations that the Court is too intrusive in the jurisprudence of the domestic courts, thus eroding their interpretive discretion), the Court should nonetheless be sanctioning, where necessary, the work of national courts, and by limiting itself to a procedural review it risks forfeiting some of its authority and hampering its interpretative dynamism.

The chapter lastly considers the supranational limits stemming from EU law that EU Member States willing to enact measures of citizenship deprivation on security grounds must also take into account. Even though the EU does not have competences in nationality matters, and determinations on nationality remain within the discretion of each Member State, in the famous *Rottmann* case the CJEU affirmed that, by reason of its nature and its consequences, a situation in which the withdrawal of nationality can entail the loss of both national citizenship and European citizenship, as well as the specific rights attached to it, falls within the ambit of EU law. Moreover, national deprivation decisions falling within the scope of EU law are subject to additional legal standards, apart from those set by international law and the ECHR, as the withdrawal decision must observe the European principle of proportionality.

Chapter 3

This chapter aims to conduct a comparative analysis of how specific legal systems in Europe introduced – or expanded – deprivation powers, and what issues have emerged. After an in-depth study of the issue, three countries were selected as case studies: the UK, France, and Italy. Before delving into the analysis of the cases, the chapter first recalls the most important international limits and standards that appear to be relevant with regard to the chosen cases: specifically, art.15 of the UDHR, which affirms that everyone has the right to a nationality and forbids its arbitrary deprivation, serves as the cornerstone of the international legal framework protecting the right to nationality. Additionally, there are several UN human rights Conventions which contain provisions on the nationality of specific groups (e.g. children, women, persons with disabilities) to which the Uk, France and Italy are parties to; these include 1965 Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1966 International Covenant on Civil and Political Rights (ICCPR), 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1989 Convention on the Rights of the Child (CRC) and 2006 Convention on Rights of Persons with Disabilities (CRPD).

In addition to the UN standards discussed above, regional human rights treaties like the ECHR and the European Convention on Nationality (ECN) establish requirements regarding nationality. The UK, France and Italy are all parties to the ECHR, but only France and Italy have signed the ECN. Finally, when resorting to measures of citizenship deprivation, as EU Member States, France and Italy – as was the case for the UK before 2020 - are obliged to have due regard to EU law regardless of the fact that the EU has no competences in the field of nationality law, as was stressed by the CJEU in the *Rottmann* sentence.

The chapter then turns to the analysis of the UK, where removal of citizenship is currently regulated by Section 40 of the 1981 British Nationality Act (BNA). According to this provision, "*the Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good*". Individuals can also be rendered stateless as long as they are naturalized citizens, the Secretary of State is satisfied that the deprivation is conducive to the public good and has reasonable grounds for believing that the person is able to acquire another nationality. This formulation of Section 40 is the final result of a series of legislative developments that, starting from the 9/11 terroris attacks, and especially between 2002 and 2015, led to a considerable expansion in the scope and use of nationality removal measures. The chapter proceeds to detail the process of expansion of deprivation powers up to 28 April 2022, when the most recent development occurred: through the Nationality and Borders Bill, the Secretary of State is no longer required to notify the concerned individual of the removal of citizenship.

In France, loss of nationality is allowed where the loyalty and allegiance of the individual concerned are disputed. The law distinguishes between *perte* (loss), regulated by art. 23 of the Civil Code, applicable to all citizens, and *décheancé* (deprivation), regulated by art. 25 of the Civil Code, only applicable to naturalized citizens and as long as they are not rendered stateless. All the changes adopted or discussed in the past 20 years or so concerned art. 25 Civil Code, which seeks to punish disloyalty and is only applicable in the following situations: conviction for acts against the fundamental interests of the nation; conviction for crime or offence constituting acts of terrorism; conviction for crimes considered to be crimes against the public administration (crimes committed by persons holding a public office); acts of insubordination; and engaging, for the benefit of a foreign State, in acts that are incompatible with the quality of French national and commission of acts that are prejudicial to the interests of France. As an additional safeguard, in all cases except for the last one, it is necessary to be first found guilty of a specific offence before losing citizenship. Between 2003 and 2006, deprivation powers were expanded, first by extending the terms between the commission of the offence and the moment of naturalisation to 10 years, and then by further extending the terms to 15 years. However, it is particularly interesting to note that, even though France suffered a great number of terrorist attacks since 2001, the evolution of legislation in an expansive direction stopped relatively early. Admittedly, there were a series of attempts in this direction in the past years, mainly aiming at extending deprivation to French-born citizens, but all the proposals eventually failed.

The chapter then moves to the analysis of the Italian case. Italy joined the large number of Western countries that resorted to the removal of citizenship through the so-called Decreto Sicurezza (Decree Law 113 of 2018) converted into law, with amendments, by Law No. 132 of 2018.

Specifically, art. 14(1)(d) of Decree Law no. 113/2018, through the insertion of a new art. 10-bis of Law No. 91 of 1992, introduced into the Italian legal system the possibility of ordering the revocation of Italian citizenship acquired pursuant to art. 4(2), art. 5 and art. 9 of the same law, in the case of a final conviction for the offences referred to in art. 407(2)(a)(4) of the Code of Criminal Procedure as well as for the offences referred to in art. 270-ter and art. 270-quinquies of the Criminal Code. Moreover, the revocation of citizenship is adopted within three years from the final passage of the sentence of conviction for the offences referred to in the first sentence, by decree of the President of the Republic, at the proposal of the Minister of the Interior. The chapter also takes into consideration the wide range of criticism attracted by this provision, and in particular the fact that it is characterised by a "wait-and-see" logic in relation to the significant period of time between the final passage of the criminal sentence and the (possible) application of the measure; the fact that the revocation of citizenship does not automatically guarantee the possibility of expelling the person; and its uncertain constitutional compatibility.

From the comparative analysis of the three presented case studies, a number of similarities and differences emerge. In terms of legislative evolution, the UK and France are similar in that both underwent a process of expansion of deprivation powers. However, while this process is still ongoing in the Uk, it stopped relatively early in France, despite a high number of terrorist attacks on its soil. In this context, Italy is different from the other two countries, as it did not witness an evolution of the norm but, rather, its sudden appearance. Moreover, this appearance was not the consequence of terrorist attacks in the country, as in other cases, but rather the result of a government particularly focused on security and the diffusion of populist and xenophobic rhetoric.

Concerning the content of the norms, it is possible to identify Italy as a contact point between the other two countries, having some commonalities with both the UK and France, which, by contrast, do not share many similitudes with each other. Both in France and in Italy only naturalized citizens can be deprived of their citizenship, although France requires dual nationality. In the UK, also UK-born citizens and naturalized citizens can be stripped of their nationality.

In terms of safeguards, French legislation is probably the most comprehensive. Both in France and in Italy, a criminal conviction is necessary for an individual to be deprived of his or her citizenship, while in the UK, following the passing of the IANA in 2006, the standard for deprivation was lowered to the Home Secretary's satisfaction that it would be "conducive to the public good". A second point in terms of safeguards on which the UK appears distant from France and Italy is the provision of a time limit for citizenship deprivation. Indeed, whereas such a limit is absent within UK law, both French and Italian legislation contain provisions to this effect, although not of the exact

same nature. In addition, French law provides for a third safeguard that not Italy nor the UK provide for, as individuals cannot be rendered stateless.

Lastly, the chapter identifies a potential common thread among the three countries considered, which is based on a point raised by Émilien Fargues in his paper "*The revival of citizenship deprivation in France and the UK as an instance of citizenship renationalisation*". Indeed, no matter how much their legal frameworks for deprivation differ, deprivation formed an instance of citizenship "*renationalisation*" in all cases. When applied to citizenship policies specifically, renationalisation captures a specific trend: it upholds the conditionality of citizenship, advancing the idea that there is no right to it and that it must be earned; it maintains or reinforces the consequentiality of citizenship rights, demonstrating that they still have material meaning for individuals; it presents the national community as a homogeneous entity whose social cohesion must be protected from dangerous foreigners. Indeed, the deprivation policies in the three case studies fulfil these three conditions. First, the idea that citizenship must be earned is strongly present in all three countries, and former UK Prime Minister Theresa May's assertion that British citizenship is a privilege, not a right, appears emblematic. Second, the government of the considered countries ensured that deprivation had severe consequences for the individuals targeted, particularly removal from the territory. Third, conditionality and consequentiality apply only to citizens with foreign backgrounds (British citizens and naturalized British citizens; French and Italian naturalized citizens) - in other words, deprivation produces different categories of citizenship along ethnic lines that aim at "othering" dangerous foreigners.

Conclusions

The conclusions section recalls the main findings from each chapter and attempts to answer the questions that guided the development of this research.

The first chapter essentially aimed at addressing the question of what is the potential value of using the removal of citizenship as a security measure and what are its criticalities, as well as whether they are equivalently significant or if one outweighs the others. As for the main findings of the chapter, it showed how the main arguments advanced by supporters of the measure are that deprivation of citizenship, as a pre-emptive measure, makes the return more complex and keeps potential terrorists out of the country; that deprivation of citizenship entails legal consequences that may work as deterrents for terrorist activity; that deprivation of nationality protects the integrity of citizenship as a democratic concept; and that it has an inherently symbolic value. Critics, in turn, contend that that deprivation of citizenship is not effective as it neither reduces nor eliminates the real threat of a terrorist attack; that deprivation of citizenship is not effective in deterring terrorists from

committing an attack but risks encouraging radicalisation processes; that deprivation of citizenship is not effective because of its inherent issue of inequality; and that it can have a severe impact on human rights and dignity, if citizenship is seen as an enabling right.

After taking into account arguments from both sides, it was possible to conclude that the criticalities of the measure outweigh its advantages. While the symbolic value of measures of citizenship deprivation should not be downplayed, there is a concrete risk that this rhetoric is employed by politicians who want to ride a wave of fear to gain political consensus. Apart from the observation that arguments pointing against the effectiveness of the measure seemed more reasonable than those in favour, what appeared to be a key factor for the purposes of this research, and to take a side in the debate, was the potential impact of these measures on human rights. The legal limbo and the "*civil death*" in which a suspect terrorist may end up, following the loss of citizenship as an enabling right, entail consequences that are potentially in contrast with international law.

The second chapter aimed at addressing the question of what actual limits international law imposes on States that wish to strip terrorists, and suspected terrorists, of their citizenship, as well as what margins the Courts leave for States. Concerning the first question, the chapter showed how, although matters of nationality have traditionally been part of the reserved domain of States, they must exercise their power in accordance with the obligations stemming from international law. By looking at the process of "*humanrightization*" of international law, the chapter then reconstructed the most relevant sources of international law for States wishing to resort to citizenship removal measures. Then, to address the second question, the chapter extensively analysed the ECHR and the jurisprudence developed by the ECtHR through the exposure of four cases: *Ramadan v. Malta, K2 v. the United Kingdom, Ghoumid and Others v. France* and *Johansen v. Denmark.* After also taking into account limits stemming by EU law, since there is a risk that an individual may lose, along with his or her nationality, also the status of European citizen, the chapter concluded that the ECtHR has set some important parameters - statelessness and expulsion - but that its approach seems far too deferential to States and, for the time being, not incisive enough. Concerning the CJEU, it is difficult to draw conclusions since it has not yet ruled on cases of removal of citizenship on security grounds. The position it has generally taken towards the removal of citizenship appeared, however, relevant for the purposes of this research, as it showed how the hypothesis of also losing European citizenship has shifted the matter from the exclusive competence of Member States to the scope of EU law.

Finally, the third chapter aimed at addressing the question of how European countries introduced – or expanded – deprivation powers, and what issues have emerged. The chapter proceeded to do so through a comparative analysis of three case studies, namely the UK, France and Italy. After reconstructing the introduction of the norm for the removal of citizenship as a

counterterrorism measure in all three legal systems, as well as the subsequent legislative developments (if any) in the direction of expanding deprivation powers, and the content of the respective provisions, the chapter pointed out the main similarities and the main differences in terms of legislative evolution, content and envisaged safeguards. Beyond the content, the comparison was particularly interesting in terms of legislative developments and planned safeguards. For the United Kingdom, a clear and still ongoing trend of legislative evolution emerged, which, in its numerous stages, was always triggered by judicial decisions that, to some extent, restricted the Home Office from issuing deprivation orders. France, too, followed a path of legislative evolution, which, however, exhausted itself very early on, despite a high number of attacks, and saw the failure of numerous proposals to expand powers, the last and most resounding one in 2016 put forward – and then withdrawn – by President François Hollande. Italy, on the other hand, did not see a process of legislative evolution so much as the sudden appearance of the rule during a government particularly interested in the issue of security. On safeguards, France has emerged as the system that offers the most protections, not the least having always upheld the prohibition against statelessness as one of its cornerstones. Italy fell somewhere in between, providing some safeguards in terms of time limits but making no mention of the prohibition against statelessness, and it was followed by the UK, where naturalized British citizens can also be rendered stateless under certain conditions.

Notably, from the third chapter, it was possible to identify one common thread between all cases, namely the fact that deprivation formed an instance of citizenship "*renationalisation*".

After answering the incidental questions, the conclusion section attempted to provide an answer to the main research question. At first glance, if one relies on the conception of citizenship as expressed by Justice Warren, and thus that it itself represents a fundamental human right on which, by virtue of its enabling right nature, the enjoyment of additional fundamental rights depends, the removal of citizenship itself appears contrary to international law and the duties it imposes on States.

However, keeping aside Justice Warren's view and building on the overall findings of the three chapters of this research, it emerged that, despite questions of nationality traditionally falling under the domestic jurisdiction of States, they must exercise their powers in compliance with their international obligations. International law, Convention rights and even EU law do place considerable restrictions on the exercise of this power by establishing specific higher standards which are, however, not impossible to comply with, leaving the possibility open for States to draft a legally admissible denationalization law. Therefore, the answer to the main research question was that measures to remove citizenship on security grounds do not *automatically* violate international law and the human rights it guarantees. However, as the research showed, even a perfectly drafted law is not without problems.

First, the research showed how these measures are unlikely to produce the expected benefits in terms of deterrence and security; conversely, by only applying to citizens with foreign backgrounds, they risk encouraging radicalisation processes and having counterproductive effects with respect to its intended objective.

Second, when States operate within a nationality – immigration – security nexus, the lines between these factors begin to blur, and respect for fundamental rights seems to take a back seat; in such cases, it is easy for states to yield to the pressure to expand denationalisation laws, especially in times of terror, with a real risk of overstepping the boundaries of what is legally permissible. In this regard, the conclusions section also points out that international and European human rights bodies should play a stronger role in ensuring the protection of the human right to citizenship and, where necessary, challenge state practices that diverge from established standards. Notwithstanding the potential symbolic value of deprivation measures, the attempt to circumvent existing legal standards on nationality, in general terms, deserves a firmer commitment from the international community.

Finally, the conclusions section puts forward one general consideration, which is in agreement with Sandra Mantu's position, namely that terrorism started a process of renegotiation of the social pact that led to the transformation of the very model of citizenry, whose remaking also relies on law to impose ideas of how citizens should behave and what happens to them when they misbehave. In line with Daniele Salerno's observation that "*the politics of identity and belonging are preliminary to any security action*", it does not come as a surprise that nationality law, due to its close ties to the concept of identity, has evolved into an instrument used to transform citizenry by enabling the oust of "terrorist" nationals. Particularly, the case studies presented in the final chapter demonstrate how citizenship deprivation powers were transformed to this end, with political concerns about national security generally taking precedence over human rights and obligations arising from international nationality obligations.