



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF GHOUMID AND OTHERS v. FRANCE

(Application no. 52273/16 and 4 others)

JUDGMENT

Art 4 P7 • Right not to be tried or punished twice • Inapplicability in case of deprivation of French nationality on account of previous conviction for terrorist offence • Measure not representing a criminal sanction (Engel criteria)
Art 8 • Respect for private and family life • Deprivation of French nationality on account of previous conviction for terrorist offence • No interference with family life, measure not entailing deportation • Private life • Impact on personal identity • Lack of arbitrariness • Passage of time between conviction and deprivation of nationality explained by response to increased terrorist violence in year measure was taken • Procedural safeguards • Consequences not disproportionate • Seriousness of terrorist threat for democracy and human rights • Conviction for participation over a ten-year period in a criminal conspiracy to commit a terrorist act • Absence of ensuing statelessness • No automatic suppression of right to reside.

STRASBOURG

25 June 2020

FINAL

25/09/2020

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ghoumid and Others v. France,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Síofra O’Leary, *President*,
Gabriele Kucsko-Stadlmayer,
Ganna Yudkivska,
André Potocki,
Lətif Hüseyinov,
Lado Chanturia,
Anja Seibert-Fohr, *judges*,

and Victor Soloveytschik, *Deputy Section Registrar*,

Having regard to:

the applications (nos. 52273/16 and 52285/16, 52290/16, 52294/16 and 52302/16) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Mr Bachir Ghoumid (no. 52273/16), a Moroccan national (“the first applicant”), Mr Fouad Charouali (no. 52285/16), a Moroccan national (“the second applicant”), Mr Attila Turk (no. 52290/16), a Turkish national (“the third applicant”), Mr Redouane Aberbri (no. 52294/16), a Moroccan national (“the fourth applicant”), and Mr Rachid Ait El Haj, a Moroccan national (“the fifth applicant”) (“the applicants”);

the parties’ observations;

the invitation to the Turkish Government to submit observations under Article 36 § 1 of the Convention and their wish not to make use of this possibility;

the decision of 23 May 2017 to give notice to the French Government (“the Government”) of the complaint concerning Article 8 of the Convention, to the effect that the deprivation of the applicants’ nationality breached their right to respect for their family life, and the complaint under Article 4 of Protocol No. 7, and to declare inadmissible the remainder of the applications pursuant to Rule 54 § 3 of the Rules of Court;

Having deliberated in private on 2 June 2020,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerned five dual nationals who were convicted in 2007 for their participation in a criminal conspiracy to commit a terrorist act, and released from prison in 2009 or 2010, before being deprived of their French nationality in October 2015 by orders of the Prime Minister. They relied in particular on Article 8 of the Convention and Article 4 of Protocol No. 7.

THE FACTS

2. The first, second and third applicants live in Mantes-la-Jolie. The fourth and fifth applicants live in Les Mureaux. They were represented by Mr W. Bourdon, lawyer.

3. The French Government were represented by their Agent, Mr F. Alabrune, Director of Legal Affairs at the Ministry for Europe and Foreign Affairs.

4. Born in France in 1974, the first applicant acquired French nationality by a declaration of nationality registered on 26 May 1992.

5. Born in Morocco in 1975, the second applicant acquired French nationality on 22 August 1991 through the collective effect of his father's naturalisation (Article 84 of the French Nationality Code).

6. Born in France in 1976, the third applicant acquired French nationality on 16 June 1994 as a result of the registration of his express voluntary declaration under Article 21-7 of the Civil Code.

7. Born in Morocco in 1977, the fourth applicant acquired French nationality on 19 February 2001 by a declaration of nationality registered on 30 November 2001.

8. Born in Morocco in 1975, the fifth applicant acquired French nationality on 14 February 2000 by a declaration of nationality registered on 19 December 2000.

9. In a judgment of 11 July 2007 the Paris Criminal Court convicted the five applicants (and three other individuals) of participation in a criminal conspiracy to commit an act of terrorism in the years 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003 and 2004. They were found to have provided financial and logistical support to the "Moroccan Islamist Combatant Group" (*Groupe islamiste combattant marocain* – "GICM"), which was close to the *Salafiya Jihadia* organisation (to which the perpetrators of the 16 May 2003 bombings in Casablanca, Morocco, were linked), on account, *inter alia*, of working in businesses supporting the activity of the GICM, harbouring GICM members clandestinely (except in the fourth applicant's case) and obtaining passports intended, after falsification, to facilitate the movement of GICM members. The Criminal Court handed down the following sentences: to the first applicant, seven years' imprisonment with a minimum term of fifty-six months; to the second applicant, eight years' imprisonment with a minimum term of sixty-four months; for the third applicant, six years' imprisonment with a minimum term of forty-eight months; for the fourth applicant, six years' imprisonment with a period of security of forty-eight months; and for the fifth applicant, eight years' imprisonment with a minimum term of sixty-four months.

10. The third and fourth applicants appealed to the Paris Court of Appeal, which upheld their convictions in a judgment of 1 July 2008.

11. In April 2015 the Minister of the Interior sent a letter to the applicants informing them that, in view of the judgment of 11 July 2007 convicting them of an offence constituting an act of terrorism, he had decided to initiate against them the procedure for deprivation of nationality provided for in Articles 25 and 25-1 of the Civil Code (see paragraph 19 below). Referring to Article 61 of Decree no. 93-1362 of 30 December 1993 on declarations of nationality and decisions on naturalisation, on redintegration, and on the loss, deprivation and withdrawal of French nationality (see paragraph 21 below), he invited the applicants to submit their observations within one month. The Minister specified that at the end of this period the *Conseil d'État* would be asked to give its opinion on the proposed deprivation of nationality, adding that this measure could be ordered only with its assent.

12. After receiving the assent of the *Conseil d'État* on 1 September 2015 (not produced for the file), the Prime Minister, by five orders of 7 October 2015, deprived the applicants of their French nationality. The orders were based on Article 25 of the Civil Code and Article 25-1 of the same Code as amended by Law no. 2006-64 of 23 January 2006 (see paragraph 19 below), and referred to the applicants' criminal convictions.

13. The applicants made urgent applications to the *Conseil d'État* seeking the suspension of the orders of 7 October 2015 together with actions for judicial review.

14. The urgent applications were rejected by five similar decisions of 20 November 2015.

15. In the context of the judicial review procedure, the public rapporteur emphasised the following points in his opinion addressed to that court:

“... I am of the opinion ... that it is necessary for the court ... to bring its case-law up to date in order to recognise that, in this type of dispute, Article 8 of the [Convention] can be relied upon.

As your case-law stands, you have consistently held that Article 8 of the Convention ... cannot be invoked in nationality cases. ... This is also the approach of the Constitutional Council, which, again in its decision [no. 2014-439 QPC of 23 January 2015], dismissed as invalid the complaint that the right to private life of individuals deprived of their nationality had been breached.

In a judgment of 11 October 2011, *Genovese v. Malta*, no. 53124/09, the Court ..., however, further developed its case-law by its disapproval of the Maltese legislation which drew a distinction, for the granting of Maltese nationality by descent, depending on whether a child had been born in or out of wedlock, considering that in that case such discrimination ... undermined the applicant's social identity, which was itself protected by Article 8 of the Convention in respect of private life. It relied only on the head of private life, being a component of Article 8, as you know, being distinguishable from family life, which is not mentioned in this case-law. It reiterated this approach in its *Mennesson* and *Labassée* judgments (26 June 2014, *Mennesson v. France*, application no. 65192/11, and *Labassée v. France*, application no. 65941/11), concerning the status of children born of surrogacy arrangements abroad, and you yourselves entered into this line of reasoning on the question whether a certificate of

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nationality should be issued to those same children, in your decision *Association juristes pour l'enfance et autres* (CE, 12 December 2014, no. 365779, A).

In my view it is both necessary and appropriate to recognise the operation of Article 8 in relation to the measure depriving a person of nationality. It is simply a matter of recognising the reality that a person's nationality is a constituent element of his or her identity, not only legally, but also at a personal level. This will lead you to carry out a more in-depth review, which could, for example, take into account the circumstances in which the nationality was originally acquired by the person who has been deprived of it.

However, my proposition is that you should recognise, exactly as the Court does in its case-law, that Article 8 can only be invoked with regard to the private life of the persons concerned, i.e. their personal identity, and not to any interference with their family life, because as the Court ... itself has pointed out, the consequences of deprivation of nationality for one's right of abode or place of abode are not automatic. It is noteworthy that in the opinion given by the *Conseil d'État* on 11 December 2015 on the constitutional bill for the 'protection of the nation', family life was also mentioned, but it is my opinion that on this matter you should remain as closely as possible to the Court's findings ...

This twofold development that I am proposing to you, namely full review and applicability of Article 8, is probably more of jurisprudential than of practical interest in the current state of the legislation and administrative practice: not only are the conditions laid down by law for deprivation of nationality exceptional and confined, in practice one can see that such measures are rarely adopted. Thus, since the grounds for deprivation of nationality have to be criminal convictions for very serious offences, only in cases where the overall sanction imposed is light would it be possible to consider that such a measure may not be justified by the weight in the balance.

But this development is nevertheless proposed with the firm conviction that it is not insignificant, in such matters, be it for the administrative authorities today, or for those, whether a legislator or the European court, who may be called upon to consider whether Articles 25 and 25-1 of the Civil Code provide a balanced response, for you to clearly set out the framework of your review.

...

[As regards the criticism relating to] proportionality, [which can be expressed] both: in the field of EU law in line with the *Rottmann* case-law, which you have already engaged with, as has been said; under Article 8 of the Convention ...; and in the context of the full review in which you are now invited to engage.

In this connection, it must first be stressed that the acts for which the individuals concerned were convicted are serious ...

With regard to the consequences of the measure for those concerned, it is important to emphasise that the loss of nationality does not in itself have a definite impact on the right of abode of the persons concerned. It is not certain that the applicants, or at least not all of them, can be expelled or deported to their country of origin, especially if they are able to show that they would be exposed to a risk of treatment in breach of Article 3 of the Convention. The Court has been willing to enter into such an examination and has recognised the existence of a violation in certain cases (see the judgment of 3 December 2009, no. 19576/08, *Daoudi v. France*). In your office, you do yourselves ensure compliance with the Convention, as interpreted by the Court, of course, and regardless of the criticisms that may be made of it and which may affect

you as well. In this connection, I would strongly emphasise that it is the responsibility of the authorities, when they seek to expel an alien, even on grounds of absolute urgency, to ensure that the Court's case-law is adhered to, and to ensure that the right of appeal is guaranteed, as well as the effectiveness of any such appeal.

Lastly, with regard to the interference with personal identity, I am of the view that it can certainly be regarded as more detrimental for Mr Turk, Mr Ghoumid and Mr Charouali, the first two having been born in France and having acquired nationality by declaration when they reached the age of their majority, the third having become French at the age of 16 by the collective effect of his father's naturalisation. But at the same time, I cannot but note that the allegiances revealed by the actions which justified their criminal convictions also demonstrate that their allegiance to France and its values has been of scant importance to them in the construction of their personal identity.

In sum, therefore, I submit that the deprivation of nationality appears to be proportionate to the seriousness of the acts committed. I would add that there is nothing in the subsequent behaviour of the individuals concerned that would negate this assessment of the proportionality of the sanctions. ..."

16. The *Conseil d'État* dismissed the applicants' actions to have the measures set aside in five similar decisions of 8 June 2016. It concluded that they could not validly claim that the orders appealed against had breached Article 4 of Protocol No. 7, which "was only applicable to criminal proceedings, [whereas] deprivation of nationality was an administrative sanction".

17. It further found as follows:

"... whilst, as regards the imposition of administrative sanctions, only acts constituting a breach of obligations defined by legislative or regulatory provisions in force at the time when these acts were committed are punishable, on the other hand, and save where otherwise provided, texts laying down the conditions for bringing proceedings and the forms of procedure apply immediately, even if they lead to the punishment of misconduct predating their entry into force; that it is the case for the texts setting the time-limits within which an administrative sanction can be issued, unless the previously applicable time-limits had already expired before they entered into force.

... in the present case, the most recent acts for which [the applicants were] convicted were committed in 2004. The Law of 23 January 2006 increased from ten to fifteen years the time-limit set in Article 25-1 of the Civil Code within which deprivation of nationality may be decided, from the time of commission of the acts giving rise to conviction for a serious offence constituting an act of terrorism. On the date of entry into force of this law, the previously applicable ten-year period within which the sanction of deprivation of nationality could be imposed on [the applicants] had not expired. As a result, the argument that by applying the time-limit provided for in Article 25-1 of the Civil Code, as amended by the Law of 23 January 2006, the impugned order[s] [were] based on inapplicable legislative provisions must be rejected;

... it is clear from the documents in the file that [the applicants were] convicted [and given the sentences set out in paragraph 9 above] for providing financial and logistical support to an organisation known as the 'Moroccan Islamist Combatant Group' (GICM), which was close to the 'Salafiya Jihadia' organisation, to which the

perpetrators of the attacks in Casablanca, Morocco, on 16 May 2003 were linked, and that these acts were classified by the criminal court as participation in a criminal conspiracy to commit an act of terrorism. It can be seen from the findings of fact made by the criminal court that they had, *inter alia*, worked in businesses which supported the activity of the GICM, provided clandestine accommodation for its members [except in the fourth applicant's case], and obtained passports intended to facilitate, after falsification, the movement of GICM members. Having regard to the nature and seriousness of the acts committed by the applicant[s] which led to [their] criminal conviction, the penalty of deprivation of French nationality was not, in the circumstances of the case, disproportionate. The subsequent conduct of the applicant[s] does not call this assessment into question.

... the sanction of deprivation of nationality, as provided for in Articles 25 and 25-1 of the Civil Code, seeks to strengthen the prevention of terrorism. An order depriving a person of French nationality in itself has no effect on that person's presence in France, or on his or her family relationships, and therefore does not affect the person's right to respect for his or her family life. However, such an order does affect a constituent element of that person's identity and is thus capable of infringing that person's right to respect for his or her private life. In the present case, having regard to the seriousness of the acts committed by the applicant(s), the impugned orders did not disproportionately infringe the right to respect for private life guaranteed by Article 8 of the Convention ..."

18. The fourth and fifth applicants were heard by the Deportation Board of Les Yvelines on 8 September 2016. On 21 October 2016 the prefect of Les Yvelines informed them that she had given an opinion in favour of their deportation. They were summoned on 26 October 2016 by the police but were not notified of their deportation orders.

RELEVANT DOMESTIC LEGAL FRAMEWORK AND PRACTICE

19. Articles 21-24, 25 and 25-1 of the Civil Code read as follows:

Article 21-24

"To be naturalised a person must prove assimilation into the French community, in particular by having sufficient knowledge, depending on the person's condition, of the language, history, culture, and society of France, the level and means of assessment of that knowledge being regulated by decree in the *Conseil d'État*, and of the rights and duties conferred by French nationality, and also by adhering to the basic principles and values of the Republic.

After such assimilation has been ascertained, the person concerned signs the charter of the rights and duties of the French citizen. This charter, approved by decree in the *Conseil d'État*, restates the basic principles, values, and symbols of the French Republic."

Article 25

"A person who has acquired the status of French national may, by an order made with the assent of the *Conseil d'État*, be deprived of his or her French nationality, unless deprivation would have the effect of rendering him or her stateless, where:

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1° He or she has been convicted of an act characterised as a serious offence (*crime* or *délit*) which constitutes a violation of the fundamental interests of the Nation, or for a serious offence (*crime* or *délit*) which constitutes an act of terrorism.

2° He or she has been convicted for an act characterised as a serious offence (*crime* or *délit*) which is provided for by Chapter II of Title III of Book IV of the Criminal Code.

3° He or she has been convicted for evading compulsory duties under the Code of National Service.

4° He or she has committed, for the benefit of a foreign State, acts incompatible with the status of French national and detrimental to the interests of France.”

Article 25-1

“Deprivation of nationality is ordered only where the acts committed by the person concerned, as referred to in Article 25, occurred prior to the acquisition of French nationality or within ten years from the date of that acquisition.

It can be ordered only within a period of ten years from the perpetration of those acts.

[added by Law no. 2006-64 of 23 January 2006] Where the acts of which the person concerned stands accused are those referred to in Article 25 1°, the periods referred to in the preceding two paragraphs shall be extended to fifteen years.”

20. The *Conseil d'État* clarified in a decision of 17 November 2006 (*Société CNP assurances*, no. 276926) that, with regard to the imposition of administrative penalties, while only those acts constituting a breach of obligations defined by legislative or regulatory provisions in force at the time when those acts were committed were punishable, on the other hand, and unless otherwise provided, texts laying down the conditions for bringing proceedings and the procedures to be followed would apply immediately, even if they led to punishment for misconduct committed prior to their entry into force.

21. Article 61 of Decree no. 93-1362 of 30 December 1993 on declarations of nationality and decisions on naturalisation, redintegration, loss, deprivation and withdrawal of French nationality states as follows:

“When the government decides to apply Articles 25 and 25-1 of the Civil Code, it notifies the legal and factual grounds justifying the deprivation of French nationality, by an administrative act or by registered letter with return receipt. Where the address is unknown, a notice is published in the official gazette (*Journal officiel de la République française*). The person concerned will have a period of one month from the date of notification or publication of the notice in that gazette within which to send the Minister for naturalisations his or her observations in defence. On the expiry of this period, the government may declare, by a reasoned order made with the assent of the *Conseil d'État*, that the person concerned has been deprived of French nationality.”

22. Article L. 521-1 of the Code of Administrative Justice reads as follows:

“When an application is made to have an administrative decision, even one rejecting a request, set aside or varied, the urgent applications judge dealing with the case may order that the enforcement of that decision, or some of its effects, be suspended, where the urgency of the case so justifies and where evidence is produced that is sufficient to cast serious doubt on the legality of the decision, at the current stage of the proceedings.

When a suspension has been granted, the judge will rule on the application to have the decision set aside or varied as soon as possible. The suspension will be lifted, at the latest, when the judge rules on the application to have the decision set aside or varied.”

CASE-LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

23. In its judgment of 2 March 2010, in *Rottmann*, C-135/08, EU:C:2010:104, the Court of Justice of the European Union (CJEU) examined a request for a preliminary ruling referred in a case concerning the withdrawal of a person’s naturalisation as a German national, based on the interpretation of EU law concerning EU citizenship. It held in particular as follows:

“51. ... it is legitimate for a Member State to wish to protect the special relationship of solidarity and good faith between it and its nationals and also the reciprocity of rights and duties, which form the bedrock of the bond of nationality.

...

54. Those considerations on the legitimacy, in principle, of a decision withdrawing naturalisation on account of deception remain, in theory, valid when the consequence of that withdrawal is that the person in question loses, in addition to the nationality of the Member State of naturalisation, citizenship of the Union.

55 In such a case, it is, however, for the national court to ascertain whether the withdrawal decision at issue in the main proceedings observes the principle of proportionality so far as concerns the consequences it entails for the situation of the person concerned in the light of European Union law, in addition, where appropriate, to examination of the proportionality of the decision in the light of national law.

56 Having regard to the importance which primary law attaches to the status of citizen of the Union, when examining a decision withdrawing naturalisation it is necessary, therefore, to take into account the consequences that the decision entails for the person concerned and, if relevant, for the members of his family with regard to the loss of the rights enjoyed by every citizen of the Union. In this respect it is necessary to establish, in particular, whether that loss is justified in relation to the gravity of the offence committed by that person, to the lapse of time between the naturalisation decision and the withdrawal decision and to whether it is possible for that person to recover his original nationality.

...

59 Having regard to the foregoing, ... it is not contrary to European Union law, in particular to Article 17 EC, for a Member State to withdraw from a citizen of the Union the nationality of that State acquired by naturalisation when that nationality has

been obtained by deception, on condition that the decision to withdraw observes the principle of proportionality.”

24. In its judgment of 12 March 2019, in *M.G. Tjebbes and Others*, C-221/17, EU:C:2019:189, the CJEU examined a request for a preliminary ruling referred in a case concerning a refusal to examine passport applications on account of a person’s loss of Dutch nationality on grounds of absence from the country, based on the interpretation of Articles 20 and 21 of the Treaty on the Functioning of the European Union and Article 7 of the EU Charter of Fundamental Rights. It held in particular as follows:

“33. ... it is legitimate for a Member State to wish to protect the special relationship of solidarity and good faith between it and its nationals and also the reciprocity of rights and duties, which form the bedrock of the bond of nationality (judgment of 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104, paragraph 51).

...

35. ... when exercising its competence to lay down the conditions for acquisition and loss of nationality, it is legitimate for a Member State to take the view that nationality is the expression of a genuine link between it and its nationals, and therefore to prescribe that the absence, or the loss, of any such genuine link entails the loss of nationality. It is also legitimate for a Member State to wish to protect the unity of nationality within the same family.

...

37. The legitimacy, in principle, of the loss of the nationality of a Member State in those situations is indeed supported by the provisions of Article 6 and Article 7(3) to (6) of the Convention on the Reduction of Statelessness which provide that, in similar situations, a person may lose the nationality of a Contracting State in so far as he does not become stateless. ...

...

40. ... it is for the competent national authorities and the national courts to determine whether the loss of the nationality of the Member State concerned, when it entails the loss of citizenship of the Union and the rights attaching thereto, has due regard to the principle of proportionality so far as concerns the consequences of that loss for the situation of the person concerned and, if relevant, for that of the members of his or her family, from the point of view of EU law ...”

INTERNATIONAL LAW

25. The European Convention on Nationality of the Council of Europe, of 6 November 1997 (signed but not ratified by France), provides in particular as follows:

Article 7

Loss of nationality *ex lege* or at the initiative of a State Party

“1 A State Party may not provide in its internal law for the loss of its nationality *ex lege* or at the initiative of the State Party except in the following cases:

- a voluntary acquisition of another nationality;
- b acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant;
- c voluntary service in a foreign military force;
- d conduct seriously prejudicial to the vital interests of the State Party;
- e lack of a genuine link between the State Party and a national habitually residing abroad;
- f where it is established during the minority of a child that the preconditions laid down by internal law which led to the *ex lege* acquisition of the nationality of the State Party are no longer fulfilled;
- g adoption of a child if the child acquires or possesses the foreign nationality of one or both of the adopting parents.

2 A State Party may provide for the loss of its nationality by children whose parents lose that nationality except in cases covered by sub-paragraphs c and d of paragraph 1. However, children shall not lose that nationality if one of their parents retains it.

3 A State Party may not provide in its internal law for the loss of its nationality under paragraphs 1 and 2 of this article if the person concerned would thereby become stateless, with the exception of the cases mentioned in paragraph 1, sub-paragraph b, of this article.”

26. Article 15 of the Universal Declaration of Human Rights of 10 December 1948 reads as follows:

“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.”

THE LAW

I. JOINDER OF THE APPLICATIONS

27. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

28. The applicants complained that the order depriving them of their nationality breached their right to respect for their private life. They relied on Article 8 of the Convention, which reads 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.”

A. Admissibility

29. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

30. The applicants began by emphasising the eminently political nature of the measure depriving them of nationality. They observed that it had been announced in the National Assembly by the Minister of the Interior on 6 October 2015, that the following day the newspaper *Le Monde* had published a detailed article, referring in particular to a lack of remorse and of respect for French values and principles that had been attributed to them by the Minister, and that they had received notification of the orders only on 8 October. The measure's real purpose in their view had therefore been one of political communication.

31. The applicants acknowledged that in their case the *Conseil d'État* had, for the first time, recognised the need to carry out a full proportionality review, particularly with regard to the right to respect for private life, whereas it had previously held that reliance on Article 8 was invalid in nationality cases. They submitted, however, that its review in their case had been quite superficial.

32. The applicants argued that there had been a disproportionate interference with their right to respect for their private life. The measure had been taken in respect of events that had occurred more than ten years previously, thus demonstrating a lack of diligence, and that the limitation period provided for in Article 25-1 of the Civil Code, which had previously been ten years after an offence, had been extended to fifteen years by a law of January 2006, which post-dated the judgment in their case. They stated that they had rebuilt their lives after the conviction and after serving their sentences, that they were working and had a family life and that two of them were born in France. They further observed that the Government had not taken into account the specific circumstances of their cases or the fact that they were well integrated in France, nor had the Government explained why other individuals convicted in the same case had not been deprived of their nationality. They reiterated that the measure taken against them had been decided in a highly political context, marked by the authorities' desire to publicly and symbolically express their commitment to combating

terrorism. They also pointed out that four of them had Moroccan nationality, that they could therefore be deported to Morocco even though they had no ties there and that they risked being subjected to ill-treatment in that country since they had been convicted for offences related to the Casablanca bombing. They referred in this connection to the judgments in *El Haski v. Belgium* (no. 649/08, §§ 92-93, 25 September 2012) and *Ouabour v. Belgium* (no. 26417/10, §§ 71 and 73-75, 2 June 2015) and stated that the proceedings against them had been based on a confession obtained from a suspect during an interrogation in Morocco, most likely by torture. This fear of removal to a country where they would be at risk of inhuman and degrading treatment exacerbated the violation of Article 8 of which they complained.

33. The applicants emphasised that they did not share the Government's view that depriving them of their nationality had no effect on their right to reside in France. They pointed out that the order in question had entailed, as soon as it was published, the loss of the right to reside in France and, as a result, the right to work there and to receive social benefits. They had consequently been obliged to apply for a "private and family life" residence permit, which had still not been granted, so they only had temporary residence permits valid for three months. They added that two of them (the fourth and fifth applicants) had been the subject of a deportation order, which, although it had not been implemented, showed that their presence in France was no longer secured.

34. Lastly, the parliamentary debates had shown that the decision to deprive them of French nationality was not based on any grounds of general interest and was merely symbolic. This had to be weighed against the consequences of such a measure for the individual: loss of voting rights and eligibility to stand for election, inability to access public and private employment, loss of European citizenship, risk of deportation and, more generally, social exclusion.

(b) The Government

35. The Government stated that they did not dispute that deprivation of nationality was capable of infringing the right to respect for private life in so far as that right included the right to one's identity. They noted that the *Conseil d'État* had so decided in its judgments in the applicants' case.

36. They took the view, however, that the deprivation of nationality decided in the present case had been prescribed by law, namely by Articles 25 and 25-1 of the Civil Code. In this connection, they pointed out that the time-limit laid down in Article 25-1 for imposing the measure, which had been ten years from the commission of the offences of which the person concerned stood accused, i.e. those classified as more serious offences (*crimes* or *délits*) constituting an act of terrorism, had been increased to fifteen years by a Law of January 2006. The Government submitted that, as

the *Conseil d'État* had ruled, it had been correct to apply this new time-limit in the present case, even though the offences dated from 2004, since, in the case of administrative sanctions, the administrative and regulatory provisions laying down the conditions for bringing proceedings and the forms of procedure applied with immediate effect, in accordance with established case-law.

37. The Government further submitted that the applicants had been afforded all the procedural safeguards necessary for them to defend their interests: they had been notified of the intention to deprive them of their nationality in April 2015; they had been given one month to file their observations, which they had done; the draft ministerial orders had then been submitted to the *Conseil d'État* and the orders had subsequently been adopted with its assent; the applicants had been able to submit an application for judicial review to the *Conseil d'État*, which had carried out a full review of proportionality; represented by counsel, they had been able to put forward their arguments relating to the procedural compliance and merits of the decisions. The Government added that, in accordance with Article 25 of the Civil Code, the deprivation measure had been decided at a time when the applicants had been convicted by a final judgment, meaning that the substance of the acts of which they stood accused had been addressed in separate proceedings before the criminal courts.

38. Furthermore, in spite of the time that had elapsed between the criminal conviction, which dated from 2007, and the deprivation proceedings, the authorities had conducted those proceedings expeditiously and promptly. In the Government's submission, this passage of time could be explained by the fact that, in addition to the applicants' conviction for terrorist offences, it was also on account of the particularly serious security situation that it had appeared necessary to punish the applicants, as France had been hit by a series of major attacks in 2015. In any event, this would not have been detrimental to the applicants since they had enjoyed French nationality during that period.

39. The Government further contended that the deprivation of nationality had not had disproportionate consequences for the applicants' private life in view of the particular seriousness of the facts which had justified the measures, namely the fact that they had participated, over several years, in a particularly structured terrorist organisation whose goal was international jihad and which had carried out terrorist acts abroad. In their submission, the applicants could legitimately be excluded from the national community in view of the very nature and seriousness of their offences, which revealed an acceptance of values that were radically opposed to French republican principles and therefore reflected a lack of loyalty to the French nation. They referred to the opinion of the public rapporteur before the *Conseil d'État*, according to which it was doubtful that French nationality constituted an underlying element of the applicants'

personal identity, given that their allegiance to the principles advocated by the terrorist organisation in which they were fully involved was incompatible with an allegiance to the French community. They also emphasised that the applicants had another nationality, that the loss of French nationality had not in itself affected their right to reside in France, and that their removal would require a separate decision, which they could then challenge before the Administrative Court if they so wished. In this connection they explained that deportation proceedings had been initiated in respect of the fourth and fifth applicants but that no decision had been taken to date. They added that the applicants remained legally resident in France since they held temporary residence certificates, valid for three months, which were regularly renewed and which also allowed them to work in France.

40. With regard to the applicants' allegation that they had been convicted on the basis of testimony obtained by torture in Morocco, the Government responded that it had been rejected by the Paris Criminal Court and that, as they had failed to use the domestic remedies available, their complaint to the Court had to be found inadmissible. The Government further took the view that the applicants could not validly complain about any consequences of the deprivation of nationality for their family life, since the complaint notified by the Court had only concerned the question of respect for their private life.

2. *The Court's assessment*

41. The applicants argued in their applications that the measure depriving them of nationality had constituted a violation not only of their right to respect for their private life but also their right to respect for their family life. This latter complaint was, however, declared inadmissible by the Section President, sitting in a single judge formation, at the time when notice of the application was given to the respondent State pursuant to Rule 54 § 2 of the Rules of Court, in so far as it concerned the applicants' right to respect for their family life.

42. While the removal of an alien from a country where he or she has close relatives may breach that person's right to respect for his or her family (see, for example, *Moustaquim v. Belgium*, 18 February 1991, § 36, Series A no. 193), as stated by the *Conseil d'État*, an order made to deprive a person of French nationality will have no effect on that person's presence in France. Moreover, the applicants, who had applied for "private and family life" residence permits, thus had certificates of application allowing them to reside in France. If such permits are denied, followed by removal measures against them, they would be able to lodge an appeal with the Administrative Court on the basis, in particular, of their right to respect for their family life. Consequently, the orders depriving the applicants of

nationality did not constitute interference with their right to respect for their family life.

43. Nevertheless, even though the Convention and the Protocols thereto do not guarantee a right to a given nationality as such, any arbitrary deprivation of nationality might in certain circumstances raise an issue under Article 8 of the Convention because of its impact on the private life of the individual (see *Ramadan v. Malta*, no. 76136/12, § 85, 21 June 2016, see also *K2 v. the United Kingdom* (dec.), no. 42387/13, § 45, 7 February 2017). In this connection the Court reiterates that nationality is an element of personal identity (see, among other authorities, *Menesson v. France*, no. 65192/11, § 97, ECHR 2014 (extracts)).

44. The Court will therefore examine the measures taken against the applicants in the light of their right to respect for their private life. Its supervision will concern two points (see *Ramadan*, §§ 86-93, cited above, and *K2*, §§ 50-63, decision cited above). Firstly, it will ascertain whether the measures were arbitrary; it will thus establish whether they were lawful, whether the applicants enjoyed procedural safeguards, and in particular whether they had access to appropriate judicial review, and whether the authorities acted diligently and promptly. Secondly, it will consider the impact of the deprivation of nationality on the applicants' private life.

45. The Court notes, firstly, that the administrative authorities did not immediately initiate proceedings for deprivation of nationality following the applicants' convictions. They informed the applicants of their intention to deprive them of French nationality in April 2015, more than ten years after the acts that led to their conviction for participation in a criminal conspiracy to commit an act of terrorism, almost eight years after the first-instance judgment (judgment of the Paris Criminal Court of 11 July 2007) and almost seven years after the judgment on appeal (judgment of the Paris Court of Appeal of 1 July 2008; only the third and fourth applicants had lodged an appeal). The Court takes note of the Government's explanation that the fact that France waited until 2015 to deprive the applicants of French nationality stemmed from the fact that it had been affected by a series of major attacks that year. It also notes the applicants' argument that this timing had given a political connotation to the measure taken against them. The Court is able to accept, however, that in the presence of events of this nature, a State may reinforce its assessment of the bond of loyalty and solidarity existing between itself and persons previously convicted of a serious offence constituting an act of terrorism (see, for example, *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, § 183, ECHR 2012 (extracts), and *Trabelsi v. Belgium*, no. 140/10, § 117, ECHR 2014 (extracts)), and that it may therefore, subject to a strict proportionality review, decide to take measures against them with which it had not initially proceeded. The Court accordingly considers that, in the particular circumstances of the present case, the time that elapsed between the

applicants' convictions, which under French law allowed proceedings to be brought for deprivation of nationality, and the date on which those proceedings were actually initiated, is not sufficient in itself to render arbitrary the decision to deprive them of French nationality.

46. As regards the lawfulness of the measure, the Court observes that, at the time of the events in the present case, Article 25-1 of the Civil Code provided that deprivation of nationality could be ordered only within ten years from the time of the commission of the offences on which the criminal conviction was based. In the present case, however, the decisions to deprive the applicants of their French nationality were taken in 2015, even though the most recent offences dated from 2004. The Court notes, however, that the legislature had extended the time-limit to fifteen years in January 2006 (see paragraph 19 above) and that the *Conseil d'État* had considered in the present case, in accordance with its case-law (see paragraph 20 above), that in respect of administrative sanctions, the administrative and regulatory provisions laying down the conditions for bringing proceedings and the forms of procedure applied immediately on their entry into force (see paragraph 17 above). The Court concludes that the measures taken against the applicants were lawful. It notes, as an additional consideration, that the approach of the *Conseil d'État* is compatible with the Court's case-law in respect of Article 7 of the Convention (see, in particular, *Coëme and Others v. Belgium*, nos. 32492/96 and 4 others, §§ 147-149, ECHR 2000-VII, and *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 110, 17 September 2009).

47. The Court further notes that the applicants were afforded substantial procedural safeguards. In accordance with Article 61 of Decree no. 93-1362 of 30 December 1993 (see paragraph 21 above), the authorities notified them in advance of their intention to deprive them of French nationality and informed them of the legal and factual grounds for that measure. The applicants were then given one month to submit observations in their defence, which they did. The *Conseil d'État* was then asked for its opinion, as deprivation of nationality could be decided only after obtaining its assent. The relevant orders, adopted in the light of that assent, contained reasoning in fact and in law, and the applicants had the possibility – of which they availed themselves – of referring the matter to the urgent applications judge on the basis of Article L. 521-1 of the Code of Administrative Justice (see paragraph 22 above) and of seeking judicial review by the *Conseil d'État*. In particular, they were able to assert their rights under the Convention and, in the context of the action for judicial review, the *Conseil d'État* carried out a proportionality review and gave a reasoned decision after proceedings whose fully adversarial nature has not been called into question by the applicants, who were represented by lawyers in those proceedings (see paragraphs 11-17 above).

48. The examination of these various factors does not therefore lead to the conclusion that the decisions to deprive the applicants of their French nationality were arbitrary.

49. As to the consequences of these decisions for the applicants' private life, it is true that their ability to remain in France was thereby undermined. The Court notes in this connection that adversarial proceedings with a view to deportation were initiated against the fourth and fifth applicants. They were summoned on 8 September 2016 by the Yvelines Deportation Board, which gave an opinion in favour of their expulsion. Although no decision was taken at the end of that procedure (see paragraph 18 above), it can be seen that, as aliens on French soil, the applicants may now have to face deportation. A measure of this kind would be likely to have an impact on their private life, in that it could result in a loss of employment, separation from their families and a breakdown in the social ties they have developed in France. However, as the case stands, since no deportation order has been issued, the consequence of the deprivation of nationality for the applicants' private life is confined to the loss of an element of their identity.

50. That being so, the Court is able to accept the Government's arguments. As it has repeatedly emphasised, terrorist violence is in itself a grave threat to human rights (see *Othman (Abu Qatada)*, cited above, § 183; *Trabelsi*, cited above, § 117; *Ouabour v. Belgium*, no. 26417/10, § 63, 2 June 2015; and *Big Brother Watch and Others v. the United Kingdom*, nos. 58170/13 and 2 others, § 445, 13 September 2018). The Court therefore understands, as it has previously stated, the decision of the French authorities, following the attacks in France in 2015, to take a firmer stand against individuals who had been convicted of a serious offence constituting an act of terrorism. It also notes the Government's position to the effect that, as a result of their actions, such individuals may no longer enjoy the specific bond conferred on them by the nationality of the country in which they reside. It has also taken note of the view of the public rapporteur before the *Conseil d'État* that the actions leading to their criminal convictions reveal certain allegiances which show that their attachment to France and its values is of little importance for them in the construction of their personal identity (see paragraph 15 above). It further notes that the participation in a criminal conspiracy to prepare a terrorist act, of which all five applicants were found guilty, continued for ten consecutive years (see paragraph 9 above). Some of the applicants had just acquired French nationality when they committed the offences and the others acquired it while they were in the process of committing them (see paragraphs 4-9 above). The Court also notes that the applicants all have another nationality, a fact to which it attaches some importance. The decision to deprive them of their French nationality did not therefore have the effect of rendering them stateless, which is indeed a prerequisite for the application of Article 25 of the Civil Code. Moreover, as the Court has already noted and as the applicants' situation illustrates, the

loss of French nationality does not automatically entail deportation and if such a decision came to be taken in their cases, remedies would be available to them through which they could assert their rights.

51. In the light of the foregoing, the Court finds that the decision to deprive the applicants of their French nationality did not have any disproportionate consequences for their private life.

52. Accordingly, there has been no violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL No. 7

53. The applicants argued that the deprivation of their French nationality was a “disguised punishment”, being tantamount to a sanction aimed at penalising the same conduct as that for which they had been convicted in 2007 by the Paris Criminal Court. They relied on Article 4 of Protocol No. 7, which reads as follows:

“1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

3. No derogation from this Article shall be made under Article 15 of the Convention.”

1. The parties' submissions

(a) The Government

54. The Government primarily argued that this complaint was inadmissible.

55. They began by pointing out the reservation made by France under Article 4 of Protocol No. 7, to the effect that “only those offences which under French law fall within the jurisdiction of the French criminal courts may be regarded as offences within the meaning of [Article 4] of this Protocol”. They acknowledged that this reservation did not contain a brief statement of the law or laws that might be incompatible with the provision in question, but submitted that the phrase “criminal courts” delimited its scope with sufficient precision, such that it could not be set aside. They pointed out that, under French law, deprivation of nationality by ministerial order was not a matter for the criminal courts but for the *Conseil d'État*.

56. The Government further submitted that such a measure was not a criminal sanction and that the complaint was therefore incompatible *ratione materiae* with the provisions of the Convention.

57. They pointed out in that connection that the European Commission of Human Rights had held, in its decision in *Saladin Gaip v. Greece* (no. 17309/90, 30 August 1994), that proceedings relating to deprivation of nationality before the administrative courts in that country did not concern a criminal charge within the meaning of Article 6 of the Convention.

58. They stressed that the so-called *Engel* criteria should be applied to determine whether proceedings could be characterised as criminal within the meaning of Article 4 of Protocol No. 7. In their view, those criteria would lead to the conclusion that this was not the case for the proceedings at issue, since the deprivation of nationality provided for in Article 25 of the Civil Code was an administrative sanction under French law and its essential purpose was not to punish or deter but to terminate the special bond between the person concerned and the country which had conferred its nationality thereon, given the particularly serious nature of the offences, which could be regarded as incompatible with the requirement of loyalty to France. On that last point, the Government observed that the Criminal Court could not impose a measure of deprivation of nationality by way of addition to a criminal sentence. They added that, although it was a sanction with a certain degree of severity, it was not disproportionate in view of: the particular seriousness of the conduct referred to in Article 25 of the Civil Code, the fact that it could not be decided against a person who would be rendered stateless as a result, the fact that it did not in itself entail deportation, and the fact that the resulting loss of civic rights and of the right to join the French civil service were penalties that could ordinarily stem from convictions for offences such as those of which the applicants had been found guilty. In addition, the Constitutional Council had twice validated the constitutionality of the measure of deprivation of nationality (decisions of 6 July 1996, no. 96-377 DC, and 23 January 2015, no. 2015-439 QPC).

(b) The applicants

59. The applicants asked the Court to declare the application admissible.

60. They began by observing that France's reservation had been strongly criticised in literature and that, in the circumstances of the present case, it would be tantamount to rendering Article 4 of Protocol No. 7 devoid of substance.

61. They pointed out that the concept of offence, within the meaning of Article 4 of Protocol No. 7 extended beyond the criminal domain. Referring to the judgment in *Sergueï Zolotukhin v. Russia* ([GC], no. 14939/03, ECHR 2009), they stated that there was no doubt that the measure taken against them was an administrative sanction which supplemented the criminal conviction and sentence handed down against them in 2007 in respect of the same offences. Since the measure was irrevocable and could entail deportation to countries with which they had no links, deprivation of

nationality could be perceived as a more serious sanction than the sentence itself.

62. In their view, the deprivation of nationality was undoubtedly punitive in nature when it was ordered in circumstances such as those of their case, as it was a sanction for a presumed lack of loyalty and resulted in the loss of a number of rights.

2. *The Court's assessment*

63. The Court does not find it necessary to examine the question concerning the application of France's reservation in respect of Article 4 of Protocol No. 7, in so far as the complaint is inadmissible for another reason (see, for example, *Durand v. France* (dec.), no. 10212/07, § 54, 31 January 2012).

64. For that complaint is, in any event, incompatible *ratione materiae* with the provisions of the Convention.

65. In order for Article 4 of Protocol No. 7 to be applicable, it is necessary in particular for the applicant to have been tried or "punished in criminal proceedings" for an offence for which he has already been finally acquitted or convicted.

66. In the present case, there is no doubt that, after being found guilty by the criminal courts for the offence of participation in a criminal conspiracy to commit a terrorist act, the applicants had indeed been "convicted" within the meaning of Article 4 of Protocol No. 7. Moreover, their conviction in 2007 had already become final when they were deprived of French nationality in 2015.

67. The question thus arising, as to the applicability of Article 4 of Protocol No. 7, is whether, by the effect of this deprivation of French nationality, pursuant to Article 25 of the Civil Code, the applicants may be regarded as having been "punished in criminal proceedings" within the meaning of Article 4 of Protocol No. 7.

68. In this connection the Court clarified, in the case of *A and B v. Norway* ([GC], nos. 24130/11 and 29758/11, § 107, 15 November 2016) that, in order to determine whether proceedings are "criminal" for the purposes of Article 4 of Protocol No. 7, it is necessary to apply the so-called *Engel* criteria in respect of the concept of a "criminal charge", within the meaning of Article 6 § 1 of the Convention (see *Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22). The criteria are as follows: (1) the legal classification of the measure under national law, (2) the very nature of the measure, and (3) the nature and degree of severity of the "penalty" (see, among other authorities, *Kapetanios and Others v. Greece*, nos. 3453/12 and 2 others, § 52, 30 April 2015, and *Escoubet v. Belgium* [GC], no. 26780/95, § 32, ECHR 1999-VII). The second and third criteria are alternative, not cumulative, but this does not exclude a cumulative approach where separate analysis of each criterion does not

make it possible to reach a clear conclusion as to the existence of a criminal charge (see, for example, *Kapetanios and Others*, cited above, § 52).

69. The Court will therefore ascertain whether the decision to deprive a person of nationality under Article 25 of the Civil Code is classified as a criminal measure under French law; it will also examine the very nature of this measure together with the nature and degree of severity of the “penalty”.

70. It would first observe that deprivation of nationality under Article 25 of the Civil Code is not a “criminal” measure in French law. It is not provided for in the Criminal Code but in the Civil Code and does not fall under the jurisdiction of the criminal courts but that of the administrative authorities and courts; the *Conseil d’État* indeed clarified in the present case that it was an “administrative sanction”.

71. Secondly, as to the “very nature” of this measure, the Court is of the view, as argued by the Government, that going beyond its punitive connotation, deprivation of nationality under Article 25 of the Civil Code has a specific objective in that it gives effect to the fact that an individual who has benefited from acquisition of French nationality has subsequently severed the bond of loyalty to France by committing particularly serious acts which, in the case of terrorism, undermine the very foundation of democracy. Its primary purpose is thus to serve as a solemn acknowledgment of this severance of their bond with France.

72. Thirdly, as to the degree of severity of the measure in question, the Court does not underestimate either the serious nature of the message that the State thereby addresses to those concerned – a seriousness that is clearly reflected in the term “*déchéance*” (the fact of being deprived or stripped of a status) – or the impact that it may have on their identity. Its degree of severity must, however, be unreservedly put into perspective, having regard to the fact that deprivation of nationality under Article 25 of the Civil Code is directed against conduct which, in the case of terrorist acts, undermines the very foundation of democracy. The Court would further point out that this measure does not in itself result in the deportation from France of those concerned (see paragraphs 42 and 50 above). Lastly, referring to paragraph 71 above, it notes that it is not a sanction that can be regarded as criminal in nature.

73. It can be seen from the foregoing that deprivation of nationality, as prescribed by Article 25 of the Civil Code, is not a punishment in criminal proceedings, within the meaning of Article 4 of Protocol No. 7. That provision is therefore inapplicable in the present case.

74. This part of the application must therefore be declared inadmissible as incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 35 §§ 3 (a) and 4 thereof.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the complaint concerning Article 8 admissible and the remainder inadmissible;
3. *Holds* that there has been no violation of Article 8 of the Convention.

Done in French, and notified in writing on 25 June 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Victor Soloveytchik
Deputy Registrar

Síofra O’Leary
President