



[ECtHR - Gouhmid and Others v. France](#)

Five applicants of dual nationality, convicted in 2007 of participating in a criminal association in a terrorist context, were stripped of their French nationality in October 2015 by Prime Minister decrees. The Court held that the decision to forfeit the applicants' French nationality did not have a disproportionate impact on their private lives and therefore was not in violation of Article 8 of the Convention.

Case name (in original language) : Affaire Gouhmid c France, Application no. 52273/16 and 4 others

Case number: 52273/16 and 4 others

Citation: European Court of Human Rights, Affaire Gouhmid and Others v. France, (Application no. 52273/16 and 4 others), 16 November 2020

Date of decision: 16/11/2020

State: France

Court / UN Treaty Body: European Court of Human Rights

Language(s) the decision is available in: French

Applicant's country of birth: Morocco

Applicant's country of residence: France

Legal instruments: European Convention on Human Rights (ECHR), European Union law, Other international law

Key aspects: Acquisition of nationality, Deprivation of nationality, Determination/confirmation of nationality, Respect for private and family life, Stateless status and documentation

Relevant Legislative Provisions:

s. 21-24, 25 and 25-1 of the Civil Code

Article 61 of Decree 93-1362 of 30 December 1993

Article L. 521-1 of the Code of Administrative

Articles 20 and 21 of the Treaty on the Functioning of the European Union

Article 7 of the Charter of Fundamental Rights of the European Union

Article 7 of the European Convention on the Nationality of the Council of Europe

1997

Article 15 of the Universal Declaration of Human Rights 1948

Articles 4 of Protocol No. 7 and Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms

Facts

The applicants are five dual nationals, two born in France and three in Morocco, who acquired French nationality through various means. This included the naturalisation of the father of one of the applicants and the declaration of registered nationality for another. The Moroccan nationals obtained French nationality through the registered declaration of nationality.

The five applicants were convicted by the Paris Correctional Court in 2007 for participating in an association planning an act of terrorism, for which they all received various prison sentences.

In 2015, the Minister of the Interior condemned the applicants' acts of terrorism and proceeded in forfeiting their French nationality, provided by Articles 25 and 25-1 of the Civil Code. Specifically, in September 2015, the Prime Minister issued five decrees by which he stripped the five applicants of their French nationalities. The applicants referred their case to the Council of State which rejected their request to suspend the decrees.

The Public Rapporteur noted that it was necessary and appropriate to recognise the applicability of Article 8 with respect to the measure relating to the applicants' deprivation of nationality. Specifically, he stated that a person's nationality is an essential element of his identity, quoting *Genovese v. Malta*, 53124/09 and *Mennesson v. France*, 65192/11, 97, ECHR 2014. However, the French Government opposed this claim by highlighting that the applicants' criminal actions demonstrated that they placed little importance on their allegiance to France. The Public Rapporteur, therefore, stated that the pronounced deprivation measures seemed proportionate in view of the seriousness of the acts committed.

The Council of State rejected the requests for annulment in five similar decisions of 8 June 2016.

The fourth and fifth applicants were heard by the Yvelines Eviction Commission on 8 September 2016, where they were informed that expulsion from France was to take place. They were summoned by the police on 26 October 2016 but were not

notified of a deportation order.

Legal arguments by the applicant

The applicants brought proceedings to the Court claiming that the loss of nationality infringed their right to privacy under Article 8 of the Convention.

Firstly, the applicants stressed out that the deprivation of their nationality was due to the political context, marked by the authorities' willingness to express their disproportionate commitment publicly and symbolically against terrorism. The applicants relied on the fact that other persons convicted of the same offences had not been stripped of their nationality.

The applicants claimed that their right to privacy was disproportionality infringed. They also argued that the state did not consider the implication of their conviction on their work and family lives in France. Also, they disputed that the Government's claims that the deprivation of their French nationality would not affect their right to stay in France. They pointed out that the decree, automatically triggered the loss of the right to reside in France and therefore the right to work and receive social benefits. The fourth and fifth applicants also relied on the fact they had been subjected to deportation.

Lastly, the applicants argued that that the Government's reliance on their dual Moroccan nationality (in the case of four of the applicants), is not well-founded as they have no ties to the country and are at risk of ill-treatment due to their convictions in connection with the Casablanca attacks if returned there. They relied on *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) to demonstrate the possibility of facing torture in case they were returned to Morocco. This fear of a return to a country where they would be at risk of inhumane and degrading treatment would reinforce the breach of Article 8 of the Convention.

The applicants also brought a claim under Article 4 of Protocol No. 7 to the Convention, arguing that the deprivation of their nationality constituted a sanction for their acts of terrorism for which they were convicted in 2007, which the Protocol protects them against.

Legal arguments by the opposing party

The Government stated that it did not dispute that the loss of nationality is likely to an infringement to the applicants' right to privacy and therefore their right to identity. However, it maintained that the deprivation measures taken in this case were provided for by law, namely sections 25 and 25-1 of the Civil Code.

The Government stressed that provided by Article 25-1 the deprivation of nationality was to be increased from ten years to fifteen years by a law passed in January 2006. Therefore, the Government upheld the Council of State's decision that this law was applied correctly. The Government additionally submitted that the time delay between criminal conviction and deprivation of nationality was justified in the security context. This was drawn on the basis that it has become necessary to punish the applicants, since France had been hit by a series of serious terrorist attacks in 2015.

The Government further held that the applicants were given all of the procedural safeguards necessary to defend their interests, which they exercised, and the deprivation decision was only made from a final conviction where all material facts had been laid out and discussed in separate proceedings.

The Government considered that the deprivation measures did not have an undue impact on the applicants' privacy given their participation in a terrorist organisation for several years. The Government confirmed the legitimacy of excluding those who reveal a lack of loyalty to the French nation, relying on the statements made by the public rapporteur.

Finally, the Government relied on the fact that the applicants had another nationality and therefore the deprivation of French nationality did not leave them stateless and did not jeopardize their right to stay in France. They relied on the deportation orders of the fourth and fifth applicants for which no decision has been taken to remove them yet. Noting the applicants' allegations of torture in Morocco upon deportation, the Government argued that it was dismissed by the Paris Correctional Court and that, having failed to use available internal remedies, the application of this violation would be inadmissible.

On the submission invoking Article 4 of Protocol No. 7 of the Convention, the Government contended the admissibility of the case under the Protocol that "only offences under French law within the jurisdiction of the Court's ruling in criminal matters must be regarded within the meaning of [Article 4] of this Protocol". The

deprivation of nationality by decree did not fall under French law and so the Government argued that such a measure is not a criminal sanction, rendering the complaint inadmissible before the Court.

Decision & Reasoning

In deciding the effect of the interference with the applicants' right for family life and privacy, *Moustaquim v. Belgium*, 18 February 1991, 36, series ANo.193 held that they are likely to be infringed in cases of removal of a foreigner. The Court held the decree of forfeiting the applicants' French nationality had no effect on their presence on French territory and thus the loss of nationality did not constitute interference with their exercise of their right to a family life.

The Court then went on to decide if the loss of nationality had been arbitrary under Article 8 of the Convention due to its impact on the applicants' right to privacy (*Ramadan v. Malta*, 76136/12, 85, 21 June 2016; see also *K2 v. United Kingdom* (Dec), "No. 42387/13, '45, 7 February 2017). To determine its arbitrariness, the Court assessed whether the revocation was decided by following the law, whether it was accompanied by the necessary procedural safeguards, and whether the authorities acted diligently and swiftly. The Court also examined the consequences of the loss of nationality on the applicants' privacy.

Arbitrary loss of nationality

The fact that the French authorities decided to strip the applicants of their French nationalities more than ten years after the events leading to their sentences, was justification by the Government by a number of serious terrorist attacks that same year (2015). The Court admitted that a State may resume with enhanced firmness the assessment of the bond of loyalty and solidarity between France and those convicted of an act of terrorism (*Othman (Abu Qatada) v. United Kingdom*, No. 8139/09,183, ECHR 2012 (extracts), and *Trabelsi v. Belgium*, 140/10, 117, ECHR 2014 (extracts)). Therefore, the Government decided to take strict but proportional measures against those perpetrators which lacked that bond. The Court held the time that had lapsed was not enough to hold the decision to strip them of their French nationalities to be arbitrary.

The Court noted that the January 2006 law which had extended the Article 25-1 provision of the Criminal Code to fifteen years after the conviction was lawful. Finally, the Court found that the applicants benefited from substantial procedural

safeguards, which the applicants exercised, including being able to assert their rights under the Convention and in the context of the appeal for annulment.

Examining all three elements, the Court held that the decision to forfeit the applicants' French nationality was not arbitrary.

Consequences of the loss of nationality

The Court admitted that the deprivation of nationality did not weaken the applicants' ability to remain in France. Additionally, despite the publication of deportation orders for the fourth and fifth applicants the court held that it did not impact their private lives. The Court judged that this did not amount to a loss of an element of their identity.

The Court recognised that terrorist violence posed a serious threat to human rights and so understood the French authorities' reasoning following the attacks in 2015, showing a stronger firmness towards persons convicted of acts related to terrorism. The Court also took notice of the public rapporteur's view before the Council of State, that the convictions of the applicants demonstrated a lack of attachment to France and its values and, therefore, the impact on their personal identities. This was of particular relevance in light of the fact that the applicants had committed these acts when some had only just acquired French nationality or were still in the process of doing so.

Finally, the Court highlighted the importance of the possession of the applicants' dual nationality, as the decision to strip them of their French nationality would not leave them stateless. The Court reiterated this was not synonymous with legalising their right to live in France.

In view of these elements, the Court considered that the decision to forfeit the applicants' French nationality did not have a disproportionate impact on their private lives.

The Court did not consider it necessary to assess the admissibility, the deprivation of nationality under Article 25 of the Civil Code as it is not criminal punishment, as defined by Article 4 of Protocol 7. Therefore, the Court held that this provision was not applicable in this case.

Decision documents

[Gouhmid and Others v. France](#)

Outcome

The Court held that there was no violation of Article 4 and 8 of the Convention.

Links to other relevant materials related to the case (blogs, analysis, articles, reports, etc.)

ECHR Factsheet on deprivation of nationality:

https://www.echr.coe.int/Documents/FS_Citizenship_Deprivation_ENG.pdf

Ghoumid and others v. France: The Grey Hole of Nationality Revocation:

<https://globalcit.eu/ghoumid-and-others-v-france-the-grey-hole-of-natio...>

Caselaw cited

El Haski v. Belgium (No. 649/08, 92-93, 25 September 2012)

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Moustaquim v. Belgium, 18 February 1991, 36, series ANo. 193

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Coeme et al v. Belgium, No. 32492/96 et al., 147-149, ECHR 2000-VII

Scoppola v. Italy (No.2) [GC], No. 10249/03, 110, 17 September 2009

Ouabour v. Belgium. No. 26417/10, 63, 2 June 2015

Big Brother Watch and others c. United Kingdom, No. 58170/13 and 2 others, 445, 13 September 2018

Saladhin Gaip v. Greece, No. 17309/90, 30 August 1994

Sergei Zolotoukhine v. Russia [GC], No. 14939/03, ECHR 2009

Durand v. France (Dec.), No. 10210/07, 54, 31 January 2012

A and B v. Norway [GC], No. 24130/11 and 29758/11, 107, 15 November 2016

Engelet alv. Netherlands, June8, 1976, 82, Series Ao 22

Kapetanios and other v. Greece, No. 3453/12 and 2 others, 52, 30 April 2015

Escoubet v. Belgium [GC], No. 26780/95, 32, ECHR 1999-VII

Genovese v. Malta, No. 53124/09