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

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Complaint by two dual nationals about the removal of their Belgian nationality on account of convictions for terrorist offences: no violation of the Convention

In today's **Chamber** judgment[1] in the case of El Aroud and B.S. v. Belgium (applications nos. 25491/18 and 27629/18) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the deprivation of Belgian nationality ordered in respect of two dual nationals who had been convicted in Belgium on terrorism-related charges.

The Court began by reiterating that terrorist violence was in itself a grave threat to human rights and, in consequence, that it was legitimate that States should take action in respect of individuals who had been convicted at final instance of offences which directly undermined the values of the Convention. It also specified that questions relating to the granting, loss and deprivation of nationality concerned matters in which the Contracting States had to be afforded wide discretion. It reiterated that, in cases concerning a deprivation of nationality, it had regard to whether an appropriate judicial review had been conducted. In the present case, the measures in question had been ordered by the Brussels Court of Appeal, in judgments in which the reasoning had been relevant and sufficient; in particular, that court had considered that the actions leading to the applicants' criminal convictions had shown that their attachment to Belgium and its values had been of little consequence to them in the construction of their personal identity. The Court also took account of the fact that the applicants had another nationality and the decision to deprive them of their Belgian nationality had not had the effect of rendering them stateless. In consequence, it held that the Belgian authorities had not exceeded their wide discretion and that the measures in question had been "necessary in a democratic society".

Principal facts

The applicants, Malika El Aroud – a Moroccan national who was born in 1959 – and B.S. – a Tunisian national who was born in 1973 –, were five and three years old respectively when they arrived in Belgium. They acquired Belgian nationality by a declaration of nationality under Article 12*bis* of the Belgian Nationality Code ("BNC") in 2000 and 2001 respectively.

In 2010 Ms El Aroud was sentenced to eight years' imprisonment for her role as a leader of a terrorist organisation, in respect of offences committed between January 2007 and December 2008. She was specifically convicted of having set up and run a cell with her husband in order to recruit potential jihadists who could then join al-Qaeda and take part in its terrorist activities. Ms El Aroud served her sentence and was released in 2016.

In 2008 Mr B.S. was sentenced to five years' imprisonment for his role as a member of a terrorist organisation, in respect of offences committed between January 2004 and December 2005. He was convicted, in particular, of having been the leader of a terrorist group by motivating, mentoring and

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

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providing financial support to four individuals who had travelled to Iraq to engage in armed jihad. Mr B.S. served his sentence and was released in 2011.

On various dates, the Principal State Counsel (*procureur général*) at the Brussels Court of Appeal lodged applications in respect of both applicants under Article 23 § 1 of the BNC, seeking to have them deprived of their nationality. Subsequently, in 2017, the Brussels Court of Appeal deprived the applicants of their Belgian nationality, finding that, in view of the offences for which they had been convicted, they had both seriously failed in their duties as Belgian citizens. In its decision, the Court of Appeal noted that both applicants had another nationality. Subsequently, an order for the applicants to leave the country was issued. The Court has not been informed of the progress of those proceedings.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicants submitted that the deprivation of their nationality had constituted an unjustified interference with their right to respect for private life. Ms El Aroud also submitted that her right to family life had been breached, by reference to the fact that she had an adult daughter and a granddaughter, both of whom were Belgian nationals.

The applicants also complained that they had had no right to an appeal within the meaning of Article 2 of Protocol No. 7.

The applications were lodged with the European Court of Human Rights on 25 and 30 May 2018.

Judgment was given by a Chamber of seven judges, composed as follows:

Ivana **Jelić** (Montenegro), *President*,
Alena **Poláčková** (Slovakia),
Krzysztof **Wojtyczek** (Poland),
Georgios A. **Serghides** (Cyprus),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),
Frédéric **Krenc** (Belgium),

and also Ilse **Freiwirth**, *Section Registrar.*

Decision of the Court

Article 8

The Court considered that the decision to deprive the applicants of Belgian nationality had constituted an interference with their right to respect for their private life. It noted that the decision had been based on Article 23 § 1 of the BNC, which provided that persons who had acquired Belgian nationality by a declaration could be deprived of it "if they seriously failed in their duties as Belgian citizens". The Court considered that that provision had been sufficiently foreseeable. In addition, it acknowledged that the deprivation of the applicants' Belgian nationality as a result of their convictions for serious terrorist offences had pursued the legitimate aims of protecting national security and preventing crime.

In that connection, the Court specified that questions relating to the granting, withdrawal and – as in the present case – deprivation of nationality were matters in which the Contracting States had to be afforded wide discretion. Furthermore, it reiterated that terrorist violence was in itself a grave threat to human rights and, in consequence, that it was legitimate that States should take action in respect of individuals who had been convicted at final instance of offences which directly undermined the

values of the Convention. Thus, it had already held on several occasions that measures to deprive individuals who had committed terrorist offences of their nationality did not violate Article 8.

In the present case, the Court reiterated that, in cases concerning deprivation of nationality, it had regard to whether appropriate judicial review had been conducted. In view of the interference with the applicants' private life and the possible impact of the deprivation of nationality, the Court attached importance to the fact that in the instant case the measure had been ordered by a court with jurisdiction to deal with all aspects of the case, the independence of which had not been called into question. It further noted that the applicants had not disputed that they had been able to defend themselves before the Court of Appeal in adversarial proceedings, during which they had been assisted by a lawyer and had been able to submit oral and written observations.

The Court then noted that the Court of Appeal's judgments had been based on relevant and sufficient reasons and had duly taken account of the arguments relating to the applicants' private life. The Court of Appeal had thus been able to determine that the actions leading to the applicants' criminal convictions had shown that their attachment to Belgium and its values had been of little consequence to them in the construction of their personal identity.

Lastly, the Court noted that both the applicants were nationals of other States, a fact to which it attached some importance. The decision to deprive them of their Belgian nationality had not therefore had the effect of rendering them stateless, which was moreover a prerequisite for the application of Article 23 § 1 of the BNC.

It followed that the Belgian authorities had not exceeded their wide discretion and the measures in question had been "necessary in a democratic society". There had therefore been no violation of Article 8 of the Convention.

Article 2 of Protocol No. 7

The Court noted that the Court of Cassation and the Constitutional Court had judged deprivation of nationality to be a civil measure. Furthermore, it reiterated that it had already held that deprivation of nationality was not a "criminal" measure within the meaning of the Convention. In consequence, Article 2 of Protocol No. 7 was not applicable in the present case. This part of the application was therefore declared inadmissible.

The judgment is available only in French.

Press contacts
echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

We are happy to receive journalists' enquiries via either email or telephone.

Inci Ertekin (tel: + 33 3 90 21 55 30)
Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Denis Lambert (tel: + 33 3 90 21 41 09)
Neil Connolly (tel: + 33 3 90 21 48 05)
Jane Swift (tel: + 33 3 88 41 29 04)