

Introduction

Both historically and today, citizenship deprivation has often been associated with serious prejudice and violence against particular religious, racial or ethnic groups, and women's rights to nationality have often been especially fragile. Citizenship-stripping can have grave consequences for the people affected, their families and their wider communities; potentially, those consequences may be even more serious and longer lasting than when someone is incarcerated.

No state should ignore its human rights obligations and fundamental principles of justice and equality, and greater knowledge of current laws and practices will be an important step toward fairness and accountability.

Overview of citizenship deprivation practices across the three Council of Europe jurisdictions

The roundtable began by exploring the similarities and differences among citizenship deprivation practices in France, Denmark and the UK, and describing historical legislative changes that grant powers for deprivation. Participants compared the grounds on which people can be deprived of citizenship in the three jurisdictions, described other conditions that must be met for a decision to become effective and noted who has the power to implement such an order.

In France, only those who have acquired French citizenship through naturalisation, and hold another nationality, are vulnerable to deprivation orders. Such orders can be made on grounds of fraud or if the individual has been convicted of a terrorism-related offense. All deprivation orders must receive approval from the Conseil d'État before becoming effective.

In Denmark, citizenship revocation can also occur in cases of fraud; if the person has received a criminal conviction, such as for acts against the state or terrorism offenses; due to a loss of ties to Denmark; or following an administrative deprivation. Administrative deprivations are the result of recently introduced powers that give the Danish government more discretion to make revocation orders if satisfied that the individual is a dual national and a threat to the state. Administrative deprivation powers also enable orders to be carried out while the individual is abroad.

By comparison, the Home Secretary in the UK may deprive someone of their British nationality if satisfied that doing so is 'conducive to the public good,'; if the individual has allegedly been linked to terrorism; or in cases of fraud. There is no requirement for a criminal conviction prior to a deprivation order and anyone who is not a mono-national is vulnerable to such orders. The UK also has the power to take away British citizenship even if this would leave the individual stateless in practice.

Experts speaking from the Danish context noted the similarities between Danish administrative deprivations and UK deprivations on the grounds of being 'conducive to public good', as neither instance requires a conviction before the revocation orders come into effect. However, Danish courts must analyse the impact deprivation would have on the individual before certifying an order, whereas no such requirement exists in UK legislation.

Although citizenship revocation remains possible in all three jurisdictions in cases in which the individual obtained their citizenship through fraud, our experts also noted how the British and Danish governments have utilised deprivation powers to retroactively analyse citizenship cases and serve revocation orders. These practices – like deprivations conducted on national security grounds – have the potential to result in discrimination, particularly because specific minority groups appear to have been disproportionately affected by government orders.

In all three countries, it was clear that authorities have been depriving people of their citizenship more frequently in recent years, with the stated justification of responding to national security concerns. Several participants suggested that by expanding deprivation powers, states had weakened the safeguards originally designed to restrict the practice. Participants questioned the idea that citizenship-stripping is an effective approach to combatting terrorism-related concerns, or that deprivation practices are aligned with states' international human rights obligations. More specifically, and particularly in Denmark and

the UK, deprivation powers have become increasingly more expansive in the post-9/11 era and amidst the ISIS conflict.

In France, although a terrorism conviction is required before a deprivation can take place on national security grounds, the threshold for what constitutes as a terrorism offence remains low and – it was argued – arbitrary, with evidence showing an increase in the number of French deprivations in the past four years.

In the same regard, Denmark amended its legislation in 2019 to expand deprivation powers to include administrative deprivations, which broadened the grounds for deprivation if authorities suspect the individual of engaging in activity that is not aligned with the government's 'vital interests.' Certain acts, such as residing in Syria, may constitute as a terrorism offense, although they are not – by themselves – sufficient grounds for deprivation. Nevertheless, Denmark's 2020 legislative changes enable the government to withhold citizenship from children born to Danish parents located in 'exclusionary zones'.

In the UK, the grounds for deprivation remain much broader than the other jurisdictions, as deprivations can occur regardless of whether the individual has connections to Syria specifically and can be carried out on the basis of suspected terrorism-related activity or affiliations (not just convictions).

Human rights concerns with citizenship deprivation

The roundtable participants proceeded to discuss a range of human rights issues arising from the practice of citizenship-stripping, including how victims of trafficking and torture may be affected by these policies. Issues of racism, gender bias, and ethnic and religious discrimination were also highlighted as potential contributing factors to deprivation decisions. The matter of children's rights was highlighted as an issue that requires greater analysis – and scrutiny – by courts and UN bodies.

Our speakers then briefly touched upon the specific issue of repatriating third-country nationals detained in camps in northeast Syria (many of whom have been deprived of their British or other European citizenship), and the life-threatening conditions adults and children are enduring there. Some of the main points of discussion, and challenges raised, included the potential receipt of information from intelligence services of other countries, with that information perhaps then forming part of the basis for the citizenship deprivation decision. There was also discussion of the *Begum* case in the UK, which involves a young British woman in Syria who (the Special Immigration Appeals Commission has found) may be a victim of trafficking and has now been stripped of her British citizenship. While the case has caused alarm in UK legal circles due to the courts' deference to the government, among other issues, our roundtable raised the possibility that it may not have as strong of an impact on UK citizenship deprivation appeals as may have been expected -- particularly where deprivations made under Section 40(3) of the British Nationality Act 1981 ('BNA 1981') are concerned, as such deprivations may be based on alleged fraud or deception rather than a conclusion by the Home Secretary that the deprivation is 'conducive to the public good'.

Lastly, the topic of 'tiered citizenship' was a recurring theme throughout the discussions. Tiered citizenship, in this instance, refers to the concept of distinguishing citizens who have only one nationality or were born in-country (for example, French-born, Danish-born, or British-born) from those who became citizens through naturalisation and/or have dual nationalities. In the three national contexts discussed during the roundtable, people who hold or may be entitled to dual citizenship (often by descent) are far more vulnerable to deprivation orders, which in turn has created a hierarchal system of nationality rights, with firm protections only being afforded to mono-nationals and/or people born in the country in question. In practice, this 'tiered citizenship' can place racial and ethnic minorities at a disadvantage compared to white citizens, as people who have

immigrated to the country or are second-, third- or even fourth-generation immigrants may hold (or be eligible for) citizenship of the country of ancestry.

In the UK, the tiered nature of citizenship is further emphasised by the breadth and vagueness of s. 40(4A) of the BNA 1981, which enables the Home Secretary to carry out deprivation decisions if there are 'reasonable grounds for believing' that an individual is able to obtain the citizenship of another country. In *Begum*, for example, the Home Secretary concluded that the young British woman in Syria could claim Bangladeshi nationality, even though she had been born and raised in Britain and Bangladesh had announced that it would not allow her to enter the country or grant her a passport. *Begum* also lost any rights she may have had to Bangladeshi citizenship by descent when she turned 21 – after the deprivation decision, but before her appeal had concluded (the appeal remains ongoing.) However, the Special Immigration Appeals Commission ruled that although there was evidence indicating that the young woman had been trafficked to and exploited in Syria, the Home Secretary was still entitled to deprive her of her British citizenship on national security grounds.

In contrast, Danish courts must analyse an individual's ties to Denmark as well as their second country of citizenship before determining whether a deprivation decision is proportionate and appropriate. In some instances, the Danish Supreme Court may overturn deprivation decisions if it is satisfied that a person does not have sufficient ties to their second country of citizenship.

Procedural elements to deprivation decisions

Another recurring topic in the session was the question of the procedural elements of a deprivation decision. In other words, which bodies make the decision and what external protections are in place.

In France and Denmark, the power to deprive someone of their citizenship does not lie solely with the executive, but instead must be reviewed and approved by the courts. The courts are also tasked with carrying out assessments on the individual and have the power to overturn deprivation orders. These procedures contrast greatly to those in the UK, where the Home Secretary retains full authority to implement a deprivation order, enabling it to become effective immediately and without any court review or approval in advance. Even if the individual appeals, the citizenship deprivation remains in effect during the appeal process, and the Commission found in *Begum* that the UK is not obligated to allow the person to return to the country during the appeal.

Furthermore, jurisdictions have expanded on legislation that allows them to serve deprivation orders in unconventional ways, thus making it more difficult for people deprived of their citizenship to appeal the decisions. In Denmark, notice of deprivation is administered through a digital public information system. During the roundtable, it was suggested that this method of informing the person affected is not practical, especially for those who may be incarcerated and/or unable to access their online account to retrieve the information.

Similarly, the UK the government recently passed the Nationality and Borders Act 2022, which enables the Home Secretary to deprive someone of their nationality without giving notice in certain circumstances.