Meijers Committee
standing committee of experts on international immigration,
refugee and criminal law

CM2016 Policy brief on 'Differential treatment of citizens with dual or multiple nationality and the prohibition of discrimination'

Summary and Recommendations

6 December 2020

In its policy brief CM2016 the Meijers Committee highlights the use of dual nationality as a selection criterion in legislation or administrative practice and its potentially harmful effects on the equal enjoyment of rights by citizens of immigrant origin.[1] In many European states dual nationals are predominantly citizens of immigrant origin who also belong to racial or ethnic minorities. While explicit racial or ethnic discrimination is clearly prohibited by law, there is a risk that dual nationality is used as a proxy for race or ethnic origin, resulting in indirect racial or ethnic discrimination.

This risk is especially salient in the field of citizenship deprivation. Over the past ten years, several European states have amended their nationality laws in response to so-called homegrown terrorists and increased the possibilities of withdrawing the nationality of citizens who participated in Islamic State or other terrorist organisations. Because of the international obligation to prevent statelessness, most of these laws only allow citizenship deprivation of persons with dual or multiple nationality.

Over the past decades dual nationality has gradually become more accepted throughout the Council of Europe member states. Dual nationality is commonly obtained as a result of birth in a marriage of parents with different nationalities, naturalisation or birth from non-citizen parents in a country where citizenship is acquired through *ius soli*. It follows that persons with dual nationality are often immigrants or children of immigrants. Registration of dual nationality occurs in a few countries only, which makes it difficult to draw general conclusions as to its prevalence. Available numbers indicate that in the Netherlands in 2014 around 8% of the population had dual nationality whereas in France in 2010 this was 5%. Many dual nationals do not have the option of getting rid of their second nationality because the countries concerned do not allow their nationals to renounce their nationality.

Nine of the 27 EU Member States and the United Kingdom have adopted legislation that allows citizenship deprivation of persons convicted for terrorist activities or who have joined a terrorist organisation abroad. In eight states this legislation has been introduced or enhanced within the past ten years. In seven states deprivation is only possible if the person concerned would not become stateless, hence has dual or multiple nationality. In five states only naturalised citizens can be deprived of their citizenship (or at least one ground of deprivation applies only to naturalised citizens). A further study of five states (Belgium, France, Germany, the Netherlands and the UK) indicates that citizenship deprivation in relation to terrorist

[1] The full text of the policy brief is available at https://www.commissie-meijers.nl/en/commentaar/cm2016-policy-brief-differential-treatment-citizens-dual-or-multiple-nationality.

activities does not concern large groups of people (14 in France over three decades to around 150 in the UK over the past ten years), but numbers have increased following the introduction of new legislation.

Proposals to increase the possibilities for citizenship deprivation in reaction to terrorism led to principled debates in France and Germany. Proponents argue that dual nationals are not comparable to single nationals because deprivation will not leave them stateless and that deprivation is justified in light of the very serious nature of certain crimes. Opponents warn against the creation of conditional or 'second-class' citizenship and the risk of indirect racial or ethnic discrimination.

Discrimination on the grounds of nationality is prohibited both in EU law and under the European Convention on Human Rights (ECHR; Articles 14 and 1 Twelfth Protocol). These provisions can be interpreted to cover distinctions between single and dual nationals. Additionally, distinctions between single and dual nationals can amount to indirect discrimination on the grounds of racial or ethnic origin as prohibited under the ECHR and the UN Convention on the Elimination of all Forms of Racial Discrimination (CERD). It follows from case law of the European Court of Human Rights that this will be the case where distinctions between citizens predominantly affect citizens of foreign ethnic origin. Such distinctions require very weighty reasons in order to be justified.

Applying the prohibition of discrimination to the case of citizenship deprivation, it can be argued that single and dual nationals are not comparable because dual nationals have the nationality of more than one state. However, it can also be stressed that they are comparable as citizens of the same state who are entitled to equal citizenship. If single and dual nationals are considered as being in relevantly similar situations, the respondent State Party must offer sufficient justification for the difference in treatment. A stronger justification will be required if the person concerned cannot get rid of the second nationality as in that case the second nationality amounts to an immutable characteristic

Citizenship deprivation of dual nationals amounts to indirect racial or ethnic discrimination if the target group predominantly consists of persons belonging to racial or ethnic minorities. This is clearly the case in the Netherlands, where three-quarters of dual nationals are persons of so-called 'non-western' origin and four-fifths of those who lost their Dutch nationality in relation to terrorist activities were of Moroccan origin, mostly born in the Netherlands. This is at odds with Article 1(3) CERD which provides that states may not, in their nationality laws, discriminate against 'any particular nationality'. The UN Special Rapporteur on Racism has also qualified the Dutch policy on denationalisation of (suspected) terrorists as a form of racial discrimination incompatible with the CERD.

Citizenship deprivation policies target dual nationals because, unlike single nationals, they will not become stateless when their nationality is withdrawn. Although the prevention of statelessness clearly is a legitimate aim, the obligation to prevent statelessness does not absolve states from their simultaneous obligation to respect the prohibition of (racial) discrimination. To ensure equal citizenship, including for racial and ethnic minorities, the same

human rights compliant sanctions that apply to single nationals who engage in terrorist activities (i.e. criminal prosecution and administrative measures) should also apply to dual nationals.

Recommendations

The Meijers Committee makes the following recommendations:

- States should exercise restraint when using dual nationality as a criterion to differentiate between citizens. In principle single and dual nationals should be subject to equal treatment in the field of nationality law as well as in other fields. Where dual nationals are treated differently, states should take due account of the effects of such differential treatment on citizens of immigrant origin and racialised minorities. Where such effects exist, less favourable treatment of dual nationals can only be justified by very weighty reasons.
- Persons with dual or multiple nationality who engage in terrorist activities should be subject to the same human rights compliant sanctions as single nationals. The Meijers Committee fully supports the efforts of states to avoid statelessness but urges them do so without differentiating between groups of citizens. States have to comply both with their obligations under international norms against statelessness and those prohibiting racial discrimination. Administrative and criminal law measures that can be equally applied to all citizens (such as withdrawal of passports and criminal prosecution) constitute preferred means of fighting terrorism compared to citizenship deprivation.
- States that apply citizenship deprivation as an instrument to combat terrorism are urged to limit the scope of deprivation provisions to persons who acquired their nationality later in life (not at birth) and to allow citizenship deprivation only for terrorist activities that have been committed within a limited period after the acquisition of citizenship. To avoid conditional citizenship, it is recommended that citizenship deprivation should no longer be possible after a period of five or maximum eight years after citizenship acquisition. The Meijers Committee recalls that a residence duration of five years is considered sufficient for naturalisation in 12 EU Member States and a residence of six to eight years in another 11 Member States. This may be seen as the timeframe after which non-nationals are entitled to a secure citizenship status.
- If dual nationals are deprived of their citizenship because of engagement in terrorist activities, such deprivation should always be preceded by a final criminal sentence. A criminal sentence in absentia is not sufficient.