

DEPRIVATION OF NATIONALITY AS A NATIONAL SECURITY MEASURE IN THE NETHERLANDS

Since 2017, the Minister of Justice holds the power to deprive a Dutch citizen of their nationality for joining an organisation that is listed as constituting a threat to national security according to Article 14(4) of the Dutch Nationality Act (DNA). This measure was introduced on the pretext that it is needed to protect national security, aiming to prevent the return of *uitreizigers* to the Netherlands. The provision will expire in 2022, unless legislation is passed to extend it. Extensive evaluations published in 2020 show that denationalisation is not a useful national security tool and it is likely to actually be counter-effective. This use of deprivation of nationality also raises serious human rights issues and has led to discrimination against Dutch citizens of migrant or minority background. The powers provided for in Article 14(4) DNA should not be extended.

INEFFECTIVE TO PROTECTING NATIONAL SECURITY

Article 14(4) DNA was introduced in 2017 on the pretext that it was a necessary national security measure – in particular to deal with Dutch nationals who left the Netherlands to join jihadist groups in Syria and Iraq (*uitreizigers*). This rests on two assumptions: 1) that preventing the return of Dutch citizens to the Netherlands if they have gone abroad to join a terrorist organisation will increase our national security and 2) that deprivation of Dutch nationality will prevent return. Even as the introduction of this measure was being debated, concerns were raised about its necessity and effectiveness. The General Intelligence and Security Service (AIVD) was doubtful of the practical utility of the measure and of the effect that deprivation of nationality would have on national security because engagement in terrorist activity can continue and clandestine return to the Netherlands remains possible. The Netherlands Institute for Human Rights also pointed out that “since withdrawal of Dutch citizenship is limited to persons who have dual or multiple nationality, the measure makes only a very limited contribution to enhancing national security”.¹

In 2020, two comprehensive evaluations of Article 14(4) DNA were carried out: by the Dutch Review Committee on the Intelligence and Security Services (CTIVD)² and by the Research and Documentation Centre (WODC).³ Neither evaluation provided evidence of the effectiveness of the measure. On the contrary, the CTIVD reiterates that it is “uncertain whether the measure will have the desired effect of preventing return of *uitreizigers*”. The WODC admits that the question as to whether Article 14(4) has contributed to a decrease in the threat of terrorist activities by members of jihadi organisations on Dutch territory and thereby an increase in the degree of national security has increased, “cannot be answered” and that it is also “impossible to determine” in how many cases revocation of citizenship has led to the prevention of illegal entry by Dutch *uitreizigers*. What these evaluations do show is that:

- The public prosecutor (OM) views deprivation of Dutch nationality as an encroachment on prosecution interests and raised objections in all cases in which there had not yet been a criminal conviction. These objections were ignored.
- Despite significant resources being (re)directed within the AIVD to pursuing nationality deprivation cases, only 4 citizens (1.3% of all Dutch *uitreizigers*) have been definitively deprived of their nationality under Article 14(4) DNA since its introduction in 2017.
- Deprivation of nationality does not guarantee that the person will not return: there are two cases in which a person whose nationality had been deprived was able to return to the Netherlands because Turkey unilaterally decided to remove them and deport them directly to the Netherlands.

Article 14(4) DNA

Our Minister may revoke the Dutch citizenship of a person who has reached the age of sixteen and who is outside the Kingdom in the interest of national security, if his conduct shows that he has joined an organization that Our Minister, in accordance with the views of the Council of Ministers, has been placed on a list of organizations that participate in a national or international armed conflict and that pose a threat to national security

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While the measure may raise a barrier to return to the Netherlands, it does not remove the (potential) threat posed by the individual.

The AIVD would still have to continue to investigate the threat that a person potentially poses, even if that person has lost their Dutch nationality. Terrorist activities can continue, whereby citizens or objects abroad can also be or become the target. People can also secretly return to the Netherlands”.

Review Committee on Intelligence and Security Services (CTIVD)⁴

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Arab states preventing jihadis from returning from Afghanistan in the 1990s led to waves of foreign fighters spreading to war zones and failed states around the world.

Osama Bin Laden is Exhibit A of the folly of stripping a foreign fighter's citizenship and then washing your hands and assuming the individual is no longer your problem.”

Dr. David Malet,
Expert on Foreign Fighters (American University)⁵

Relevant references and resources

¹ College voor de Rechten van de Mens, Advies conceptwetsvoorstel intrekken Nederlanderschap (2015). Available at: <https://mensenrechten.nl/nl/publicatie/35355>.

² CTIVD, Toezichtsrapport. Over het handelen van de AIVD in het kader van intrekking van het Nederlanderschap in het belang van de nationale veiligheid, 2020. Available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2020/06/16/aanbieding-ctivd-rapport-intrekking-nederlanderschap>.

³ WODC, Evaluatie wijziging van de Rijkswet op het Nederlanderschap in het belang van de nationale veiligheid, 2020. Available at: <https://www.wodc.nl/onderzoeksdatabase/3107-evaluatie-wijziging-van-de-rijkswet-op-het-nederlanderschap-in-het-belang-van-de-nationale-veiligheid.aspx>.

⁴ CTIVD, “Toezichtsrapport. Over het handelen van de AIVD in het kader van intrekking van het Nederlanderschap in het belang van de nationale veiligheid”, 2020, p. 10. Available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2020/06/16/aanbieding-ctivd-rapport-intrekking-nederlanderschap>.

⁵ David Malet, ISIS Foreign Fighters: Keep Your Enemies Closer, 25 December 2019, Available at: <https://www.internationalaffairs.org.au/australianoutlook/isis-foreign-fighters-keep-enemies-closer/>.

UNDERMINING INTERNATIONAL COOPERATION

Using deprivation of nationality against citizens who have become associated with terrorist groups abroad interferes with the commitment to international cooperation in counter-terrorism efforts. The Netherlands is a strong supporter of multilateral engagement to address issues of peace and security, serving on the UN Security Council in 2018 and taking up a new 2-year term on the UN Human Rights Council in 2020. In contrast, deprivation of nationality “is characterised by a ‘pass the buck mentality’, where the potential risk is not addressed, but exported somewhere else, making it the problem of others”,⁶ according to counter-terrorism experts.

Article 14(4) DNA also risks undermining efforts to ensure security and development in fragile and post-conflict states. As experts have pointed out, “European governments have the resources to handle these people through prosecution, surveillance, or reintegration, as appropriate”.⁷ Instead of taking this responsibility to bring Dutch citizens to justice, they are disowned – causing further problems for the countries that they remain stranded in and potentially aggravating the security threat to all. Moreover, according to global governance experts, “In a system of equally sovereign states, governments can no longer simply dump their bad apples on other countries [...] States must assume responsibility for their citizens vis-à-vis other states”.⁸ Eroding this core function of nationality in the international system risks leading to other situations where (other) countries similarly refuse to accept their duty to readmit their nationals, which may also have unforeseen ramifications for immigration management in the Netherlands.

HUMAN RIGHTS, DISCRIMINATION AND STIGMATISATION

The nationality deprivation powers laid down in Article 14(4) DNA can only be invoked against dual nationals, creating a difference in treatment as compared to citizens who only hold Dutch nationality. This leads to indirect discrimination against Dutch citizens from particular minority groups, in particular Dutch-Moroccans, as shown in the table below. Maintaining such a system also has a stigmatising effect on these communities and can negatively impact social cohesion.

Nationality of persons deprived of nationality on the basis of Art. 14(4) DNA <i>(until end of April 2020 – data published in WODC evaluation report)</i>	
Dutch and Moroccan	16
Dutch and other nationality	4
Multiple nationality	1
TOTAL	21

Using nationality deprivation as a security and counter-terrorism measure has profound human rights consequences for individuals, families and communities: “nationality remains an entry point for individuals and groups to access civil, political, social, economic and cultural rights. Deprivation of nationality cuts an individual off from the capacity to meaningfully exercise such rights and gain protection in multiple dimensions”.⁹ The effect is, moreover, felt not only by the person deprived of nationality, but also by dependents or family. Nationality deprivation is an extreme and irreversible measure due to its consequential human rights impacts and permanence, which is why international (human rights) standards curtail its use. States must not only avoid the creation of statelessness but also respect the principles of legality, necessity and proportionality, as well as due process safeguards, in all cases.¹⁰

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Shifting the burden to the authorities in areas where fighters are being held is not a solution. It undermines the present rules-based system which holds a reasonable guarantee that countries of origin take responsibility for their nationals.

It also places a severe and unfair burden on countries struggling to recover from years of savage violent conflict, who lack even the basic capacity to look after their own people.”

Laetitia van den Assum,
Former Ambassador of the Netherlands and
international diplomacy expert¹¹

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Although being neutral on the face of it, the Netherlands citizenship-stripping legislation, policies and procedures apply only to citizens with dual nationality and therefore disproportionately affects Netherlanders of Moroccan and Turkish descent [...]

citizenship-stripping legislation in the Netherlands aggravates stereotypes of terrorism by associating terrorism with people of certain ethnic and national origins. The associated policies and their effects are incompatible with international human rights principles of equality and non-discrimination”.

Tendayi Achiume,
UN Special Rapporteur
on contemporary forms of racism¹²

⁶ Christophe Paulussen & Martin Scheinin, ‘Deprivation of nationality as a counter-terrorism measure: A human rights and security perspective’ in ISI, World’s Stateless 2020: Deprivation of Nationality (2020) p. 225. Available at: https://files.institutesi.org/WORLD'S_STATELESS_2020.pdf.

⁷ Open letter by members of the European Council of Foreign Relations: Call for a managed return of ISIS foreign fighters, 26 November 2019. Available at: https://ecfr.eu/article/commentary_open_letter_a_managed_return_of_isis_foreign_fighters/.

⁸ Rainer Bauböck, ‘A free movement paradox: denationalisation and deportation in mobile societies’ in Citizenship Studies 24:3 (2020) p. 390.

⁹ Fionnuala Ní Aoláin, SR on the Protection and Promotion of Human Rights and Fundamental Freedoms while Countering Terrorism, ‘Foreword’ in Principles on Deprivation of Nationality as National Security Measure, 2020. Available at: <https://files.institutesi.org/PRINCIPLES.pdf>.

¹⁰ For the relevant international (human rights) standards, please refer to the Principles on Deprivation of Nationality as National Security Measure, 2020. Available at: <https://files.institutesi.org/PRINCIPLES.pdf>. A comprehensive analysis of Dutch nationality deprivation powers against these standards is available at: https://files.institutesi.org/Deprivation_of_nationality_under_Dutch_law_and_practice.pdf.

¹¹ Laetitia van den Assum, ‘Deprivation of Nationality: A Diplomat’s Perspective’ in ISI, World’s Stateless 2020: Deprivation of Nationality (2020) p. 144. Available at: https://files.institutesi.org/WORLD'S_STATELESS_2020.pdf.

¹² SR Racism, Visit to the Netherlands, A/HRC/44/57/Add.2, 2 July 2020. Available at: https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session44/Documents/A_HRC_44_57_Add2_AdvanceEditedVersion.docx.