

ON CITIZENSHIP STRIPPING



GLOBAL SEMINAR SERIES

LECTURE 5

DEPRIVATION OF NATIONALITY AS A
COUNTER-TERRORISM MEASURE:
A HUMAN RIGHTS AND
SECURITY PERSPECTIVE



LECTURE & DEBATE KIT

THE ONLINE LECTURE 'DEPRIVATION OF NATIONALITY AS A
COUNTER - TERRORISM MEASURE: A HUMAN RIGHTS AND
SECURITY PERSPECTIVE' BY MARTIN SCHEININ
& CHRISTOPHE PAULUSSEN AND FURTHER READING

QUESTIONS TO GUIDE VIEWING OF THE LECTURE IN A WORKSHEET
(ANSWERS ON THE LAST PAGE OF THE KIT)

QUESTIONS FOR CRITICAL REFLECTION,
DISCUSSION OR DEBATE

SUGGESTIONS FOR AN EXERCISE OR RESEARCH
TO LEARN MORE ABOUT THE TOPIC

VIDEO RECORDING OF THE LECTURE

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ABOUT THE LECTURE

In this lecture, Martin Scheinin and Christophe Paulussen assess the practice of citizenship stripping as a counter-terrorism measure and argue that it is problematic from both an international human rights law and a security perspective. They argue that citizenship stripping clashes with international law obligations and question whether it can be the least intrusive means available. According to the lecturers, depriving someone of their nationality does not also guarantee national security as it fails to bring people to justice, rehabilitate and reintegrate them, but rather exports the issue somewhere else, enhancing the risk of further radicalisation and threat towards national security.

MARTIN SCHEININ is British Academy Global Professor at the Bonavero Institute of Human Rights of the University of Oxford and Professor of International Law and Human Rights at the European University Institute in Florence, Italy. From 2005–2011 he was the first United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. He has also served as a member of the United Nations Human Rights Committee and was President of the International Association of Constitutional Law.

CHRISTOPHE PAULUSSEN is a senior researcher at the T.M.C. Asser Institute and coordinator of its research strand 'Human Dignity and Human Security in International and European Law'. He also coordinates the interfaculty research platform 'International Humanitarian and Criminal Law Platform' and is research fellow at the International Centre for Counter-Terrorism in The Hague. Christophe is also editor-in-chief of the journal 'Security and Human Rights'.

FURTHER READING

- Martin Scheinin & Christophe Paulussen (2020) **Deprivation of Nationality as a Counter - Terrorism Measure: a Human Rights and Security Perspective**
- Institute on Statelessness and Inclusion (2020) **The World's Stateless 2020: Deprivation Of Nationality**

This lecture is part of the **GLOBAL SEMINAR SERIES ON CITIZENSHIP STRIPPING**.

QUESTIONS TO GUIDE VIEWEING - WORKSHEET

1. In what way did the 1966 Covenants (ICCPR and ICESCR) fail to live up to the promise to protect the right to a nationality, as explained by Martin Scheinin?

2. Why is liberalisation towards allowing dual citizenship paradoxical in relation to citizenship stripping? What are the possible effects of citizenship stripping for a dual national according to Martin Scheinin?

3. Name three reasons why (national) security as a legitimate aim is not enough to justify citizenship stripping.

4. Why does barring entry to the country through citizenship stripping represent a limited view of the concept of national security according to Christophe Paulussen?

5. According to Christophe Paulussen, why is nationality deprivation still resorted to in politics?

6. Overall, according to both Martin Scheinin and Christophe Paulussen, why can citizenship stripping be a counter-productive measure for national security?

QUESTIONS FOR CRITICAL REFLECTION, DISCUSSION OR DEBATE

- In carrying out a concrete weighing regarding the benefits and the harms of citizenship stripping, is it possible, and to what extent, to concretely measure the harms of citizenship stripping in terms of human rights, seeing that the consequences often reach beyond an individual, and are - in practice - difficult to measure?
- How can politicians effectively explain to constituents that 100% security is not possible and that democratic values should be upheld when protecting national security?
- What disciplines and professionals other than lawyers should be involved in the analysis of the effects of citizenship stripping and be more vocal in conversations, research or policy discussion on the deprivation of nationality of foreign fighters?

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Considering that citizenship stripping, in particular concerning people who have allegedly been involved in acts of terrorism, is a controversial issue, there has been a lot of discussion about it. Explore existing (academic) debate and advocacy efforts on citizenship stripping as a national security measure. What key arguments and messages do they use and which do you find powerful, and why? In view of this, how can a balance be struck between national security and avoiding the risk of statelessness in a way that caters to both interests?

QUESTIONS TO GUIDE VIEWEING - ANSWERS

1. In what way did the 1966 Covenants (ICCPR and ICESCR) fail to live up to the promise to protect the right to a nationality, as explained by Martin Scheinin?

Neither the Covenant on Economic Social Rights (ICESCR) nor the Covenant on Civil and Political Rights (ICCPR) have a provision that gives effect to the Universal Declaration's right to citizenship. The exception is the ICCPR clause concerning the right of children to acquire a nationality. This was in turn covered by the 1961 Convention on the Reduction of Statelessness.

2. Why is liberalisation towards allowing dual citizenship paradoxical in relation to citizenship stripping? What are the possible effects of citizenship stripping for a dual national according to Martin Scheinin?

Many countries have liberalized their law and policy, to the effect that dual or multiple citizenship is often allowed. Paradoxically, this may widen the scope for permissible citizenship stripping, because stripping a dual national of their citizenship does not lead to statelessness. Nevertheless, a state cannot know or determine whether its citizen is also a citizen of another state, thus deprivation of nationality may lead to statelessness due to the faulty assessment of foreign law and citizenship status of a person. Moreover, in the context of the EU, being stripped of an EU Member State's nationality also results in the person losing their EU citizenship and the associated rights, including diplomatic protection.

3. Name three reasons why (national) security as a legitimate aim is not enough to justify citizenship stripping.

Three of the following:

For citizenship stripping to be a justified measure to protect national security, there must be:

- *A legal basis that meets the 'quality of the law' test.*
- *A proven benefit towards meeting the legitimate aim.*
- *A necessity to use this particular measure instead of another equally beneficial but less intrusive measure.*
- *Proportionality between the benefit obtained and the necessity tested harm to the individual: concrete weighing instead of abstract 'balancing'.*
- *No breach of other international obligations.*

4. Why does barring entry to the country through citizenship stripping represent a limited view of the concept of national security according to Christophe Paulussen?

Assuming that barring entry to the country through citizenship stripping will ensure the safety of the territory is dangerous and constitutes a narrow understanding of national security, which does not account for the current hyper-connectedness of the world, as well as the border-crossing nature of terrorism. Additionally, seeing that this measure results in countries losing track of (alleged) terrorists, the measure can lead to further radicalisation abroad, constituting a threat to the territory in which the person resides but also to the country who conducted the citizenship stripping.

5. According to Christophe Paulussen, why is nationality deprivation still resorted to in politics?

When it comes to countering terrorism, emotion often trumps common sense. Politicians want to showcase a strong response towards terroristic threats and are therefore opting for as many measures as possible in the hope that some are successful, or at least to show to the public that something is being done to combat the problem. Nationality deprivation is a highly symbolic measure and is used in order to communicate that certain behaviour will not be tolerated, even though that message can also be communicated through criminal prosecution or less far-going administrative measures.

6. Overall, according to both Martin Scheinin and Christophe Paulussen, why can citizenship stripping be a counter-productive measure for national security?

The rule of 'Aut dedere aut judicare' (prosecute or extradite) is a central rule of international criminal law, which requires an assessment of what best serves the national security of a country also on an international basis. In many cases, the citizenship of a country where the person has lived may be the only effective jurisdictional link to successful prosecution. If a person is stripped of their citizenship, it may be that no other country has ground for jurisdiction, or that the only other country that is able to prosecute is unable or unwilling to do so. Thus, because responsibility for prosecution of a criminal is put on another country, citizenship stripping can result in impunity, which makes the measure counter-productive.