The following full text is a publisher's version.

For additional information about this publication click this link.
http://hdl.handle.net/2066/85266

Please be advised that this information was generated on 2020-02-15 and may be subject to change.
FP7-SSH-2007-1-217504

ENACT
Enacting European Citizenship

Deliverable: WP4 – Deprivation of citizenship in France

Due date of deliverable: January 2010
Actual submission date: January 2010

Start date of Project: 01 January 2008
Duration: 36 months

Organisation name of lead contractor for this deliverable: The Open University
Project Coordinator: Engin Isin

Project co-funded by the European Commission within the Seventh Framework Programme (2207-2013)

<table>
<thead>
<tr>
<th>Dissemination level</th>
</tr>
</thead>
<tbody>
<tr>
<td>PU</td>
</tr>
<tr>
<td>PP</td>
</tr>
<tr>
<td>RE</td>
</tr>
<tr>
<td>CO</td>
</tr>
</tbody>
</table>
Abstract:

Keywords:
Content

1 Introduction ....................................................................................................................................................................................... 4
2 Nationality law – general remarks ..................................................................................................................................................... 5
3 Deprivation of citizenship – any Republican logic? ...................................................................................................................... 9
4 The current legal framework ............................................................................................................................................................. 12
4.1 Loss of citizenship (Perte) occurs in three situations (Article 23 of the Civil Code and its subparagraphs): ................................................. 12
4.2 Deprivation of citizenship (Décheancé – Article 25 of the Civil Code and its subparagraphs) ................................................................. 13
4.3 Withdrawal of nationality ................................................................................................................................................................. 14
5 Legislative changes, counter-terrorism and immigration .................................................................................................................. 15
5.1 The 1996 changes ............................................................................................................................................................................. 15
5.2 The 2005 changes ............................................................................................................................................................................. 16
5.3 Debates in Parliament ...................................................................................................................................................................... 18
6 A real case of deprivation - Adel Tebourski ....................................................................................................................................... 20
6.1 General approach to terrorism cases ............................................................................................................................................. 20
6.2 Adel Tebourski .................................................................................................................................................................................. 21
7 Final remarks .................................................................................................................................................................................... 23

© ENACT Consortium - Public
1 Introduction

For several years now, citizenship, integration and immigration have been high on the agenda of French politicians and public alike. Similar to the situation encountered in most Western states, France has known vivid and contested debates around issues of immigration and integration, suggesting that its model of assimilationist citizenship and the authorities' confidence in the possibilities of the nation to effectively assimilate foreigners and make them French is starting to fade. Currently, the French president Nicolas Sarkozy has opened a public debate on national identity which is supposed to bring the Republican values which are emblematic of modern France, back to the masses. This exercise of making national identity and citizenship once again relevant for the general public has been nevertheless tainted with accusations of political manipulation as it more or less took place in advance of the local elections organized at the end of 2009. While the initiators of the project have tried to deny the relationship between the debate on national identity and issues of immigration, the opposition and the press have stressed the conflation of the two subjects.

The structural linkage between citizenship, immigration and integration is a characteristic not only of this debate, but also of nationality legislation. Sergio Carrera has documented how integration has been subject to a gradual expansionist logic from its classical venue within the realm of nationality law to the regime covering the wider area of immigration. Nationality legislation has been changed as to ensure the assimilation of the individual concerned and it is presented as the final step of a successful process of integration by non-nationals into the privileged status of citizen. Becoming a French citizen has been made more difficult by the introduction of various tests and requirements based on the ideology of assimilationism that

1 It is worth noting that the pertinence and effectiveness of both multiculturalism, as the trademark of British integration policies, and assimilationism as the main French approach to issues of integration and migration have been heavily questioned in recent years.

2 See, Discours De M. Le Président De La République, Déplacement dans la Drôme, La Chapelle en Vercors – Jeudi 12 Novembre 2009 downloaded from www.elysee.fr; Haute Conseil à l'intégration, Faire Connaître Les Valeurs De La République, Avril 2009, http://www.immigration.gouv.fr/IMG/pdf/RapportHCIvaleursRepp210409.pdf. The Report makes interesting reading for several reasons. The national debate launched by Sarkozy on the topic of national identity is one which should interest the public at large and one would assume that any effort in explaining traditional French values and making them more relevant for the citizenry of the 21st millennium should target not only migrants wishing to become citizens but citizens alike. However, only migrants are the target group, since for the rest of the citizenry this process of understanding is supposed to take place during the school years. It is worth mentioning that the report tries to make a difference between the knowledge of the said republican values and their understanding and respect (adherence seems not to be required if values are respected). This becomes more interesting as the report devotes an entire chapter towards the end to several incidents that have taken place during football matches during which the French anthem was hissed by members of the audience, while the president and other members of government were present. These events are catalogued as examples of a part of French youth (of immigrant background) showing a lack of allegiance towards the French nation and its values (see, pp. 58- 59 of the Report).


4 Sergio Carrera, op.cit., p. 295
requires the citizen-to-be to socialise himself towards the defining republican values of the French republic and to at least, formally, become like the prototype French citizen. The provisions on loss of French nationality have also undergone changes, mainly connected with the strengthening of the legal tools that state authorities can use in the fight against terrorism. This report will focus on the last changes introduced to the powers of deprivation, the debates that they have generated in Parliament and the manner in which they affect the current debates around citizenship and identity in France.

2 Nationality law—general remarks

The current nationality legislation in France is part of the larger story of state and nation building. In order to understand the implications of the changes brought to the regime of nationality attribution, one has to bear in mind the context in which this legislation has developed as well as its specificities and complexities. The starting point of most discussions on French nationality and citizenship is the French Revolution which has been instrumental in conceptualizing the nation as “une et indivisible” and therefore, in inventing national citizenship and nationalism. Since the revolution, citizenship and nationality are separate concepts, while political understandings of belonging prevail over ethnocultural ones. Brubaker argues that as a national revolution, the French revolution has brought along a dual transformation: the creation of a nation une et indivisible composed of legally equal individuals standing in a direct relationship to the state, out of a patchwork of overlapping corporate-jurisdictions and the pervasive corporate privilege; and the substitution of a militant, mobilized nationalism for the cosmopolitanism, the prevailing indifference to nationality of the old regime.

One of the interesting aspects the period is the perversion of the Revolution’s initial cosmopolitan nationalism under a climate of fear and extreme suspicion towards strangers which start to be targeted by various repressive measures (a system of registration and surveillance, expulsions, imposing special criminal penalties, requiring special proofs of civisme etc). This leads Brubaker to argue that by inventing the national citizen and the legally homogenous national citizenry, the Revolution simultaneously invented the foreigner. “Citizen and foreigner would be correlative, mutually exclusive, exhaustive categories.” What is worthwhile mentioning for the topic of deprivation of citizenship, and the possibility of turning citizens into foreigners, is Brubaker’s observation that foreigner as a political epithet, was applicable also to nationals. The explication lays in the lack of sharp distinctions between the legal and political definitions of foreigner, as illustrated by the fact that certain “bad citizens” could be redefined as foreigners, as nonbelongers. Thus, the

---

6 For a more comprehensive description of citizenship and nationality from a historic perspective see Brubaker, op.cit., pp. 30-40 and Patrick Weil, How to be French, Nationality in the Making since 1789, p.20; Jean-François Berdah, Citizenship and National Identity in France from the French Revolution to the Present, in Frontiers and Identities, Pisa University Press, 2006, pp. 141-153 (at 142-143).
7 Brubaker, op.cit., p. 43.
8 Idem., p. 45-46
9 Ibidem
10 Idem, p. 46.
possibility of deprivation appears to be structurally incorporated in the creation of the national republican state.

The Revolution marks the breaking point from the nationality policy of the Ancient regime, as jus sanguinis replaced jus soli as the main principle for nationality acquisition. Jus soli was deemed to be representative of feudal allegiance and as such contradicting the ideal of equality before the law and the depiction of the citizen as an independent subject. Nevertheless, in the 19th century (1851) the need to enlarge the population and the pool of military recruits required the return of jus soli as the main mode of citizenship acquisition. Besides constant debates around the principles upon which nationality should be bestowed, the 19th century has also witnessed several trends that have left a mark on nationality legislation up to now. As such, one should mention the nationalization of race and the racialization of nationhood and the extension of jus soli to the second generation of migrants born on French soil (while in 1889 the law is changed as to make the third generation automatically French if born on French soil). For 100 years the provisions have remained more or less in the same form. Weil sees this as a beneficial development as it is both a mechanism for granting French citizenship automatically to third generation migrants but also the easiest way of proving citizenship for French citizens as well (one has to provide the birth certificates of the ancestors).

Automatic acquisition of French nationality by the second and third generation is seen by many as the cornerstone of French nationality policy and legislation. It is based on an assimilationist ideology that has largely remained intact, despite it being challenged various times along the years. Its main argument is that Frenchness is acquired and not inherited and in the case of naturalized citizens, it is accompanied by a social transformation: “immigrants could be redefined legally as Frenchmen because they would be transformed socially into Frenchmen through the assimilatory workings of compulsory schooling and universal military service.” The current debate on national identity, while not directly challenging assimilationism as an integration ideology, it does focuses on the manner in which migrants can be successfully integrated as to ensure social cohesion. In reality this topic seems to be a constant presence on the political agenda and it adds to concerns that nationality and immigration have become securitized and politicized topics. Under pressure from the National Front and its gaining supporters, the center right parties took up the theme during the 1986 legislative campaign and ended up proposing to suppress the automatic acquisition of French citizenship. Consequently, by the end of the 1980’s and especially on the eve of the 1996 elections, there was a rise in nationalist discourse which ended with a nationwide debate launched by Chirac on the issue of citizenship and migrants. However, the instrumentalisation of nationality and immigration discourses and the return to a

---

11 See, Brubaker, op. cit, p. 90; Patrick Weil and Alexis Spire, France in Rainer Bauböck, Eva Ersbøll, Kees Groenendijk, Harald Waldrauch (Eds), Acquisition and Loss of Nationality, volume 2, Amsterdam University Press, 2006, p. 188 (From now on referred to as NATAC )
12 Brubaker, p. 85-86. p
14 Carrera, op.cit., p. 302.
15 The motto in the 80’s became “Etre Français, cela ce mérite”.

© ENACT Consortium - Public
nationalist discourse should not be pinned entirely on the right wing. The left has also used the debate to divert attention from the social and political crisis at the end of the 1980’s that generated the “falling apart of the grande utopie socialiste” and the social problems faced by migrants\textsuperscript{16}.

The comeback of nationalist ideology is explained by several factors. On one hand, there was the so-called Algerian crisis in French nationality as a consequence of decolonisation and the grievances of second-generation Algerians in France\textsuperscript{17}, and on the other hand, what Brubaker describes as “the devaluation, desacralisation, denationalization and pluralisation of citizenship” perceived by nationalists defending the traditional model of the nation-state.\textsuperscript{18} According to him, nationalists stress the need to re-assert the value and dignity of national citizenship and stressing the idea that state-membership presupposes nation-membership. Their demands are either that migrants naturalize and assimilate or that they depart. Brubaker argues that in reality what nationalists reproach dual nationals is the manner in which dual citizenship has led to the devaluation and desacralisation of French citizenship. By the desacralisation of citizenship is meant a “general aspect of modern citizenship in the West rooted in the emotional remoteness of the bureaucratic welfare state and in the obsolescence of the citizen army”\textsuperscript{19}. Yet similar processes of desacralisation of citizenship have been documented by other scholars as related to the decline of importance of work, war and reproduction for the conceptualization of citizenship\textsuperscript{20}. While it is clear that the process of desacralisation or devaluation of citizenship can be explained in terms not primarily related to an increase in dual nationality, in the French case it seems to be largely associated with a certain manner in which dual Algerian-French nationals talked about their dual citizenship. French citizenship was described as having a purely instrumental significance. Brubaker emphasizes that this approach is not limited to Algerians but in their case it is more visible. This led to dual nationals being stigmatized as false citizens, citizens of nowhere\textsuperscript{21}.

One might ask, if indeed this stigmatization of dual nationals can be documented, if it also leads to an easier acceptance of rules of deprivation. Since this group of citizens is seen with suspicion, their transformation into foreigners is not resisted by the body politic per se. What is worth remembering is that the instrumentalization of citizenship argument seems to run only against migrants. If we actually consider the

\textsuperscript{16} Carrera, op.cit., p. 308; Daniel Bélard, Randall Hansen, Reforming the French welfare state: Solidarity, social exclusion and the three crises of citizenship, in West European Politics, 23:1, pp. 47-64.

\textsuperscript{17} Decolonisation has played its part in shaping France’s migration policy, as the government had to deal with the conditions under which former colonial subjects were allowed to enter France. Algeria was the most problematic former colony in this respect leading to an important attack on the attribution rules in the 1980’s. The Algerian crisis in nationality legislation, the desire of certain dual Algerian French nationals to renounce their French nationality imposed on them at birth without the possibility of option, came at a time when double jus soli was questioned and the far right attempted to appropriate the nationality issue on its political platform by pushing the issue of assimilability on the public agenda. For a more comprehensive discussion on decolonisation see Weil, How to be French, pp. 152-168.

\textsuperscript{18} Brubaker, op.cit., p. 143.

\textsuperscript{19} Idem, p. 145


\textsuperscript{21} Idem, p. 147. The nationalist argument is that citizenship should induce respect for what it is rather than calculation about what it entails
nationality politics pursued by France over the course of its history, it becomes clear that liberal naturalization policies have been used as a tool in the expansion and strengthening of the Republic and its colonial empire. Yet, similar to the case of the UK and its experiences with decolonisation, when migrants try to use to their advantage the possibility to reside or naturalize, they are stigmatized for using migration or citizenship to achieve security of residence and legal status. In the French example this is underlined also by arguments regarding the inassimilable character of today’s mainly Muslim migrants, as opposed to earlier Jewish or Catholic ones. Moreover, Weil shows how while the allegiance and assimilability of dual nationals was being questioned in public debates, the government was busy “preserving the ties with French emigrants”. It is interesting that the loyalty of this group is rarely questioned although they are not direct beneficiaries of the institutional framework that ensures socialization into French society. They were outside the direct reach of the school and army, the traditional French “socializing” institutions, not just for migrants, but Frenchmen as well. Here the socializing institution is supposed to be the family itself, but since the family has left France it can be questioned how far its powers go.

The most visible consequences of this new approach to nationality and immigration consist in relatively frequent legislative changes from the 1990s onwards regarding nationality attribution and immigration (in 1993, 1998 and 2003) and several general, nation-wide debates on nationality and integration all showing a clear nationalist tendency. In 2002, the right wing party of Le Pen returned to power and managed to repoliticise nationality and immigration which were presented as the main causes of insecurity, instability and criminality inside the country and a threat to the stability and cohesion of the French Republic. Similar to the 1980s, the political parties on the centre have embraced the topic of immigration and its impact on French citizenship and identity. This has led to legislative changes in 2003 that have had an overall restrictive effect for naturalization.

---

22 Idem, p. 49. Although, one might note that the assimilability of Jewish migrants has not always been considered that self-evident.
23 Weil and Spire, op.cit, p. 196
24 The first debate took place after Chirac had won the elections in 1986 and decided to make the reform of nationality legislation a priority. A Commission on French Nationality was organized that put forward a report on the topic and led the debates on integration. The nationality legislation was changed by the Pasqua Law of 1994, the Code of Nationality introduced in 1945 was abrogated and the nationality provisions reintegrated in the Civil Code. According to Weil the 1993 law on nationality was not just a reform of nationality legislation but it was part of a larger agenda that aimed at controlling immigration to France. For more details see Weil and Spire, NATAC, pp. 200-202.
25 See Carrera, op.cit., p. 310-315;
26 Weil and Spire, p. 203 Weil and Spire argue that the changes introduced in 2003 to naturalization did not attract too much attention. The main explanation is that the law had brought much more restrictive changes in other areas of migration law which have been picked upon by various NGO’s, activists etc.
3 Deprivation of citizenship – any Republican logic?

In their current form, the provisions on deprivation of nationality have been introduced in French legislation at the beginning of the 20th century, and similar to the case of the United Kingdom they are initially connected with the First World War and the mistrust towards citizens of enemy origin. The Government’s suspicion of newly naturalized citizens even led to the formation of an agency dedicated to their surveillance under the authority of the Minister of Interior. The rules on nationality attribution were amended and a procedure under the control of the Council of State and then of the Supreme Court (2 appeal layers) was introduced. It allowed the stripping of French nationality from naturalized persons of enemy origin. 25,000 persons had their nationality reexamined and 549 men and women of German and Austro-Hungarian and Ottoman origin lost their French citizenship (Law of 7 April 1915 and Law of 18 June 1917).

For a short period after the war, the French government returned to a more practical and instrumental approach towards immigration as the national interest required the increase of the population in an effort to rebuild the country. However, because the financial situation deteriorated, the debate regarding the conditions for citizenship acquisition became hotly debated issues again. In a climate charged with xenophobic and nationalist discourses, changes were introduced to the law that prevented newly naturalized citizens from exercising certain professions straight ahead after naturalization (in 1934). In 1938 a law was passed that prevented naturalized citizens from voting or being elected in public office for five years; consequently the denaturalization provisions were reinforced. The discourse becomes dominated by the idea that the French state had to be defended against fraudulent naturalizations whose increase was predicted due to the introduction of shorter waiting periods. The “paper Frenchmen” issue was also gaining popularity as the naturalization rate was supposed to be increasing. At the same time, proposals to withdraw nationality from persons recently naturalized who had committed crimes and misdemeanors, most of whom were of Levantine or Oriental origin were being put forward.

---

27 In France, target groups were Germans, Austrians, Ottomans and residents of Alsace-Moselle (members of the last group were even interned in concentration camps). The idea was to protect the “true French” who might be false Germans and to protect the country from French nationals who might be enemy spies. See Weil, How to be French, p. 60. Similar to the UK case, situation of French women married to Germans was also an issue as marrying them they had became German themselves and as a consequence ended being interned in camps.

28 Weil and Spire, NATAC, pp. 189-190; Berdah, op.cit., pp. 145-146. This agency was established in April 1928 but was disbanded after the war stopped.

29 The entire period seems to have been dominated by a mass hysteria regarding Germans infiltrated in the heart of French economy and finance systems.

30 The law was changed so that women marrying a foreigner would not lose their French citizenship (this proved to be a major cause of loss of citizens); also favourable naturalization conditions were introduced.

31 Weil and Spire, op.cit., p. 190.

32 The main worry was that one cannot produce Frenchmen simply by awarding a naturalization decree and outraged cries about the inflation of nationality are combined with ideas about the selection of migrants based on their ability to be assimilated.

33 See, Weil, How to be French, op.cit., p. 72.
Besides the 1915 and 1917 laws, it is worth mentioning the law of 1927 that introduced the possibility of revocation of nationality targeting cases of disloyalty\textsuperscript{34} and the decree law of 21 November 1938 that added unworthiness as a ground for revocation. It applied to persons who had committed after their naturalization (in France or abroad) a crime or offense leading to a prison sentence of more than one year. Revocation was now possible for disloyalty, fraud and unworthiness. From 1928 to 1939 there had been 16 revocations (261,000 naturalizations).

Weil argues that the extension of the grounds for revocation is connected with the change of the waiting period for naturalization, from 10 to 3 years. The 1938 law was further changed in 1945 and after World War II 279 revocations were operated (1947-1953). Weil argues that since the late 1950’s revocation for disloyalty (any French person also having a second nationality) has fallen into disuse, now being only one case per year. At the beginning of the cold war, revocations were used against naturalized communist militants.\textsuperscript{35} It is however, interesting to observe that the general approach to loss of citizenship was developed at the beginning of the century, a time that was dominated by racist and anti-immigrant public discourse and measures. Thus we can question whether the extension of the power of the state to take away citizenship is connected with the liberalization of the acquisition criteria for citizenship or it has to do with the attitude displayed by the authorities and part of the public towards foreigners.\textsuperscript{36}

At the beginning of the Second World War the government decided to speed the naturalization of the 3 million foreigners present in France in order to use them in the war. But during the Nazi occupation and the Vichy regime the issue of naturalized citizens was reopened this time with the aim of getting rid of the citizens of Jewish origin\textsuperscript{37}. During the Vichy regime, all naturalization that had taken place after 1927 have been reviewed leading to the denaturalization of 15,154 persons.

\textsuperscript{34} Revocation was possible for having carried out acts inimical to the internal or external security of the French state; having committed acts beneficial to a foreign state but incompatible with being a French citizen and inimical to France’s interests; having avoided the obligations resulting from the laws of recruitment.

\textsuperscript{35} For more details, see Weil, How to be French, p. 243-244.

\textsuperscript{36} It is not very easy to separate the two in practice but my point is more that these powers to deprive of citizenship are not necessarily the downside of liberal naturalisation policies as Weil seems to argue.

Some authors argue that the Vichy denaturalisations are very different from the possibility of denaturalizing citizens under current legislation (or the legislation before the Vichy regime, for that matter). Vichy is presented as an abnormal moment in the nationality history of France and one not to be repeated. Yet, there are also authors who propose a more nuanced view of the Vichy denaturalisations and argue that this policy was in fact a continuation of the racially discriminatory policies and measures introduced by French authorities after the beginning of the 20th century.\textsuperscript{38}

Laguerre argues that the review of all naturalisations after 1927 and the denaturalisations that followed did not operate exclusively on the basis of German policy or dictates but rather, they were the expression of a certain idea of what France was and who the real French were ("on denaturalise au nom d’une certaine idée de la France et des Français").\textsuperscript{40} His conclusion that the 22 July 1940 law has been applied independently of German policy and that the French government has knowingly and willingly engaged in the deportation of thousands of its former nationals to the camps after March 1942 is troubling for the understanding of the Vichy denaturalisations as an isolated episode in French nationality legislation. Even more so is his reminder that the slogan used during one of the more recent debates on national identity "Être Français, cela se mérite" was in fact used by the extreme right in the 1930’s racist and xenophobic debates on immigration and its impact on national identity, only to be borrowed later on by the Vichy regime to legitimize the law on denaturalisation.\textsuperscript{41}

After the fall of the Vichy regime, the laws on denaturalisation adopted during the war have been abrogated, but not as easily as one might have imagined.\textsuperscript{42} All denaturalisation dossiers were re-examined and in most cases the denaturalisation was annulled.\textsuperscript{43}

This short historical presentation of the provisions on deprivation aims at understanding whether or not these powers are structural to the construction of modern nationality legislation in France. Undeniably there is a connection between the development of this legal framework around denaturalization and the liberalization of the naturalization procedure, the increase in the number of naturalizations and of dual nationals\textsuperscript{44}. Following this reasoning, an indifferent and tolerant policy towards dual nationality requires the possibility of withdrawing of nationality in cases of disloyalty or unworthiness as a sort of safety catch. If indeed this would be the case, one would expect that countries that do not allow dual

\textsuperscript{38} The legal framework on the basis of which the Vichy denaturalisation have taken place consists of the law of 22 July 1940 that provided for the revision of all naturalisations since 1927 – 15152 persons lost citizenship on its basis; the law of 23 July 1940 based upon which 446 persons that had fled France without the authorisation of the Vichy regime have lost citizenship and the law of 7 October 1940 based upon which all Algerian Jews have been denaturalised.

\textsuperscript{39} See, Weisberg, op.cit and Laguerre, op.cit

\textsuperscript{40} Laguerre, op.,cit., p. 9.


\textsuperscript{42} Weil, op.cit., p. 127. Various members of the new authorities wanted to maintain the denaturalisations effected during the war as they considered them useful for „purifying” the French nation from elements that could not be easily assimilated (they were not referring to Jews as such).

\textsuperscript{43} For more on this topic, Weil op. cit., p. 131. The exception seems to be the case of active collaborators.

\textsuperscript{44} Weil, op.cit., p. 228
nationality would have much stricter provisions on deprivation because lack of allegiance. This theory remains to be tested. The two countries analysed until now, United Kingdom and France being both tolerant of dual nationality. Loss of citizenship because of fraud, is not as such connected with the person’s second nationality (one may became stateless if nationality is withdrawn for reasons of fraud) and it seems to be accepted as unproblematic in French literature. But, bearing, in mind what has been said about Vichy, is the power to denaturalize indeed a downside of liberal nationalisation policy as Weil suggests? These historical examples suggest in my opinion that the deprivation powers inserted in French nationality legislation at the beginning of the century (both pre and during the Vichy regime) are more the result of racist and xenophobic discourses towards migrants that ended up being formalised and institutionalised as law, with devastating consequences during the 1940-1944.

4 The current legal framework

Currently, French law distinguishes between perte (loss), applicable to all citizens and décheancé (forfeiture, deprivation) applicable only to naturalized citizens. Withdrawal of a naturalization certificate is seen as a separate case of loss of nationality and it mainly involves cases of fraud.

4.1 Loss of citizenship (Perte) occurs in three situations (Article 23 of the Civil Code and its subparagraphs):

- possession of a foreign nationality (conflict of loyalties) – The provision is applicable only if the person lives abroad; a French person, voluntarily acquiring a second nationality, does not lose French citizenship automatically; it has to make an express declaration to this extent (Article 23 Civil Code). Nevertheless, this might be different for persons acquiring the nationality of one of the countries that have signed the Council of Europe Convention of 1963 that aims at reducing the cases of dual nationals among the signatories. While in literature this considered to be more of an obsolete case of loss, there has recently been a highly publicized case involving a French man married to a Dutch man. The couple was residing in Holland and as a manner of showing attachment to his country of residence, the Frenchman decided to naturalize in Holland, only to find out that he had lost ex lege his French citizenship upon the moment he became Dutch.

- residence abroad for a long period of time (loss of ties with France) – nationality must have been acquired on the basis of jus sanguinis; if it was on the basis of jus soli (which requires that 2 generations have been born on French soil) than it is considered that the links with France are strong enough. Secondly, the person concerned must have never had its habitual residence in France.

---

45 See previous deliverable on deprivation in the United Kingdom.
46 Weil argues that at the beginning of the 20th century when the provisions of deprivation for other reasons than fraud were being contemplated, they were seen as against French legal tradition but ultimately their necessity was accepted in the face of the growing number of naturalizations. Well, How to be French, p. 240.
47 Bernard Audit, Droit International Privé, 4eme édition, Economica 2006, no.1004.
- the behavior of the citizen (défaut de loyalisme) - the idea behind this case is that the French national is behaving like a citizen of a different country towards which he/she is also showing the normal allegiance that a French national should show towards his/her own country. This case has moral implications and it is seen as a sanction. There are two situations covered by this provision: active exercise of a foreign nationality and employment in a foreign public service (army, international organization to which France does not belong.). In this last case the person concerned is not required to posses de jure a foreign nationality. The government must first require the person concerned to give up this behavior; there are several procedural guarantees such as the approval of the Council of State etc.

4.2 Deprivation of citizenship (Décheancé – Article 25 of the Civil Code and its subparagraphs)

Is applicable only to naturalized citizens and only if they do not become stateless.49 The aim of this provision is to sanction a lack of allegiance (default of loyalisme) that can be identified in various circumstances: conviction for acts against the fundamental interests of the Nation, for ordinary or serious offences which constitute acts of terrorism, or for crimes that are considered to be crimes against the public administration (crimes committed by persons holding a public office), acts of insubordination and finally engaging, for the benefit of a foreign state, in acts that are incompatible with the quality of French national and acts that are prejudicial to the interest of France. In the last case, deprivation can occur in the absence of a court judgment (conviction).

All the changes that have been operated recently in respect of the deprivation provisions deal with deprivation under Article 25 of the Civil Code. In 2003, loss of citizenship was made possible also for facts that had occurred before the person’s acquisition of French nationality50. Besides the general safeguard against statelessness, the general rule of Article 25 is that the facts imputable to the person concerned must have occurred either before acquisition of nationality or within ten years after acquisition. Moreover, deprivation can be pronounced only within ten years of the perpetration of the facts. However, in 2006 these rules have been amended. If the imputable facts are acts of terrorism or acts against the fundamental interests of the Nation, the time limits are increased from 10 to 15 years.51 The procedure requires that the person concerned be notified of the government’s intention to deprive and be given the opportunity to make observations and mount a defense. The order to deprive has to be motivated and the authorities can proceed with deprivation only after the favorable opinion of the Council of State.52 Loss on the basis of this article operates only for the future.

Based on the last official data published, in 2006 there have been 5 cases of loss on the basis of Article 25 of the Civil Code and all of them involved persons convicted for acts of terrorism and where possible the person has been expelled and removed

49 This last safeguard was introduced in 1998 (act no 98-170 of 16 March 1998).
50 Law no 2003-1119 of 26 November 2003
51 Law no 2006-64 of 23 January 2006
52 I will come back to these changes in the following section.
from French territory\(^{53}\). In 2005 and 2004 there were no cases, whereas in 2002 and 2003 there has been one case in each year.

### 4.3 Withdrawal of nationality

regulated by Article 27-2 of the Civil Code, is the third main case of loss at the initiative of the state and according to statistical data available, the most frequent\(^ {54}\). The provision is applicable in two types of cases. Firstly, when the naturalisation or reintegration in French nationality takes place and the administrative authorities are unaware that one of the conditions required for naturalisation or reintegration was, in fact, not fulfilled. The typical example seems to be when the person applying for naturalisation or reintegration has committed certain acts that would normally lead the authorities to deny the request and these acts remain undisclosed.\(^ {55}\) According to the administrative authorities, the second type of cases covered by this provision involves fraud regarding one’s family situation\(^ {56}\). By fraud it is understood a voluntary misrepresentation of changes intervened in one’s family situation. Most cases seem to involve persons applying for naturalisation who do not disclose that in their country of origin they are married and their spouse is habitually resident abroad. In case of such disclosure, the application would be rejected as it shows that the centre of the applicant’s family interests is not France.\(^ {57}\) The applicant’s true family situation usually comes to light once they ask to have their marriage inscribed in the French registry of civil status. Thus, the ministry for foreign affairs alerts the relevant authorities within the naturalisation department regarding a possible fraud. The fraud is considered to come from the fact that the naturalised spouse has willingly hidden the existence of the foreign spouse in order to facilitate his entry into France after his own naturalization. The underlying assumption here is that it is easier for French citizens to bring a foreign spouse into France than for resident migrants upon whom more cumbersome requirements are placed. The procedure does require the approval of the Council of State\(^ {58}\) and more importantly, it has to take place within

---

\(^{53}\) Acquisitions et pertes de la nationalité française. Francisations des noms et prénoms (Données, chiffrées et commentaires, Année 2006) issued by La Sous-Directeur des Naturalisations, Ministère de l’Emploi, de la Cohesion Sociale et du Logement, pp. 74.

\(^{54}\) Acquisitions et pertes de la nationalité française. Francisations des noms et prénoms (Données, chiffrées et commentaires, Année 2006) issued by La Sous-Directeur des Naturalisations, Ministère de l’Emploi, de la Cohesion Sociale et du Logement, pp. 75-76

\(^{55}\) Article 21-23 of the Civil Code states that in order to be naturalized one must be of good character and must not have incurred one of the sentences expressly refers to in Article 21-27 (acts of terrorism and acts against the fundamental interests of the Nation). The good character requirement in practice means that a persons who has committed acts for which more than 6 months of prison are prescribed by law (regardless of whether the crime was intentional or not) will be denied naturalization.

\(^{56}\) Acquisitions et pertes de la nationalité française. Francisations des noms et prénoms (Données, chiffrées et commentaires, Année 2006) issued by La Sous-Directeur des Naturalisations, Ministère de l’Emploi, de la Cohesion Sociale et du Logement, pp. 75

\(^{57}\) This is the interpretation given to the provision of Article 21-16 of the Civil Code by the administrative courts. The article states that nobody may be naturalised unless he has his residence in France at the time of the signature of the decree of naturalisation.

\(^{58}\) When describing the different procedures that can lead to loss of citizenship, most authors consider the approval of the Council of State to be an important safeguard. However, one should bear in mind that the Council of State most of times has the same opinion as the authorities. The fact that deprivation in cases of fraud must take place within certain time seems to me a more important limitation, especially if one considers other legislations were the authorities are not bound by similar time limits.

© ENACT Consortium - Public
certain time limits. If it is a case of fraud involving misrepresentation, deprivation may occur only two years after the fraud has been discovered. In case withdrawal is sought because one of the legal conditions that must be met in case of naturalization or reintegration was in fact violated, the authorities must act within one year after the naturalization decree has been published in the Official Journal.

The latest official data is for 2006 when 817 files have been considered as possibly involving a withdrawal case. From 817 files, 32 were sent to the Council of State for approval and 27 have been approved. Compared with previous years there was a substantial increase in the number of files examined.

2006 seems to have been an extremely prolific year for denaturalization in France showing an increase in the number of cases based on terrorist activity as well as in fraud cases. With respect to fraud cases, it is worth stressing the increase in the number of files scrutinized by the authorities. This conclusion seems to be consistent with the general approach towards immigration and naturalization that has been labeled as increasingly securitarian.

5 Legislative changes, counter-terrorism and immigration

5.1 The 1996 changes

Most of the changes operated to the provisions on loss of nationality at the initiative of the state are connected with the fight against terrorism. In 1996, the Act to strengthen enforcement measures to combat terrorism and violence against holders of public office or public service functions and to enact measures relating to the criminal investigation police operated several changes to France’s counter-terrorism legislation. Among them, a new ground for deprivation of citizenship was introduced. Section 12 of the Act provided that persons having acquired French nationality may be deprived of that nationality where they are convicted of a crime or an offence constituting an act of terrorism.

---

56 For comparison, during 1973-1986 there have been only 3 cases of loss; see André Lebon, Attribution, acquisition et perte de la nationalité française: un bilan 1973-1986 (Revue européenne de migrations internationals, 1987, vol 3, no 1, pp7-34)

60 According to a report on counter-terrorism in France published on the server “security and society.org” in 2006 France had pursued aggressive counterterrorism measures leading to the arrest of 317 people, 140 for links with Islamist terrorism, 150 for attacks in Corsica and 27 for ties with ERA. France authorities have adopted new legislation on the topic, the White Paper on terrorism was issued in March 2006 and several judicial proceedings have taken place against Islamic terrorists. Interestingly enough in May 2006 the government has revoked the security clearances of 72 individuals working in private companies at Charles de Gaulle international airport because they showed sympathies with Islamic extremists. Some of them have challenged the decision and had to be reinstated. The entire report is available at http://www.security-society.org/?q=node/494

61 Terrorist acts were defined by the law as, acts done intentionally; in relation to an individual or collective act calculated to seriously disrupt law and order by intimidation or terror, to assist the unlawful entry, movement or residence of foreign nationals within the meaning of section 21 of the ordinance of 2 November 1945.
The constitutionality of some of the measures introduced by the Act has been challenged before the Constitutional Court by a group of deputies and senators. Regarding Section 12 of the Act that introduced the new deprivation ground, the deputies have argued that it violates the principle of equality before the criminal law and the principle that penalties must be necessary. In their opinion, the fact that the perpetrator had acquired French nationality by naturalization or by birth does not justify a difference in treatment under the criminal law; moreover, the provision which in fact is a penalty provision, was seen as neither necessary nor useful for the upholding of public order.

The Government has defended the introduction of the new ground by arguing that it did not bring anything new to the existing legislation as deprivation for terrorist acts was already covered by the Civil Code since they were crimes for which a penalty of minimum 5 years of imprisonment was attached. In reality, what the provision did was to allow deprivation for terrorist acts when the person that committed the act has received a sentence of less than 5 years imprisonment. This was considered natural and part of the logic of paragraphs 1 and 2 of Article 25 that identified certain crimes for which deprivation can be engaged regardless of the penalty attached to them. Moreover, it was argued that the mechanism of deprivation did not contradict any principle recognized by the Republic and that the commission of such acts was, in itself, a breakage of the republican pact.

The Constitutional Court took the side of the Government and declared the measures constitutional. It stated (paras. 22-23) "The principle of equality does not preclude the legislature from treating different situations differently nor form derogating from equality for reasons of general interest, provided in both cases that the difference of treatment in relation to the object of the statute providing for it. In relation to the law governing nationality, persons having acquired French nationality and persons who enjoy French nationality by birth are in the same situation; however, in view of the avowed objective of combating terrorism, it is in order to provide that for a limited period the administrative authorities may deprive a person of French nationality without the resultant difference in treatment being a violation of the principle of equality; given the intrinsic gravity of offences of terrorism, it is not contrary to Article 8 of the Declaration of Human and Civic Rights for the legislature to provide for such penalty." Thus, according to the Constitutional Court the fact that deprivation is limited in time saves the measure from being discriminatory.

5.2 The 2005 changes

The next important amendment was introduced in 2005 with the occasion of a new law on the fight against terrorism and it dealt precisely with the extension of the limited time, during which the authorities could deprive of citizenship, from 10 to 15

63 Deprivation was possible under the regime of the previous nationality code under the heading of crimes against state security. A variety of laws listed this possibility: the laws of 7 April 1915 and 18 June 1917; the Law of 10 August 1927 made permanent that possibility of deprivation; the Ordinance of 10 October 1945 whose version is closest to the 1996 law; Law no 73-42 of 9 January 1973 (deprivation can no longer have a collective effect) and Law no 93-933 of 22 July 1993.
64 Nevertheless, how limited in time should this possibility be, was not as such assessed by the Court. Ten years is limited enough but what about longer periods?
years. The proposal for a new law on the combat of terrorism was put forward in 2005 by Nicholas Sarkozy, at that moment minister of interior. It was adopted via an emergency procedure and after a very short debate in parliament it became law on the 29th of November 2009. The law is modeled or tries to borrow elements from the British legislation on counter-terrorism; the opposition parties (mainly left wing parties and the Greens) have complained that in reality the law is based on the American anti-terror legislation and that its approach is the end of liberalism in France.

The law’s overall effect has been to introduce measures that undermine civil liberties; surveillance has been one of the major themes of the law and of the discussions surrounding the fight against terrorism. Also, some measures voted with the occasion of the law were in fact related to hooliganism and not terrorism as such; this is an interesting mix, which can be traced also in the current debates on national identity (see the debate on the disrespect showed to the national anthem during football matches; in reality only during the matches between France and Algeria which makes the debate in reality one about immigration and integration).

Alongside, the liberalization of the legal regime of video surveillance and of the control of phone and electronic communications and their retention, the law also introduced new possibilities of sanctioning terrorism-related crimes as well as introduced the centralization of the jurisdictions in charge of imposing sanctions to such crimes and increased the period during which deprivation of citizenship is possible. Moreover, it has facilitated identity controls in international trains, prescribed the treatment of personal data that might be useful in the fight against terrorism and introduced provisions to help fight the financing of terrorist activities and a procedure for freezing assets.

Among the changes introduced, was the extension to 15 years of the delay during which a person can be deprived of citizenship. The measure is applicable only to persons who have acquired citizenship by naturalization, due to marriage to a French national or by reintegration in the French nationality. The acts for which deprivation can be engaged are conviction for an act that manifestly harms the fundamental interests of the Nation, a terrorist act or an act incompatible with the quality of being French and which is harmful to the interests of France.

When Sarkozy introduced the law in parliament, he argued that the new provisions on deprivation were needed because terrorist networks adopted a strategy of territorial implementation: once naturalized as French, activists could no longer be subjected to measures of interdiction in France or expulsion; they no longer had the obligation to obtain visas for various countries; with other words they were able to enjoy all the advantages of being a French citizen. As such, increasing the period during which deprivation can be affected was just a matter of counter-acting the strategies deployed by terrorist networks. Also 15 years were considered more

---

65 Several members of the opposition have challenged the emergency character of the law but the government has argued that in lights of the terrorist attacks that had taken place that year in Spain and the UK, the law had to be adopted immediately. The Government has tried to portray the law as being adopted with the consensus of all political parties, but in reality there have been various contestations around the main provisions of the law.

66 See, Assemblée nationale, Deuxième séance du mardi 29 novembre 2005, p.17
appropriate as an extra safeguard that the convictions justifying the deprivation order would be final.\(^67\)

The Constitutional Law Commission has scrutinized the new deprivation provisions and found them to be sound.\(^68\) The Rapporteur, M. Alain Marsaud (a deputy for the UMP) argued that deprivation has been seldom used, (at that time, the last deprivations had taken place in 2002 and 2003). He found the government’s explanation as to the need to increase the period during which deprivation can be engaged from 10 to 15 years convincing. It was argued that based on the examples furnished by countries that have experienced terrorist attacks, it was possible to ascertain that persons that have acquired the nationality of their country of residence (presumably opposed to citizens by birth) have been involved in terrorist acts\(^69\). The extension to 15 years was deemed to be in accordance with the case-law of the Constitutional Council that has stated in the past that deprivation can occur only within a limited time period. The measure was not disproportionate especially considering that the Council recognizes the particular seriousness of terrorist acts.

### 5.3 Debates in Parliament

During the first round of general debate in the National Assembly, the provisions on deprivation have not been among the main points of discussion. The general debate has focused on the desired general approach towards terrorism and the best manner in which to fight it. The law as such was introduced after attacks in Spain and England; France had not had attacks on its soil for some time but it had confronted itself with severe turbulences in the banlieux (suburbs). The urgency of the law has been justified by the change underwent by terrorism itself. The government has not tired to point out that terrorism nowadays was no longer that of the years 70 but an inter-state phenomenon that had infiltrated society as such. Also, the government insisted that terrorists had changed considerably their methods and special attention was devoted to the use of methods of local implementation. Sarkozy talked of a phenomenon of depersonalization of the individual and cited the example of a Belgian of origin that had traveled with her family to Iraq to become a kamikaze\(^70\). Against such people, denaturalization was presumably the answer, although in the case referred to, it had not been possible. It is not very clear what solution should apply to those citizens who cannot be deprived of citizenship (because they lack a second one) but who do become radical freedom fighters.

On various occasions during the debates, the opposition has challenged the proposed measures as in reality being about the management of illegal immigration, disguised as fight against terrorism. It has also been pointed out that at the moment when the law was being proposed, the memory of the fights in the suburbs was still recent and that in reality these so called counter-terrorist measures would be associated by the population with those fights and their destructive effects. Thus, in reality, there would be an association made between terrorism and social unrest (and

---

\(^67\) Projet de Loi, relative a la lutte contre le terrorisme et portant dispositions diverses relatives a la securite et aux xontroles frontaliers, Assemble Nationale, No 2615, 28 Oct 2005.

\(^68\) Alain Marsaud on behalf of the Constitutional Law Commission for the National Assembly, Rapport No 2681, 22 November 2005.

\(^69\) Report, p. 86

\(^70\) Assemblée nationale, séance du mercredi 23 novembre 2005, p. 24; also Deuxième séance du mercredi 23 novembre 2005, p. 15).
by all means, who were the ones protesting if not persons of immigrant background?!).

The response of the majority coalition is illuminating as to the manner in which French authorities understand the link between terrorism, immigration and nationality. They argued that while it is not their intention to draw a connection between immigration and terrorism, this seems unavoidable at some point since certain groups of immigrant origin undertake frequent trips to certain countries such as Iraq or Pakistan. Thus, these suspicious movements justify the access of the information services to data and information.  

Regarding the increase to 15 years of the period during which denaturalization is possible, the opposition through the voice of M. Noël Mamère (member of the Green party), argued that the measure is useless in the fight against terrorism and dangerous since it increases the stigmatizations of certain categories of the French population whose attachment to France will always be open to discussion. He considered that the measure links terrorism with immigration. Other members of the opposition argued that the present provision only complicates matters further, since there already was a provision that allowed for deprivation. On the other hand, the government sustained that the measure was not useless since it allowed for the expulsion of the person condemned of terrorist crimes or crimes against the fundamental interests of the nation. This is not possible if the person remains French, confirming that the real stake is the physical removal of such persons.

In the Senate, similar arguments have been engaged. The opposition parties have questioned the dissuasive character of this measure fearing that the main effect of the law would be to make a part of the French population suspicious of another part and make believe that in France there is a sort of fifth column, an enemy from within that is ready any moment to transform itself into a terrorist. This sort of associations are stigmatizing for a part of the French citizenry. They also criticized the fact that the same member of the majority that had argued in the Lower House that the measure was useful because it allowed the expulsion of those condemned, had been previously requesting the deprivation of French nationality from the participants in the riots in the suburbs. The representative of the government argued that the measure was not trying to change the minds of radicalized terrorist but to protect French society by removing from its soil dangerous persons.

It is obvious that French authorities see a direct link between terrorism, migration and naturalized citizens. What is interesting compared to the similar debates that have taken place in the United Kingdom parliament is that the French government and ruling coalition see no problem in putting forward this approach to terrorism that is actually pointing the finger towards France’s citizens with an immigrant background. It is undeniable that this sort of public discourse has consequences for the manner in which identity and solidarity are conceptualized in the French public space.

71 Ibidem
72 Deuxième séance du jeudi 24 novembre 2005, pp. 51-53
73 The only amendment voted for was one that limited the type of crimes for which the period during which deprivation is possible to crimes of terrorism or crimes against the fundamental interest of the nation. The category excluded were acts of espionage that did not lead to a conviction.
75 Ibidem
6 A real case of deprivation - Adel Tebourski

6.1 General approach to terrorism cases

The previous sections have shown that while deprivation for fraud is numerically the most important case of loss of citizenship at the initiative of the state, the provisions on loss due to a terrorist conviction are the ones most paraded by the government. However, there has been an increase in the number of cases operated on this basis as well which requires an explanation.

It is common knowledge that France had developed even before 2001 one of the most robust counter-terrorist policies in Europe. This policy is characterized by a robust prevention effort and the annihilation of terrorist movements in their very early stages (en aval). In 1986, a law was passed that aimed at centralizing in Paris the personnel and the jurisdiction in terrorism related cases. The next major reform was in 1996 when a new offense was introduced “belonging to a criminal association in relation to a terrorist undertaking” (association de malfaiteurs en relation avec une entreprise terroriste) which allows investigating magistrates to detain terrorism suspects before they have been linked to any specific act of terrorism that has been planned or carried out which has been criticized by various groups for its vagueness. The overwhelming majority of those accused in France of involvement in activities related to Islamist terrorism are charged with this offence. The same 1996 law increased the allowed duration of custody without charge and introduced the possibility of deprivation of citizenship for involvement in terrorist activities. In 2001, the law on daily security (loi du 15 novembre 2001 sur la sécurité quotidienne) allowed the use of new information and communication technologies and added gun and drug trafficking to the list of terrorist offences. The 2005 law is the last important change to the counter-terrorism legislation (discussed above).

The centralization of terrorism related cases in Paris is seen as another important aspect of the fight against terrorism. Thus, not only the formulation of national security strategies, policies and legislation is situated in opaque institutional sites, its practical application suffers from the same shortcomings. Only two Paris situated courts adjudicate on this issues; a similar process of jurisdictional centralization was observable in the UK case study. On the practical manner in which cases are set to trial, it has been noted that there is a strong tendency in which material evidence is no longer relevant in securing a conviction. The existence of a confession of the intentions to commit a crime are enough to secure conviction, regardless of the fact that these submissions are frequently obtained in countries where torture is allowed (the scenario is that the person is arrested abroad, held in prison and then extradited to France where he/she is set on trial using the testimonies offered abroad). As to the penalties imposed for such crimes, the latest legislative changes have increased penalties to 20 and 30 years respectively. However, it is standard procedure that in case of terrorism related offences the judge will pronounce also a complementary penalty such as the interdiction to return to France and expulsion which are executed.

76 Karyn Agostini-Lippi, Politique anti-terroriste française à la lumière du cas Saïd Arif, p. 1, séminaire 16-17 Novembre 2005; In the Name of Prevention, Human Rights Watch, June 5, 2007, http://www.hrw.org, p.7. This is a minor felony offense defined by the Criminal Code as “the participation in any group formed or association established with a view to the preparation, marked by one or more material facts, of any of the acts of terrorism” provided for in the Criminal Code punishable by up to 10 years in prison.

77 Agostini-Lippi, op.cit., p.5.
on the same day as execution of the imprisonment sentence is over (there are several well known cases where persons after being released at the end of serving a prison sentence for a terrorist related crime were immediately removed from French soil without the possibility of contesting their destination).

The law of 16 November 2003 changed this so-called double penalty regime, which refers to the possibility of expelling foreigners condemned to prison sentences after the execution of their penalties. La double peine can take the form of a complementary sanction (interdiction to be on French territory) or an administrative decision of expulsion. The appeal to this measure does not have suspensive effect. One way to try to stop removal is to file an asylum application but usually these are rejected\(^78\). Asylum claims have a suspensive effect only at first instance, which means that after the rejection of the appeal application, the government can expel or deport while an appeal is pending, even in cases where there is a fear of persecution upon return to the country of nationality, unless a judge grants a stay of execution in the specific case.

This situation worries various international bodies. Human Rights Watch considers that France’s approach to the expulsion of imams is troublesome as the authorities are much more prone to expel a person via an administrative decision than subject the person to trial for speech offences or incitement to hatred. As such, they consider that the French government is bypassing the more stringent requirements of criminal justice by using immigration powers\(^79\).

This situation is relevant for our topic since the deprivation of a French citizen of his citizenship after the execution of his sentence (provided that he does not become stateless) presents similarities with that of the foreigners expelled with the interdiction to return to France. In the case of deprived French citizens, the reasoning is that by depriving them of citizenship they became expel-able.

### 6.2 Adel Tebourski

The case of Adel Tebourski is well known and serves as an illustration of how deprivation takes place in practice. In 1985 he left Tunisia for Belgium where he pursued studies. In 1995 he had married a French national and in 2000 he became a French citizen. On 26 November 2001, he was arrested in northern France, following the assassination of Ahmed Shah Massoud on 9 September 2001 in Afghanistan. Massaoud was the leader of the Northern Alliance forces in Afghanistan and was assassinated by Abdessatar Dahmane and Bouraoui El Ouaer. Tebourski stood trial in 2005 and was accused of having organized the departure of volunteers for Pakistan and Afghanistan. His role was confined to procuring false papers such as visas and passports. He denied any knowledge of the plans of his friend Dahmane, whom he had met during his mathematical studies in Belgium\(^80\). On 17 May 2005, the Paris Criminal Court sentenced Tebourski to six year imprisonment for “criminal conspiracy in connection with a terrorist enterprise” and to deprivation of his civil, civic and family rights for a period of five years. However, he did receive a remission

\(^78\) Persons involved in terrorism acts come under Article 1F of the Refugee Convention and are denied refugee status. However, protection from non-refoulement might still come into play.

\(^79\) See, HRW Report, op.cit., p. 4

\(^80\) At his trial he has claimed that he helped the assassins to travel to Afghanistan to volunteer in civil activities and had no clue as to their real purposes.
of sentence for good behaviour and was released on 22 July 2006 from Nantes prison (his release in 2006 is explained by the fact that he had been imprisoned since his arrest in 2001). Three days before his release, on the 19th of July 2006 Tebourski is deprived of his French citizenship and was served the same day with a ministerial (administrative) deportation order motivated by “the imperative requirements of State security and public safety”. One could ask how is it possible for a person to be released earlier from prison because of good behaviour yet at the same time to constitute a serious threat to state security and public safety as to justify his immediate removal from state territory.

After his prison release he was immediately taken to an administrative detention centre in order to be removed from French territory to Tunisia, the country of his (now) only nationality. Tebourski has launched several appeals to the administrative removal order, as well as an application for asylum, which was denied. He tried to appeal the designation of Tunisia as his country of deportation. The appeal to the decision of the French Office of Refugees and Stateless Persons with the Refugee Appeals Board did not have suspensive effect and on 7 August 2006 he was deported to Tunisia, despite several applications for interim relief launched previously. On 17 October 2006 the Refugee Appeals Board passed judgment on his appeal against the rejection of his asylum application. Having due regard to the nature and gravity of the acts committed, the Board agreed that his exclusion from the status of refugee on the basis of Article 1 F of the 1951 Geneva Convention was justified. This is an interesting point to bear in mind since the scope of application of Article 1 F is similar to that of the provisions of the Stateless Convention that allows for statelessness to occur if the person has been involved in certain activities. However, the Board did acknowledge that he might be right in fearing to return to Tunisia where he would be punished a second time for the same crimes he had been convicted of in France.

Tebourski has challenged his deportation to Tunisia before the Committee against Torture under Article 22 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. The Committee has found that his deportation to Tunisia was a violation of Articles 3 and 22 of the Convention. Furthermore, the Committee has also stated that “if the exercise of domestic remedies is to be effective and not illusory, an individual must be allowed a reasonable length of time before execution of the final decision to exhaust such remedies. The Committee notes that in the present case the complainant was stripped of his nationality by the State party on 19 July 2006, the consequence of which was to make him an immigrant in an irregular situation and liable to expulsion. Despite the steps he took, the complainant was expelled just three weeks after this decision.” This passage suggests that the measure to deprive him of his nationality is viewed as linked with its consequences, removal from state territory.

This case shows that the aim of the rules on loss of citizenship due to the commission of a terrorist act is to render the person vulnerable to expulsion. In 2006 most persons deprived of citizenship have also been removed from France after the execution of their penalties. Thus this “double penalty” combined with the “efficient” system of administrative expulsion orders have been instrumental in making sure that persons accused of involvement in terrorism are removed from state territory. Some questions remain as to how the linkage between condemnation for criminal

conspiracy in connection with a terrorist enterprise and loss of citizenship impacts the individual and what are the consequences for the operation of the rule of law in France. Bearing in mind that a condemnation for this offence is not very difficult to secure by the authorities (mainly because of the vagueness of its content and the low level of proof required), one can question whether there should be an automatic link made between condemnation and the possibility of losing citizenship. Should there be a proportionality test making sure that only those condemned for a certain number of years are also deprived? For the time being, the initiation of deprivation procedures rests with the government and it is build as an administrative procedure. The approval of the Council of State is the main procedural guarantee and should function as a safeguard against arbitrariness. A one month period in which to respond and bring a challenge to the government’s intention to deprive is a short time.

7 Final remarks

This report has examined the rules on loss of citizenship at the initiative of the state in France. While it has focused mainly on the last legislative changes introduced in 2005 and 1996, it has also put forward a short sketch of French nationality legislation. By looking at nationality legislation and the rules on loss of citizenship from a historical perspective, one can argue that these rules are an expression of how belonging and citizenship are conceptualized at a certain moment in time.

Currently, the most important rules on loss of citizenship target either naturalized citizens (loss because of fraud) or dual nationals who engage in behaviours sanctioned by the state. Part of French politicians and authorities make a clear link between immigration, integration, terrorism and citizenship, which suggests that the state views certain categories of citizens as a risk category or at least as a category whose loyalty and allegiance is put under question for the first 15 years of their citizenship. National identity and what it means to be French are recurrent themes in French public space but there does not seem to be any real discussion as to how social cohesion is impacted by the fact that the loyalty of certain citizens is questioned by the state, not just in discourse but also via the legal provisions on loss of citizenship.

Similar to the situation encountered in the United Kingdom, European citizenship and human rights do not seem to penetrate the discourse. The debate has been closed when the Constitutional Court has declared that the rules on loss of citizenship do not violate any principles safeguarded by the Republic. It is also clear that French authorities see nationality as a sovereign matter outside the influence of the EU. At the same time, the number of cases of loss of French citizenship and thus, European citizenship has been increasing for both reasons of fraud and terrorism. It is unclear if this increase can be explained only by the harsh approach that the French government has taken towards terrorism and its securitarian approach towards many aspects of daily life. As mentioned before, the general approach towards loss of citizenship is connected from its very beginnings with issues of immigration and integration. As such, it is quite plausible that the perception of dual nationals as “false citizens” or citizens from nowhere, which has dominated the immigration debate throughout the 20th century, is partly responsible for the linkage made between immigration, dual nationals, terrorism and loss of citizenship.