THE EXPULSION OF FOREIGN CRIMINALS IN LIGHT OF EUROPEAN CASE LAW

European Centre for Law and Justice

“The Expulsion of Foreign Criminals in Light of European Case Law,” study published in the *Revue française de criminologie et de droit pénal* (No. 26, April 2026).

This study examines how the European Court of Human Rights regulates the expulsion of foreign criminals and how this case law has fuelled an ongoing political debate since the turning point marked by *Sharafane v. Denmark* (2024 - 2025).

Regarding the right to respect for private and family life, the Court has developed principles governing the proportionality review applicable to any expulsion of a foreign criminal. This review has led the Court to prohibit definitive expulsion without any possibility of return. States must show that the foreign national facing removal will have a legal and practical possibility of returning after a limited period. This new requirement imposes significant constraints on national security and immigration policies.

At the same time, the Court has extended its review under the right to private life to cases involving the deprivation of nationality of dual nationals convicted of criminal offences, thereby also limiting - upstream- the possibility of removal.

The study discusses the Court’s interpretative method, the margin of appreciation afforded to States, and possible institutional responses.

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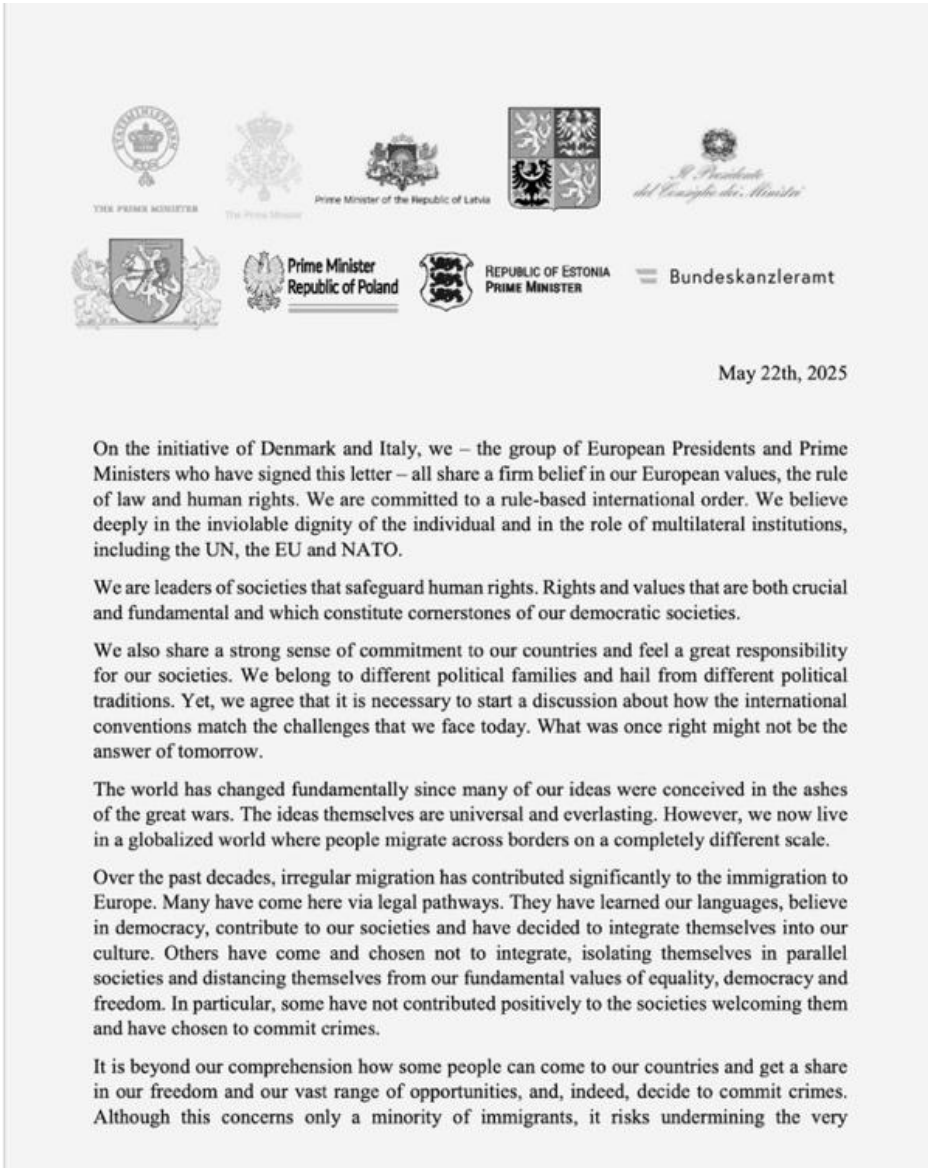
Introduction

On May 22, 2025, nine governments wrote an open letter criticizing the European Court of Human Rights' case law on immigration. In their view, the Court has unduly restricted governments' ability to combat crime of foreign origin. They denounce "the evolution of the Court's interpretation," which they claim has "extended the scope of the [European Convention on Human Rights] beyond the original intentions underlying it". The signatories regret the "cases concerning the expulsion of foreign nationals who are offenders and criminals, where the Court's interpretation of the Convention has led to protecting the wrong people and imposed too many limitations on States' ability to decide whom to expel from their territory." The nine governments, on one hand, assert that they prioritize the right to safety and security "of victims as well as the vast majority of law-abiding citizens," and, on the other hand, the stability of society.



Prime Minister of the Republic of Latvia

Prime Minister
Republic of Poland

REPUBLIC OF ESTONIA
PRIME MINISTER

Bundeskanzleramt

May 22th, 2025

On the initiative of Denmark and Italy, we – the group of European Presidents and Prime Ministers who have signed this letter – all share a firm belief in our European values, the rule of law and human rights. We are committed to a rule-based international order. We believe deeply in the inviolable dignity of the individual and in the role of multilateral institutions, including the UN, the EU and NATO.

We are leaders of societies that safeguard human rights. Rights and values that are both crucial and fundamental and which constitute cornerstones of our democratic societies.

We also share a strong sense of commitment to our countries and feel a great responsibility for our societies. We belong to different political families and hail from different political traditions. Yet, we agree that it is necessary to start a discussion about how the international conventions match the challenges that we face today. What was once right might not be the answer of tomorrow.

The world has changed fundamentally since many of our ideas were conceived in the ashes of the great wars. The ideas themselves are universal and everlasting. However, we now live in a globalized world where people migrate across borders on a completely different scale.

Over the past decades, irregular migration has contributed significantly to the immigration to Europe. Many have come here via legal pathways. They have learned our languages, believe in democracy, contribute to our societies and have decided to integrate themselves into our culture. Others have come and chosen not to integrate, isolating themselves in parallel societies and distancing themselves from our fundamental values of equality, democracy and freedom. In particular, some have not contributed positively to the societies welcoming them and have chosen to commit crimes.

It is beyond our comprehension how some people can come to our countries and get a share in our freedom and our vast range of opportunities, and, indeed, decide to commit crimes. Although this concerns only a minority of immigrants, it risks undermining the very

The signatory heads of government or state include figures from the right, such as Giorgia Meloni (Italy) and Christian Stocker (Austria), as well as those from the left, such as Mette Frederiksen (Denmark) and Donald Tusk (Poland). Their action is a response to the November 12, 2024, judgment *in Sharafane v. Denmark*, in which the Court ruled against Denmark for deporting an Iraqi cocaine trafficker on the grounds that he had no assurance he could return to Denmark once his re-entry ban expired.[1] The Danish government had requested that the case be referred to the Grand Chamber of the Court in order to defend its right "to control the entry, stay, and expulsion of foreigners."[2] It was the rejection of this request by Denmark on March 17, 2025[3] , that prompted the letter of May 22, asking the Court to thoroughly review its case law regarding the expulsion of foreign offenders. The nine States were joined in their initiative by a tenth State, Hungary, which officially endorsed the letter on June 10, 2025.[4]

The Court takes into account the political acceptability of its decisions. This is only the second time in its history that governments have joined forces in this way to politically challenge a ruling. The first time was in 2009 in the case of *Lautsi v. Italy*, when the Court held that the presence of crucifixes in schools violated the educational rights of agnostic parents.[5] The European judges were not insensitive to the reaction of States hostile to this ruling and ultimately held, in a 2011 Grand Chamber judgment, that Italy could legitimately "give the country's majority religion a prominent presence in the school environment."[6] The review of the case had therefore led the Court to completely revise its judgment. That said, there is a major difference between this case and the current backlash from governments regarding the deportation of foreign offenders and criminals. This time, the opposition is coming too late, as the *Sharafane* judgment is final. However, it is easier to obtain a review by the Grand Chamber (*Lautsi*) than a reversal of precedent (*Sharafane*).

Nevertheless, it would be regrettable to view the Court's judgments solely as the result of political power struggles. Case law must also be examined from the perspective of the reasoning underlying it and be subject to legal critique. In this regard, the letter from the nine governments raises several questions regarding the Court's method of interpreting the Convention, the balancing of the rights and interests at stake, and the margin of appreciation left to States. On these points, the letter highlights the disconnect between the intentions of certain States Parties to the Convention and the actions of the Court established by that same Convention.

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[1] *Sharafane v. Denmark*, No. 5199/23, November 12, 2024, see § 72.
[2] Government of Denmark, Application for a referral in the case of *Sharafane v. Denmark*, supra, p. 1, § 2.
[3] Registrar of the Court, Press Release 075 (2025) "Case Referred to the Grand Chamber," March 17, 2025, p. 1.
[4] Government of Hungary, "We must put an end to European law protecting migrants who commit crimes," press release from the Ministry of European Union Affairs, June 10, 2025.
[5] *Lautsi and Others v. Italy* [Second Section], No. 30814/06, Nov. 3, 2009. See: Grégor Puppinck, "An Alliance Against Secularism," *L'Osservatore Romano*, Rome, July 27, 2010.
[6] *Lautsi and Others v. Italy* [GC], No. 30814/06, March 18, 2011, § 71.

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It appears that the "rebellious" States do not challenge all the grounds cited by the Court for limiting the deportation of foreign offenders. Thus, the call to shift "the balance of interests to be protected," by prioritizing those of society and the victims, focuses on the cases examined by the Court from the perspective of foreign offenders' right to respect for their private and family life (Article 8). Indeed, this right may be limited by other considerations, such as national security, public safety, and the rights of others (Article 8 § 2). Conversely, this is not the case for the right not to be subjected to inhuman or degrading treatment (Article 3), which the Court invokes to block the expulsion of foreigners at risk of such treatment in their countries of origin.[7] This prohibition on torture is absolute in nature and therefore cannot be limited, either by the rights or needs of others, or by objectives of general interest.[8] Consequently, there is no question of a "balancing of interests to be protected." The prohibition against torture is directly linked to human dignity, and it is rare for a State to directly criticize the Court's interpretation of this principle or its absolute nature.[9]

While the study of the Court's case law regarding the expulsion of foreign offenders and criminals is essential, this importance stems not only from the numerous judgments rendered against States in this area, but also from the fact that States and their courts bear the primary responsibility for establishing a legal framework that complies with the Convention.[10] Thus, the Court's case law leads States to amend their legislation and domestic courts to adapt their case law.

The purpose of this article is to analyze how the Court limits the expulsion of foreign offenders and criminals based on a broad interpretation of the right to respect for private and family life. We will explain the process by which the Court has established, on the basis of Article 8, a right for foreigners to remain in or return to Europe. It should first be noted that prior to 1985, the Court never reviewed decisions to expel foreigners under Article 8, respecting the intent of the Convention's drafters (1). It subsequently began to conduct such a review, using case-law criteria that were gradually formalized and applied to offenders and criminals (2). Since 2021, European judges have been ruling against States that expel foreign offenders and criminals without giving them the possibility of returning after a few years (3). In parallel

[7] See, for example: *A.L. (X.W.) v. Russia*, No. 44095/14, Oct. 29, 2015; *M.D. and Others v. Russia*, Nos. 71321/17, 25735/18, 58858/18 and others, September 14, 2021.
[8] See, for example, regarding Article 3, *Soering v. the United Kingdom*, No. 14038/88, July 7, 1989, § 88.
[9] There are exceptions, notably the United Kingdom. In a case involving Italy's expulsion of a Tunisian terrorist, the United Kingdom formally requested the Court to "balance" the principle prohibiting torture "against the interests of society as a whole," thereby challenging the "rigidity" of that prohibition (*Saadi v. Italy* [GC], No. 37201/06, February 28, 2008, §§ 117–123). The United Kingdom had previously justified the deportation of a foreign national deemed dangerous by arguing that the host country's national security took precedence over the risk of torture in the country of destination (*Chahal v. United Kingdom* [GC], No. 22414/93, November 15, 1996, § 76). During the preparatory work on the Convention, however, it was a representative of the United Kingdom who insisted on "proclaiming to the world that torture is an absolute evil [...], and that no cause [...] can justify its use," an idea that was supported by another British representative, Sir David Maxwell Fyfe (European Commission of Human Rights, Preparatory Work on Article 3 of the European Convention on Human Rights, Information Document prepared by the Commission's Secretariat, DH (56) 5, Strasbourg, May 22, 1956, statements by Mr. Cocks and Sir David Maxwell Fyfe, September 8, 1949, notably pp. 3–6).
[10] See in particular Articles 1 and 13 of the European Convention.

with this development, the Court has also established a review of decisions to strip individuals of their nationality, applying in particular to dual-national offenders and criminals and indirectly limiting the ability of States to expel them (4).

1. The Absence of Oversight of Deportations from the Perspective of Foreigners' Private or Family Life (1959–1984)

1.1. "Private and family life," directly linked to privacy

The applicability of Article 8 to an expulsion measure comes up against two major principles. The first relates to the concept of "private and family life," the intended scope of which was to protect privacy and the family. The drafters of the Convention intended to formulate a provision giving binding force to Article 12 of the 1948 Universal Declaration of Human Rights, which States that no one shall be "subject to arbitrary interference with his privacy, family, home, or correspondence, nor to attacks upon his honor and reputation."[11]

Until 1985, the Court's case law regarding Article 8 was consistent with the intentions of the Convention's drafters. Thus, the Court's first three judgments under Article 8, in the late 1970s, concerned the prohibition on a prisoner corresponding with his lawyer,[12] restrictions preventing a mother from freely transferring her estate to her daughter,[13] and the lack of effective access to legal separation proceedings for a wife facing an alcoholic and violent husband.[14] In the early 1980s, the Court issued further rulings regarding the respect for correspondence,[15] as well as two other rulings: one concerning the criminalization of homosexual acts in the private sphere,[16] and the other regarding a legal loophole preventing criminal prosecution of a man who had raped a young disabled girl.[17] All of these issues directly concerned individuals' privacy.

1.2. The *prima facie* inapplicability of Article 8 in immigration matters

At the same time, the Court has set certain limits on the scope of Article 8's application. Specifically, Article 8 does not guarantee a right to reside in a particular location.[18] The Court

[11] European Commission of Human Rights (ECHR), Preparatory Work on Article 8 of the European Convention on Human Rights, Information Document prepared by the Secretariat of the Commission, DH (56) 12, Strasbourg, August 9, 1956, § 2, p. 2.
[12] *Golder v. United Kingdom* [Grand Chamber], No. 4451/70, February 21, 1975.
[13] *Marckx v. Belgium* [Grand Chamber], No. 6833/74, June 13, 1979.
[14] *Airey v. Ireland*, No. 6289/73, October 9, 1979.
[15] *Silver and Others v. the United Kingdom*, Nos. 5947/72 and 6 others, March 25, 1983; *Campbell and Fell v. the United Kingdom*, Nos. 7819/77 and 7878/77, June 28, 1984; *Malone v. the United Kingdom* [Grand Chamber], No. 8691/79, August 2, 1984.
[16] *Dudgeon v. the United Kingdom* [Grand Chamber], No. 7525/76, October 22, 1981.
[17] *X and Y v. the Netherlands*, No. 8978/80, March 26, 1985.
[18] *Ward v. the United Kingdom* (dec.), No. 31888/03, November 9, 2004, para. 2; *Codona v. the United Kingdom* (dec.), No. 485/05, February 7, 2006.

relied on this principle to declare inadmissible an application by a group of travelers demanding that the authorities provide them with a new site.[19]

The applicability of Article 8 to expulsion measures also conflicts with States' general competence in matters of immigration policy. The Court regularly reaffirms this competence, even though it is now limited by other considerations (see *below*, §§ 2 and 3). According to the Court, States have the "right to control, by virtue of a well-established principle of international law [...], the entry and residence of non-nationals."[20] The Court adds that "in this respect, they have the power to expel offenders among them."[21]

This right of States exists regardless of whether a foreign national entered the host country as an adult or at a very young age, or was born there.[22] The Court explained this very clearly: "Even if a foreign national possesses a secure resident status and has achieved a high degree of integration, his situation cannot be equated with that of a national of the State when it comes to the aforementioned power of Contracting States to expel foreign nationals [...]."[23]

2. The definition of "guiding principles" governing the expulsion of delinquent and criminal aliens (from 1985)

2.1. The established principle of reviewing expulsions under Article 8 (1985)

It was in the case *of Abdulaziz, Cabales, and Balkandali v. the United Kingdom*, decided in 1985, that the Court first held that the expulsion of aliens could violate Article 8 of the Convention.[24] In its written observations, the Government of the United Kingdom argued that "neither Article 8 nor any other provision of the Convention applies to immigration control."[25] The Court rejected this analysis and declared itself competent to review deportations on the basis of the right to respect for private and family life.

The *Abdulaziz* case provided the Court with an ideal opportunity to develop its case law, as the applicants were not the deported individuals themselves, but their wives, who argued that they risked being deprived of their husbands' company as a result of deportation proceedings.[26] In this way, the Court initially addressed the issue of deportation of foreign nationals indirectly, focusing on the rights of women lawfully residing in the United Kingdom rather than those of the deported individuals themselves. Furthermore, the Court did not find the United Kingdom

[19] *Ibid.*
[20] *Abdulaziz, Cabales, and Balkandali v. the United Kingdom (Grand Chamber)*, Nos. 9214/80, 9473/81, and 9474/81, May 28, 1985, § 67; *Boujlifa v. France*, No. 25404/94, October 21, 1997, § 42.
[21] *Boujlifa v. France*, supra, § 42.
[22] *Üner v. the Netherlands* [GC], No. 46410/99, October 18, 2006, §§ 54–60.
[23] *Cherif and Others v. Italy*, No. 1860/07, April 7, 2009, § 59.
[24] *Abdulaziz, Cabales, and Balkandali v. the United Kingdom (Plenary)*, supra.
[25] *Ibid.*, §§ 57 and 59.
[26] *Ibid.*, in particular § 60.

in violation solely on the basis of Article 8, but rather due to gender discrimination. Specifically, the immigration rules in question were more disadvantageous to men than to women, as they were designed to protect the British labor market; consequently, the applicants were more exposed to the deportation of their husbands than men were to the deportation of their wives (Article 14 in conjunction with Article 8).[27]

The *Abdulaziz* decision received very little attention at the time, and the principle established by the Court regarding the review of deportations under Article 8 was not challenged by the States.

2.2. *Berrehab v. the Netherlands* (1988), the first conviction for the deportation of a non-offending foreign national

The first ruling against a State regarding expulsion based solely on Article 8 was the 1988 *Berrehab v. the Netherlands* judgment, in which the Court ruled against the Netherlands for failing to grant a residence permit to a Moroccan man whose daughter was living in Amsterdam with her mother.[28] Since then, these issues have given rise to numerous judgments and decisions, enabling the Court to establish and subsequently refine "guiding principles" for reviewing the expulsion of foreign nationals. These principles are specifically designed to assess the proportionality of the expulsion of foreign offenders, balancing security against private or family life.

2.3. The eight guiding principles from *Boultif v. Switzerland* (2001) regarding the expulsion of foreign offenders and criminals

The landmark 2001 decision in *Boultif v. Switzerland*[29] provided the Court with an opportunity to define eight guiding principles for assessing the expulsion of foreign nationals. In this case, the Court found that Switzerland violated the right to respect for family life of Abdelouahab Boultif, an Algerian national married to a Swiss citizen. Mr. Boultif had been the subject of several criminal convictions for illegal possession of weapons, robbery, and property offenses. In assessing the situation of a foreign national subject to a deportation order, the Court focuses on the circumstances at the time the decision becomes final.[30]

The guiding principles set forth in the *Boultif* decision can be described as "objective," in the sense of the adjective rather than the noun. Indeed, these eight criteria correspond to various factual elements to be weighed, such as legal classifications, durations, legal affiliations, or statuses.[31]

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[27] *Ibid.*, §§ 74–83.
[28] *Berrehab v. the Netherlands*, No. 10730/84, June 21, 1988.
[29] *Boultif v. Switzerland*, No. 54273/00, August 2, 2001.
[30] *Cabucak v. Germany*, No. 18706/16, December 20, 2018, § 43.
[31] The Court lists these principles in paragraph 48 of the judgment.

Three of the eight *Boultif* criteria apply to all foreign offenders and criminals:

- *the nature and severity of the offense committed by the applicant;*
- *the length of time that has elapsed since the offense, and the applicant's conduct during that period;*
- *the length of the applicant's stay in the country from which they are to be deported.*

The five additional criteria established *by Boultif* are intended to protect not only individuals but also their families. Even though Mr. Boultif did not have children, the Court sought to take this possibility into account. These five additional guiding principles are:

- *the nationality of the various persons concerned*;
- *the applicant's family situation and, where applicable, the duration of his marriage, and other factors indicating the existence of a genuine family life within a couple*;
- *whether the spouse was aware of the offense at the time the family relationship was established*;
- *whether there are children from the marriage and, if so, their ages*;
- *the severity of the difficulties the spouse is likely to face in the country to which the applicant is to be deported*.

The judges in Strasbourg applied these principles, concluding that "whilst the offence which the applicant committed may give rise to certain fears that he constitutes a danger to public order and security for the future, in the Court's opinion such fears are mitigated by the particular circumstances of the present case."[32] These circumstances included his conduct in prison, which the Court described as "exemplary," the absence of recidivism in the years following his release from prison, and the fact that he had worked for a few months.[33]

[32] *Boultif v. Switzerland*, supra, § 51.
[33] *Ibid.*

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2.4. The two complementary guiding principles defined by the Grand Chamber in *Üner v. the Netherlands* (2006)

In the 2006 Grand Chamber judgment *Üner v. the Netherlands*, the Court sought to clarify "two criteria which may already be implicit in those identified in *Boultif*."[34] In that case, the Court upheld the expulsion of Ziya Üner, a Turkish citizen who had been convicted of several violent criminal offenses, the most recent being manslaughter and grievous bodily harm, after he fired two revolvers at two men following a dispute in a café.

The two guiding principles added by the Court in its *Üner* judgment can be described as "subjective," requiring context-specific assessment rather than purely objective measurement.

One of the *Üner* criteria applies to all foreign offenders:

- *the strength of social, cultural, and family ties with the host country and with the destination country*

The second *Üner* criterion aims to protect those with families:

- *the interests and well-being of the children, in particular the severity of the difficulties that the applicant's children are likely to face in the country to which the person concerned is to be deported*.

The Court applied all ten criteria and found that the offenses committed by Mr. Üner were "of a very serious nature" and that he could be regarded as having demonstrated a propensity for criminal behavior.[35] The European judges thus held that "having regard to the nature and the seriousness of the offences committed by the applicant, and bearing in mind that the exclusion order is limited to ten years, the Court cannot find that the respondent State assigned too much weight to its own interests when it decided to impose that measure."[36]

The inclusion of two guiding principles in the *Üner* judgment reflects the insufficiency of relying solely on objective criteria. Indeed, a specific family situation does not necessarily determine whether it is in the children's best interest to remain with their parents in their current country. Similarly, the length of stay in a country does not, by itself, establish the existence of strong ties to that country. In some instances, extended periods spent in a host country have not led to integration but rather to the development of parallel communities that operate independently of the broader society. This phenomenon has been observed in certain cases involving foreign nationals, including those from predominantly Muslim countries, where prolonged residence may, in fact, deepen the divide between these individuals and the host society.

[34] *Üner v. the Netherlands* [GC], No. 46410/99, October 18, 2006, § 58.
[35] *Ibid.*, § 63.
[36] *Ibid.*, § 65.

2.5. Guiding principles unchanged since 2006

While these principles had evolved between 1988 and 2006, the guiding principles have remained unchanged since that date. This choice stands in contrast to the Court's claim to update its jurisprudential principles "in light of present-day conditions,"[37] according to a so-called "dynamic and evolving" approach.[38] Such an approach could have led the Court to consider the effects of foreign crime on European societies.

The ten guiding principles of *Boultif* and *Üner* indeed appear insufficient. They are individualistic, even though they aim to assess the proportionality of an expulsion within the framework of a so-called "democratic" society, characterized in particular by "pluralism, tolerance, and broadmindedness."[39] However, between an individual and a society, integration requires mutual willingness, much like a bilateral contract. The proportionality of an expulsion measure should therefore be relative not only to the individual circumstances of the applicants but also to the social conditions of the country, region, and city in question, in light of these three characteristics. After assessing the capacity of a person facing deportation to fulfill this contract, the Court could also assess that of society. How stable is the host country's society, that is, what is its capacity to integrate a foreign applicant? In the case of offenders, what difficulties is society likely to encounter in removing the applicant from the environment that led them to commit criminal offenses? The *Boultif* and *Üner* guiding principles leave these questions aside.

The Court has acknowledged that it "has not specified the relative weight to be given to each [of the ten guiding principles] in the individual assessment,"[40] which tends to turn these criteria into a long list of "pros" and "cons" regarding deportation, rather than providing clear guidance for resolving disputes. To ensure a fair balance between the rights of foreign offenders, the collective interest in security, and the rights of children, it would be beneficial for the Court to clarify how these guiding principles should be weighed in practice.[41]

In any event, the Court monitors the national authorities' application of these ten guiding principles and regularly rules against States that have decided to deport foreign offenders and criminals on this basis.[42]

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[37] *Tyrer v. the United Kingdom*, No. 5856/72, April 5, 1978, § 31.
[38] *Stafford v. the United Kingdom*, No. 46295/99, May 25, 2002, para. 68.
[39] *Handyside v. the United Kingdom*, No. 5493/72, December 7, 1976, para. 49.
[40] *Levakovic v. Denmark*, No. 7841/14, October 23, 2018, § 41.
[41] In a dissenting opinion appended to the *Üner* judgment, three judges discussed the weighting implicitly applied by the Court (*Üner v. the Netherlands*, supra, joint dissenting opinion of Judges Costa, Zupančič, and Türmen, § 16).
[42] See, for example: *Maslov v. Austria* [GC], No. 1638/03, June 23, 2008; *A.A. v. the United Kingdom*, No. 8000/08, September 20, 2011; *Butt v. Norway*, No. 47017/09, December 4, 2012; *Hasanbasic v. Switzerland*, No. 52166/09, June 11, 2013; *I.M. v. Switzerland*, No. 23887/16, April 9, 2019; *Makdoudi v. Belgium*, No. 12848/15, February 18, 2020. See also the subsequent cases cited in paragraph 3 of our study.

3. The establishment of a form of "right of return" for all deported foreigners (2021–2026)

3.1. *Levakovic v. Denmark* (2018), the most recent judgment upholding a permanent ban on return

Prior to 2021, the Court's application of the ten guiding principles had never led it to condemn a State for a deportation decision due to the permanent nature of the accompanying re-entry ban. The 2018 judgment in *Levakovic v. Denmark*, delivered unanimously by the seven judges of the Chamber, attests to this.[43]

Jura Levakovic, a Croatian and Roma living in Denmark, had been convicted of approximately ten criminal offenses between 2003 and 2016, particularly for thefts, including armed robbery. In 2012, the court ordered his expulsion, accompanied by a permanent re-entry ban, after applying the Court's guiding principles: "there are such serious grounds that [Mr. Levakovic] must be expelled and barred from residence for life, in accordance with [the Danish] Aliens Act; in this regard, it is noted that the expulsion order is not considered contrary to Denmark's international obligations."[44] The permanent nature of the ban on returning to Denmark was not a discretionary decision by the court but an application of the Danish Aliens Act, which at the time imposed such a ban when the expelled foreign national had been sentenced to imprisonment for at least two years.[45] This judgment was upheld on appeal by the High Court of Eastern Denmark.[46] Mr. Levakovic was finally deported to Croatia in 2017, but returned to Denmark shortly thereafter, in violation of the re-entry ban.

The Court examined the compatibility of the decision to expel Mr. Levakovic with his right to respect for private life as recognized in Article 8 of the Convention. At no point in its reasoning—which was, however, particularly detailed—did the Court assess the duration of the ban on returning to Denmark, which in this case was indefinite.[47] It upheld the expulsion by reiterating its principle that " where the balancing exercise has been undertaken by the national

[43] *Levakovic v. Denmark*, *supra*.
[44] *Ibid.*, § 19.
[45] *Ibid.*, § 25.
[46] *Ibid.*, § 20.
[47] *Ibid.*, §§ 30–46.

authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts."[48]

The *Levakovic v. Denmark* judgment is consistent with the Court's previous case law on permanent expulsions. For example, in the case of *Salem v. Denmark* decided in 2016, the Court held that the expulsion of a foreign offender accompanied by an indefinite re-entry ban was consistent with Article 8 and applied its guiding principles without commenting on the permanent nature of the re-entry ban.[49]

3.2. The "particular importance of the duration of the re-entry ban" in the case of *Abdi v. Denmark* (Sept. 2021)

The judgment *Abdi v. Denmark* was delivered in September 2021 by a Chamber of the Second Section,[50] which had also delivered the judgment *in Levakovic v. Denmark*. Yet, three years later, the Court appears to have modified the application of these guiding principles, attaching "particular importance" to "the duration of the re-entry ban."[51]

In addition to convictions for theft and burglary, as well as drug-related offenses, Mohamed Hassan Abdi, a Somali national, had been convicted of a more serious crime: the unlawful possession of a fully loaded firearm with ammunition in a public place, under particularly aggravating circumstances.[52] His deportation, accompanied by a permanent ban on return, was ordered by the High Court of Western Denmark in 2018. As in the *Levakovic* case, the permanent nature of the deportation stemmed from the Danish Aliens Act, as Mr. Abdi had also been sentenced to a prison term of at least two years.[53] The High Court of Western Denmark provided additional justifications for this permanent nature, conducting a comprehensive review of its proportionality,[54] whereas the Danish courts had not conducted such a review in the *Levakovic* case.

In the *Abdi* case, the Court applied its guiding principles from the perspective of the right to respect for private life. The reasoning follows the same steps as in the *Levakovic* case to assess the proportionality of the decision to expel Mr. Abdi.[55] The Court then adds a second proportionality test, focusing specifically on "the duration of the re-entry ban."[56] It emphasizes the "particular importance" of this factor.[57]

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[48] *Ibid.*, § 45.
[49] *Salem v. Denmark*, No. 77036/11, December 1, 2016.
[50] *Abdi v. Denmark*, No. 41643/19, September 14, 2021.
[51] *Ibid.*, § 38.
[52] *Ibid.*, §§ 33 and 34.
[53] *Ibid.*, § 15.
[54] *Ibid.*, § 11.
[55] *Ibid.*, §§ 29–37.
[56] *Ibid.*, §§ 38–44.
[57] *Ibid.*, § 38.

To justify this additional proportionality review, the Court cites three cases in which it had previously held that a permanent ban on return was disproportionate under Article 8: *Ezzouhdi v. France* (2001), *Keles v. Germany* (2005), and *Bousarra v. France* (2010).[58] However, these three previous judgments differ significantly from the reasoning in the *Abdi* judgment. On one hand, in the *Ezzouhdi*, *Keles*, and *Bousarra* cases, the Court does not conduct a proportionality review of the duration of the re-entry ban but merely notes that it is permanent.[59] Its review focuses on the expulsion decision as a whole. On the other hand, as it itself acknowledges, "in the three aforementioned cases, the Court concluded that the persons concerned did not constitute a serious threat to public order. In the present case [*Abdi v. Denmark*], the Court does not dispute that the offense committed by the applicant [Mr. Abdi] and leading to his expulsion constituted a serious threat to public order"[60] . Furthermore, the Court fails to cite other cases in which it explicitly downplayed the significance of the duration of a re-entry ban[61] .

Having found this "serious threat to public order"—which led to the decision to deport Mr. Abdi—the Court considers that the permanent ban on re-entry is disproportionate, insofar as "the applicant had not previously been warned of deportation nor had he been subject to a conditional deportation order," that is, a form of suspended expulsion.[62] Consequently, regardless of the seriousness of the offense, a State should not impose a permanent re-entry ban alongside an expulsion if the foreign offender has not previously been subject to other, less severe measures. Although it was the examination of the duration of the re-entry ban that led the Court to find a violation of Article 8, the Court concluded more broadly that "the applicant's expulsion coupled with a lifetime re-entry ban was disproportionate."[63]

In acknowledging that "the Danish courts decided, in accordance with the applicable legislation, to combine the applicant's expulsion with a permanent re-entry ban"[64], the Court considers that this legislation is insufficient to guarantee the rights of foreign offenders, which implies an obligation on Denmark to take general measures to remedy this deficiency, in accordance with Article 46 § 1 of the European Convention.

The Court did not explain this shift in case law, even though the *Abdi* and *Levakovic* cases were similar. They were adjudicated by the same Chamber of the Court and against the same State, which had applied its domestic legislation without having amended it in the interim. The Court also applied its guiding principles exclusively from the perspective of private life, given that Mr. Abdi and Levakovic had neither spouses nor children at the time.

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[58] *Ibid.* The judgments cited are as follows: *Ezzouhdi v. France*, No. 47160/99, February 13, 2001; *Keles v. Germany*, No. 32231/02, October 27, 2005; *Bousarra v. France*, No. 25672/07, September 23, 2010.
[59] *Ezzouhdi v. France*, supra, § 34; *Keles v. Germany*, supra, § 66; *Bousarra v. France*, supra, § 53.
[60] *Abdi v. Denmark*, supra, § 39.
[61] *Maslov v. Austria* [GC], supra, §§ 98–99: "the limited duration of the residence ban is not decisive [...]."
[62] *Abdi v. Denmark*, supra, § 41.
[63] *Ibid.*, §§ 44 and 45.
[64] *Ibid.*, § 42.

3.3. The prohibition on permanently expelling a foreign national who has committed a criminal offense, as established by the Grand Chamber judgment in *Savran v. Denmark* (Dec. 2021)

Three months after the *Abdi* judgment, the Grand Chamber of the Court further developed the case law in its December 2021 judgment in *Savran v. Denmark*.[65] It completed the shift in case law that had been initiated in the *Abdi* judgment and established the principle that the permanent expulsion of a foreign national was henceforth prohibited under Article 8, contrary to the *Levakovic* judgment and its prior case law.

Arıf Savran, a Turkish national, had been convicted of aggravated robbery and group assault resulting in the victim's death.[66] Following proceedings initiated in 2006, the Supreme Court upheld Mr. Savran's expulsion with a permanent ban on return in 2009. The validity of the expulsion was subsequently reviewed in a separate proceeding, concluded in 2015, and the expulsion was then enforced. As in the *Levakovic* and *Abdi* cases, the permanent nature of the expulsion stemmed from the Danish Aliens Act, as Mr. Savran had also been sentenced to a prison term of at least two years. The Danish courts conducted a proportionality review to confirm this permanent nature.

In the *Savran* case, the Court elevated to an absolute principle what had previously been merely one factor among others in the proportionality tests conducted in its earlier case law:

> *To assess the proportionality of the impugned measure, the duration of the entry ban also needs to be taken into account […]. The Court has previously found such a ban to be disproportionate on account of its unlimited duration, whilst in other cases it has considered the limited duration of the exclusion measure to be a factor weighing in favour of its proportionality […]. The Court has also accepted an expulsion measure as proportionate in a situation where, in spite of the indefinite duration of that measure, possibilities remained for the applicants to enter the returning State […], and, even more so, where it was open to the applicants to request the authorities to reconsider the duration of the entry ban*.[67]

The Court omits cases such as *Levakovic* in which it upheld an expulsion with a permanent re-entry ban without even discussing the proportionality of that permanent nature. The proportionality review in the *Savran* case thus continues as follows:

> *In the present case, the Danish courts, in the revocation proceedings, had no discretion under the domestic law to review and to limit the duration of the ban imposed on the applicant; nor was it open to him to have the exclusion order reconsidered in any other procedure. As a result of the refusal to lift that measure in the revocation proceedings, he was subjected to a permanent re-entry ban. The*

[65] *Savran v. Denmark* [GC], No. 57467/15, December 7, 2021.
[66] *Ibid.*, § 193.
[67] *Ibid.*, § 199.

Court notes the very intrusive nature of that measure for the applicant. In the light of the Government's submissions regarding the very limited basis on which a visitor's visa may be issued to aliens who have been expelled and permanently banned from re-entry (see paragraph 162 above), it is clear that the possibility of the applicant re-entering Denmark, even for a short period, remains purely theoretical. As a result, he has been left without any realistic prospect of entering, let alone returning to, Denmark.[68]

Six of the judges of the Grand Chamber voted against the majority in the *Savran* judgment and demonstrated in their dissenting opinion that the Court's finding of a violation was at odds with its past case law.[69] Their main argument is that the cases cited by the Court each had specific characteristics and could not, on their own, serve as a basis for the finding of a violation in the present case.[70] The six judges conclude their dissenting opinion by stating that "in cases concerning expulsion following a criminal conviction, the Court's judgment may in practice and in general lead to […] an increased focus on the duration of a re-entry ban for the purpose of the assessment of the proportionality of an expulsion order following a criminal conviction."[71]

To comply with this case law, the Danish government had a bill passed by Parliament on June 8, 2022.[72] This legislation aims to allow judges to reduce the duration of re-entry bans to Denmark that accompany their decisions to expel foreign offenders or criminals.

3.4. The creation of a form of "right of return" for any offender or criminal expelled under the *Sharafane*, *Savuran,* and *Al-Habeeb* judgments (November 12, 2024)

On November 12, 2024, the Court delivered its judgments in three cases concerning the expulsion of foreign offenders by Denmark, under Article 8: *Sharafane*, *Savuran,* and *Al-*

[68] *Ibid.*, § 200.
[69] See the joint dissenting opinion of Judges Kjølbro, Dedov, Lubarda, Harutyunyan, Kucsko-Stadlmayer, and Poláčková in the judgment *Savran v. Denmark* [GC], *supra*, in particular §§ 11, 12, 28, 29.
[70] *Ibid.*, § 11: "The cases in which the Court found a violation of Article 8 of the Convention involved specific circumstances, notably the following: (i) the criminal offense was less serious or the penalty less severe [...]; (ii) there were very special circumstances [...]; (iii) the applicant was still a minor at the time the expulsion decision was adopted [...]; (iv) the applicant was a minor at the time the offenses were committed, which were less serious and typical of "juvenile delinquency " [...]; or v) the applicant had not maintained ties with his country of origin [...]".
[71] *Ibid.*, § 52.
[72] See the procedure for the execution of the judgments in *Savran v. Denmark* [GC] and *Abdi v. Denmark*, as concluded by the Committee of Ministers.

Habeeb.[73] Each of the three expulsions was accompanied by a temporary, rather than permanent, re-entry ban. In the first case (*Sharafane*), the Court found Denmark in violation for having deported an Iraqi cocaine trafficker. In the other two cases, the Court upheld the expulsion of a Turkish cocaine trafficker (*Savuran*) and that of an Iraqi man convicted multiple times for violence and assault, including with a knife, as well as for attempted robbery (*Al-Habeeb*).

These three judgments provided the Court with an opportunity to establish a new principle: a form of "guarantee of return" for any deported offender. In each case, the ECHR sought to ensure that the applicant's prospects of being readmitted to Denmark "after the expiry of the re-entry ban [...] is not purely theoretical."[74] Thus, Mr. Sharafane's deportation violated his rights because it does not appear that he will be eligible to immigrate legally after the duration of his re-entry ban, set at six years. On the other hand, the ECHR upheld the deportations of Mr. Savuran and Al-Habeeb because they will have the opportunity to apply for family reunification to return to Denmark after their re-entry bans, set at six and twelve years respectively. For example, in the case of Mr. Al-Habeeb, the ECHR states: "The figures seem to indicate that for a person who, like the applicant, has a Danish spouse or a long-term cohabiting partner, the prospect of re-entering Denmark on the grounds of family reunification does not remain purely theoretical."[75]

[76]Thus, the Court not only prohibits permanent expulsions but also adds a condition for temporary ones: the State must ensure that the expelled person has a genuine prospect of returning once the re-entry ban expires. If immigration rules are so restrictive that return becomes merely theoretical, a time-limited ban effectively becomes "de facto permanent" and therefore incompatible with Article 8. In both scenarios, the Court relies on Article 8 to compel States to keep foreign offenders and criminals on their territory whenever expulsion would result in an irreversible exclusion.

Through these new jurisprudential principles, the Court effectively supplants States in determining their immigration and public security policies, rather than respecting their margin of appreciation. Furthermore, it judges a State's decision not on the basis of its concrete and immediate effects, but on conjecture regarding a possible consequence of that decision in the distant future. However, it is impossible to predict what a particular country's immigration policy will be in six or twelve years, nor the evolution of the personal circumstances of the deported offenders. If the person wishes to return at the end of the period of exclusion, they may apply to do so and will have the opportunity to appeal against any visa refusal. The refusal

[73] *Sharafane v. Denmark*, supra; *Savuran v. Denmark*, No. 3645/23, November 12, 2024; *Al-Habeeb v. Denmark*, No. 14171/23, November 12, 2024.
[74] *Sharafane v. Denmark*, supra, § 72. See also: *Savuran v. Denmark*, supra, § 39; *Al-Habeeb v. Denmark*, supra, § 71.
[75] *Al-Habeeb v. Denmark*, supra, § 71.
[76] See the reasoning regarding Denmark's immigration policy, leading to the finding of a violation of Article 8: *Sharafane v. Denmark*, supra, §§ 58–76.

decision may then be reviewed by the Danish courts as well as by the Court, to verify the compatibility of that decision with the respect due to the applicant's private life, under the circumstances at that time. In any event, it is excessive to invoke a hypothetical future risk of non-admission to the territory to render a legitimate expulsion decision ineffective, since there is no right to enter the territory of a country of which one is not a national.

The Court's creation of a form of guarantee of return for any expelled offender has been the subject of sharp criticism.[77]

3.5. The decision of the Grand Chamber making the judgment *in Sharafane v. Denmark* final (March 17, 2025)

On January 29, 2025, the Danish government requested a referral of the case *Sharafane* to the Grand Chamber. In its application for referral, it stated that the Chamber's judgment "raises serious questions affecting the interpretation and application of Article 8 of the Convention as regards to the right of the State parties to control the entry, residence and expulsion of aliens," even though this right is "a matter of well-established international law."[78] The Danish government considered, in particular, that "national courts should not conduct a concrete and individualized assessment of the foreign national's prospects of return when ruling on his or her expulsion" and that "this assessment must be carried out at the time of the examination of a specific application [for return to the territory] and by the competent authorities."[79]

Denmark's request was rejected by the Grand Chamber panel on March 17, 2025,[80] making the judgment *in Sharafane v. Denmark* final. The panel of five judges included Mattias Guyomar, a French judge who became President of the Court in May 2025, and Darian Pavli, an Albanian judge who had long worked at *Open Society* and whose official *curriculum vitae* is disputed.[81]

Since this decision by the Grand Chamber, several cases involving the expulsion of foreign offenders have been pending before the Court.[82]

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[77] For France, see: Nicolas Bauer, "When the ECHR Prohibits the Deportation of Iraqi Drug Traffickers," *Le Figaro*, November 21, 2024; Charlotte d'Ornellas, "The ECHR's Latest Folly," *Europe 1*, November 27, 2024; "The ECHR enshrines the right of deported foreigners to return to Europe," *Le Journal du Dimanche*, November 28, 2024; André Bercoff, "ECHR: Deported foreigners will be able to return to France," *Sud Radio*, December 5, 2024; Nicolas Bauer, "OQTF and the ECHR: When France loses control of its deportations," *Radio Courtoisie*, March 19, 2025; Marianne Lecach, "Right of deported foreigners to return to Europe: the ECHR stands firm," *Le Journal du Dimanche*, March 20, 2025. See also the posts on X by Members of the European Parliament Céline Imart, Fabrice Leggeri, and Mathilde Androuët, and by Member of Parliament Guillaume Bigot.
[78] Government of Denmark, Application for a preliminary ruling in the *Sharafane* case, supra, § 2.
[79] *Ibid.*, p. 2, §§ 6 and 7.
[80] Registrar of the Court, Press Release 075 (2025), supra, p. 1.
[81] Paul Sugy, "A Report Again Highlights the Lack of Independence of the ECHR," *Le Figaro*, April 20, 2023.
[82] See, in particular: *Ahmed Kvadrani Abukar v. Denmark*, Application No. 24837/24, lodged on August 24, 2024, and communicated on September 12, 2024; *Saaid Omar Hussein Mohamud*, Application No. 15078/25, lodged on

The Committee of Ministers of the Council of Europe has initiated a monitoring procedure regarding Denmark's implementation of the *Sharafane* judgment.[83] In this context, the Danish government has indicated that the national courts reopened the case in April 2025, and that the main hearing regarding the expulsion will be held before the High Court of Western Denmark on March 17 and 18, 2026. The government also indicated that it has not known Mr. Sharafane's place of residence since 2021, so the issue of his deportation and the re-entry ban remain theoretical. Furthermore, the government has adopted regulatory measures and maintains that Danish case law will evolve to conform to that of the Court.

4. The Parallel Development of Court Review of Decisions to Deprive Dual Nationals of Citizenship

4.1. The absence of review of decisions to deprive individuals of their nationality (1959–1999)

Regarding dual nationals who have committed crimes, the revocation of their nationality is a prerequisite for their deportation as foreign nationals. In France, this revocation primarily takes the form of deprivation of nationality. Appeals by dual nationals against the deprivation of their nationality were declared inadmissible.[84] The Court refused to review the deprivation of a dual national's nationality, leaving such a decision to the discretion of the States. This case law remained consistent until 1999. The Court acknowledged this fact in a 2016 judgment in which it notes that " The Court observes that old cases concerning loss of citizenship, whether already acquired or born into, were consistently rejected by the Convention organs as incompatible *ratione materiae* with the provisions of the Convention, in the absence of such a right being guaranteed by the Convention."[85]

This lack of review of decisions to deprive individuals of nationality was consistent with other provisions of international law regarding the definition of nationality. Nationality, in fact, refers to the legal bond between a person and a State.[86] According to the International Court of Justice, it is the legal expression of a personal bond, of "a social fact of attachment, a genuine connection of existence, interests, and sentiments, together with the existence of reciprocal rights and duties"; it is "the juridical expression of the fact that the individual upon whom it is conferred […] is, in fact, more closely connected to the population of the State conferring

May 8, 2025, and communicated on June 6, 2025; *Abdulsattar Abdulbaset Allabed*, Application No. 14983/25, lodged on May 9, 2025, and communicated on June 16, 2025.

[83] See the proceedings for the enforcement of the judgment in *Sharafane v. Denmark*, pending before the Committee of Ministers and accessed on December 16, 2025.

[84] See in this regard: ECHR, *X v. Austria* (dec.), No. 5212/71, October 5, 1972.

[85] *Ramadan v. Malta*, No. 76136/12, June 21, 2016, § 84.

[86] European Convention on Nationality (Council of Europe), adopted on Nov. 6, 1997, in Strasbourg, Art. 2a.

nationality than with that of any other State."[87] Conversely, deprivation of nationality is the legal expression of the death of such a personal bond.

4.2. The established principle of reviewing decisions on nationality under Article 8 (1999)

In a 1999 decision declaring the case *of Karassev v. Finland* inadmissible, the European judges opened the door to future review of decisions regarding nationality under Article 8, stating that "the Court does not exclude that an arbitrary denial of a citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual."[88] Establishing this principle for the first time, the Court concluded that in the present case it was "necessary to examine whether the Finnish decisions reveal arbitrariness or have such consequences as might raise issues under Article 8 of the Convention."[89]

The Court's rationale for this shift in case law is, in this decision, directly linked to deportations, as the issue at hand is to examine "the consequences of refusing to grant him Finnish citizenship."[90] However, in this case, the Court notes that "the applicant is not threatened with expulsion from Finland" and therefore that the consequences of the refusal to grant him nationality "cannot be regarded as sufficiently serious to raise an issue under Article 8 of the Convention."[91]

In its subsequent case law, the Court confirmed this development and explained that it applied not only to cases of refusal of nationality but also to those of deprivation of nationality. Thus, "an arbitrary revocation of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of its impact on the private life of the individual. Therefore, in the present case it is necessary to examine whether the decisions of the […] authorities disclose such arbitrariness and have such consequences as might raise issues under Article 8 of the Convention."[92]

4.3. Nationality as an element of identity, protected under the right to private life (2011)

The *Karassev* decision paved the way for the development of case law on nationality as an element of an individual's identity, protected as such within the scope of private life under Article 8. In its 2011 judgment in *Genovese v. Malta*, the Court explains that "the denial of citizenship may raise an issue under Article 8 because of its impact on the private life of an

[87] International Court of Justice, *Nottebohm*, April 6, 1955, I.C.J. Reports 1955, p. 23.
[88] *Karassev v. Finland* (dec.), No. 31414/96, Jan. 12, 1999, para. 1.b.
[89] *Ibid.*
[90] *Ibid.*
[91] *Ibid.*
[92] *Ramadan v. Malta*, supra, § 85.

individual, which concept is wide enough to embrace aspects of a person's social identity. While the right to citizenship is not as such a Convention right and while its denial in the present case was not such as to give rise to a violation of Article 8, the Court considers that its impact on the applicant's social identity was such as to bring it within the general scope and ambit of that Article."[93]

The Court has since confirmed on several occasions that a decision to deprive a person of nationality, such as the revocation of nationality in France, is analyzed as "the loss of an element of identity" for the persons concerned, that is, "an interference with their right to respect for private life."[94]

4.4. The Court's early rulings in cases brought by dual-national offenders (2016–2017)

In the case *of Ramadan v. Malta*, decided in 2016, Louay Ramadan, an Egyptian who had become a Maltese citizen, was stripped of his Maltese citizenship.[95] This decision was not based on his conviction for domestic violence. The revocation of citizenship was ordered due to the fraudulent nature of his marriage, which he had entered into solely for the purpose of remaining in Malta and obtaining citizenship. However, even though the grounds for revocation were not that he had beaten his pregnant wife, Mr. Ramadan does fall into the category of dual nationals for whom the Court verifies that the revocation of citizenship does not constitute a disproportionate infringement on privacy. In this case, one of the reasons cited by the Court for considering the revocation of nationality compatible with Article 8 is the fact that "the person concerned is not at risk of being expelled from Malta."[96]

The 2017 case *of K2 v. the United Kingdom* is the first in which the Court addressed the deprivation of nationality in the context of the fight against Islamic terrorism.[97] The applicant, a Sudanese national, had acquired British citizenship in 2000, had been convicted of a criminal offense in 2009, and had subsequently participated in jihadist activities in East Africa in 2010.[98] For this reason, he was stripped of his British nationality and subsequently filed multiple appeals against this decision until 2016, hoping to have it overturned and return to the United Kingdom. The Sudanese national's application to the Court focused primarily on the procedural safeguards arising from Article 8 and was declared inadmissible as manifestly ill-founded.

[93] *Genovese v. Malta* (dec.), No. 53124/09, October 11, 2011, § 33. See also: *Zeggai v. France*, No. 12456/19, October 13, 2022, § 28; *Ghoumid and Others v. France*, Nos. 52273/16 and 4 others, June 25, 2020, § 43; *El Aroud and B.S. v. Belgium*, Nos. 25491/18 and 27629/18, 2024, § 59.
[94] *Ghoumid and Others v. France*, supra, § 49; *El Aroud and B.S. v. Belgium*, supra, §§ 59 and 60.
[95] *Ramadan v. Malta*, supra.
[96] *Ibid.*, § 90.
[97] *K2 v. the United Kingdom* (dec.), No. 42387/13, February 7, 2017.
[98] *Ibid.*, § 5.

4.5. Criteria Governing the Revocation of Nationality for Dual-National Offenders (since 2020)

In the 2020 judgment *Ghoumid and Others v. France*, the Court summarized the principles governing its review of the deprivation of nationality of dual nationals, from the perspective of Article 8.[99] The applicants were dual nationals—four Franco-Moroccans and one Franco-Turk—and had been convicted of criminal association in connection with a terrorist enterprise. They had provided financial and logistical support to the Moroccan Islamic Combatant Group (GICM), affiliated with Al-Qaeda. These applicants were subsequently released from prison between 2009 and 2010 and had their French nationality revoked in October 2015. The Court stated in the judgment that its review will focus on two points. "Firstly, it will ascertain whether the [the revocation of nationality] were arbitrary; it will thus establish whether they were lawful, whether the applicants enjoyed procedural safeguards, and in particular whether they had access to appropriate judicial review, and whether the authorities acted diligently and promptly. Secondly, it will consider the impact of the deprivation of nationality on the applicants' private life."[100]

The proportionality test applied by the Court in the *Ghoumid* judgment does not include criteria as precisely defined as those for expulsions (see *above*, §§ 2.3 and 2.4), but lists a number of factors. Regarding the absence of arbitrariness in the revocation of nationality, the decisive factor in this case concerns the gravity of the terrorist offenses. The Court thus stated that "a State [may] reassess the bond of loyalty and solidarity existing between itself and persons previously convicted of a serious offense constituting an act of terrorism."[101] When the Court subsequently examined the consequences for the private lives of the applicants, it was the absence of a deportation order that led the Court to uphold the revocation of nationality. Indeed, "as the case stands, since no deportation order has been issued, the consequence of the deprivation of nationality on the applicants' private life is confined to the loss of an element of their identity."[102] In this regard, the Court "notes the Government's position to the effect that, as a result of their actions, such individuals may no longer enjoy the specific bond conferred on them by the nationality of the country in which they reside."[103] The Court concludes that in the event a decision to expel the applicants is taken in the future, the review of such a decision under Article 8 would be conducted in the context of other appeals "through which they could assert their rights."[104]

The Court has retained in its case law the two-step test for reviewing deprivations of nationality established in the *Ghoumid* judgment: the absence of arbitrariness and the impact on private life. These two steps are followed in the most recent judgments, such as *El Aroud*

[99] *Ghoumid and Others v. France*, supra.
[100] *Ibid.*, § 44.
[101] *Ibid.*, § 45.
[102] *Ibid.*, § 49.
[103] *Ibid.*, § 50.
[104] *Ibid.*

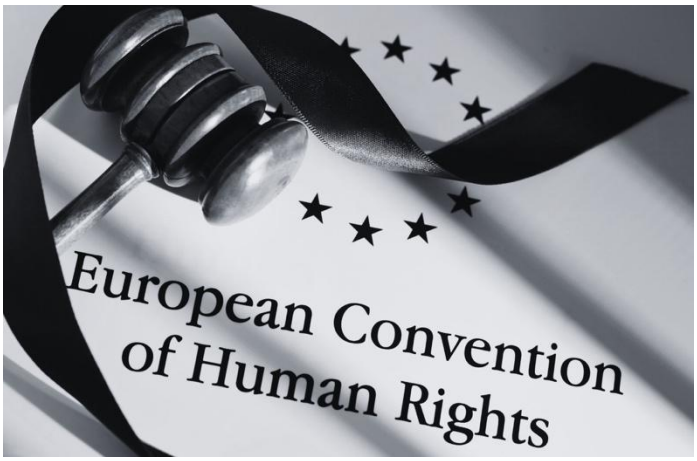
and B.S. v. Belgium (December 2024).[105] In the latter case, the factors that were decisive in the proportionality review were the same as in the *Ghoumid* judgment, namely the seriousness of the terrorist offenses for which the dual-national applicants were convicted and the absence of a decision to expel the applicants.[106] Another criterion that appears to emerge from the *Ghoumid*, *El Aroud, and B.S.* judgments is the time elapsed between the criminal conviction and the imposition of the deprivation of nationality.[107] The Court considers that a short time period supports the proportionality of the measure of deprivation of nationality.[108]

It is possible that the Court will formalize its reasoning in the future. It could thus establish guiding principles regarding the deprivation of nationality of dual-national offenders, as it did regarding deportations in the *Boultif* and *Üner* judgments (see 2.3 and 2.4).

[105] *El Aroud and B.S. v. Belgium*, Nos. 25491/18 and 27629/18, December 5, 2024, § 53.
[106] *Ibid.*, §§ 57–79. See also: *Johansen v. Denmark* (dec.), No. 27801/19, February 1, 2022; *Laraba v. Denmark* (dec.), No. 26781/19, March 22, 2022;
[107] *Ghoumid and Others v. France*, supra, § 45; *El Aroud and B.S. v. Belgium*, supra, § 76.
[108] *Ibid.*

Conclusion

At the conclusion of this study, it is important to recall that these developments in case law regarding the expulsion of foreign offenders and criminals rest solely on the following basis: "Everyone has the right to respect for his private and family life." These few words from Article 8 of the Convention are sufficient for the Court to exercise close scrutiny over every expulsion and every prior revocation of nationality. The Court indeed considers the Convention to be " a living instrument which […] must be interpreted in the light of present-day conditions,"[109] according to a "dynamic and evolving" approach.[110] The right to respect for private and family life would therefore suffice to redefine, at the European and judicial level, the immigration and security policies of the States. The fact that the latter never intended to be bound by Article 8 in this area is of no consequence to the Court. For European judges, it is their own assessment that counts, not the intention of the Convention's signatories.



This study would benefit from being supplemented by others focusing on the various treaty and procedural instruments that are subject to broad interpretation by the Court in cases involving the expulsion of foreign offenders and criminals. This is particularly the case with the prohibition on collective expulsions of foreigners (Article 4 of Protocol No. 4 to the Convention) and the Court's ability to direct States to adopt interim measures (Rule 39 of the Rules of Court).[111] These two provisions are subject to an interpretation by the Court that the States Parties to the Convention had explicitly excluded.

Regarding Article 8, States today appear to have no choice but to recognize the right of foreign offenders and criminals to remain on European territory, or to denounce the Convention in order to free themselves from the Court's jurisdiction. This binary alternative does not, however, preclude the possibility for States to chart a third path. Following the open letter of May 22, 2025, Giorgia Meloni (Italy) and Mette Frederiksen (Denmark) succeeded in rallying twenty-five other governments to sign a joint declaration on December 10, 2025, emphasizing the need to adapt the Convention's framework to the migration and security challenges of today's world.[112] This declaration calls on the Court, in particular, to give greater weight to the

[109] *Tyrer v. United Kingdom*, supra, § 31.
[110] *Stafford v. United Kingdom*, supra, § 68.
[111] On this last point, see the following report: Grégor Puppinck, "Article 39: How the ECHR Asserted Its Power to Suspend Deportations," ECLJ, May 2024.
[112] Government of the United Kingdom, "Joint statement to the Conference of Ministers of Justice of the Council of Europe," December 10, 2025 (accessed on gov.uk); Italian Government, "Denmark and Italy gather majority to

"nature and seriousness of the offense committed, and less weight less weight is put on the foreign criminal's social, cultural, and family ties with the host Country and with the Country of destination" and to no longer place States in situations where foreign nationals convicted of serious crimes cannot be deported.[113]

At the next formal session of the Committee of Ministers, on May 15, 2026, in Chișinău (Moldova), the issue of the deportation of foreign offenders and criminals is on the agenda and will be the subject of a political declaration by the forty-six member States.[114] It is likely that such a declaration, bringing together all member States, will remain vague and avoid taking a clear stance. In any case, the States cannot be certain that they can influence the Court's case law through a mere political declaration. It therefore appears essential to consider a formal revision of the Convention, whether to supplement Article 8, to define the Court's interpretive role (Title II of the Convention), or to add a specific protocol on immigration and security. Such changes remain subject to the unanimous consent of the States Parties, a condition that, in practice, constitutes a major political obstacle.

push for the Council of Europe to address migration and security challenges," December 10, 2025 (accessed on governo.it). In addition to Italy and Denmark, the signatory States are as follows: Albania, Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, Hungary, Iceland, Ireland, Latvia, Lithuania, Malta, Montenegro, the Netherlands, Norway, Poland, Romania, San Marino, Serbia, Slovakia, Sweden, Ukraine, and the United Kingdom.

[113] *Ibid.*

[114] Council of Europe, "Migration challenges: Council of Europe ministers call for a political declaration on rights," press release of December 10, 2025, Council of Europe (accessed at coe.int).