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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

OPINION

**ON THE DRAFT CONSTITUTIONAL LAW
ON "PROTECTION OF THE NATION"**

OF FRANCE

**Adopted by the Venice Commission
at its 106th Plenary Session
(Venice, 11-12 March 2016)**

on the basis of comments by

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I. Introduction

1. Following the adoption by the Parliamentary Assembly of the Council of Europe of Resolution 2090(2016) on "Combating international terrorism while protecting Council of Europe standards and values",¹ the President of the PACE wrote to the Venice Commission on 4 February 2016, requesting its opinion on the compatibility with the European Convention on Human Rights and the Council of Europe's standards of the draft reform of the French Constitution aimed at constitutionalising provisions on the application of the state of emergency and the deprivation of nationality. The PACE asked that the opinion be adopted, if possible, at the plenary session in March 2016.

2. Mr N. Alivizatos, Ms R. Kiener, Ms H. Suchocka, Mr K. Tuori and Mr J. Velaers were appointed rapporteurs. The rapporteurs and Mr G Buquicchio, President of the Commission, accompanied by Ms S. Granata-Menghini, Deputy Secretary of the Commission, travelled to Paris on 4 March 2016 to hold exchanges of views with representatives of the French Council of State, the Ministry of Justice, the Constitutional Council, the Ministry of Foreign Affairs, the Ministry of the Interior, the Prime Minister and the National Assembly. The Venice Commission wishes to thank the French authorities for their welcome and their co-operation during this visit. The Venice Commission delegation also met with representatives of the civil society and wishes to thank them too for their availability and co-operation.

3. The present opinion was prepared on the basis of the contributions of the rapporteurs; it was discussed at the joint meeting of the Sub-Commissions on constitutional justice and international law on 10 March 2016 and was subsequently adopted by the Venice Commission at its 106th plenary session (Venice, 11-12 March 2016).

II. National context

A. The state of emergency

4. On 14 November 2015, following the terrorist attacks which killed 130 people in France on 13 November, the President of the French Republic declared a state of emergency via three decrees² defining the content of the measures authorised with reference to Law no. 55-385 of 3 April 1955 on states of emergency (herein after "the 1955 Law").

5. By law no. 2015-1501 of 20 November 2015, the state of emergency was extended by three months, as of 26 November 2015. This same law also amended the 1955 Law. On 23 and 24 November 2015 respectively, France lodged an information note with the Secretary General of the United Nations and the Secretary General of the Council of Europe notifying its intention to avail itself of the derogation rights provided by Article 4.3 ICCPR and Article 15.1 ECHR.³

¹ <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=22481&lang=EN>

² <http://www.legifrance.gouv.fr/eli/decret/2015/11/14/INTD1527633D/jo>

http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=9F264F70A4A37E50EE92749D8570EB68.tpdila23v_2?cidTexte=JORFTEXT000031473413&dateTexte=&oldAction=rechJO&categorieLien=id&idJO=JORFCONT000031472559

http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=7581336D2E6E9B4706B83FF911A862CB.tpdila17v_3?cidTexte=JORFTEXT000031474548&dateTexte=

³ The justification provided in the notifications for the use of the derogations under Articles 4.3 ICCPR and 15.1 ECHR was the following: on 13 November 2015, large scale terrorist attacks took place in the region of Paris. In view of the indications provided by the intelligence services and in the light of the international context, terrorism is in France a long-term threat. The French Government has decided, by Decree No. 2015-1475 of 14 November

6. Law no. 2016-162 extending the state of emergency by 3 months as of 26 February 2016 was published in the *Journal officiel* of 20 February 2016.⁴ On 25 February 2016, France lodged a further information note in compliance with Article 15 of the European Convention on Human Rights and a new declaration within the meaning of Article 4.3 of the ICCPR.

B. The draft constitutional law “on protection of the Nation”

7. On 23 December 2015, the Council of Ministers adopted upon proposal of the Prime Minister and tabled a draft constitutional law on "protection of the Nation" (CDL-REF(2016)016) seeking to constitutionalise the state of emergency and the deprivation of nationality for a person born as a French national and also holding another nationality in the event of them being convicted for a crime gravely undermining the life of the Nation. This draft legislation had been announced by the President of the Republic at the Congress of Parliament in Versailles on 16 November 2015.

8. On 10 February 2016, the French lower house of parliament, the *Assemblée Nationale*, (hereinafter – National Assembly) adopted the draft constitutional law on "protection of the Nation" at its first reading (CDL-REF(2016)017). The adopted text was then transmitted to the Senate, which will discuss it in public sittings on 16, 17 and 22 March 2016. The Congress of Parliament for the definitive adoption of the text is to be convened in the month of April 2016.

III. Scope of the present opinion

9. The present opinion analyses the draft constitutional law on "protection of the Nation" in the light of the obligations arising under international law, in particular the European Convention on Human Rights and the standards of the Council of Europe.

10. The Venice Commission stresses that it strongly condemns all acts of terrorism, which strike at the heart of the values enshrined in the European Convention on Human Rights and could never be justified. The Venice Commission furthermore reiterates that a democratic State is entitled to defend itself when attacked. However, the fight against terrorism must guarantee the common European values of freedom, democracy, respect for human rights and fundamental freedoms, as well as respect for the rule of law.

IV. Applicable legal framework

A. States of emergency

a. National legal framework

11. The French Constitution contains two provisions regarding exceptional situations, with Article 16⁵ attributing emergency powers to the President of the Republic "where the institutions

2015, to apply the Law n° 55-385 of 3 April 1955 regarding the state of emergency". Moreover, the notification specifies (citing the decrees) the measures likely to be taken by the administrative authority and the duration of the derogation ("for three months, starting on 26 November 2015"). It points out that "some [measures], provided by the decrees of 14 November 2015 and 18 November 2015 and by the Act of 20 November 2015, are likely to involve a derogation from the obligations under the European Convention of Human rights and fundamental freedoms".

⁴ <https://www.legifrance.gouv.fr/eli/loi/2016/2/19/INTX1602418L/jo/texte>

⁵ Article 16 of the French Constitution: "Where the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfilment of its international commitments are under serious and immediate threat, and where the proper functioning of the constitutional public authorities is interrupted, the President of the Republic shall take measures required by these circumstances, after formally consulting the Prime Minister, the Speakers of the Houses of Parliament and the Constitutional Council.

of the Republic, the independence of the Nation, the integrity of its territory or the fulfilment of its international commitments are under serious and immediate threat, and where the proper functioning of the constitutional public authorities is interrupted" and Article 36⁶ covering the state of siege.

12. The state of emergency is not as such regulated by the French Constitution. On two occasions the Constitutional Council ruled that "the Constitution does not exclude the possibility for the legislature to provide a state of emergency regime."⁷

13. The state of emergency is defined by Law no. 55-385 of 3 April 1955,⁸ amended in particular by the Law of 20 November 2015. It is pronounced by Presidential decree, subject to the countersignature of the Prime Minister, and deliberated in the Council of Ministers (Article 13 of the Constitution); however, a law is needed to extend it beyond 12 days (Article 2). A decree pronouncing a state of emergency may be challenged before the State Council.

14. Article 4 provides that "the law extending the state of emergency becomes null and void fifteen (clear) days after the resignation of the Government or the dissolution of the National Assembly".

15. Article 4-ter added by the Law of 20 November 2015 provides that the National Assembly and the Senate are informed without delay of the measures taken by the Government during the state of emergency. They may request additional information within the framework of their monitoring and evaluation of these measures. Pursuant to Article 5-ter of Ordinance No. 58-1100 of 17 November 1958 on the functioning of the parliamentary assemblies, the Law Commission of the National Assembly decided to establish, starting from 2 December 2015 a "continuous watch" designed to enable effective and permanent control of the implementation of the state of emergency.⁹ This work is primarily intended to assess the adequacy of the adopted measures and to formulate, where appropriate, recommendations.

He shall address the Nation and inform it of such measures.

The measures shall be designed to provide the constitutional public authorities, as swiftly as possible, with the means to carry out their duties. The Constitutional Council shall be consulted with regard to such measures.

Parliament shall sit as of right.

The National Assembly shall not be dissolved during the exercise of such emergency powers.

After thirty days of the exercise of such emergency powers, the matter may be referred to the Constitutional Council by the Speaker of the National Assembly, the Speaker of the Senate, sixty Members of the National Assembly or sixty Senators, for the purpose of examining whether the conditions laid down in paragraph one still apply. It shall make its decision by public announcement as soon as possible. It shall be automatically entitled to carry out such an examination and make its decision in the same manner after sixty days of the exercise of emergency powers or at any moment thereafter."

⁶ Article 36 of the French Constitution: "A state of siege shall be decreed in the Council of Ministers".

The extension thereof after a period of twelve days may be authorised solely by Parliament.

⁷ Décisions n° 2015-527 QPC du 22 décembre 20 et n° 2016-535 QPC du 19 février 2016.

⁸ <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000695350>. The second sentence of the third indent of paragraph I of Article 11 of the Law of 3 April 1955 entitling the administrative authorities to copy all the computer data which would have been accessible during a search was declared unconstitutional on 16 February 2016.

⁹ See <http://www2.assemblee-nationale.fr/14/commissions-permanentes/commission-des-lois/controle-parlementaire-de-l-etat-d-urgence/controle-parlementaire-de-l-etat-d-urgence>.

16. The emergency measures called of "administrative police", taken by the civil authorities and authorized by the law of 1955 include: bans on the circulation of persons or vehicles (Article 5,1°); the establishment of protection or security areas where the presence of individuals is regulated (Article 5, 2°); residence bans in relation to all or part of the county ("département") against any person seeking to hinder in any way the action of the public authorities (Article 5, 3°); restricted residence orders ("assignation à résidence") against persons in respect of whom there are serious reasons to believe that their behavior is a threat to security and public order (Article 6); dissolution of associations or groups participating in the commission of acts seriously undermining public order or whose activities facilitate or incite the commission of such acts (Article 6-1); temporary closure of concert halls/theaters, pubs and places of meeting of any kind (Article 8, para. 1); prohibition of meetings likely to cause or maintain disorder (Article 8 para 2); obligation to surrender, for reasons of public order, certain firearms and ammunition legally held or acquired (Article 9); requisition of people, goods and services (Article 10); house search during both daytime and nighttime (Article 11.I); blocking websites which incite the commission of acts of terrorism or glorify such acts (Article 11.II). Some of these measures, such as restricted residence or house orders and searches, normally fall within the competence of the judicial authority.

17. The possibility provided for in Article 11, for the civil authorities, to take all measures to ensure control of the press and publications of all kinds as well as radio broadcasts, film screenings and theater performances, was repealed by the Law of 20 November 2015.

18. Article 14, as amended by the Law of 20 November 2015, stipulates that "the measures taken under this Law shall cease to have effect immediately upon the end of the state of emergency."

19. Police measures may be appealed to the administrative court (Article 14-1), including by way of interlocutory procedures.

20. On 11 December 2015, a priority question of constitutionality was brought before the Constitutional Council by the State Council; in its decision of 22 December 2015,¹⁰ the Constitutional Council stated that restricted residence orders do not involve deprivation of personal freedom within the meaning of Article 66 of the Constitution and that the nine first paragraphs of Article 6 of the law of 1955 do not bear a disproportionate interference with the freedom to come and go; also, these provisions do not infringe Article 16 of the Declaration of the rights of man and of the citizen of 1789, nor the right to respect for private life or the right to a normal family life, or freedom of expression and communication nor any other right guaranteed by the Constitution. The Constitutional Council also ruled that the Constitution does not exclude the possibility, for the legislator, to provide for a state of emergency regime.

21. On 18 January 2016, a priority question of constitutionality was referred to the Constitutional Council by the Council of State on behalf of the *Ligue des droits de l'homme* association. The Constitutional Council, in a decision of 19 February 2016,¹¹ declared that Article 8 of the Law of 1955 on the temporary closure of concert halls/theaters, pubs and places of meeting of any kind was in line with the Constitution. The Constitutional Council also reiterated that the Constitution does not exclude the possibility, for the legislator, to provide for a state of emergency regime.

¹⁰ Décision n° 2015-527 QPC du 22 décembre 2015, M. Cédric D.

¹¹ Décision n° 2016-535 QPC du 19 février 2016, Ligue des droits de l'homme.

22. On 18 January 2016, a priority question of constitutionality was referred to the Constitutional Council by the Council of State on behalf of the *Ligue des droits de l'homme* association. The Constitutional Council, in a decision of 16 February 2016,¹² declared that the provisions of the second sentence of the third indent of paragraph I of Article 11 of the Law of 3 April 1955, entitling the administrative authorities to copy all the computer data which would have been accessible during a search, were unconstitutional.

b. International legal framework

23. Article 15 of the European Convention on Human Rights provides for derogations in emergency situations:

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Article 4 of the International Covenant on Civil and Political Rights states:

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

24. France has made reservations to these two texts. In respect of paragraph 1 of Article 15, the French Government has made a reservation “to the effect, firstly, that the circumstances specified in Article 16 of the Constitution regarding the implementation of that Article, in Section 1 of the Act of 3 April 1878 and in the Act of 9 August 1849 regarding proclamation of a state of siege, and in Section 1 of Act No. 55-385 of 3 April 1955 regarding proclamation of a state of emergency, and in which it is permissible to apply the provisions of those texts, must be understood as complying with the purpose of Article 15 of the Convention and that, secondly, for the interpretation and application of Article 16 of the

¹² Decision n° 2016-536 QPC of 19 February 2016, *Ligue des droits de l'homme*.

Constitution of the Republic, the terms to the extent strictly required by the exigencies of the situation shall not restrict the power of the President of the Republic to take the measures required by the circumstances”.

25. In respect of paragraph 1 of article 4 ICCPR, the French Government has made a reservation to the effect that “firstly, the circumstances enumerated in article 16 of the Constitution in respect of its implementation, in article 1 of the Act of 3 April 1978 and in the Act of 9 August 1849 in respect of the declaration of a state of siege, in article 1 of Act No. 55-385 of 3 April 1955 in respect of the declaration of a state of emergency and which enable these instruments to be implemented, are to be understood as meeting the purpose of article 4 of the Covenant; and, secondly, for the purpose of interpreting and implementing article 16 of the Constitution of the French Republic, the terms “to the extent strictly required by the exigencies of the situation” cannot limit the power of the President of the Republic to take “the measures required by circumstances”.

26. It follows from the above that the French authorities are bound to meet the following requirements, if the declaration of a state of emergency leads to derogation under Article 15 ECHR:

- the existence of a situation of public emergency threatening the life of the nation / exceptional public emergency threatening the existence of the nation;
- the official proclamation of a state of emergency and its notification, in accordance with the ECHR and the ICCPR, in order to inform immediately and publicly the other States Parties of the measures taken, the reasons that justified them and the date on which they will cease to be in force;
- the principle that the derogation is only justified “to the extent strictly required by the exigencies of the situation”, the second reserve mentioned above applying only to Article 16 of the Constitution;
- the imperative respect for the non-derogable rights, including the right to non-discrimination based solely on race, color, sex, language, religion or social origin, and “other obligations under international law ”.

27. The former European Commission of Human Rights has defined the characteristics that must present a situation to qualify as a state of emergency:

- the danger must be actual or imminent;
- its effects must involve the whole nation;¹³
- the organized community life must be threatened;
- the crisis or danger must be exceptional, i.e that the normal measures or restrictions permitted by the ECHR for the protection of safety, health and public order must be totally insufficient. In 1961, the ECtHR had already stressed that the situation had to be a “threat to the organized life of the community.”¹⁴

28. Similar principles are laid down in Article 4 of the International Covenant on Civil and Political Rights. The Special Rapporteur of the UN on human rights and states of exception affirms that States must respect the following principles:¹⁵

¹³ This, however, does not exclude that events having affected only a part of the territory may be considered as threatening the life of the Nation as a whole, or that measures may be taken on a specific part of the territory.

¹⁴ Venice Commission, Opinion on the Protection of Human Rights in Emergency Situations adopted by the Venice Commission at its 66th Plenary Session (Venice, 17-18 March 2006), CDL-AD (2006)015, n° 10; the decision quoted is the Greek case, Yearbook 12 (volume 1), Opinion of the Commission, paragraph 53.

¹⁵ Final Report of the Special Rapporteur of the UN on human rights and states of exception, E/CN.4/Sub.2/1997/19, <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/CN.4/Sub.2/1997/19/Add.1&Lang=F>. See also BORN H. et FLURI P. Parliamentary Oversight of the Security Sector, handbook published by the Geneva Centre for the Democratic Control of Armed Forces and the Inter-Parliamentary Union, 2003, p. 101.

- temporality, i.e the exceptional nature of the declaration of a state of emergency; the exceptional nature of threat, which requires that the crisis presents a real, current or at least imminent danger for the community;
- declaration, i.e. the need to publicly announce the state of emergency; communication, namely the obligation to inform other states and monitoring bodies of the relevant treaties of the content of the measures adopted; proportionality, which requires that the measures adopted to address the crisis are proportionate to its seriousness;
- legality: the restrictions on human rights and fundamental freedoms during a state of emergency must remain within the limits set by the national and international law instruments; moreover, a state of emergency does not involve the temporary suspension of the rule of law and does not allow those in power to act so that the law is violated, as they are bound by these principles permanently
- inviolability/intangibility fundamental rights which are not subject to any derogation, even during time of emergency: the right to life, the prohibition of torture, the prohibition of slavery, the non-retroactivity of the law and other judicial guarantees, the right to recognition of one's legal personality and the freedom of thought, conscience and religion.¹⁶

29. The Venice Commission refers in particular to its "Rule of Law Checklist",¹⁷ in which it identified the criteria for exceptions in emergency situations as follows:

Are exceptions in emergency situations provided for?

- i. Are there specific national provisions applicable to emergency situations (war or other public emergency threatening the life of the nation)? Are derogations to human rights possible in such situations under national law? What are the circumstances and criteria required in order to trigger an exception?*
- ii. Does national law prohibit derogation from certain rights even in emergency situations? Are derogations proportionate, that is limited to the extent strictly required by the exigencies of the situation, in duration, circumstance and scope?*
- iii. Are the possibilities for the executive to derogate from the normal division of powers in emergency circumstances also limited in duration, circumstance and scope?*
- iv. What is the procedure for determining an emergency situation? Is there parliamentary control and judicial review of the existence and duration of an emergency situation, and the scope of any derogation thereunder?*

B. Deprivation of nationality

a. National legal framework

30. Article 1 of the French Constitution proclaims the "equality of all citizens before the law, without distinction of origin, race or religion".

31. Article 25 § 1 of the French Civil Code (amended by Law no. 98-170 of 16 March 1998 - Art. 23) makes it possible to deprive an individual of French nationality acquired by naturalisation notably if they are convicted of a crime or misdemeanour constituting a violation of the fundamental interests of the Nation except where such deprivation of nationality would make them stateless:

¹⁶ Venice Commission, Report on the democratic control of the armed forces, CDL-AD(2008)004, §§ 246 and following.

¹⁷ CDL-AD(2016)007.

An individual having acquired French nationality may be declared, by decree adopted after the Council of State has given its assent, as being deprived of their French nationality, unless such deprivation of nationality would have the effect of making them stateless:

1° If they are sentenced for an act characterised as a crime or misdemeanour that constitutes a violation of the fundamental interests of the Nation, or for a crime or misdemeanour that constitutes an act of terrorism; [...]

32. Only individuals having acquired the French nationality less than 10 years ago may be deprived of French nationality. This time limit is extended to 15 years if they have committed a crime or misdemeanour constituting "a violation of the fundamental interests of the Nation".

33. In a specific case, the deprivation of nationality is requested to the Prime Minister by the Minister of Interior. The Decree is issued with the assent of the State Council. The deprivation leads to the de facto loss of the residence permit. The deprivation decree sets out the conditions attached to the loss of French nationality. The Ministry may for example decide to add inadmissibility to the deprivation of nationality. These measures are at the discretion of the Ministry. The deprivation decree may be appealed to the State Council.

34. About twenty decisions of deprivation of nationality have been taken since the 1990s, including eight between 2000 and 2014 for terrorism.

35. Article 23-7 of the Civil Code also allows a French person "*who behaves de facto as a national of a foreign country*" to be deprived of French nationality "*if they have the nationality of that country*".

36. In 1996, when the law adding convictions for terrorist crimes or misdemeanours among the possible grounds for depriving a person of French nationality was referred to it, the Constitutional Council ruled¹⁸ that "given the particularly serious inherent nature of acts of terrorism", the "sanction" represented by the deprivation of nationality is not contrary to the requirements of Article 8 of the Declaration of 1789, which states that: "the law should establish only penalties that are strictly and evidently necessary, and no one can be punished but under a law established and promulgated before the offence and legally applied". In 2015,¹⁹ when a priority question of constitutionality was referred to it in connection with a challenge before the Council of State to a decree establishing deprivation of nationality for acts of terrorism (on condition, however, that the person concerned was not made stateless), the Constitutional Council confirmed this case-law. The Court declared that "given the particularly serious inherent nature of acts of terrorism, the challenged provisions institute a punitive sanction that is not manifestly disproportionate" in the light of the requirements of Article 8 of the Declaration of 1789. These Constitutional Council judgments related to the deprivation of newly acquired nationality (since the acts it applied to had to have been committed within a certain period before or after such acquisition that was strictly defined by law.

37. Where statelessness is concerned, in 1996, the Constitutional Council declared that extending the procedure for deprivation of nationality to convictions for terrorism conformed to the Constitution, despite it not yet ruling out the creation of stateless persons²⁰. In January 2015, on the other hand, the constitutional judge noted – without indicating whether this condition was necessary or not – that Article 25 of the Civil Code did not allow an individual

¹⁸ Decision no. 93-377 Dc of 16 July 1996. recitals 20 to 23.

¹⁹ Decision no. 2014-439 QPC of 23 January 2015, *Mr Ahmed S.*

²⁰ Decision no.93-377 Dc of 16 July 1996. recital 23.

to be made stateless, before concluding that the measure was not disproportionate in the light of Article 8 of the Declaration of 1789.²¹

38. Chapter I of Title II ("Terrorism") of Book IV of the Criminal Code lists the crimes and misdemeanours "constituting an act of terrorism".²² "Crimes relating to terrorism" are ordinary crimes which, through the reference made in Article 421-1 of the Criminal Code, are classified as acts of terrorism "where they are committed intentionally in connection with an individual or collective undertaking the purpose of which is seriously to disturb public order through intimidation or terror" and for which the penalties are increased as per Article 421-3 of that code. "Misdemeanours relating to terrorism" are individual terrorist offences defined in articles 421-2 to 421-2-6 and 421-4 to 421-6 of the code (for example, financing a terrorist organisation, apology of terrorist acts or participation in a group formed for the purpose of the preparation of terrorist acts).

b. International legal framework

39. In principle, international law accepts that it is for each State to sovereignly determine who its nationals are.²³ However, there are a few conventions, ratified by a number of States, setting out guidelines for the exercise of this power.

40. The Universal Declaration of Human Rights of 10 December 1948 stipulates, in Article 15: "Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality".²⁴

41. The Convention relating to the Status of Stateless Persons of 28 September 1954 seeks to give a status to stateless persons who do not enjoy refugee status. It does not prohibit States from creating cases of statelessness. The Convention, which entered into force on 6 June 1960, was signed by France on 12 January 1955 and then ratified on 8 March 1960.

42. The Convention on the Reduction of Statelessness of 30 August 1961 does not exclude the possibility of depriving a person of their nationality either. In Article 8, paragraph 3, it stipulates that:

"a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time:

"a) that, inconsistently with his duty of loyalty to the Contracting State, the person: i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments

²¹ Decision no. 2014-439 QPC of 23 January 2015, *Mr Ahmed S*, recital 19:

²²

https://www.legifrance.gouv.fr/affichCode.do?sessionId=C19531CFCAEE97730B3781ABC51AD7A3.tpdila21v_2?idSectionTA=LEGISCTA000006136045&cidTexte=LEGITEXT000006070719&dateTexte=20160302

²³ Article 3 of the European Convention on Nationality stipulates that: "1. Each State shall determine under its own law who are its nationals. 2. This law shall be accepted by other States in so far as it is consistent with applicable international conventions, customary international law and the principles of law generally recognised with regard to nationality". France signed this convention on 4 July 2000 but has not ratified it.

²⁴ Discussion focusing on the right of nationality when the Universal Declaration was drafted was particularly difficult, which explains why this right was not written into the United Nations Covenant on Civil and Political Rights: A. Verdoodt, *Naissance et signification de la Déclaration Universelle des Droits de l'Homme*, Louvain – Paris, 1963, p. 287-299. Within the framework of the United Nations, see amongst others, the Report of the Secretary General on "Human rights and arbitrary deprivation of nationality", A/HRC/13/34.

from, another State, or ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State;

b) that the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State"."

43. This Convention was signed by France on 31 May 1962 but has not been ratified. When signing the Convention, the French Government declared that "it reserves the right to exercise the power available to it under Article 8 (3) on the terms laid down in that paragraph, when it deposits the instrument of ratification of the Convention".

44. Under Article 7, paragraph 1 of the European Convention on Nationality (1997),²⁵ a State Party may not provide in its internal law for the loss of its nationality *ex lege* or at the initiative of the State Party concerned except in the cases expressly provided for in the Convention. One such case is where an individual's conduct is seriously prejudicial to the vital interests of the State Party.²⁶ However, the same article prohibits, in this case, the state from taking this step "if the person becomes stateless." This Convention was signed by France on 4 July 2000, but has not been ratified.

45. From the viewpoint of the European Convention on Human Rights, deprivation of nationality relates neither to a dispute regarding civil rights and freedoms nor to the well-foundedness of a criminal indictment within the meaning of Article 6 of the Convention.²⁷ In Article 8, the European Convention guarantees the right to private and family life; according to the Court's case-law, the right to acquire or not lose a nationality is not protected by Article 8 of the Convention. The Court does accept however that, while nationality is not directly protected by an article of the Convention, measures prejudicial to it may be examined in the light of Articles 8 and 14 of the Convention, with regard to the impact they may have on an individual's "social identity". Both an arbitrary refusal to grant nationality²⁸ and a decision to strip someone of their nationality, making them stateless as a result,²⁹ may fall within the scope of Articles 8 and 14 of the Convention. In both cases, the proportionality of the measure is a factor in the assessment of whether it conforms to the aforementioned articles.

46. Under European Union law, defining the conditions for acquiring and losing nationality lies within the competence of the Member States. However, any withdrawal of citizenship of the Union must be on grounds of public interest and conform to the principle of proportionality.³⁰

²⁵ France signed this convention on 4 July 2000 but has not ratified it.

²⁶ See also Article 8 paragraph 3/ii of the International Convention on the Reduction of Statelessness ("has conducted himself in a manner seriously prejudicial to the vital interests of the State").

²⁷ European Commission of Human Rights, *Galip v. Greece*, no. 17309/90, 30 August 1994; confirmed in the judgment in the case of *Zeibek v. Greece*, no. 34372/97, 21 May 1997.

²⁸ European Court of Human Rights (ECHR) judgment in the case of *Genovese v. Malta*, 11 October 2011 ECHR judgment in the case of *Karashev v. Finland*, 12 January 1999; ECHR judgment in the case of *Petropavlovskis v. Latvia*, 13 January 2015

²⁹ ECHR judgment in the case of *Fedorova and others v. Latvia*, 9 October 2003; ECHR judgment in the case of *Kuric v. Slovenia*, 13 July 2010.

³⁰ The Court considered that « it is, however, for the national court to ascertain whether the withdrawal decision at issue in the main proceedings observes the principle of proportionality so far as concerns the consequences it entails for the situation of the person concerned in the light of European Union law, in addition, where appropriate, to examination of the proportionality of the decision in the light of national law ». « when examining a decision withdrawing naturalisation it is necessary, therefore, to take into account the consequences that the decision entails for the person concerned and, if relevant, for the members of his family with regard to the loss of the rights enjoyed by every citizen of the Union. In this respect it is necessary to establish, in particular, whether that loss is justified in relation to the gravity of the offence committed by that person, to the lapse of time between

47. The rules and principles of international law and the legal principles generally recognised in the sphere of nationality may be summarised as follows:

- There may be provision for loss of nationality in domestic law in cases of conduct seriously prejudicial to the vital interests of the State Party;
- Statelessness must be avoided;³¹
- No one may be arbitrarily deprived of their nationality;³²
- This latter principle has a number of consequences.³³ Deprivation of nationality must be founded on an implementing act clearly and unequivocally setting out the grounds on which nationality may be withdrawn; the rules governing deprivation must not have retrospective effect, which means that deprivation of nationality is admissible only for actions governed by a law expressly providing for it. As a punitive sanction, deprivation of nationality must be proportionate to the seriousness of the crime for which it has been imposed. Legal provisions aside, any individual decision relating to deprivation of nationality must respect the principle of proportionality.³⁴ In practice, this means that deprivation is never an automatic measure; on the contrary, this step is acceptable only if it is the result of a meticulous examination on a case-by-case basis, including analysis of the family circumstances of the person concerned.
- The rules governing nationality must not contain any distinctions or include practices amounting to discrimination based on gender, religion, race, skin colour or national or ethnic origin;³⁵
- The rules governing nationality must respect the principle of non-discrimination between nationals, whether they are nationals by birth or have acquired its nationality subsequently;³⁶
- The rules governing procedure must be strictly followed, particularly those protecting the right of the person concerned to be heard, the right to a written, reasoned decision and the right to judicial review.³⁷

48. A brief comparison of laws shows that various States have laid down rules regarding the loss of nationality in their legislation. Since the Council of Europe's member States enjoy broad autonomy in the area of nationality, the rules vary considerably. According to a recent

the naturalisation decision and the withdrawal decision and to whether it is possible for that person to recover his original nationality» (ECJ, C-135/08, GC, 2 March 2010, *Janko Rottman v Freistaat Bayern*).

³¹ Articles 1 and 8 of the International Convention on the Reduction of Statelessness; Article 4 of the European Convention on Nationality; see also Committee of Ministers Recommendation 18 (1999) on the avoidance and reduction of statelessness.

³² Article 4 of the European Convention on Nationality; Article 8 paragraph 1 of the International Convention on the Reduction of Statelessness; Article 15 of the Universal Declaration of Human Rights; Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination.

³³ *Gerard-René de Groot and Maarten Peter Vink*, Best Practices in Involuntary Loss of Nationality in the EU (2014), <http://www.ceps.eu>, p. 3 ff.

³⁴ "While international law allows for the deprivation of nationality in certain circumstances, it must be in conformity with domestic law and comply with specific procedural and substantive standards, in particular the principle of proportionality. Measures leading to the deprivation of nationality must serve a legitimate purpose that is consistent with international law and, in particular, the objectives of international human rights law. Such measures must be the least intrusive instrument of those that might achieve the desired result, and they must be proportional to the interest to be protected. In this respect, the notion of arbitrariness applies to all State action, legislative, administrative and judicial. The notion of arbitrariness could be interpreted to include not only acts that are against the law but, more broadly, elements of inappropriateness, injustice and lack of predictability also." : « Human rights and arbitrary deprivation of nationality » - Report of the Secretary-General, A/HRC/13/34, § 25.

³⁵ Article 5 paragraph 1 of the European Convention on Nationality, Article 9 of the International Convention on the Reduction of Statelessness.

³⁶ Article 5 paragraph 2 of the European Convention on Nationality.

³⁷ Articles 10 to 13 of the European Convention on Nationality.

study, 19 European Union Member States provide for the possibility of depriving a person of their nationality whereas there is no such provision in the other nine.³⁸ In Switzerland, under Article 48 of the Federal Law on the acquisition and loss of Swiss nationality,³⁹ the State Secretariat for Migration may, "with the assent of the authorities of the canton of origin, deprive a dual national of Swiss nationality and the right of cantonal and communal citizenship if their conduct is seriously prejudicial to Switzerland's interests or reputation". Similar legislation exists in Great Britain.⁴⁰ In Belgium, new Article 23/2 of the Nationality Code (amended in July 2015) stipulates that only naturalized Belgians who would not become stateless persons may be deprived of Belgian nationality if they have been sentenced to imprisonment of at least 5 years. On the other hand, in Germany, under Article 16 of the fundamental law ("*Grundgesetz*"), no one may be deprived of their nationality.

V. Analysis of the draft constitutional law

A. Article 1: constitutionalisation of states of emergency

49. Article 1 of the draft constitutional law envisages the addition to the Constitution of a new Article 36-1 on states of emergency.⁴¹ The text adopted at first reading is worded as follows:

"Art. 36-1. – A state of emergency shall be decreed by the Council of Ministers, within all or part of the national territory, either in the event of an imminent threat resulting from serious breaches of public order or in the case of events tantamount to a public disaster by reason of their nature and severity.

The law shall determine the administrative policing measures that may be taken by the civil authorities to avert this threat or deal with these events.

Throughout the state of emergency Parliament shall sit as of right.

The National Assembly and the Senate shall be notified at once of measures taken by the Government during the state of emergency. They may demand any further information required to scrutinise and assess these measures. The rules of both houses shall determine the conditions whereby Parliament scrutinises the implementation of a state of emergency.

A state of emergency may be extended beyond twelve days only by a law determining the duration of this extension, which may not exceed four months. The extension is renewable on the same terms."

50. The explanatory memorandum states that "*this constitutionalisation of the state of emergency is necessary to complete the range of actions open to the security forces under the supervision of the courts, [...] means of combating the threats of violent radicalisation and terrorism. The new Article 36-1 of the Constitution on states of emergency, set out in Article 1 of this draft constitutional law, provides the legal basis for these rules*".

51. The Venice Commission points out that a state of emergency entails both derogations from the normal rules on human rights and changes to the way in which responsibilities and prerogatives are apportioned to the various organs of State. The issue of derogations from fundamental human rights is especially crucial; experience has shown that the gravest

³⁸ Gerard-René de Groot and Maarten Peter Vink, Best Practices in Involuntary Loss of Nationality in the EU (2014), <http://www.ceps.eu>, p. 2.

³⁹ Law on nationality (1952), LN, RS 141.0.

⁴⁰ Immigration, Asylum and Nationality Act (2006).

⁴¹ The constitutionalisation of the state of emergency was previously recommended by the "Rapport Vedel" in 1993 and by the "Rapport Ballardur" in 2007.

breaches of human rights tend to occur in the context of a state of emergency.⁴² The Parliamentary Assembly has said that "The need for security often leads governments to adopt exceptional measures. These must be truly exceptional, as no State has the right to disregard the principle of the rule of law, even in extreme situations. At all events, there must be statutory guarantees preventing any misuse of exceptional measures".⁴³

52. Many constitutions contain provisions specifically relating to states of emergency, while others do not. This is the case notably in Austria, Belgium, Italy, Denmark, Luxembourg, Norway, Sweden and Switzerland. Certain legal regimes possess a tradition of non-written constitutional emergency law. The Venice Commission, however, given that constitutions normally contain provisions to safeguard fundamental rights and freedoms, has already expressed the view that provision for situations of emergency rule should be made in the form of express constitutional rules.⁴⁴ Accordingly, the French initiative in seeking to constitutionalise states of emergency is to be welcomed.

53. As regards the constitutionalisation of the state of emergency in France, the objection has been raised that "constitutionalising the state of emergency amounts to placing it at the same level in the normative hierarchy as fundamental rights and freedoms, notably those enshrined in the Declaration of human rights of 1789. Emergency powers and fundamental rights and freedoms are thus placed on the same normative level".⁴⁵ Concerns have further been expressed that "new Article 36-1 of the 1958 Constitution may be directed exclusively, as explicitly stated in the Explanatory memorandum to the draft constitutional law, at providing a constitutional basis for future legislative provisions seriously affecting fundamental rights and freedoms, through a significant strengthening of the law enforcement powers of the civil authorities".⁴⁶

54. The Venice Commission underlines that the constitutionalisation of the state of emergency should aim at strengthening the guarantees against possible abuse in the form of declaring or prolonging the state of emergency without genuinely aiming at protecting the life of the nation or of taking police measures which are not directly linked to, nor justified by the state of emergency. The provisions on the state of emergency will have to be interpreted in a systemic manner, in compliance with the other constitutional provisions, notably fundamental rights and freedoms. Under no circumstances should the constitutionalisation result in a "blank cheque" in favour of the legislator, even less so in favour of the majority in power, which would otherwise have the power to introduce very substantial derogations from the protected freedoms, including after the declaration of the state of emergency. For this reason, it seems necessary to avert this risk by enshrining in the Constitution not only the possibility of declaring (and prolonging) any exceptional regime, including the state of emergency, but also the formal, material and time limits which must govern such regimes.

⁴² Venice Commission, Emergency Powers, Science and technique of democracy, No. 12, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD\(1995\)012-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD(1995)012-e)

⁴³ Recommendation 1713 of 23/06/2005 on "Democratic oversight of the security sector in member states" <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17360&lang=en>

⁴⁴ Venice Commission, Emergency Powers, Science and technique of democracy, No. 12, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD\(1995\)012-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD(1995)012-e)

⁴⁵ See Commission Nationale Consultative des Droits de l'Homme, Avis sur le projet de loi constitutionnelle de protection de la Nation, 18 February 2016, § 10, <http://cncdh.fr/fr/publications/avis-sur-le-projet-de-loi-constitutionnelle-de-protection-de-la-nation>.

⁴⁶ See Commission Nationale Consultative des Droits de l'Homme, Avis sur le projet de loi constitutionnelle de protection de la Nation, 18 February 2016, § 11.

a. Declaration of a state of emergency: substantive requirements

55. Regarding the circumstances which may trigger a state of emergency, Article 1 of the draft constitutional law echoes the wording of the 1955 law: "either in the event of an imminent threat resulting from serious breaches of public order or in the case of events tantamount to a public disaster by reason of their nature and severity".

56. The definition used in the draft constitutional law needs to be looked at in the light of the definitions contained in the ECHR and the ICCPR. The notions used in paragraph 1 of Article 36-1 appear to be broader. Mention is made primarily of an "imminent threat", though with no explicit stipulation of which aspects of the public good have to be jeopardised by this "imminent threat". The requirement that the imminent threat should result from "serious breaches of public order" implies – as was stated in the National Assembly – "that the threat, whose consequences the state of emergency is designed to thwart, jeopardises the most traditional and fundamental conception of public order". So it seems that the idea of "imminent threat" is to be interpreted as meaning an "imminent threat *to public order*, resulting from serious breaches of public order". It should be underlined that pursuant to the 1955 law, which has been reproduced in the proposed article 36-1, a state of emergency may only be declared *after* "serious breaches of public order" have already taken place: this excludes that the declaration may be based only on a future, hypothetical threat. It is not stated instead that these serious disturbances must be exceptional and likely to damage "the life of the nation".⁴⁷ Yet the Human Rights Committee has said that "not every disturbance or catastrophe qualifies as a public emergency which threatens the life of the nation, as required by Article 4 paragraph 1" of the ICCPR. The Committee says that, even in wartime, the situation must be really serious before it can be considered as a threat to the life of the nation.⁴⁸ It is true that reproducing the formulas of the 1955 law which has already been applied in several cases has the advantage that there already exists a practice which may serve as guidance for interpretation and may thus ensure a certain consistency in the application of the state of emergency. However, adding the notions enshrined in Article 15 ECHR and 4.3 ICCPR would avert the risk – which remains possible when the constitution is not clear and precise – that the constitutional regime of the state of emergency may be applied too broadly in the future.

57. Article 36-1 as adopted by the National Assembly also allows a state of emergency to be decreed "in the case of events tantamount to a public disaster by reason of their nature and severity." This wording already featured in the 1955 law. That text was apparently referring to large-scale disasters. Thus the government draft of March 1955 talked about "forest fires, floods or earthquakes". But no state of emergency has ever been declared on that basis. And the wording does not appear in any other legal text. Report No. 3451 raised the question of whether the notion of "public disasters" other than purely natural events can also include technological disasters (nuclear or chemical accidents). Some members of parliament take the view that "disasters" means natural phenomena only. This should be clarified, at least in the *travaux préparatoires*.

58. The Venice Commission acknowledges that it is hard to predict and describe an emergency situation exactly; a degree of vagueness in the definition would thus appear unavoidable. The preconditions which the Constitution imposes in order for a state of emergency to be declared must at any rate be interpreted in the light of the definitions

⁴⁷ From practice based on the 1955 law it appears that the French administrative courts have already in the past recognised urban unrest covering a large part of the territory and entailing serious threats to public safety as a situation that can justify the implementation of a state of emergency (see Council of State, ord. of 14 November 2005, Rolin, Application No. 28635, AJDA, 2006, p. 501, note by P. Chrestia).

⁴⁸ General Comment No. 29, States of emergency (Art. 4), CCPR/C/21/Rev.1/Add. 11 (2001), paragraph 3: "Not every disturbance or catastrophe qualifies as a public emergency which threatens the life of the nation, as required by Article 4 paragraph 1."

contained in the ECHR and in the ICCPR. The definition contained in Article 36-1 can be interpreted with due regard for European standards. Nevertheless, the text could usefully be improved to make it clear that both "the imminent threat resulting from serious breaches of public order" and "events tantamount to a public disaster" must be "such as to potentially threaten the life of the nation".

b. Declaration of a state of emergency: control of constitutionality

59. The European Court of Human Rights has declared itself competent to consider emergency situations by virtue of the Convention's Article 15. While holding that "the national authorities are in principle in a better position than the international judge to decide both on the presence of such an emergency and on the nature and scope of derogations necessary to avert it", the European Court nevertheless allows the national authorities a considerable margin of appreciation.⁴⁹

60. Unlike Article 16 paragraph 1 of the Constitution, the new Article 36-1 does not stipulate that the Constitutional Council must be consulted on the activation of a state of emergency.

61. Comparative constitutional law offers no clear and unequivocal answer on whether it is appropriate for declarations of a state of emergency to require judicial review, something that might be awkward given the highly political nature of such decisions. The Venice Commission notes that the President's exceptional powers under Article 16 of the Constitution are submitted to prior constitutional review, but are neither limited in time nor subject to parliamentary control. It is again the Constitutional Council that must rule on the possibility to prolong them, after 30 days upon request, and ex officio after 60 days. This is not the case for the state of emergency: the decree declaring it is not subject to prior constitutional review but may be challenged before the Council of State. Moreover, it is possible to apply to the Constitutional Council for a priority question of constitutionality (admittedly, after the state of emergency has been declared). The Venice Commission is therefore of the view that constitutional review a priori of the decree declaring the state of emergency is not necessary.

c. Role of parliament

62. Parliamentary scrutiny of acts by the authorities in connection with a state of emergency and the special procedures for such scrutiny are important guarantees of the rule of law and democracy. Most democratic constitutions vest the right to declare a state of emergency in the executive – but subject to parliamentary assent. The question of who should end a state of emergency, when and how, cannot be left to the judgement of an executive which is exercising increased powers. It is a question for Parliament; hence, the need for parliamentary life to continue throughout a state of emergency. It is for this reason that some constitutions expressly state that Parliament cannot be dissolved during the exercise of emergency powers.⁵⁰

⁴⁹ The Court recalled in one judgment "[...] that it falls to each Contracting State, with its responsibility for 'the life of [its] nation', to determine whether that life is threatened by a 'public emergency' and, if so, how far it is necessary to go in attempting to overcome the emergency. By reason of their direct and continuous contact with the pressing needs of the moment, the national authorities are in principle in a better position than the international judge to decide both on the presence of such an emergency and on the nature and scope of derogations necessary to avert it. Accordingly, in this matter a wide margin of appreciation should be left to the national authorities [...]. Nevertheless, Contracting Parties do not enjoy an unlimited power of appreciation. It is for the Court to rule on whether inter alia the States have gone beyond the 'extent strictly required by the exigencies' of the crisis. The domestic margin of appreciation is thus accompanied by a European supervision [...]. At the same time, in exercising its supervision the Court must give appropriate weight to such relevant factors as the nature of the rights affected by the derogation, the circumstances leading to, and the duration of, the emergency situation", *Brannigan and McBride v. the United Kingdom, Judgment (5/1992/350/423-424)*, 26 May 1993, paragraph 43.

⁵⁰ Venice Commission, *Emergency Powers*, *op. cit.*

63. Article 36-1 assigns an important role to Parliament, which must primarily "scrutinise" and "assess" the implementation of a state of emergency; Parliament sits as of right throughout it. Parliament is then required to decide whether it should be extended, for a maximum period of four months (renewable). Parliament decides by a simple majority vote. It may be argued that it would be useful to add the guarantee of a decision by a qualified majority. According to the French authorities, the main obstacle to adopting an organic law would be the length of the relevant procedure⁵¹, which would hardly suit the need for a prompt reaction. At any rate, it would not appear possible to follow this procedure to decide the first prolongation 12 days after the declaration of the state of emergency. The Venice Commission agrees that it would be inappropriate to require a qualified majority for the first law prolonging the state of emergency; it considers instead that it would be useful to provide for such majority for any subsequent prolongation.⁵²

64. Article 16 of the Constitution states that the National Assembly cannot be dissolved during the exercise of emergency powers by the President of the Republic. One wonders whether a similar provision prohibiting the dissolution of Parliament during a state of emergency would be appropriate.⁵³ The French authorities have explained to the Venice Commission that in French constitutional law, dissolution of parliament is a measure reserved to exceptional cases in which one or more state institutions are not functioning, a situation which does not apply to the state emergency, while it applies to the exercise of the President's exceptional powers. The Venice Commission agrees that during the state of emergency, state institutions function normally, although the distribution of powers is modified in favour of the executive. In addition, according to the French authorities, the balance of powers would be affected if during the state of emergency the government were prevented from dissolving parliament, while parliament maintains its power to call into question the responsibility of the government. Still, parliament exercises a very important control on the implementation of the state of emergency,⁵⁴ which would cease if parliament were dissolved. It should be noted that on the one hand, the state of emergency may only be prolonged by parliament; on the other hand, as underlined by the French authorities, Article 4 of the Law of 1955 stipulates that "the law prolonging the state of emergency becomes null 15 days after the date [...] of dissolution of the National Assembly". In the opinion of the Venice Commission, this provision could be added to the Constitution.

d. Duration of a state of emergency

65. A state of emergency is by definition a state which must be exceptional and temporary.⁵⁵ So it must also be provisional. Emergency rule must be time-limited. It must last no longer than the emergency itself and cannot become permanent.

66. It is clear from Article 36-1 paragraph 5 that a state of emergency is decreed for twelve days but may be extended by the law, which determines the period of its extension. This may not exceed four months. This extension is, however, renewable "on the same terms", but the law does not set a limit for the total duration of the state of emergency or the number

⁵¹ Article 46 of the Constitution.

⁵² Law no. 2015-1501 of 20 November 2015 was adopted by 551 votes in favour and 6 against out of 558 voters. Law no. 2016-162 of 19 February 2016 was adopted by 212 votes in favour and 31 against out of 236 voters. <http://www.assemblee-nationale.fr/14/cr/2015-2016>.

⁵³ A provision to that end had been tabled during the debates in the National Assembly.

⁵⁴ See <http://www2.assemblee-nationale.fr/14/commissions-permanentes/commission-des-lois/controle-parlementaire-de-l-etat-d-urgence/controle-parlementaire-de-l-etat-d-urgence>

⁵⁵ See General Comment No. 29, States of emergency (art. 4) CCPR/C/21/Rev.1/Add.11, 31 August 2001, paragraph 2: "Measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature."

of times it can be extended. Whereas the 1955 law states that the law "shall determine [its] definitive duration", Article 36-1 says merely that the law "shall determine [its] duration".⁵⁶ It will thus be up to Parliament, the only body with the authority to extend the state of emergency, to decide on a case-by-case basis whether it is appropriate to do so and what the total duration should be.

67. Like the European Court of Human Rights, the Venice Commission stresses that a state of emergency can be extended only on the basis of a "process of continued reflection [...] which requires permanent review of the need for emergency measures."⁵⁷ Parliament must decide whether to extend the state of emergency, in full cognisance of the facts which may warrant it. The Venice Commission notes that France's Council of State said in its binding opinion on the second law prolonging the state of emergency that "the state of emergency must remain temporary. [...] Exceptional powers have effects which in a state governed by the rule of law must necessarily be limited in time and in space. [...] State of emergency remains "a state of crisis" which by its nature is temporary. It may therefore not be prolonged indefinitely. [...] When, as it seems to be the case, the "imminent danger" that gives rise to a state of emergency is based on a permanent threat, we must counter it using permanent instruments. The Government must therefore start preparing to end the state of emergency". The Venice Commission considers therefore that, despite the absence of a specific provision that a state of emergency must be limited in time, this principle is enshrined in the case-law of the State Council. In addition, the Venice Commission recommends reflecting on the possibility of providing that, as of the second prolongation of the state of emergency, parliament decide by a qualified majority.

e. Effects of the state of emergency

68. Article 36-1 states that the law shall determine "*the administrative policing measures which the civil authorities can take in response to this danger or these events*". The legislator is given no other guidance. The risk that this might be interpreted as giving a free hand to the civil authorities has been raised. In order to avert such risk, it appears necessary to indicate explicitly the limits which are imposed on the civil authorities in the implementation of the state of emergency.⁵⁸ In the Venice Commission's view, it would be important to amend Article 36-1 to mention, first of all, that there are rights from which no derogation is possible and that any law on emergency powers must safeguard these.⁵⁹ The Constitution should also require that any declaration of a state of emergency must include a list of the rights to be derogated from.

69. In the opinion of the Venice Commission, it is also important that Article 36-1 also stipulate that the civil authorities can take (administrative policing) measures in order to avert this imminent danger or deal with these events only "to the extent strictly required by the exigencies of the situation".⁶⁰

⁵⁶ According to the information obtained by the Venice Commission, the definitive duration of the state of emergency currently in force has not yet been fixed.

⁵⁷ ECHR judgment in the case of *Brannigan and McBride v. the United Kingdom* (plenary), Applications Nos. 14553/89 and 14554/8, judgment of 26 May 1993, paragraph 54.

⁵⁸ On the grounds of the state of emergency, the freedom of assembly, of demonstration and the liberty to come and go of certain environmental activists were subjected to restriction (restricted residence orders) in the context of the COP21 Climate Conference. These measures were subsequently ratified by the Council of State, which in its decision of 15 December 2015 held that the law of 3 April 1955 made no direct link between the nature of the imminent threat or public disaster prompting the declaration of a state of emergency and the nature of the risk to security and public order warranting a "restricted residence order (*assignation à résidence*)".

⁵⁹ Venice Commission, Emergency powers, op. cit.

⁶⁰ General Comment No. 29, States of emergency (Art. 4) CCPR/C/21/Rev.1/Add.11, 31 August 2001.

70. The French government disagrees about the need for these additions to Article 36-1, on the basis of the following arguments: first, France is already under an obligation to respect Article 15 ECHR and 4 ICCPR and, second, Article 36-1 may be interpreted in line with these provisions. The Venice Commission is nonetheless of the opinion that if the French constituent legislator decides to constitutionalise the state of emergency, it is necessary to enshrine not only the possibility of declaring it and the procedure for doing so and for prolonging it, but also the essential material limitations to it. This would present the additional advantage of ruling out the ambiguity which transpired during the debates at the National Assembly, when some speakers claimed that the aim of the constitutionalisation was also to “consolidate the administrative policing measures defined by the 1955 law” and to “support the current policing measures and avoid the unfortunate and ruinous consequences which the admissibility of a possible priority question of constitutionality would bring”.

f. Judicial review of emergency measures

71. In its "Opinion on the protection of human rights in emergency situations"⁶¹ the Venice Commission said that "Derogations may only last for as long as, and may only have a scope that is 'strictly required by the exigencies of the situation'. Their necessity and proportionality must be subject to domestic and international supervision. That supervision is of primary importance, since State Practice shows that the gravest violations of human rights tend to occur in the context of states of emergency and that States may be inclined, under the pretext of a state of emergency, to use their power of derogation for other purposes or to a larger extent than is justified by the exigency of the situation." Similarly, the UN Human Rights Committee stated in its General Comment No. 29/2001: "Even if a State party, during a state of emergency, and to the extent that such measures are strictly required by the exigencies of the situation, may introduce adjustments to the practical functioning of its procedures governing judicial or other remedies, the State party must comply with the fundamental obligation, under Article 2, paragraph 3, of the Covenant to provide a remedy that is effective".⁶²

72. Decisions taken by these authorities are unilateral administrative acts *par excellence*; for this reason it makes sense that they should be subject to judicial review.⁶³ Article 36-1 as proposed does not modify the distribution of competencies between the ordinary judiciary and the administrative judge. Under the 1955 law, all measures of administrative policing taken by the relevant civil authorities are subject to judicial review by the administrative courts, including by means of interlocutory proceedings. The point is also made that the administrative court can verify that they are proportionate as well as lawful.⁶⁴ It must also be emphasised that the Council of State, in its decision of 11 December 2015, ruled that:

- There is a presumption of emergency for the courts hearing interim measures (*référé*) to decide within a very short time, after holding a hearing guaranteeing an oral contradictory discussion;
- The administrative judge must ensure that any measure of restricted residence meet the requirements of necessity, appropriateness and proportionality both in principle and as concerns the modalities of implementation;

⁶¹ Opinion on the protection of human rights in emergency situations, adopted by the Venice Commission at its 66th Plenary Session (Venice, 17-18 March 2006) CDL-AD (2006)015, paragraph 10.

⁶² General Comment No. 29/2001 of the UN Human Rights Committee on States of Emergency (Art. 4 of the International Covenant on Civil and Political Rights), CCPR/C/21/Rev.1/Add.11, paragraph 14.

⁶³ Venice Commission, *Emergency Powers*, *op. cit.*

⁶⁴ In its decision No. 2015-527 QPC of 22 December 2015 the Constitutional Council confirmed that the administrative court tasked with ruling on the lawfulness of individual measures also examined their proportionality.

- The court hearing interim measures (*référé*s) takes any appropriate measure to reconcile the respect for fundamental freedoms and the protection of public order.

73. According to the statistics provided by the State Council to the Venice Commission delegation, out of 106 measures of administrative police examined as of 25 February 2016, the courts hearing interim measures (administrative tribunals and Council of State) have endorsed 20 repeals by the Ministry of the Interior prior to the decision of the Council of State (19 per cent), have suspended, totally or in part, 17 measures (16 per cent) and have refused interim relief against 69 measures (65 per cent of the challenged measures).⁶⁵

74. The Venice Commission does not see any reason to doubt that the control exercised by the French administrative judge, notably by means of interim measures (*référé*s), over emergency measures represent an effective remedy. It considers that adding in Article 36-1 that only measures which are strictly necessary may be taken by the civil authorities would represent an additional guarantee.

B. Article 2: deprivation of nationality

75. Article 2 of the draft constitutional law seeks to amend Article 34 of the Constitution, which demarcates the legislator's fields of competence, by adding the deprivation of nationality. Article 2, as adopted at first reading by the National Assembly, reads as follows:

"The third indent of Article 34 of the Constitution shall be replaced by two indents worded as follows:

- " – nationality, including the conditions in which a person may be deprived of French nationality or the rights attached thereto if they are convicted of a crime or a misdemeanour gravely undermining the life of the Nation;*
- the status and capacity of persons, matrimonial property systems, inheritance and gifts".*

76. This article differs in several respects from the current rules for deprivation of nationality (provided for in Article 25 § 1 of the Civil Code):

- there is no mention of a person "having acquired French nationality", making the legal rules for the deprivation of nationality identical for those who were born French and those have been naturalised as French;
- there is no reference to dual nationality;
- deprivation no longer relates only to nationality but also to "the rights attached thereto".

77. The National Assembly has made a clear choice to unify the legal rules for deprivation of nationality.⁶⁶ Referring to Article 1 of the Constitution which provides that France "guarantees

⁶⁵ For an in-depth analysis of the data relating to the judicial control of emergency measures taken between the declaration of state of emergency and 17 February 2016, see National Consultative Commission on Human Rights, Opinion on the monitoring of the state of emergency, §§ 20-27, <http://www.cncdh.fr/fr/publications/avis-sur-le-suivi-de-letat-durgence>.

⁶⁶ When the law adding convictions for a terrorist crime or misdemeanour to the possible grounds for deprivation of nationality was referred to it, the Constitutional Council held, in 1996, that "the legislator has managed, given the objective of stepping up the fight against terrorism, to provide for the possibility, within a limited period, of the administrative authority withdrawing French nationality from those who have acquired it, without the resulting difference in treatment violating the principle of equality". (Decision no. 93-377 Dc of 16 July 1996). On 11 May 2015, in the case of *Ahmed S.*, the Council of State similarly took the view that "the fact that deprivation of nationality concerns only those who are French nationals through acquisition who have another nationality is not contrary to Articles 20 and 21 of the Charter of Fundamental Rights of the European Union, relating to the principle of equality before the law and the prohibition of discrimination based on nationality, insofar as these articles "do not prevent the loss of nationality from depending on the manner or conditions in which nationality was acquired" (Council of State, 11 May 2015, E.Q., no. 383664).

equality before the law of all citizens without distinctions based on origin”, the National Assembly considered that in the field of deprivation of nationality for “serious threats to the life of the nation” it was inappropriate to make a distinction on the basis of the nationality of those making the threats.⁶⁷

78. Under international law, the rules governing nationality must not contain any distinctions or include practices amounting to discrimination based on gender, religion, race, skin colour or national or ethnic origin. Moreover, those rules must respect the principle of non-discrimination between nationals, whether they are nationals by birth or have acquired that nationality subsequently (see Article 5 paragraph 2 of the European Convention on Nationality). According to the case-law of the European Court of Human Rights, a distinction is discriminatory within the meaning of Article 14 if there is no objective and reasonable justification for it, i.e. if it does not pursue a legitimate aim or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised"⁶⁸. It is also clear from this case-law, however, that the prohibition of discrimination is also violated "when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different".⁶⁹

79. Applying the same legal rules on deprivation of nationality to all the French has the advantage to treat all authors of crimes or misdemeanours "gravely undermining the life of the Nation" in the same manner. However, it must not be forgotten that the effects of deprivation of nationality are different for a person who is French by birth compared to a person who has had the French nationality for only some time, and for a person holding only the French nationality, who would become stateless, compared to a person holding two or more nationalities, who would maintain the nationality of the other state(s).

80. This analysis shows that the constituent legislator, irrespective of the choice made – that only persons holding two nationalities, or all the French may be deprived of the French nationality – cannot avoid making a distinction that will need to be justified in the light of the prohibition of discrimination.

81. In the Venice Commission's opinion, broadening deprivation of nationality to persons who are French by birth conforms to the principle of non-discrimination between nationals provided for in Article 5 paragraph 2 of the European Convention on Nationality, on condition that each decision of deprivation of nationality is taken with due respect of the principle of proportionality which is a key element for any justification. The proportionality of the deprivation of nationality will be examined herein after, first in general and in respect of the French by birth, and afterwards in respect of persons holding one nationality, who subsequent to deprivation of the French nationality, would become stateless.

⁶⁷ "Granting a privilege to a criminal because of their ancestry would be contrary to the individualisation of penalties and the fundamental principles of our Republic. An individual must be punished in relation to their acts and not in relation to their origins [...] the real difference is between those who break the national pact and break with what we are and with France and its values, and the vast majority or near enough all of our compatriots, regardless of how they acquired their nationality, by *jus soli*, *jus sanguinis* or subsequent naturalisation": See Report no. 3451 prepared on behalf of the Committee on constitutional laws, legislation and general administration of the Republic on the draft constitutional law (no. 3381) on protection of the Nation, by R M. Dominique Raimbourg.

⁶⁸ See for example the ECHR judgment in the case of *Fretté v. France*, 26 February 2002, § 34.

⁶⁹ See for example the ECHR judgment in the case of *Thlimmenos v. Greece*, 6 April 2000, § 44

a. Deprivation of nationality of the French in general, and of persons who are French by birth in particular

82. In the explanatory memorandum⁷⁰ the Government considered that stripping persons who were French by birth of their nationality could meet with the disapproval of the Constitutional Council, which might judge this disproportionate. This, apparently, is the main reason for constitutionalising deprivation of nationality. Furthermore, according to the Council of State, "French nationality represents a constituent element of a person from their very birth. It confers fundamental rights upon its holder, and the deprivation of those rights by the ordinary legislator might be regarded as an excessive and disproportionate, and consequently unconstitutional, infringement of those rights. In particular, the measure envisaged by the Government would raise the question of its conformity with the principle of safeguarding the rights proclaimed by Article 16 of the Declaration of the Rights of Man and of the Citizen".⁷¹

83. It should be stressed from the outset that constitutionalising the deprivation of nationality is not enough, as such, to exclude all risk of arbitrariness. It must be accompanied by the vital condition of proportionality, which must be respected not only in the light of the French Constitution and the case-law of the Constitutional Council but also in the light of international law and the case-law of the Court of Justice of the European Union and the European Court of Human Rights. Accordingly, loss of nationality may be envisaged only as a consequence of conduct seriously prejudicial to the vital interests of the State.

84. The proportionality of the sanction of deprivation of nationality must be assessed in respect both of the offences for which it is provided and of its consequences on the affected individual and, possibly, for his or her family. Like the Constitutional Council, the Venice Commission is of the opinion that the legislator may deprivation of nationality may represent a proportionate sanction, "regard being had to the very specific gravity which by their nature terrorist acts present".

b. French nationals holding single nationality or dual or multiple nationality

85. The draft constitutional law does not expressly stipulate (following the amendments made on the first reading) that only persons holding dual or multiple nationality may be deprived of French citizenship.

86. International law accepts that loss of nationality may be provided for in domestic law for cases of conduct seriously prejudicial to the vital interests of the State. At the same time, international law requires the avoidance of statelessness. Consequently, deprivation of nationality may concern only dual nationals, with international law tolerating a degree of inequality between holders of single nationality and holders of dual nationality. States may only depart from this principle in exceptional cases with due respect for the strict requirements of Article 8 § 3 of the Convention on the Reduction of Cases of Statelessness of 31 August 1961 (see herein after).

87. The lack of a guarantee against statelessness in the Constitution is not *per se* contrary to European standards. The French Prime Minister has announced to the National Assembly that he intends to submit a law proposing ratification of the 1961 Convention on the

⁷⁰ Explanatory memorandum: "French nationality bestowed upon birth confers fundamental rights upon its holder, and deprivation of those rights by the ordinary legislator could be regarded as a violation going beyond the limits allowed by the Constitution." (CDL-REF(2016)016).

⁷¹ Council of State, General Assembly, opinion of 11 December 2015 on the draft constitutional law on protection of the Nation, no. 390866. Article 16 of the Declaration of the Rights of Man and of the Citizen states that "Any society in which the guarantee of rights is not assured, nor the separation of powers determined, has no Constitution".

Prevention of Statelessness, while stressing that France reserves the right to apply "article 8 § 3 a.ii, which allows deprivation of nationality of an individual 'who has behaved in a manner that has seriously undermined the essential interests of the State'". However, a declaration in pursuance of Article 8 § 3 does not remove the obligation to respect the principle of proportionality for the reasons exposed above. In each individual case, it is necessary to assess whether the sanction is proportionate, taking into account both the gravity of the offences and the consequences of deprivation on the affected individual, in particular the status as stateless which would ensue.

c. Rights attached to nationality

88. The new indent of Article 34 provides that a person may be deprived of French nationality "*or the rights attached thereunto*".

89. The loss of civic rights (*citoyenneté*) is therefore raised as an alternative to the loss of nationality (which comprises loss of civic rights). Article 131-26 of the Criminal Code states that:

"Forfeiture of civic, civil and family rights covers: 1° the right to vote; 2° the right to be elected; 3° the right to hold a judicial office, or to give an expert opinion before a court, or to represent or assist a party before a court of law; 4° the right to make a witness statement in court other than a simple declaration; 5° the right to be tutor or curator; this prohibition does not preclude the right to become a tutor or a curator of one's own children, after obtaining the guardianship judge's approval, and after having heard the family council. Forfeiture of civic, civil and family rights may not exceed a maximum period of ten years in the case of a sentence imposed for a felony and a maximum period of five years in the case of a sentence imposed for a misdemeanour.

The court may impose forfeiture of all or part of these rights.

The forfeiture of the right to vote or to be elected imposed pursuant to the present article also entails the prohibition or incapacity to hold public office."

90. It is not specified whether all these rights may be concerned, nor if stripping someone of the rights attached to nationality would be a less severe sanction, to be applied for misdemeanours rather than crimes for example or if it would be reserved to cases in which avoidance of statelessness would prevent deprivation of nationality. It is not specified either who will be responsible for taking the decision to withdraw the rights attached to nationality. The guarantees provided by the deprivation procedure will be considered below.

91. In the opinion of the Venice Commission, as such, providing for the withdrawal of rights attached to nationality in the event of a conviction "for a crime or misdemeanour constituting a violation of the fundamental interests of the Nation" is not incompatible with European standards. Specifically where the loss of the right to vote and stand for election is concerned, the Code of Good Practice in Electoral Matters drawn up by the Venice Commission states⁷² that "i. provision may be made for depriving individuals of their right to vote and to be elected, but only subject to the following cumulative conditions: ii. it must be provided for by law; iii. the proportionality principle must be observed; conditions for depriving individuals of the right to stand for election may be less strict than for disenfranchising them; iv. the deprivation must be based on mental incapacity or a criminal conviction for a serious offence [...]."⁷³ These conditions are met in this particular case.

⁷² CDL-AD(2002)023rev, I.1.1.d.

⁷³ For an analysis of European standards concerning the deprivation of the right to vote and the right to stand for election and the loss of mandate, see the Venice Commission report on "Exclusion of offenders from Parliament", CDL-AD(2015)036.

d. "Crimes or misdemeanours" gravely undermining the life of the Nation

92. The draft constitutional law provides for the deprivation of nationality if the person concerned "is convicted of a crime or misdemeanour gravely undermining the life of the Nation". The notion of "gravely undermining the life of the Nation" is comparable to the provision in Article 15 of the European Convention on Human Rights allowing a State to derogate from certain obligations under the Convention "in time of war or other public emergency threatening the life of the nation". In substance, this wording is in line with the requirements of the applicable international treaties.

93. The draft constitutional law allows deprivation of nationality for both crimes and misdemeanours.

94. In its opinion of 11 December 2015, the Council of State held that "*most of these offences, particularly non-criminal offences, would not call for a sanction as serious as deprivation of nationality, which might be regarded as disproportionate. Consequently, the Council of State considers that the measure envisaged should concern solely perpetrators of the most serious criminal acts and not those committing misdemeanours. It furthermore believes that it would not be appropriate to introduce the term "terrorism" into the Constitution and would be preferable, therefore, to stipulate that deprivation of nationality could be imposed only on individuals 'convicted for a crime gravely undermining the life of the Nation'*". The French authorities have explained to the Venice Commission delegation that Article 25 § 1 of the Civil Code permits deprivation of nationality of persons convicted for of "a crime or misdemeanour undermining the fundamental interests of the Nation" and that most of the deprivations so far decided were for criminal association with a terrorist aim, which is an offence punished with 10 years of imprisonment.

95. In the opinion of the Venice Commission, with regard to the principle of proportionality, it is clear that deprivation of nationality may be decided only for perpetrators of the most serious offences striking at the heart of the rule of law. Furthermore, a measure that is less severe than the deprivation of nationality – the deprivation of rights attached to nationality – now has been proposed. The law will therefore have to specify the relation between the seriousness of the offences committed and the sanction incurred. In the Commission's view, only the most serious offense, irrespectively of whether they are qualified as "crimes" or "misdemeanours" should result in deprivation of nationality. An individual assessment of each case will guarantee respect of proportionality (see herein after).

96. To fulfil the requirements of the principle of the prohibition of arbitrary measures, the law will have to make provision for a clear, exhaustive list of the crimes that may result, in the event of conviction, in the deprivation of nationality (referring, if need be, to the Criminal Code).

C. The procedure for deprivation of nationality or the rights attached to it

97. The constitutional reform does not specify which procedure is to be followed to deprive an individual of French nationality or civic rights. In the opinion of the Venice Commission, passing a sanction of deprivation of nationality can never be an automatic measure: it must always be the result of an examination of all the circumstances of the case, in terms of both the gravity of the charges laid and ramifications (danger for the life of the Nation) serving as grounds for the sanction and the consequences it would have for the person concerned. It is self-evident that deprivation of nationality can only be pronounced in compliance with due process (in particular: the right to be heard, the right to a written, reasoned decision).

98. The Venice Commission understands that the intention is to provide for deprivation of nationality as an ancillary sanction, to be decided therefore not by decree upon binding opinion of the Council of State, but by the penal judge, either the criminal court or the specialised anti-terrorist judge. The deprivation decision would thus be taken after a thorough examination in the presence of the accused and at the same time as the decision on guilt. This would meet the principle of no double jeopardy. In the opinion of the Venice Commission, this solution would be in line with the requirements of the fair trial and the principle of proportionality. The Commission considers therefore that it would be useful to provide in Article 34 of the Constitution that an individual *may be sentenced to the ancillary sanction of deprivation of nationality or of the rights attached to it*.

VI. Conclusions

99. The Venice Commission has examined the French draft constitutional law “on the protection of the Nation” and has reached the following conclusions:

With regard to the state of emergency:

100. The constitutionalisation of the state of emergency should aim at strengthening the guarantees against possible abuse in the form of declaring or prolonging the state of emergency without genuinely aiming at protecting the life of the Nation or taking police measures which are not strictly justified by the state of emergency. Under no circumstances should the constitutionalisation result in a free hand for the legislator, which would otherwise have the power to introduce very substantial derogations from the protected freedoms, including after the declaration of the state of emergency. For this reason, it seems necessary to avert this risk by enshrining in the Constitution not only the possibility of declaring (and prolonging) any exceptional regime, including the state of emergency, but also the formal, material and time limits which must govern such regimes.

101. The text of Article 36-1 as adopted at first reading by the National Assembly is not per se incompatible with international standards. In order to avert the risk – which always exists when the constitution is not clear and precise – that the state of emergency be applied in too broad a manner in the future, the Venice Commission recommends however amending Article 36-1 as follows:

- Indicating that both the “imminent threat resulting from serious breaches of public order” and “events tantamount to a public disaster” must be “potentially threatening the life of the nation”; and
- Indicating that the civil authorities can take measures in order to avert this imminent danger or deal with these events only “to the extent strictly required by the exigencies of the situation” and in full respect of the rights and freedoms which may not be derogated from.

102. The Venice Commission also invites the French authorities to consider providing that the prorogation by parliament of the state of emergency may only be renewed by qualified majority.

With regard to deprivation of French nationality or of the rights attached to it:

103. The Venice Commission considers that providing for the same legal rules on deprivation of nationality or of the rights attached to it for all the French, may they be French by birth or by naturalisation, and may they hold only one nationality or two or more nationalities, is not per se against international standards. Any decision on deprivation of nationality must respect the principles of fair trial and proportionality. The Venice Commission therefore recommends

- Providing in Article 34 of the Constitution that an individual may be sentenced to “*the ancillary sanction of deprivation of nationality or of the rights attached to it*”.

102. The Venice Commission remains at the disposal of the French authorities for any subsequent question, notably in case they should decide to carry out a reflection on, and possible reform of all the constitutional and legislative provisions on emergency situations.