



## Appendix A - Response by the Government of the Kingdom of Denmark to questions two and three from the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions on foreign fighters

### 1. Introduction

The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions has approached the Minister for Foreign Affairs. In the approach, the Special Rapporteur sent the following questions/requests pertaining to the deprivation of nationality:

- "2. Please provide detailed information on the legislation reportedly adopted by Denmark allowing for the stripping of the Danish nationality in cases of dual-citizens accused of having joined armed groups in Syria or Iraq. Please explain how is that consistent with Denmark's international human rights obligations, particularly in terms of respect for the right to life and the principle of non-discrimination;*
- 3. Please provide detailed information about the procedure envisaged with regard to the implementation of that legislation;"*

### 2. Act on the deprivation of nationality of foreign fighters

It appears from section 8B(3) of the Danish Nationality Act which was inserted in the Nationality Act by Act No. 1057 of 24 October 2019 that a person who has displayed conduct seriously prejudicial to the vital interests of the country may be deprived of their Danish nationality by the Minister for Immigration and Integration unless the person concerned will thus become a stateless person.

It also appears from section 8F of the Nationality Act that cases covered by section 8B(3) may be challenged before the Copenhagen City Court by the person who has been deprived of their Danish nationality within four weeks of the notification of the decision. In exceptional situations, the Copenhagen City Court may, however, allow a challenge after four weeks have passed.

The following appears from paragraph 2.2 of the explanatory notes to Bill no. L 38 which was introduced on 22 October 2019 when the new arrangement was implemented:

*"With this bill, we are introducing the possibility of an administrative deprivation of Danish nationality in situations where a person with dual nationality has displayed conduct seriously prejudicial to the vital interests of the country.*

*There have been situations in which persons have left for e.g. Syria and Iraq to fight for a terrorist organisation and where the foreign fighters' continued stays abroad have meant that – due to current legislation – it was not possible to conduct criminal proceedings against them although they had been placed in remand in absentia in Denmark. In this connection, there has been a wish to be able to deprive such persons, who are Danish nationals, of their nationality while they are still abroad and thus also prevent them from being able to return to Denmark where they would pose a threat against Danish society.*

*Based on this situation, we are proposing a legal basis for being able to administratively deprive persons with dual nationality of their Danish nationality if they have displayed conduct seriously prejudicial to the vital interests of the country. With this bill, it will generally be the Minister for Immigration and Integration*

*who is to assess whether the person concerned has displayed conduct seriously prejudicial to the vital interests of the country and consequently decide whether to deprive them of their Danish nationality.*

*In situations where the assessment of whether the person concerned has displayed conduct seriously prejudicial to the vital interests of the country is essentially based on information which, for security reasons, cannot be disclosed to the party or the Ministry of Immigration and Integration, the Minister for Justice may – upon request – assess for the purpose of the processing of a case concerning deprivation whether the person concerned must be regarded as having displayed conduct seriously prejudicial to the vital interests of the country. This assessment will be taken into account in the Minister for Immigration and Integration's decision on the matter.*

*With the proposed administrative deprivation, there will be no requirement that the person concerned has been convicted of a criminal offence prior to the deprivation or that the person concerned is in Denmark in connection with the processing of the case concerning administrative deprivation. Thus, the person concerned may stay abroad during the processing of the case. Deprivation may be effected significantly faster than today where the person concerned must have entered Denmark again and been convicted of contravention of one or more provisions of Part 12 or 13 of the Criminal Code before they may also be deprived of their nationality by conviction. The proposed arrangement will thus be a relevant, flexible and efficient tool in the prevention of terrorism, for example.*

*However, it is a requirement that, in situations where it is possible to instigate proceedings on deprivation of Danish nationality under section 8B(1) of the Nationality Act, according to which the deprivation will be effected by judgment, as well as under the proposed section 8B(3), the deprivation case will be instigated under section 8B(1).*

*In the assessment of whether a person will become stateless if deprived of the nationality, it may be considered whether the person concerned will be able to obtain nationality in another country merely by registration with the authorities of that country. This extensive interpretation of the Statelessness Convention is based on the indications in the UNHCR Guidelines on Statelessness about the granting of nationality.*

*Thus, based on the UNHCR Guidelines on Statelessness about the granting of nationality to stateless persons, there is deemed to be room for interpreting the Statelessness Convention in such a way that if a person is entitled to obtain another nationality just by registering with the other country's authorities without it being left to the discretion of those authorities, that person will not be able to claim protection under the conventions against being deprived of nationality for statelessness.*

*This interpretation of the Statelessness Convention will also have to be taken into account in relation to deprivation under the current provision in section 8B(1) of the Nationality Act on deprivation by judgment in connection with contravention of one or more provisions in Parts 12 and 13 of the Criminal Code.*

### *2.2.1 Conduct*

*With the possibility of deprivation in situations where a person has displayed conduct seriously prejudicial to the vital interests of the country, it will be possible, for example, to deprive a Danish national of their nationality if they enter or stay without permission in an area where there is a ban on entering and staying and where it is deemed that the person concerned has displayed conduct seriously prejudicial to the vital interests of the country.*

*Thus, the decisive factor is whether the person concerned has displayed conduct seriously prejudicial to the vital interests of the country. The wording "conduct seriously prejudicial to the vital interests of the country" originates from the Council of Europe's Convention on Nationality of 6 November 1997 by which it has been exhaustively determined in which situations a contracting state's national legislation may contain provisions on loss of nationality ex lege or at the initiative of the contracting state. The proposed provision will thus be practised in accordance with this. It appears from the Explanatory Report to the Convention alone that the provision covers treason and other activities directed against the vital interests of the state (for example work for a foreign secret service) but would not include criminal offences of a general nature, however serious they might be.*

*Thus, it will be the type and nature of the conduct that decide whether deprivation can be imposed. The commission of a serious criminal offence will not in itself justify characterising it as conduct seriously prejudicial to the vital interests of the country. The conduct must be capable of affecting the state adversely in order to lead to deprivation. In the assessment of whether the conduct was seriously prejudicial to the vital interests of the country, it may be taken into account whether the conduct is a criminal offence under Parts 12 and 13 of the Criminal Code. Thus, joining ranks with an armed force for a party fighting against the Danish state; terrorism, including training, instruction or education in some other manner of a person to commit or advance terrorist offences; and acts aimed at revising or invalidating the Constitution with the assistance of foreign forces or by the use of power or threats of such use will be able to form the basis of administrative deprivation of nationality. It should be noted in this connection that it will not be a condition that the person concerned has been convicted of contravention of one or more provisions of Parts 12 and 13 of the Criminal Code.*

*The assessment of the conduct and the decision on administrative deprivation of nationality will not include an assessment of whether the person concerned is guilty of contravention of one or more provisions of Parts 12 and 13 of the Criminal Code, including whether the intent required for conviction exists. Thus, only the offence descriptions in Parts 12 and 13 may be included in the assessment of whether the conduct was seriously prejudicial to the vital interests of the country.*

*Similarly, it will not be ruled out that acts, which are not covered by any of the offence descriptions in Parts 12 and 13 of the Criminal Code, but which are similar in nature, may lead to administrative deprivation of nationality if the conduct displayed is seriously prejudicial to the vital interests of the country. In this connection, it is a requirement that the deprivation be carried out within the framework of Denmark's international obligations, including Article 7(1)(d) of the Convention on Nationality.*

### *2.2.2 Proportionality assessment*

*It is required that, in each case, a specific and individual assessment will be made as to whether, for example in connection with the entry into or stay in an area for which there is a ban on entering and staying, the person concerned displayed conduct seriously prejudicial to the vital interests of the country.*

*In addition, the authority will also have to make a specific proportionality assessment of the significance of the deprivation of nationality for the person concerned seen in relation to the severity of the conduct. The proportionality assessment will be in line with the proportionality assessment that must be made by the courts in connection with deprivation under the current section 8B(1) of the Nationality Act which is concerned with deprivation of Danish nationality for persons who have been convicted of contravention of Parts 12 and 13 of the Criminal Code.*

*The significance which deprivation of Danish nationality has on a person must be considered individually based on the circumstances of the person concerned. In this assessment, particular importance should be attached to the person's ties to Denmark and other countries, including the country or countries of which the person concerned is also a national. In this connection, the duration and nature of a person's stay in Denmark and abroad may also be taken into account. Special importance should thus be attached to the question of where the person concerned grew up, just as less importance may be attached to a stay abroad if the stay abroad is due to work for Danish interests, or if, during their stay abroad, the person concerned kept close ties to Denmark through repeat holiday visits, participation in Danish associations abroad, etc.*

*Importance may also be attached to a person's current family relations in Denmark and abroad as well as the person's roots, including whether the family has had long-term ties to Denmark. Language skills may also be important, especially the extent to which the person concerned masters Danish and the language of the country or countries of which the person concerned is also a national. The provisions of the Aliens Act on revocation and issuance of residence permits and deportation should also be included to some extent in the proportionality assessment. In addition, the person's age may also be of importance, especially if the person is a minor.*

*Finally, in cases where deprivation of Danish citizenship also leads to the loss of the person's European Union citizenship, it must also be taken into account whether the deprivation of nationality has consequences which – seen in relation to the objective pursued by this legislation – disproportionately affects the normal development of the person's family and work life under EU law. Thus, the proportionality assessment must also take into account the person's ties to other EU countries. This assessment must also be made in cases concerning deprivation under sections 8A and 8B(1) and (2) of the Nationality Act.”*

As regards the relation to Denmark's international obligations, the following appears from paragraph 3 of the general explanatory notes to the bill:

*”3. The relation to Denmark's international obligations*

*The bill is deemed to be in accordance with Denmark's international obligations. Below is a short review of the relation to the most relevant conventions related to nationality.*

*3.1. Introduction of administrative deprivation of Danish nationality*

*3.1.1 Council of Europe Convention of 6 November 1997 on Nationality (the Convention on Nationality)*

*It appears from Article 4(c) of the Convention on Nationality that the rules on nationality of each contracting state must be based on the principle that no one should be arbitrarily deprived of their nationality.*

*It appears from the Explanatory Report to the Convention that examples of arbitrary deprivation of nationality include deprivation on grounds related to religion, race, national or ethnic origin as well as deprivation on political grounds. It also appears from the Explanatory Report that the principle that a person must not be arbitrarily deprived of their nationality generally entails that a decision on deprivation must be foreseeable, proportional and prescribed by law.*

*In relation to loss of nationality ex lege or at the initiative of a contracting state, Article 7 of the Convention stipulates exhaustively the situations in which a state's legislation is permitted to contain rules on loss of nationality. It follows from Article 7(1)(d) of the Convention on Nationality that one of these situations is*

*loss of nationality in situations where conduct seriously prejudicial to the vital interests of the contracting state has been displayed.*

*The Explanatory Report to the Convention on Nationality contains limited contributions to the more detailed understanding of the wording "conduct seriously prejudicial to the vital interests of the contracting state". Thus, it merely states that the provision covers treason and other activities directed against the vital interests of the state (for example work for a foreign secret service) but would not include criminal offences of a general nature, however serious they might be.*

*It follows from Article 7(2) of the Convention on Nationality that a contracting state's national law must not contain provisions stipulating that children will also lose their nationality in situations where their parent loses their nationality of the country in question due to conduct seriously prejudicial to the vital interests of the contracting state.*

*Article 7(3) of the Convention on Nationality further stipulates that a state's internal law must not contain provisions for the loss of its nationality if the person concerned would thereby become stateless.*

*Finally, Article 12 of the Convention on Nationality stipulates that each contracting state must ensure that decisions relating to the loss of nationality, for example, be open to an administrative or judicial review in conformity with its internal law.*

*The proposed provision on administrative deprivation of Danish nationality is drafted on the basis of the provision of the Convention on Nationality on deprivation in situations where a person has displayed conduct seriously prejudicial to the vital interests of the contracting state. Moreover, the provision contains the precondition that deprivation must not be imposed in situations where the person concerned would become stateless. In this connection, please refer to section 3.1.2.*

*Moreover, as a consequence of this bill, the administrative deprivation will have authority in law, and the legal basis will show the situations in which administrative deprivation can be effected. It is also contemplated that an individual, specific proportionality assessment will be made in each case concerning administrative deprivation of nationality.*

*In addition, a decision on administrative deprivation of nationality may be challenged before the courts for four weeks after the person concerned has been notified of their deprivation of Danish nationality, see section 63 of the Danish Constitution.*

*Finally, the deprivation of Danish nationality will only have effect for the person who has displayed conduct seriously prejudicial to the vital interests of Denmark. Any children under the age of 18 who have acquired Danish nationality through the person concerned will thus not be covered by the deprivation.*

*Therefore, it is the view of the Ministry of Immigration and Integration that the proposed provision on administrative deprivation of nationality does not raise any issues in relation to the Convention on Nationality.*

### *3.1.2 United Nations Convention of 1961 on the Reduction of Statelessness (the Statelessness Convention)*

*It follows from Article 8(1) and (2) of the Statelessness Convention that a contracting state must not deprive a person of their nationality if such deprivation would render them stateless. An exception to this is situations in which nationality has been obtained by misrepresentation or fraud.*

*In addition, it follows from Article 9 of the Convention that a contracting state may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.*

*It is a precondition for deprivation under the proposed provision that the person concerned will not become stateless. Moreover, the deprivation of nationality will not be based on racial, ethnic, religious or political grounds.*

*The definition of a stateless person can be found in Article 1(1) of the Convention of 28 September 1954 Relating to the Status of Stateless Persons. The provision stipulates that "For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law".*

*It appears from paragraphs 24-26 of UNHCR's Guidelines on Statelessness No. 4 on the grant of nationality to stateless persons that a state is not obliged to grant nationality to a stateless person if the person concerned could acquire another nationality by registration with the country in question. It is a precondition that the authorities have not been granted any discretion on granting nationality but that it only requires registration.*

*It appears from paragraph 16 of the Handbook on Protection of Stateless Persons that an individual is a stateless person from the moment that the condition in Article 1(1) is met.*

*Moreover, the following appears in paragraph 5 of the summary conclusions of an expert meeting arranged by UNHCR in 2013 on "Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality" as to when an individual becomes a stateless person:*

*"Where the 1961 Convention requires that a person shall not lose or be deprived of nationality if this would render him or her stateless, States are required to examine whether the person possesses another nationality at the time of loss or deprivation, not whether they could acquire a nationality at some future date."*

*Based on what is stated above and in paragraphs 24-26 of the UNHCR Guidelines on Statelessness No. 4 about the granting of nationality to stateless persons, there is deemed to be room for interpreting the Statelessness Convention in such a way that if a person is entitled to another nationality just by registering with the other country's authorities without it being left to the discretion of the authorities, that person will not be able to claim protection under the conventions against being deprived of nationality for statelessness.*

*In the assessment of whether a person will become stateless if deprived of nationality, it may be thus considered whether the person concerned will be able to obtain nationality in another country by merely registering with the authorities of that country.*

*Therefore, it is the view of the Ministry of Immigration and Integration that the proposed provision does not raise any issues in relation to the Statelessness Convention.*

### *3.1.3 European Convention on Human Rights (ECHR)*

#### *3.1.3.1 Articles 6 and 7 ECHR*

*According to Article 6(1) ECHR, in the determination of a person's civil rights and obligations or of any criminal charge against them, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.*

*According to Article 7(1) ECHR, no one may be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed.*

*The European Court of Human Rights (the ECtHR) has found in several cases that cases concerning the acquisition and loss of nationality do not constitute cases on civil rights and obligations or criminal cases within the meaning of ECHR for which reason Article 6 ECHR does not apply to this, see for example the ECtHR inadmissibility decision of 4 January 2005 in *Naumov v. Albania* and the ECtHR Judgment of 7 February 2012 in *Al Hamdani v. Bosnia and Herzegovina*.*

*As regards criminal cases, it is presumed that the term "criminal offence" in Article 7 ECHR corresponds to the term "criminal charge" in Article 6(1) ECHR. It must therefore be presumed that Article 7 does not apply to decisions concerning deprivation of nationality either. In this connection, reference is made to the ECtHR Judgment of 19 November 2015 in *Mikhaylova v. Russia*, paras 55-56, and Jon Fridrik Kjølbro, *Den Europæiske Menneskerettighedskonvention for praktikere (the European Convention on Human Rights for practitioners)*, 4th edition (2017), page 737.*

*It should be noted that it is not a precondition for application of the proposed legal basis for administrative deprivation of nationality that the person concerned has been convicted of or has otherwise committed a criminal offence. It is only a requirement that the person concerned has displayed conduct seriously prejudicial to the vital interests of Denmark. As stated above in paragraph 5.2.1, in a decision on administrative deprivation of nationality, it will not have to be assessed whether the person concerned is guilty of a criminal offence, including whether the intent required for conviction exists for contravention of one or more criminal-law provisions.*

*Against this background, it is the view of the Ministry of Immigration and Integration that cases concerning administrative deprivation of nationality based on the display of conduct seriously prejudicial to the vital interests of Denmark do not constitute criminal cases within the meaning of ECHR.*

### *3.1.3.2 Article 8 ECHR*

*As regards Article 8 ECHR, the ECtHR has stated that, depending on the circumstances, a deprivation of nationality may give rise to questions pertaining to this provision. In such cases, the ECtHR will assess the consequences of the deprivation for the individual, including whether the person concerned will become a stateless person if deprived of the nationality, as well as whether the deprivation can be characterised as arbitrary, see for example the ECtHR's inadmissibility decisions of 7 February 2017 in *K2 v. the United Kingdom* and of 22 January 2019 in *Said Abdul Salam Mubarak v. Denmark*.*

*As regards the consequences of the deprivation, it should be noted that it appears expressly from section 1, para. (8), of the bill that deprivation cannot be imposed if the individual would become a stateless person. As can be seen from paragraph 5.2.2 above, it is also a precondition for the proposal that, in connection with a case on administrative deprivation of nationality, a specific proportionality assessment must be made of the significance of the deprivation of nationality for the person concerned seen in relation to the severity of the conduct.*

*It is deemed not to be in contravention of Article 8 of the European Convention on Human Rights if an individual is deprived of their nationality in a situation where that individual holds a nationality of another country or is entitled to a nationality just by registration with the authorities of the other country.*

*In its assessment of whether the deprivation is arbitrary, the ECtHR attaches particular importance to whether the deprivation was prescribed by law, whether the deprivation is accompanied by necessary procedural guarantees, including whether it is possible to challenge the decision before the courts, and whether the authorities have acted in a thorough and expedient manner. Reference is made to the inadmissibility decisions of 7 February 2017 in *K2 v. the United Kingdom* and of 22 January 2019 in *Said Abdul Salam Mubarak v. Denmark*.*

*Particularly in regard to the proposed access to making decisions on administrative deprivation of nationality – as described in paragraph 2.2.5 above – being subject to the access to judicial review of the decision by the authority, see section 63 of the Constitution, and that, as regards acts before the entry into force of the act – as stated in paragraph 2.2.4 above – only matters which, already at the time the acts were performed, could lead to deprivation of nationality by judgment may be taken into account, it is the view of the Ministry of Immigration and Integration that administrative deprivations of nationality under this bill will not qualify as arbitrary.*

*It is noted that, as regards administrative deprivation of nationality based on acts performed prior to the entry into force of the act, it would constitute a more intensive measure than a similar deprivation based on acts performed after the entry into force of the act. However, the bill only entails the ability to take into account acts performed prior to the entry into force of the act to the extent that the acts in question could have resulted in deprivation by judgment under section 8B(1) of the Nationality Act at the time the acts were performed. Against this background, it is deemed that there will be a minor litigation risk in connection with the arrangement, particularly as there does not appear to be any practice from the European Court of Human Rights as regards the question of whether an individual can be deprived of their nationality within the framework of Article 8 even though this was not possible at the time when the act was performed. It should also be noted that, in connection with a potential deprivation of nationality, the person concerned may in quite extraordinary situations be entitled to a residence permit in Denmark with reference to Article 8 ECHR.*

*Against this background, it is the assessment of the Ministry of Immigration and Integration that the bill can be implemented within the framework of Article 8 ECHR."*

The Government still deems the act to be in accordance with Denmark's international obligations.

It should be noted that the right to a nationality and the framework for deprivation of nationality are explicitly regulated in several international conventions and that, as mentioned above, the act has been drafted within the framework of those. It should also be noted that it is not possible to deprive an individual of their nationality if they will thus become stateless. Thus, the person concerned will still have a home country after Denmark has deprived them of their nationality, and it will be for the home country in question to provide the necessary protection for the person concerned.

It should further be noted that – as is also stated in the explanatory notes to the bill – in each individual case concerning deprivation of nationality – a specific proportionality assessment must be made as to the significance of the deprivation of nationality for the person concerned seen in relation to the severity of the conduct.

As regards the view of the Special Rapporteur depriving a person of their Danish nationality would entail a potential violation of the right to life, for example, it should be noted that the Government disagrees with this. As stated in the response of the Danish Government to question 1, the Danish Government

wishes to reiterate its principled legal position that a State Party's obligations under the International Covenant on Civil and Political Rights is limited through Article 2 to "individuals within its territory and subject to its jurisdiction". The Danish Government notes that individuals situated in third countries in e.g. refugee camps or held in detention in general do not fall under the jurisdiction of Denmark in the sense of ICCPR article 2. Furthermore, the Danish Government notes that the same considerations apply with regard to Article 1 ECHR that limits a Contracting State's obligations under the Convention to securing the listed rights and freedoms set forth in the Convention to individuals within its own jurisdiction.

As regards the question of discrimination, it is stipulated in Article 26 of the UN International Covenant on Civil and Political Rights that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law must prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

According to Article 14 ECHR, the enjoyment of the rights and freedoms set forth in the Convention must be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

The provision does not constitute a general ban against discrimination as it only applies within areas covered by the Convention's other provisions or protocols. According to the practice of the European Court of Human Rights, Article 14 ECHR contains a ban against discrimination which means that people in comparable situations must generally be treated the same. The provision covers direct as well as indirect discrimination.

The Ministry of Immigration and Integration finds that the act is in accordance with both Article 26 of the UN International Covenant on Civil and Political Rights and Article 14 ECHR.

In this connection, it should be noted that the conditions for deprivation of nationality are the same for everyone. Thus, in each case, a specific and individual assessment will be made as to whether the person concerned displayed conduct seriously prejudicial to the vital interests of the country, just as the authority must make a specific proportionality assessment of the significance of the deprivation for the person concerned seen in relation to the severity of the conduct.

### **3. The procedure for deprivation of nationality**

As stated in paragraph 2 above, it appears from section 8F of the Nationality Act that cases covered by section 8B(3) may be challenged before the Copenhagen City Court within four weeks of the notification of the decision by the person who has been deprived of their Danish nationality. In exceptional situations, the Copenhagen City Court may, however, allow a challenge after four weeks have passed.

The procedure for processing a case on administrative deprivation of nationality and judicial review of a decision on administrative deprivation of nationality is included in the explanatory notes to the bill. It includes the following text:

### *"2.2.3 Processing of the case*

*The decision on administrative deprivation of nationality will be a decision as defined in the Public Administration Act. Thus, the general rule will be that the person concerned is covered by the due process guarantees consequential upon the Public Administration Act and public administration law, including consultation of interested parties, the right to make a statement and provide a justification.*

*As a general rule, it will be possible to consult interested parties via digital post (e-Boks) even though the person concerned has left Denmark. The Danish Public Digital Post Act stipulates that if a natural person who has signed up under subsection (1) (mandatory signing up for natural persons aged 15 or more with an address or permanent residence in Denmark) no longer has an address or permanent residence in Denmark the registration under subsection (1) will continue unchanged unless the person concerned applies to be exempted.*

*If situations where the person concerned is exempted from receiving Public Digital Post or has requested to be exempted after having left Denmark, the consultation of interested parties will depend on whether it will present significant difficulties to consult the person concerned, see section 19(2)(5), second limb, of the Public Administration Act. For example, it will not be possible to consult interested parties in situations where the Ministry of Immigration and Integration does not know where the person concerned is staying. In this connection, reference is made to the Ombudsman's statement referred to in FOB 2006.414.*

*According to general public administration rules, notification of administrative deprivation of nationality will have to be sent to the person with whom the decision is concerned. Notification may be sent via Public Digital Post. In situations where, despite reasonable efforts, it is not possible in other ways, including via Public Digital Post, to notify the person concerned of the deprivation of their nationality, a notification will be published in the Official Gazette stating that the person concerned has been deprived of their Danish nationality and that further details may be obtained by contacting the Ministry of Immigration and Integration. The published notification will not state the basis for the deprivation.*

*A case concerning administrative deprivation of nationality will often be based on information from the Danish Security and Intelligence Service (PET). However, it cannot be ruled out that a case concerning administrative deprivation of nationality may be launched on the basis of information which the Ministry of Immigration and Integration receives from other authorities or persons. In such situations, it must be expected that, in practice, it will always be relevant to consult PET. PET may be in possession of relevant information on Danish nationals which may have displayed conduct seriously prejudicial to the vital interests of the country. PET may be in possession of information on a person's entry into or stay in an area covered by the ban on entry and stay in the Criminal Code. However, there may be situations where PET will not – or only to a limited extent – be able to pass on such information in view of its nature.*

*Thus, with the introduction of the possibility of administrative deprivation of nationality, it is a requirement that the Ministry of Immigration and Integration will receive information from PET on the person concerned when there may be a basis for launching a case on administrative deprivation of nationality and that PET will pass on relevant information in situations when the Ministry of Immigration and Integration requests this as part of its processing of a case concerning administrative deprivation of nationality to the extent that PET is able to pass on such information.*

### *2.2.4 Acts performed before the entry into force of the act*

*With this legislative change it is the intention that acts performed before the entry into force of the act may be included in the assessment of whether the person concerned has displayed conduct seriously prejudicial to the vital interests of the country to the extent that such acts could have led to deprivation of nationality by judgment when they were performed. This means that the acts, when they were performed, were covered by the offence description in one or more of the provisions of Parts 12 and 13 of the Criminal Code which may now form the basis of a deprivation of nationality by judgment under section 8B(1) of the Nationality Act. It should be noted in this connection that, in a decision on administrative deprivation of nationality, it will not have to be assessed whether the person concerned is guilty of a criminal offence, including whether the intent required for conviction exists for contravention of one or more of these provisions.*

#### *2.2.5 Subsequent judicial review*

*Under section 63 of the Danish Constitution, a person who has been administratively deprived of their Danish nationality may challenge the administrative decision before the courts.*

*It is proposed that, based on the special rules applicable under Part 7B of the Aliens Act on judicial review of certain decisions on administrative deportation of foreign nationals who are deemed to be a danger to national security, specific rules be set out in the Nationality Act on judicial review of a decision on administrative deprivation of nationality.*

*It will be the assessment that the person concerned can be regarded as having displayed conduct seriously prejudicial to the vital interests of the country as well as the deprivation of Danish nationality which may be subjected to judicial review before the courts.*

*The person concerned will have to be the one to challenge the case before the court, and a time limit of four weeks after notification of the decision is set out in the bill. This time limit is set in consideration of the furtherance of the case. In exceptional situations, the court may, however, allow a challenge after four weeks have passed. The court may thus grant leave to appeal in exceptional situations. This may, for example, be in situations where the party is able to justify excusable reasons that they did not know of the time limit for challenging the decision before the courts. It should be noted in this connection that it will not be deemed excusable if the party brought themselves in a situation where it is not possible for them to access their digital post or read the Official Gazette.*

*With this bill, the challenge will not have suspensory effect. The administrative decision on deprivation of nationality thus remains in force during the processing of the case and a potential appeal. If the courts set aside the Minister for Immigration and Integration's decision on deprivation as invalid, the decision will be without legal effect, meaning that the decision will be unenforceable, and the person concerned will no longer be deprived of their Danish nationality.*

*The case will be considered by the courts with party access to public records as regards all relevant material which has formed the basis of the decision made by the Ministry of Immigration and Integration.*

*However, the bill does mean that, in such exceptional situations, where it is the Minister for Justice who has found that a person has displayed conduct seriously prejudicial to the vital interests of Denmark and the decision is thus essentially based on information which, for security reasons, cannot be passed on to the person with whom the assessment is concerned, the confidential material will be presented to the court at hearings in camera so that the court will have the best possible basis for adjudication in the matter.*

*In such exceptional cases, a special advocate will be appointed for the person concerned, and this advocate will have access to the same confidential material as the court, and their task will be to protect the interests of the person concerned in relation to the confidential material during the court hearing, and the advocate may, for example, move for the court to allow that the confidential information presented be handed over to the person concerned in full or in part during the court hearing.*

*The information which has formed the basis of the Minister for Justice's assessment of the conduct displayed will almost always be presented to the court in camera. However, the assessment may have been based on information of such a special nature that – in the interests of national security, including the activities of the Danish Security and Intelligence Service – the information cannot be passed on to others, not even as part of the proposed special court hearing. If such information is not presented to the court and the special advocate, the information will not be included in the basis of the court's decision on the matter.*

*Until the confidential material has been presented to the special advocate, the advocate may discuss the case with the person who has been deprived of their Danish nationality and their attorney with a view to including their views in the special advocate's work on the case. When the special advocate has become acquainted with the confidential material, it is proposed that the advocate may no longer discuss the case with the person concerned and their attorney. Otherwise, there might be a risk that, by asking supplementary questions of the person concerned, the special advocate might inadvertently disclose knowledge of information which must not be passed on to the person concerned for security reasons. It should be noted that the person who has been deprived of their Danish nationality and their attorney will be permitted – even after the special advocate has become acquainted with the confidential material – to send written notices to the special advocate about the case, etc.*

*The person who has been deprived of their Danish nationality and their attorney will thus know who has been appointed as special advocate in the case.*

*Even in these exceptional cases with presentation of parts of the case material at in-camera hearings, it is required that, in the open part of the court's hearing of the matter, sufficient material must be presented for the person concerned and their attorney to have access to a fair hearing, see also the Judgments by the Supreme Court of 2 July 2008, one of which was printed in 2008.2394 H of the Danish weekly law reports (UfR) on the lawfulness of deprivation of liberty of a Tunisian national who had been deported because he was deemed to be a danger to national security.*

*It also appears from 2008.2394 H of UfR that even though the decision on deprivation of liberty is made to ensure the execution of the deportation decision, which is again based on the decision that the foreign national must be regarded as a danger to national security, and even though the validity of these decisions cannot be adjudicated on during a case on deprivation of liberty under section 37, the Supreme Court finds that a check of the lawfulness of the deprivation of liberty must entail a certain adjudication of the factual basis of the decision that the alien must be regarded as a danger to national security. It must require proof on a balance of probabilities that such a factual basis existed for the assessment of danger that the deprivation of liberty cannot be deemed unauthorised or unlawful, see also Article 5(4) of the European Convention on Human Rights. This proof on a balance of probabilities must be shown by the authorities presenting to the court the required information allowing suitable access to a fair hearing."*

*In cases where it is found that the person concerned has displayed conduct seriously prejudicial to the vital interests of the country, it is thus a precondition that there is a reasonable probability that there was such a factual basis for the assessment of the conduct displayed and that this probability is proved by the authorities presenting to the court the required information allowing suitable access to a fair hearing.*

*It should be noted in this connection, that Article 8 of the European Human Rights Convention also contains a procedural protection in connection with interference in the right to respect for one's private and family life. The provision thus requires access to adjudication of the interference in question by an independent and impartial body with competence to assess all relevant factual and legal matters in a procedure with access to a fair hearing. This also applies in situations where the interference was justified by concerns for national security. In this connection, the ECtHR recognises that the authorities' assessment of what constitutes a threat must be granted considerable weight, but according to ECtHR practice, the impartial body must be made capable of reacting in situations where the invocation of national security is not reasonably based on the factual circumstances of the case or reflects an illegal or arbitrary understanding of the concept of "national security". Reference is made to the ECtHR Judgment of 20 June 2002 in *Al-Nashif v. Bulgaria*, especially paras. 122-124."*

It is the view of the Danish Government that the procedure described for deprivation of nationality is in accordance with Denmark's international obligations.