

DEPRIVATION OF NATIONALITY IN THE UK

IN A NATIONAL SECURITY CONTEXT

BRIEFING 2: AVOIDANCE OF STATELESSNESS

In 2011, Vietnamese-born and naturalised British citizen Mr. Pham was deprived of his British nationality under s40(2) of the British Nationality Act 1981, because of suspected involvement in terrorist activities. This legislative provision empowers the Secretary of State to withdraw British citizenship if “satisfied that deprivation is conducive to the public good”, so long as the person is not made stateless. Mr. Pham appealed this decision, claiming that the deprivation order was unlawful because it did have the effect of rendering him stateless, since the Vietnamese government declined to accept him as a Vietnamese citizen. He also asserted that the decision violated his right to respect for private and family life under the European Convention on Human Rights (ECHR). The UK Supreme Court ultimately dismissed Mr. Pham’s appeal, reiterating the reasoning of the Court of Appeal (para 19) that he could not be found stateless “*if the relevant facts are known and on the basis of those facts and the expert evidence it is clear that under the law of a foreign state an individual is a national of that state*”; and adding that where “*the Government of the foreign state chooses to act contrary to its own law [...] Our own courts, however, must respect the rule of law*”. The Court did not touch upon the claims brought under the ECHR.

As set out in [Briefing 1](#) of this series, British rules on nationality deprivation have undergone significant change since the turn of the century, with **deprivation powers expanded through successive law reforms**. The case of *Pham v. United Kingdom* touches upon two fundamental issues associated with current deprivation of nationality in the UK: the avoidance of statelessness and the consideration of the detrimental effects of deprivation. These were discussed by **Alison Huyghe** and **Patrícia Cabral** during the **second lecture** in the [UK Seminar Series on Citizenship Stripping](#) and are set out in more detail in this Briefing note.

While the UK can set its own rules for the deprivation of British nationality, these powers are **governed and limited by international law**. One such limitation can be found in the avoidance of statelessness: States must not render an individual stateless through the exercise of nationality deprivation. This is set out in a number of international rules, as synthesized in the [Principles on Deprivation of Nationality as a National Security Measure](#).

PRINCIPLES ON DEPRIVATION OF NATIONALITY AS A NATIONAL SECURITY MEASURE

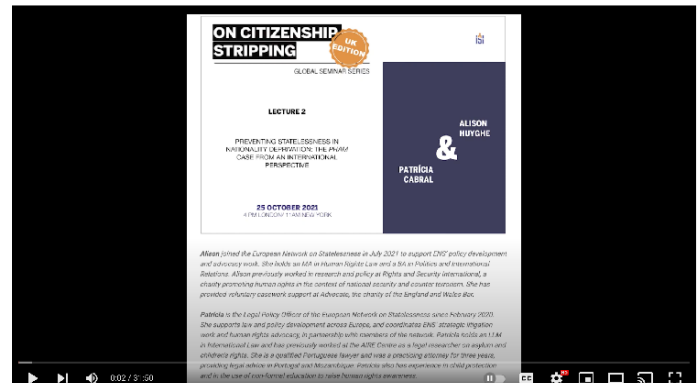
Principle 5: The avoidance of statelessness

- 5.1. States must not render any person stateless through deprivation of nationality.
- 5.2. An assessment of whether deprivation of nationality will render a person stateless, is neither a historic nor a predictive exercise. The question to be answered is whether, at the point of deprivation, the individual is considered by the competent authority of any other State, as a national under the operation of its law.

WHEN IS A PERSON “STATELESS”?

Article 1 of the 1954 Convention on the Status of Stateless Persons provides that a stateless person is someone “who is not considered as a national by any State under the operation of its law”. To prevent statelessness from ensuing from deprivation of nationality, it is vital that **the burden of proving** that loss or deprivation of nationality does not result in statelessness is carried by the State (not the individual), and that this assessment is made prior to issuing a deprivation order. The question of whether a person is recognized as a national by any other State, and hence whether they would or would not be rendered stateless as a result of deprivation or loss of nationality, should be answered **in consultation with the authorities of the relevant State** and the information as to the nationality

WATCH THE LECTURE BY
ALISON HUYGHE & PATRÍCIA CABRAL,
(EUROPEAN NETWORK ON STATELESSNESS)



SECTION 40(4A) OF THE BRITISH NATIONALITY ACT

There is no prohibition against statelessness in the context of nationality deprivation for naturalised British citizens. Section 40(4A) of the 1981 Act says that statelessness “*does not prevent*” the Secretary of State from making a deprivation order if citizenship status results from the person’s naturalisation, the deprivation is conducive to the public good, and the Secretary of State has reasonable grounds to believe that the person is able, under the law of a country outside of the UK, to become a national of that country. Contrary to international standards, only “*reasonable grounds*” are needed to satisfy that the individual “*is able*” to claim citizenship elsewhere. This violates the principle of the avoidance of statelessness in international law.

status of the person **should be confirmed in writing**. It follows that the determination of whether a person is recognized as a national should **not be based on one State's interpretation of another State's nationality laws**. When assessing whether a person would be rendered stateless through the deprivation of nationality, an examination must be made of both **the letter of the law** and of **how the law is applied in practice** by the other country in which the person (may) hold citizenship. In *Pham v. UK*, the determination of whether the individual would be rendered stateless by the deprivation order was made solely on the basis of the UK's reading of Vietnamese law, disregarding the practical exercise of the law by Vietnam, which is a critical part of the assessment of statelessness.

THE RELEVANCE OF THE RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

The importance of the avoidance of statelessness flows from its **severe impact on other fundamental rights**. The consequences of statelessness can range from destitution and denial of basic services to immigration detention, as well as a violation of the right to respect for private and family life. The violation of this latter right, established in Article 8 of the ECHR, is central to the case of *Pham v. UK*, that has now been brought before the European Court of Human Rights (ECtHR). While this provision does not guarantee the right to acquire or retain a nationality, the Court has confirmed on several occasions that **interferences with a person's right to a nationality may engage Article 8 because of the impact it has on the private life of the individual**.

In *Genovese v. Malta*, the ECtHR held that **arbitrary denial of nationality** could raise an issue under the right to private life as it is part of a person's social identity. This was subsequently broadened by the Court in *Ramadan v. Malta* to include situations of **arbitrary revocation of nationality**, arguing that the loss of nationality already acquired can have a similar or even greater impact on the private and family life of a person. With regard to determining whether a violation of the above right exists, the Court held in *K2 v. United Kingdom* that not only the question of arbitrariness should be addressed, but that the impact of revocation for the person should also be considered.

ARTICLE 8 ECHR – RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

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**WHETHER AN INDIVIDUAL WILL BE RENDERED
STATELESS THROUGH WITHDRAWAL OF
NATIONALITY IS A QUESTION OF WHETHER
THE INDIVIDUAL IS CURRENTLY RECOGNISED
AS A NATIONAL BY ANY OTHER STATE,
AND ACTUALLY HAS PROOF OF THAT
NATIONALITY.”**

Patrícia Cabral

Rendering an individual stateless, can also have consequences that extend beyond the targeted individual. For instance, children of parents who are deprived of their nationality, even when the children themselves retain their nationality, may suffer from a significant negative impact on their right to private and family life. Moreover, given the severe consequences of statelessness, an examination of a potential violation of Article 8 ECHR through deprivation of nationality must always take into consideration whether the applicant was rendered stateless by such decision. This includes an analysis of the long-term repercussions and the restrictions on the enjoyment of the individual's fundamental rights, as well as that of the person's family members, that becoming stateless may cause.

Thus far, ECHR jurisprudence has remained limited and taken a formalistic approach, primarily testing procedural rather than substantive issues. The case of *Pham v. UK* presents the Court with an opportunity to rule on whether Article 8 ECHR can in itself protect against deprivation when it results in statelessness given the severity of the consequences associated with it.

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**THE ASSESSMENT OF THE CONSEQUENCES
OF A DEPRIVATION ORDER SHOULD
[...] ALWAYS CONSIDER WHETHER THE
INDIVIDUAL WOULD BE RENDERED
STATELESS BY THE DEPRIVATION, BUT IT
SHOULD ALSO TAKE INTO ACCOUNT THE
DERIVATIVE IMPACT ON CHILDREN AND
FAMILIES OF THE PERSON DEPRIVED OF
NATIONALITY WHETHER THESE IMPACTS
ARE DIRECT OR INDIRECT”.**

Alison Huyghe

FURTHER RESOURCES

- [Principles on Deprivation of Nationality as a National Security Measure \(2020\)](#)
- [Supreme Court Judgment in *Pham v. UK* \(2015\)](#)
- [Convention Relating to the Status of Stateless Persons \(1954\)](#)
- [UNHCR Handbook on Protection of Stateless Persons \(2014\)](#)
- [ENS Thematic Index Briefing on Deprivation of Nationality and the Prevention of Statelessness in Europe \(2021\)](#)