

EUROPEAN COURT OF HUMAN RIGHTS

Application No. 36427/24

BETWEEN:

Begum

Applicant

v.

The United Kingdom

Respondent

WRITTEN SUBMISSIONS ON BEHALF OF THE INTERVENORS

The AIRE Centre (Advice on Individual Rights in Europe) and the European Network
on Statelessness (ENS)

pursuant to the Registrar's notification dated 20th March 2026 on the Court's
permission to intervene under Rule 44 § 3 of the Rules of the European Court of Human
Rights

27th April 2026

I. Scope of Article 4 ECHR

1. The rights protected under Article 4 of the European Convention on Human Rights (ECHR) enshrines “one of the fundamental values of democratic societies”.¹ The rights are absolute: nothing justifies any form of modern slavery, such as trafficking in human beings or other forms of exploitation, not even in the event of a public emergency threatening the life of the nation.² Article 4 ECHR places positive obligations on Member States to: (i) put in place a legislative and administrative framework to prevent and punish trafficking; (ii) take operational measures to protect victims and potential victims of trafficking; and (iii) effectively investigate potential trafficking in human beings.³ It is well-established that the ECHR is to be interpreted by reference to the broader framework of international law.⁴

a. The obligation to protect

2. Contracting States have a positive obligation to protect victims of trafficking in cases where the State authorities **were aware or ought to have been aware** of circumstances giving rise to a credible suspicion that an individual had been, or was at **real and immediate risk of being, trafficked or exploited**.⁵ A State has an obligation to take measures within its powers to remove individuals from the situation or risk of trafficking.⁶ This applies to acts that occurred on the State’s territory,⁷ triggering the police and border authorities’ positive obligations.⁸ **Where a State fails in this obligation, the Court has found a violation of Article 4 ECHR.**⁹
3. National authorities may take a range of operational measures to protect victims and potential victims of trafficking, including strengthening coordination at a national level between anti-trafficking bodies, discouraging demand for the exploitation of human beings, and facilitating the early identification of victims by qualified persons, and assisting victims in their physical, psychological and social recovery.¹⁰
4. **The intervenors emphasise the importance of the earliest possible identification of victims and potential victims of trafficking** by trained and qualified personnel in order for actions of state authorities to meet their obligations under Article 4,¹¹ particularly in **situations** concerning children and girls.¹²
5. In *V.C.L. and A.N.*, the Court referred to the “‘known’” situation and vulnerability of the applicants. Once it is accepted that the applicant in that case was a child, the Court considered “*the CPS should have been aware of the existence of circumstances giving*

¹ *Siliadin v. France*, no. 73316/01, § 112, ECHR 2005-VII.

² *C.N. v. the United Kingdom*, no. 4239/08, § 65, 13 November 2012.

³ *Chowdury and Others v. Greece*, no. 21884/15, § 105-116, 30 March 2017; *Siliadin v. France*, no. 73316/01, ECHR 2005-VII; *S.M. v. Croatia* [GC], no. 60561/14, § 306, 25 June 2020; *V.C.L. and A.N. v. the United Kingdom*, nos. 77587/12 and 74603/12, § 152, 16 February 2021.

⁴ United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ([Palermo Protocol](#)) 15 November 2000, Article 10 (c); [Council of Europe Convention on Action Against Trafficking in Human Beings \(ECAT\)](#) Treaty Series No. 197 (2005). This principle finds expression in Article 31(3)(c) of the Vienna Convention on the Law of Treaties (“VCLT”), and has been repeatedly relied upon by the ECtHR: see, e.g., *Demir v Turkey* (2009) 48 EHRR 1272 at §§85-86, 146.

⁵ *V.C.L. and A.N. v the United Kingdom*, op. cit., § 152.

⁶ *F.M. and Others v. Russia*, nos. 71671/16 and 40190/18, § 295, 10 December 2024.

⁷ *Rantsev v. Cyprus and Russia*, no. 25965/04, § 304, 7 January 2010.

⁸ See for example: *J. and Others v. Austria*, no. 58216/12, § 114, 17 January 2017.

⁹ *Rantsev v. Cyprus and Russia*, op. cit.; *V.C.L. and A.N. v. the United Kingdom*, op. cit., § 152. See also, *Osman v. the United Kingdom*, 28 October 1998, Reports of Judgments and Decisions 1998-VIII.

¹⁰ *V.C.L. and A.N. v. the United Kingdom*, op. cit., § 153; *Chowdury and Others v. Greece*, op. cit., § 110.

¹¹ *ibid.*, § 153; Palermo Protocol, op. cit., Article 10(2).

¹² Palermo Protocol, op. cit., Article 6(4).

rise to a credible suspicion that he had been trafficked".¹³ In *Rantsev*, the Court had noted the known prevalent context of young foreign women being forced to work in the sex industry in Cyprus as a factor triggering the positive obligation to protect potential victims of trafficking.¹⁴ The Court has therefore concluded that "*certain aspects*" of evidence or applicants' accounts "*should have raised concerns that [they] might have been a victim of trafficking*" and that "*these concerns should only have intensified when it became apparent that [they were] a minor*".¹⁵

6. This Court has previously noted the relevance of the **Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT)** in interpreting States' obligations under Article 4 ECHR.¹⁶ In addition to the early identification requirement, the relevant authorities should pay attention to a victim's capacity to consent to forms of exploitation and **emphasise that the 'means' of facilitating trafficking in human beings is not relevant in cases concerning child victims of trafficking**. Moreover, ECAT requires States to grant victims a recovery and reflection period during which they cannot be subject to expulsion. This period must be granted as soon as there are reasonable grounds to believe that a person may be a victim of trafficking.¹⁷ ECAT also requires States of which a victim is a national, or in which they held permanent residence at the time of entry into the receiving State's territory, to facilitate and accept their return without undue delay.¹⁸
7. Once a serious indication of possible trafficking is brought to the State's notice, contextualised with vulnerability (including age and gender), the State is required to **respond in an urgent and serious manner** under Article 4 ECHR.¹⁹ **The Court is invited to assess whether the relevant national authorities were aware or ought to have been aware of a real and immediate risk of being trafficked in light of relevant indicators of vulnerability to exploitation.**
8. This must also be taken into account when deciding on the relevant measures in respect of **states' restitutionary obligations**. Central to those obligations is the **non-punishment principle**, which requires States to provide for not imposing penalties on trafficking victims for unlawful activities they were compelled to commit.²⁰
9. The non-punishment principle is part of the State's duty to take operational measures to protect victims of trafficking. The teleological aims of positive obligations under Article 4 ECHR, the Court has said, are to prevent victims from further harm and to facilitate their recovery, both of which are undermined by the punishment of victims.
10. The non-punishment principle is also codified in Article 26 ECAT. The Group of Experts on Action against Trafficking in Human Beings (GRETA) has affirmed that the concept of "punishment" in this context is broad, encompassing not only criminal penalties but also **administrative sanctions and re-entry prohibitions**.²¹ In its 2021 evaluation report on the United Kingdom, GRETA expressed concern that the principle was being applied too narrowly, and that enforcement officers frequently

¹³ *V.C.L. and A.N. v. the United Kingdom*, op. cit., § 176.

¹⁴ *Rantsev v. Cyprus and Russia*, op. cit., § 294.

¹⁵ *V.C.L. and A.N. v. UK*, op. cit., § 181.

¹⁶ *ibid.*, § 150.

¹⁷ *ibid.*, Article 13.

¹⁸ *ibid.*, Article 16. This provision is designed to ensure that victims are not left stranded in the destination country. See also: Palermo Protocol, op. cit., Article 8(1).

¹⁹ *F.M. v. Russia*, nos. op. cit., § 248.

²⁰ ECAT, op. cit., Article 26. See also *V.C.L. and A.N. v. the United Kingdom*, op. cit.

²¹ GRETA, *Guidance Note on the Recovery and Reflection Period*, THB-GRETA(2024) (CoE, September 2024); GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by France* (2nd evaluation round) GRETA(2017)17, §§ 247, 250.

failed to identify victims early. It recommended that the UK authorities broaden the scope to cover all such offences and ensure that law enforcement agencies receive training to support early identification.²²

11. **For these reasons, the intervenors submit that deprivation of citizenship is analogous to prosecution and amounts to punishment, causing victims of trafficking further harm and interfering with their recovery as well as reintegration (see Section III).²³ It is particularly harmful where deprivation leads to statelessness, or if it is conducted without prior criminal proceedings or due procedural safeguards.**

b. Procedural obligation to conduct an effective investigation

12. The obligation to investigate arises where there is a **credible suspicion** that rights under Article 4 have been violated,²⁴ and drawn to the attention of the authorities including, *inter alia*, through contact with law enforcement agencies and legal assistance requests.²⁵ **Where a potential victim of trafficking is known to the authorities, this presents a clear opportunity for the authorities to investigate the individual circumstances further.** The obligation is one of means not result²⁶ and covers all stages from recruitment to exploitation (while reiterating that the ‘means’ element does not apply to child victims).²⁷ When recruitment occurs on a Contracting States’ territory, that State should conduct the investigation into the recruitment.²⁸
13. The Grand Chamber of this Court has made clear that authorities “*must take whatever reasonable steps they can to collect evidence and elucidate the circumstances of the case*”.²⁹ The conclusions of the investigation must be based on a thorough, objective, and impartial analysis of the relevant material obtained. The investigation must be independent; capable of identifying and punishing those responsible; prompt; and involve the victims to the extent necessary to ensure their safeguarding.³⁰
14. National authorities are required to act of their own motion and must not leave the initiative to the responsibility of the victim to have made a complaint.³¹ They should consider the wider context relevant to the identification of potential victims of exploitation. In *Chowdury*, the Court considered that Greece had violated the procedural limb of Article 4 as the prosecutor had refused to bring proceedings in respect of twenty-one applicants on the grounds that, among other things, they had lodged their complaints belatedly.³² The Court concluded that there was “*nothing in*

²² GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom* (3rd evaluation round) GRETA(2021)12 (Council of Europe, 20 October 2021), §§160 and 171, page 83. See also Modern Slavery Act 2015, Sch.4

²³ Siobhán Mullally, UN Special Rapporteur on Trafficking in Persons, states that “[D]eprivation of citizenship, without accompanying protections or procedural safeguards, is in itself a form of punishment” in Reprieve, *Trafficked to ISIS*, (2021).

²⁴ *C.N. v. the United Kingdom*, op. cit., § 69; *Zoletic and Others v. Azerbaijan*, no. 20116/12, § 193, 7 October 2021; *B.B. v. Slovakia*, no. 48587/21, § 87, 24 October 2024.

²⁵ *Zoletic and Others v. Azerbaijan*, op. cit., §§ 199, 200; *V.C.L. and A.N. v. the United Kingdom*, op. cit., §117.

²⁶ *J. and Others v. Austria*, op. cit.; *Chowdury and Others v. Greece*, op. cit., § 116.

²⁷ *V.C.L. and A.N. v. the United Kingdom*, op. cit., §149.

²⁸ *Rantsev v. Cyprus and Russia*, op. cit., § 308.

²⁹ *S.M. v. Croatia* [GC], op. cit., § 316.

³⁰ *Chowdury and Others v. Greece*, op. cit., § 116 and 117; *Rantsev v. Cyprus and Russia*, op. cit., § 288. See also *S.M. v. Croatia* [GC] op. cit., § 313.

³¹ *V.C.L. and A.N. v. the United Kingdom*, op. cit., § 155.

³² *Chowdury and Others v. Greece*, op. cit., § 117-121.

the decision to show that the prosecutor really examined the limb of the applicants' complaint relating to human trafficking".³³ Similarly, in *Zoletic*, this Court noted that an effective investigation must take place where the "totality" of information constituted an "arguable claim" of treatment prohibited under Article 4.³⁴

15. In *S.M. v. Croatia*, the Court concluded that the relevant authorities had failed to follow obvious lines of enquiry capable of elucidating the circumstances. Crucially, in that case, the failure to investigate the applicant's social media interactions, given its use in recruitment by traffickers, was one of the elements considered by the Court in concluding that the State had failed to conduct an effective investigation.³⁵
16. In addition to the requirement of promptness, this Court should be satisfied that the authorities of the Contracting State did not take any rapid decisions leading to a refusal to open criminal proceedings or not to thoroughly investigate without justification and without guaranteeing the safety of potential victims of trafficking.³⁶
17. **The intervenors submit that where Contracting State authorities are made aware of potential victims of human trafficking, exploitation or conduct that falls within the scope of Article 4 ECHR, those authorities have an obligation to conduct a thorough and effective investigation. Failing to pursue such an investigation or dismissing complaints with limited investigation would amount to significant flaws under the procedural limb of Article 4 ECHR. This Court is therefore invited to consider whether there is evidence indicating the significant shortcomings of a Contracting State's attempt to conduct an effective investigation per Article 4.**³⁷

II. Article 53 ECHR

18. Article 53 ECHR prohibits a construction of an individual's Convention rights which would limit the human rights and fundamental freedoms ensured under any other agreement to which the respondent is Party. The Court must construe the rights and freedoms defined in the Convention at least to the level of protection already guaranteed by other international agreements which the respondent state has ratified.

a. The Palermo Protocol

19. The Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children requires states to prevent and combat trafficking in human beings, to protect and assist victims and promote cooperation among State Parties. It is noted that, in the absence of a universal instrument on combating trafficking in human beings, these principles will be taken into consideration in the protection of victims and investigation of trafficking in human beings.³⁸

b. UN Convention on the Rights of the Child

20. Of particular relevance in determining compliance with the Osman test³⁹ in relation to a child are the provisions of the UN Convention on the Rights of the Child ('CRC') which the UK ratified in 1991.⁴⁰ The CRC applies to *all* children under 18 and must

³³ *ibid.*, § 119.

³⁴ *Zoletic and Others v. Azerbaijan*, op. cit., § 193.

³⁵ *S.M. v. Croatia* [GC], op. cit., § 336-337.

³⁶ *M. and Others v. Italy and Bulgaria*, no. 40020/03, § 106, 31 July 2012.

³⁷ *S.M. v. Croatia* [GC], § 345, 346.

³⁸ Palermo Protocol, op. cit., Articles 3, 6, 9, 12.

³⁹ *Osman v. the United Kingdom*, op. cit., § 116.

⁴⁰ Despite repeated exhortation from the CRC Committee it has not incorporated it into domestic law, but it is an international obligation binding on the UK and thus binding under Art 53 ECHR.

be read holistically in light of the interdependence and indivisibility of its provisions.⁴¹ **Under Article 4 CRC**, States must undertake all ‘appropriate measures’ to realise children’s rights with no discretion,⁴² and take positive measures to give full effects to *all* the rights of children under their jurisdiction.⁴³

21. The CRC Committee has issued two relevant Views on complaints brought under the Optional Protocol to the CRC on Communications Procedure (OPIC)⁴⁴ which concerned the repatriation of children who were being held in detention camps in the Syrian Arab Republic.⁴⁵ **The present case raises a slightly different CRC issue - the duty that was still owed to child citizens during their minority - prior to them reaching adulthood or, if applicable, to being deprived of their citizenship.** In both cases, the CRC Committee noted that a state’s jurisdiction is not limited to its “territory”, and can include domestic acts that are performed, or that produce direct and foreseeable effects, outside its national borders.⁴⁶ The CRC Committee held that the nationality of the children, France and Finland, had the capability and power to protect the rights of the children detained in Syrian camps through repatriation or other consular responses, and as such exercised jurisdiction over them.⁴⁷ States have the duty to realise the rights of children who fall under their jurisdiction, including the rights of children who are their nationals and who are in vulnerable situations in another countries’ territory. The CRC committee notes that “*persons up to the age of 18 years are entitled to continuing protection from all forms of exploitation and abuse*” (emphasis added).⁴⁸
22. Article 3(1) CRC provides that children’s best interests should be a primary consideration in all matters affecting them. This obligation also concerns “[i]naction or failure to take action and omissions”, such as when states fail to take measures to protect children from abuse.⁴⁹ Any decision affecting children must include (i) an evaluation of possible impacts on the children; (ii) procedural guarantees for the best interests assessment and determination; (iii) an explanation as to how children’s best interests have been weighed under Article 3.⁵⁰ Exceptionally, if the decision taken was not in the child’s best interests, it must explain **how** the child’s best interests were still a primary consideration and **why** it did not override competing interests.⁵¹
23. Articles 19, 34-36 CRC recognise children’s right to protection from all forms of physical and mental violence, sexual abuse and exploitation, and sale and trafficking. **Article 36** imposes on states an obligation to protect children from **all other forms of exploitation** prejudicial to any aspects of their welfare, **irrespective of whether they meet the technical definition of trafficking.** CRC General Comment No. 13 sets out measures which states must take to protect children from violence. In

⁴¹ See CRC General Comment No. 5: General measures of implementation of the CRC, 2003, § 18.

⁴² CRC Committee, General Comment 19 (2016) on Public Budgeting for the Realization of Children’s Rights, 2019, CRC/C/GC/19, § 18.

⁴³ CRC Committee, *F.B. et al & D.A. et al v. France*, 2022, CRC/C/89/D/77-79-109-2019, § 6.6.

⁴⁴ Optional Protocol to the Convention on the Rights of the Child on a communications procedure, General Assembly resolution A/RES/66/138, 19 December 2011.

⁴⁵ CRC Committee, *F.B. et al & D.A. et al v. France*, op. cit.; CRC Committee, *P.N. et al v. Finland*, 2022, CRC/C/91/D/100/2019.

⁴⁶ *ibid.*, §§ 6 - 6.9; *P.N. et al v. Finland*, § 10.8.

⁴⁷ *ibid.*

⁴⁸ CRC General comment No. 20, (2016) on the implementation of the rights of the child during adolescence, § 40.

⁴⁹ CRC General Comment No. 14, (2013) on the right of the child to have his or her best interests taken as a primary consideration, 29 May 2013, CRC/C/GC/14, § 18.

⁵⁰ *ibid.*, § 6(c).

⁵¹ *ibid.*, § 97. See also § 14.

- particular, the intervenors emphasise the impact of violence on children and its long-lasting negative impacts, including injury or psychological impact or other disruption to the child's quality of life. Protective measures should include the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, prevention and identification, reporting, referral, investigation, treatment and follow-up of instances of violence against children (Article 19(2)). The protection of children from **violence and exploitation** thus requires states to take "tailored measures" to reduce children's vulnerability to violence and exploitation.⁵²
24. If a child has been a victim of violence, the state has a duty to promote their "physical and psychological recovery and social reintegration", in an environment which fosters their "health, self-respect and dignity" (Article 39 CRC). The CRC Committee considers that states parties should ensure the "recovery and gender-sensitive reintegration of adolescents who are recruited into armed forces and groups".⁵³
 25. In relation to marriage, the CRC Committee reaffirms in its General Comment No. 20 that States should take all appropriate measures to protect all children under the age of 18 who fall within their jurisdiction from child marriage, a form of forced marriage.⁵⁴
 26. States obligations to take positive measures under Article 4 CRC is "particularly strong" in relation to the protection of children from ill-treatment and potential violations of their right to life.⁵⁵ Article 6 CRC enshrines children's right to life, survival and development, and Article 37(a) protects them from inhuman, cruel and degrading treatment. In both *F.B. et al & D.A. et al v. France* and *P.N. et al v. Finland*, the CRC Committee found that the children's state of nationality violated Article 37(a) by failing to protect the child victims, and Article 6(1) by failing to protect the child victims from an imminent and foreseeable threat to their lives. As France and Finland knew about these conditions and were capable of taking action, they had a positive obligation to protect the children from the imminent risk to their right to life and actual violation of their freedom from cruel, inhuman and degrading treatment.⁵⁶
 27. According to **Article 18(2) CRC**, states have the duty to render "appropriate assistance" to support parents and legal guardians. As such, states have an obligation to notify a child's parents that the child may be vulnerable to violence or exploitation, unless doing so would be against the child's best interests.
 28. **Article 28 CRC** recognises children's right to education which requires states to take measures to encourage regular attendance at schools and the reduction of drop-out rates (Article 28(e) CRC).⁵⁷ States parties must therefore take measures to **ensure children's attendance, especially for children of the age of compulsory education**.⁵⁸ Failure to identify child trafficking and protect children from this form of harm violates their right to **freedom from violence and exploitation**, and violates their right to **education**.
 29. The CRC Committee recommended that the United Kingdom ensure that child victims of trafficking are "always treated as victims and have access to the necessary

⁵² CRC *General Comment No. 13* (2011), The right of the child to freedom from all forms of violence, §72(f).

⁵³ CRC *General Comment No. 20*, op. cit., § 82.

⁵⁴ *ibid.*, § 40; see also Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices, 2019, §20-24.

⁵⁵ CRC Committee *F.B. et al & D.A. et al v. France*, op. cit., § 6.6.

⁵⁶ *ibid.*, § 6.9; CRC Committee, *P.N. et al v. Finland*, op. cit.

⁵⁷ CRC *General Comment No. 20*, op. cit., §§69, 71.

⁵⁸ *ibid.*, § 69.

support and services, including psychological support and legal assistance”.⁵⁹ In its Concluding Observations on the Syrian Arab Republic, the CRC Committee “deeply regretted” the cases of trafficking and sale of children.⁶⁰

c. UN Convention on the Elimination of All forms of Discrimination Against Women

30. Article 6 CEDAW specifically requires States parties to take all appropriate measures to suppress all forms of trafficking in women and girls.⁶¹ **CEDAW General Recommendation No. 38 on trafficking in women and girls in the context of global migration** elaborates on the Article 6 obligations and duties towards victims. The Committee makes clear that combating trafficking requires states to engage with the larger protection framework stemming from, inter alia, international humanitarian law, criminal law, and the Conventions against statelessness.⁶² The Committee recommends that States parties establish national guidelines to govern the identification, referral and support of victims carried out by multidisciplinary teams including social services, healthcare providers and specialised support organisations. The Committee further recommends that women and girls who are victims of trafficking must not, without exception, be subject to arrest, detention, prosecution or penalties for unlawful acts committed as a direct consequence of their situation as victims of trafficking.⁶³
31. In its most recent Concluding Observations on the eighth periodic report of the United Kingdom, the Committee expressed concern that a significant number of victims of trafficking and modern forms of slavery remain unidentified. It noted shortcomings in the national referral mechanism and the inadequacy of support provided to victims, and called on the UK to continue to improve the national referral mechanism to ensure that victims of trafficking are properly identified and protected.⁶⁴

III. Limits to citizenship deprivation to prevent statelessness

32. While there is not an explicit right to a nationality in the ECHR, the Court has reiterated that nationality is an important element of a person’s identity.⁶⁵ It has found that measures affecting a person’s nationality may fall within the ambit of the Convention, including that the arbitrary deprivation of nationality may interfere with Article 8.⁶⁶
33. In deprivation of nationality cases, the Court has assessed: i) the *consequences* for the individual concerned, to establish if there has been an interference with Article 8, and (ii) whether the measure was *arbitrary*, which may lead to a violation of Article 8(2).⁶⁷

⁵⁹ CRC Committee, Concluding observations on the combined sixth and seventh periodic reports of the United Kingdom of Great Britain and Northern Ireland, 2023, CRC/C/GBR/CO/6-7, § 52.

⁶⁰ CRC Committee, Concluding observations on the fifth periodic report of the Syrian Arab Republic, 2019, CRC/C/SYR/CO/5, § 54.

⁶¹ The United Kingdom ratified the CEDAW Convention on 7th April 1986. See the [UN Treaty Body Database](#), ratification status by country, UK; CEDAW, 34/180 of 18 December 1979, Article 6.

⁶² CEDAW, General Recommendation No. 38 on trafficking in women and girls in the context of global migration, (2020), § 13.

⁶³ *ibid.*, §§ 38, 77-78, 98.

⁶⁴ CEDAW, Concluding observations on the 8th periodic report of the United Kingdom (2019), §33-34(c).

⁶⁵ See *Ghoumid and Others v. France*, nos. 52273/16 and 4 others, § 43, 25 June 2020. See also Article 15 of the Universal Declaration of Human Rights (UDHR).

⁶⁶ *Ramadan v. Malta*, no. 76136/12, §§ 84-85; *Usmanov v. Russia*, no. 43936, § 53, 22 December 2020; Council of Europe, European Court of Human Rights, “[Article 8 – Nationality](#)”, ECHR-KS.

⁶⁷ See, e.g., *Usmanov v. Russia*, op. cit., § 58; *El Aroud and B.S. v. Belgium*, nos. 25491/18 and 27629/18, 5 December 2024.

Consequences for the applicant

34. The assessment of consequences does not rely upon a discrete list of elements, but rather evaluates the concrete impact of the measure on the individual's private life in the circumstances of a case.⁶⁸ In assessing the consequences of a deprivation order, the Court has considered whether the applicant was rendered stateless, expelled from the country, or left without any lawful/residence status or valid identity documents.⁶⁹
35. The Court has repeatedly attached "*great importance*" to whether deprivation renders an applicant stateless,⁷⁰ noting that the impact is particularly severe where statelessness occurs.⁷¹ Stateless people face adverse and disproportionate consequences in their private and daily lives, particularly given that statelessness is an enabling right that affects the enjoyment of other fundamental rights.⁷²
36. **The interveners submit that deprivation of nationality which results in statelessness has adverse consequences that will amount to an interference with the right to respect for private life (and potentially family life) under Article 8.**
37. Competent authorities must therefore make an explicit and rigorous assessment⁷³ of whether deprivation of nationality will render the applicant stateless, in line with international law and guidance on the determination of statelessness (see §§ 45-51). That assessment must be undertaken *before* the deprivation decision is taken, but reviewing courts must also assess the consequences for the applicant after the decision was made.

Whether the measure was arbitrary

38. Courts must also determine whether the deprivation of nationality was arbitrary. As observed in *K2*, arbitrariness is "*a stricter standard than that of proportionality*".⁷⁴ The Court has considered whether (i) the measure was in accordance with the law; (ii) accompanied by the necessary procedural safeguards (including access to appropriate judicial review); and (iii) whether the authorities acted diligently and swiftly.⁷⁵ Given the potentially irreversible nature of statelessness and its profound impact on an individual's status and personal identity, the obligation on States to act with particular care and diligence in deprivation cases is heightened.⁷⁶
39. **Statelessness can only be adequately identified and assessed before the deprivation order if the authorities act diligently. Where national authorities and reviewing courts fail to exercise due diligence, e.g. by not pursuing evidence and seeking confirmation of nationality, this affects both the arbitrariness of the**

⁶⁸ *Johansen v. Denmark*, no. 27801/19, §§ 53-55, 1 February 2022.

⁶⁹ *Alpeyeva and Dzhalagoniya v. Russia*, nos. 7549/09 and 33330/11, § 112, 12 June 2018; *Usmanov v. Russia*, op. cit., § 59; *Ramadan v. Malta*, op. cit., § 90.

⁷⁰ *Ghoumid and Others v. France*, op. cit., § 50; *El Aroud and B.S. v. Belgium*, op. cit., § 74; *K2 v. the United Kingdom*, no. 42387/13, § 62, 7 February 2017.

⁷¹ *Alpeyeva and Dzhalagoniya v. Russia*, op. cit., § 112; *Emin Huseynov v. Azerbaijan (No. 2)*, no. 1/16, § 52, 13 July 2023; *Hoti v. Croatia*, no. 63311/14, § 126-128, 24 April 2018; *Sudita Keita v. Hungary*, no. 42321/15, § 35, 15 May 2020.

⁷² *ibid*; *Ahmadov v. Azerbaijan*, no. 32538/10, § 46, 30 January 2020.

⁷³ *Johansen v. Denmark*, op. cit., §§ 46, 58; *A.A. v. Denmark*, no. 6041/23, § 6, 12 July 2023; *Emin Huseynov v. Azerbaijan (No. 2)*, op. cit., §§ 57, 60.

⁷⁴ *K2 v. the United Kingdom*, op. cit., § 61.

⁷⁵ *Usmanov v. Russia*, op. cit., § 53, 62-65.

⁷⁶ *Alpeyeva and Dzhalagoniya v. Russia*, op. cit., §§ 125-126; *Emin Huseynov v. Azerbaijan (No. 2)*, op. cit., §§ 60-63. In *Alpeyeva and Dzhalagoniya*, the authorities' failure to verify the applicants' nationality status or consider the consequences of withdrawing identity documents left them stateless and without recognised legal status for years, rendering the measures arbitrary in violation of Article 8.

decision and the assessment of the consequences on the applicant's private life.

40. This Court examines diligence in both procedural and substantive terms. This includes assessing whether authorities have taken appropriate steps to verify relevant facts and the foreseeable consequences of the deprivation.⁷⁷ The Court has found that where domestic courts fail to examine evidence capable of being determinative of nationality status without explanation, the decision is not accompanied by the necessary procedural safeguards and must be regarded as arbitrary.⁷⁸
41. Procedural safeguards must be practical and effective (not merely formal), and include effective judicial oversight, timely notification of the individual, and an accessible right of appeal. Individuals must be afforded a genuine opportunity to participate in proceedings and to present evidence relevant to assess statelessness and the impact on their private life.⁷⁹ Where significant restrictions affect a person's ability to gather evidence and communicate with their lawyer, or they are otherwise unable to participate meaningfully in proceedings (e.g. due to being outside the territory), particular weight must be given to whether the process ensured a fair balance and equality of arms.
42. **The intervenors submit that authorities and courts must diligently assess whether deprivation of nationality will foreseeably result in statelessness. Where that inquiry is not undertaken, deprivation will be arbitrary and in breach of Article 8.**
43. **Due diligence should follow international legal standards and guidance on the determination of statelessness, in line with States' duty to prevent statelessness. These affect the quality and adequacy of procedures for assessing nationality.**

Determining statelessness in deprivation of nationality cases

44. Under Article 53 ECHR, Contracting States must not interpret the ECHR so as to fall below their international obligations to prevent statelessness, including under the Convention on the Reduction of Statelessness (1961 Convention), which has been widely ratified and to which the United Kingdom is a party.⁸⁰ The duty to avoid conduct leading to statelessness forms part of customary international law⁸¹ and sets limits on States' ability to deprive individuals of their nationality. UNHCR has published authoritative guidance on the interpretation and application of the 1961 Convention (see Annex I).
45. Despite this, there is consistent evidence that Contracting States fail to implement these obligations in practice when depriving individuals of their nationality by failing to duly assess whether an individual will be rendered stateless.
46. In the UK, successive legislative changes have expanded deprivation powers. These are used more frequently than in most other States, including in national-security contexts, and have a disproportionate impact on British Muslims.⁸² UK law includes a narrowly framed power permitting deprivation that results in statelessness, but it has never been exercised.⁸³ There have, however, been several cases where a deprivation

⁷⁷ *Johansen v. Denmark*, op. cit., §§ 58-60; *A.A. v. Denmark*, op. cit., §§ 5-6; See also UK Home Office, [Deprivation of British citizenship: Caseworker Guidance](#), Version 5.0, 14 January 2026, p. 7.

⁷⁸ *Ahmadov v. Azerbaijan*, op. cit., §§ 52-54.

⁷⁹ See *Usmanov v. Russia*, op. cit., § 63, citing *Ramadan v. Malta*, op. cit., §§ 86-89.

⁸⁰ See Article 8(1) of the Convention on the Reduction of Statelessness, 30 August 1961, 989 UNTS 175; [AIRE Centre and ENS, Written Submissions in *Pham v the United Kingdom*](#), 19 April 2021, §§ 14-15.

⁸¹ Council of Europe, Explanatory Report to the European Convention on Nationality, § 33.

⁸² Between 2010-2024, the UK made 223 deprivation orders on the ground that it was conducive to the public good. See reports by the House of Commons and the Joint Committee on Human Rights (Annex I).

⁸³ Section 40(4A) of the BNA 1981. The Home Office claims that there are no known examples of a

order was made on the basis that it would not lead to statelessness, but the decision was then overturned by SIAC, finding that there had been errors in decision-making and the deprivation had led to statelessness in practice.⁸⁴ This is also the result of successive legal amendments that have weakened procedural safeguards in deprivation cases.

47. Several domestic courts and the UN Human Rights Committee have confirmed that States ought to bear the burden of proving deprivation of nationality will not result in statelessness, and must account for the difficulty in establishing a negative, i.e. that the person is not a national.⁸⁵ The individual should cooperate, but national authorities must take proactive measures to verify whether the person effectively and currently has another nationality, *before* making the deprivation decision. Requiring an applicant to carry the evidentiary burden may, of itself, undermine the quality of the decision-making and contribute to a finding of arbitrariness under Article 8.
48. Article 1(1) of the Convention relating to the Status of Stateless Persons defines a stateless person as someone “who is not considered as a national by any State *under the operation* of its law”. The element “under the operation” emphasises that determining statelessness is a mixed question of fact and law, requiring an analysis of how the competent authorities apply the law in practice in a specific case.⁸⁶ According to UNHCR, where a State does not treat an individual as a national, even if they would appear to meet the criteria under a country’s laws, “*it is [that State’s] position rather than the letter of the law that is determinative*”,⁸⁷ and the “*assessment should be informed by consultations with and written confirmation from the State in question*”.⁸⁸ This is aligned with caselaw from the UK and several European domestic courts (see Annex I). Authorities must thus take reasonable steps to verify nationality by engaging with the authorities of the relevant State with which the person has relevant links. The absence of a response should be given due weight as an indication of statelessness.
49. **When assessing whether a deprivation order may render a person stateless, the relevant question is whether the individual currently possesses and has proof of another nationality. Speculative or unverified assumptions as to the existence of another nationality or the possibility of acquiring one are not duly diligent.**
50. **Where Contracting States fail to take such steps, individuals may be rendered stateless and left in limbo, leading to severe and disproportionate interferences with fundamental rights that the ECHR is intended to prevent and protect.**

deprivation under section 40(4A) that has rendered an individual formally stateless (see Annex I).

⁸⁴ C3, C4 and C7 v SSHD (Open Judgment) [2021] SIAC 3 (JA), 18 March 2021, § 117; E3 and N3 v SSHD (Open Judgment) [2018] SIAC SC/138/2017 & SC/146/2017, 15 November 2018, § 110.

⁸⁵ See case law by the UN Human Rights Committee and domestic courts (listed in Annex I); UN Human Rights Council, Human rights and arbitrary deprivation of nationality (2013), A/HRC/25/28; UNHCR, Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness (2020), HCR/GS/20/05, §§ 44-45 (“UNHCR Guidelines No. 5”); UNHCR, Handbook on Protection of Stateless Persons (2014) §§ 89-91 (“UNHCR Handbook”).

⁸⁶ UNHCR Handbook, op. cit., § 23.

⁸⁷ *ibid.*, § 37, see also § 99.

⁸⁸ UNHCR Guidelines No. 5, op. cit., § 81. The distinction between “de jure” and “de facto” statelessness risks undermining the object and purpose of the 1954 Convention. The core function of the Convention is to protect persons who are not recognised as nationals by any State, not just under the letter of the law but also in practice, including those arbitrarily excluded from nationality by their own State.

Annex I

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