

**THIRD PARTY INTERVENTION IN THE
EUROPEAN COURT OF HUMAN RIGHTS**

Application No 36427/24

Shamima Begum v. The United Kingdom

WRITTEN SUBMISSIONS

**of the Institute on Statelessness and Inclusion and
the International Commission of Jurists**

**Professor Fionnuala Ní Aoláin KC (Hons) contributed to this third-party intervention in her capacity
as a Commissioner of the International Commission of Jurists**

*(Pursuant to permission granted by the President of the Section under Rule 44 § 3 of the Rules of the Court
and notified on 20 March 2026)*

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INTRODUCTION

1. The Institute on Statelessness and Inclusion and the International Commission of Jurists (the ‘interveners’) make these submissions pursuant to the leave to intervene granted by the President of the Section on 20 March 2026 under Rule 44 § 3 of the Rules of Court.
2. These submissions draw on the legal expertise of both interveners and rely on the **Principles on Deprivation of Nationality as a National Security Measure**.¹
3. Part 1 below outlines the interveners’ observations on the Contracting Parties’ jurisdiction within the meaning of Article 1 of the European Convention on Human Rights (‘the Convention’).
4. Part 2 below sets out the interveners’ submissions on matters relevant to the Court’s determination of questions 2, 3 and 4, which the Court put to the parties when it communicated the application to the Respondent State’s authorities.

PART 1: OBSERVATIONS ON JURISDICTION WITHIN THE MEANING OF ARTICLE 1 OF THE CONVENTION

5. For the purposes of well-founded complaints of Article 4 violations – just as it would be the case for well-founded complaints of violations of other non-derogable Convention rights, such as Articles 2 and 3 – the concerned individual’s presence at all material times within the Contracting Party’s territory is not the sole feature capable of establishing jurisdiction within the meaning of Article 1 of the Convention,² that is, the obligation to respect the human rights guaranteed under the Convention.
6. With respect to Article 4 complaints arising from the trafficking of an individual across borders, an essential feature establishing whether the person came within a State’s Article 1 jurisdiction at all material times is whether, but for that State’s actions or omissions in violation of its Convention obligations and other international law obligations,³ the individual concerned would or would not have an arguable case of Article 4 violations.
7. Such a case would be arguable, for example, when – notwithstanding the Contracting Party’s actual or constructive knowledge of the individual concerned being exposed to a real risk of trafficking from their own country – that Contracting Party took no reasonable steps pursuant to its Convention obligations to protect the individual concerned from being trafficked from their country across borders. Such a failure, in breach of its protective duty under, *inter alia*, Article 4 of the Convention, would be determinative in the real risk of trafficking eventuating for the individual concerned and, in turn, would thus suffice to establish that Contracting Party’s jurisdiction within the meaning of Article 1 of the Convention.
8. Hence, with respect to an individual exposed to a known, real risk of cross-border trafficking, the linchpin to establishing the Article 1 jurisdiction of the Contracting Party for the purposes of that person’s Article 4 complaints is the Contracting Party’s failure to take all reasonable measures to protect that person

¹ Institute on Statelessness and Inclusion, *Principles on Deprivation of Nationality as a National Security Measure* (March 2020). The Principles consolidate international law and legal standards under the UN Charter, treaty law, customary international law, general principles of law, judicial decisions and legal scholarship, and regional and national law and practice. They restate and reflect the international law obligations of States when taking or considering taking steps to deprive nationality as a national security measure. The Principles were developed with input from more than 60 leading international law experts. Over 110 experts and organisations, including leading academics, UN Special Rapporteurs and Treaty Body members, litigators, judges, parliamentarians and diplomats have endorsed them. ISI facilitated the drafting process, to which ICJ contributed.

² *Loizidou v. Turkey*, (Preliminary Objections), application no. 15318/89), Judgment 23 March 1995, “60. The question before the Court is whether its competence to examine the applicant’s complaints is excluded on the grounds that they concern matters which cannot fall within the “jurisdiction” of the respondent Government. 61. [...] The Court’s enquiry is limited to determining whether the matters complained of by the applicant are capable of falling within the “jurisdiction” of Turkey even though they occur outside her national territory. 62. In this respect the Court recalls that, although Article 1 (art. 1) sets limits on the reach of the Convention, the concept of “jurisdiction” under this provision is not restricted to the national territory of the High Contracting Parties. According to its established case-law, for example, the Court has held that the extradition or expulsion of a person by a Contracting State may give rise to an issue under Article 3 (art. 3), and hence engage the responsibility of that State under the Convention (see the *Soering v. the United Kingdom* judgment of 7 July 1989, Series A no. 161, pp. 35-36, para. 91; the *Cruz Varas and Others v. Sweden* judgment of 20 March 1991, Series A no. 201, p. 28, paras. 69 and 70, and the *Vilvarajah and Others v. the United Kingdom* judgment of 30 October 1991, Series A no. 215, p. 34, para. 103). In addition, the responsibility of Contracting Parties can be involved because of acts of their authorities, whether performed within or outside national boundaries, which produce effects outside their own territory (see the *Drozd and Janousek v. France and Spain* judgment of 26 June 1992, Series A no. 240, p. 29, para. 91).”

³ Such as, for example, those arising under the Council of Europe Convention on Action against Trafficking in Human Beings.

against cross-border trafficking, notwithstanding a Convention obligation to do so – arising from Article 1 (the obligation to respect human rights), read together with Article 4.

9. This Court’s Grand Chamber held in *Ilaşcu and Others v. Moldova and Russia*,⁴ that the applicants in that case were within Russia’s Article 1 jurisdiction, and Russia was responsible for the acts of which they complained because there was a continuous and uninterrupted link of responsibility on the part of Russia for their fate. *Mutatis mutandis*, there would ordinarily be a continuous and uninterrupted link for the purposes of an individual’s well-founded complaints of Article 4 violations commencing with a Contracting Party’s failure to take all reasonable measures to protect that person against cross-border trafficking, and in circumstances where the individual was eventually trafficked outside the Contracting Party’s territory.

10. Indeed, as the Court recalled in *Issa and Turkey*,⁵ the Convention’s notion of jurisdiction is not exclusively limited to the Contracting Parties’ national territory.⁶ In exceptional circumstances, acts carried out by Contracting Parties outside their territory, or within their territory, but producing extraterritorial effects, may constitute the exercise by them of their jurisdiction. In *Issa*, the Court held that accountability for Convention violations arises from the fact that the obligation to respect human rights under Article 1 of the Convention could not be interpreted as allowing Contracting Parties to perpetrate Convention violations on the territory of another State that they could not perpetrate on their own territory.

11. By analogy with *Issa*, when a Contracting Party is under a Convention obligation (arising jointly under Article 1 and, for example, Article 4) to act, both within and, when necessary, outside its territory, and, instead, the Contracting Party fails to do so, such a failure will constitute an exercise of jurisdiction on the Contracting Party’s part. In light of this, with respect to well-founded Article 4 complaints, the obligation to respect human rights under Article 1 cannot be interpreted as permitting the Contracting Party in question to circumvent its Article 4 Convention obligations – such as those arising from its initial failure to take reasonable steps to protect the individual concerned from being trafficked across the Contracting Party’s borders – solely because some of the effects of the Contracting Party’s failure occurred outside its territory. In those circumstances, the obligation to respect human rights under Article 1 requires that the Convention be interpreted in such a way as not allowing the Contracting Party in question to avoid accountability for its failure simply because such failure produced some extraterritorial effects, such as is the case of trafficking across borders, if, instead, the Contracting Party in question would be held accountable whenever the effects of its failure occurred exclusively in its territory, as it would be the case in respect of domestic trafficking.

12. Moreover, in *Dobrescu v Romania*, the Court referred to *Drozd and Bankovic* and went on to observe, by reference to *Ilaşcu* (Merits), that pursuant to the case-law of the Court: “[...] even in the absence of effective control of a territory outside its borders, the State still has a positive obligation under Article 1 of the Convention to take the diplomatic, economic, judicial or other measures that it is in its power to take and are in accordance with international law to secure to the applicants the rights guaranteed by the Convention.”⁷

13. In conclusion, to properly assess whether an individual was within the Contracting Party’s jurisdiction within the meaning of Article 1 at all material times for purposes of their complaint of Convention violations, the Convention and this Court’s jurisprudence require the focus to be on the acts or omissions of the Contracting Party in question that are said to have led – or are capable to have led – to the violations of Convention rights as alleged by the individual concerned.

14. Thus, in circumstances where: 1) the individual concerned has been trafficked out of the Contracting Party’s territory; 2) but for the Contracting Party’s failure to comply with its Convention’s and other international law obligations – including to protect the individual concerned against being trafficked outside its territory – the said individual may not have been trafficked outside the Contracting Party’s territory; 3) the Contracting Party knew or ought to have known that the individual concerned was at a real risk of being trafficked abroad; and 4) the Contracting Party’s obligations continue to apply because the violations are ongoing, and there is a continuous and uninterrupted link of responsibility on the part of that Contracting Party

⁴ ECtHR, *Ilaşcu and Others v. Moldova and Russia*, Grand Chamber Judgment, 8 July 2004, application no. 48787/99.

⁵ ECtHR, *Issa and Others v. Turkey*, judgment, 16 November 2004, application no. 31821/96.

⁶ “The term ‘jurisdiction’ is not limited to the national territory of the High Contracting Parties; their responsibility can be involved because of acts of their authorities producing effects outside their own territory (see the Commission’s decisions on the admissibility of Applications no. 1611/62, *X v. the Federal Republic of Germany*, 25 September 1965, Yearbook, vol. 8, p. 158; no. 6231/73, *Hess v. the United Kingdom*, 28 May 1975, Decisions and Reports (DR) no. 2, p. 72; nos. 6780/74 and 6950/75, *Cyprus v. Turkey*, 26 May 1975, DR 2, p. 125; nos. 7289/75 and 7349/76, *X and Y v. Switzerland*, 14 July 1977, DR 9, p. 57; no. 9348/81, *W. v. the United Kingdom*, 28 February 1983, DR 32, p. 190).” App. No. 12747/87, *Drozd and Janousek v. France and Spain*, ECommHR, 26 June 1992, 14 EHRR (1992) 445.

⁷ ECtHR, *Dobrescu v Romania* (2010) App. no. 60681/00, para 101.

for the said violations; the interveners submit that the individual concerned was at all material times within the Contracting Party's Article 1 jurisdiction with respect to the violations of the Convention as alleged by the individual concerned.

15. *A fortiori* when such an individual was a child at the material time. *A fortiori* also if failure to find that at all material times the individual was within the Contracting Party's Article 1 jurisdiction for the purposes of their well-founded complaints of Convention rights' violations would result in the Contracting Party in question escaping all accountability, notwithstanding substantial liability for its knowing failure to intervene to prevent abuses when under duty to do so, and then its failure to provide redress, reparation and restitution measures.

16. *A fortiori*, also because, by analogy with the *ex turpi causa non oritur actio* principle, when the individual concerned is no longer on the Contracting Party's territory as a result of having been trafficked across its borders, but where there is a causal link between that fact and the Contracting Party's failure to take all reasonable measures to protect the individual concerned against the real risk of being trafficked abroad, notwithstanding the fact that the Contracting Party was aware of such a risk, then the Contracting Party in question cannot be allowed to rely on the absence of the individual concerned from its territory to escape its liability for egregious human rights violations for which it is, in part, responsible (*ex turpi causa non oritur actio*).

PART 2: OBSERVATIONS ON MATTERS RELEVANT TO THE COURT'S DETERMINATION OF QUESTIONS 2, 3 AND 4

17. The trafficking of an individual across a Contracting Party's borders may engage Article 4, which places positive obligations on the Contracting Party of investigation, protection and recovery in relation to victims of trafficking. If, subsequent to the individual concerned having been trafficked across the Contracting Party's borders, the authorities decide to deprive the individual concerned of citizenship, their decision will engage Article 8, which protects the right to nationality and the prohibition of arbitrary deprivation of nationality, as intrinsic to the right to private and family life.

18. In light of this, the interveners submit that answering questions 2, 3 and 4 requires further inquiry into both these Convention rights. This integrated approach reflects the Court's established doctrine that Convention rights be interpreted and applied in a manner that renders them "practical and effective" rather than "theoretical or illusory".⁸ It ensures that Contracting Parties cannot avoid their anti-trafficking obligations under Article 4 by resorting to arbitrary citizenship deprivation in violation of Article 8.

19. Contracting parties' positive obligations of investigation, protection and recovery in relation to trafficking victims must not be circumvented by citizenship deprivation decisions.

20. A Contracting Party's discretionary citizenship deprivation powers must be exercised consistent with its international law obligations, including in relation to trafficking, such as those arising under the Convention. Failure to comply would result in a violation of Article 8 and Article 4.

21. In light of this, whether an individual might have been a victim of trafficking is a juridically relevant consideration in deciding whether to deprive the individual concerned of their citizenship, would be arbitrary or not. Further, the Contracting Parties would also be under an obligation to anticipate and consider the consequences of a prospective citizenship deprivation decision, if any, on the Article 4 rights of the individual concerned, as well as on their own Article 4 obligations. Finally, a citizenship deprivation decision without the Article 6 safeguards applicable to a criminal trial would be analogous to a criminal prosecution. The individual concerned would be subjected to a "penalty" of a criminal nature, without having been charged, tried and convicted in fair proceedings. As such, citizenship deprivation would constitute a "penalty" within the meaning of Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings. Below, the interveners provide further elaboration in this regard.

Article 8 as juridically relevant to an Article 4 analysis

22. The Court has consistently recognised that citizenship falls within the ambit of Article 8 as an element of social identity,⁹ given its impact on an individual's private life, legal identity, and social ties and the right

⁸ ECtHR, *Airey v. Ireland* (1979) App no. 6289/73, para. 24.

⁹ ECtHR, *Genovese v. Malta* (2011), App no 53124/09, para. 33.

to enter and remain in one's own country.¹⁰ It has further held that citizenship deprivation must be subject to careful scrutiny, including an assessment of its potential arbitrariness, procedural fairness, and proportionality.¹¹ In *Al-Jedda v. the United Kingdom*, the Court emphasised the need to examine the practical consequences of citizenship deprivation, including the risk of exclusion from effective protection.¹²

23. States' discretionary citizenship deprivation powers are subject to the right to nationality of the individual concerned, the prohibition of arbitrary citizenship deprivation, the discrimination prohibition and the obligation to avoid statelessness. Furthermore, the impact of citizenship deprivation on the enjoyment of other human rights must be taken into consideration when assessing the legality of citizenship deprivation. Other rights include the right to enter and remain in one's own country, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment; the right to private and family life; the rights of the child; and freedom from slavery, forced labour and trafficking. Any citizenship deprivation measures must also comply with due process safeguards.¹³ Accordingly, where a State pursues citizenship deprivation, which profoundly and permanently interferes with the individual's article 8 rights, it must ensure that the decision-making process is compatible with its Convention obligations, including those arising under Article 4, particularly where credible evidence attests that the individual concerned is a trafficking victim.

24. Article 4 imposes operational, investigative, and protective duties, including to identify potential and actual trafficking victims and to take reasonable steps where there is a credible suspicion of exploitation.¹⁴ These obligations arise where authorities "knew or ought to have known" of a real risk of trafficking.¹⁵

25. The State cannot treat citizenship deprivation as a self-contained national security measure insulated from its international law obligations. On the contrary, where deprivation is contemplated, particularly in respect of an individual who may have been trafficked as a child, the State is obliged to conduct a prior, rigorous assessment of trafficking indicators and their legal consequences. Being a non-derogable right, the Contracting Parties obligations under Article 4 are not displaced by national security considerations, which must be weighed against the Convention's object and purpose, that is, to respect human rights.

26. Failure to do so has a dual effect: it undermines compliance with Article 4 and renders the citizenship deprivation's interference with Article 8 procedurally deficient and substantively disproportionate. Further, the very lawfulness of the citizenship deprivation decision directly hinges on whether the individual concerned was identified, properly or at all, as a trafficking victim and afforded the rights that flowed from Article 4. The interveners submit that such an identification failure would be one of the critical factors rendering the citizenship deprivation decision arbitrary. Indeed, in the circumstances, the citizenship deprivation decision violates Article 8 and compounds the Article 4 violations.

27. A subsidiary consideration concerns the distinction between formal or theoretical citizenship and effective citizenship in practice, versus a purported putative entitlement to an alternative citizenship. The Court's Article 8 analysis requires a practical and reality-based assessment of the consequences of citizenship deprivation. As recognised in *Al-Jedda v. the United Kingdom*,¹⁶ the compatibility of deprivation measures with the Convention must be assessed by reference to their real-world effects, including whether the individual concerned is left without effective protection. Reliance on the theoretical existence of another citizenship, which cannot be meaningfully exercised, falls short of the State's obligation to avoid statelessness.¹⁷

28. The formal or theoretical citizenship distinction assumes added importance in trafficking cases. Exploited individuals often lack the ability to avail themselves of consular protection or to assert citizenship rights in practice. A formalistic approach risks obscuring this vulnerability and undermining both the protective purpose of Article 4 and the Article 8 safeguards. In any such contexts, the need for a rigorous assessment of

¹⁰ See ECtHR, *Karashev v. Finland* (1999) App no. 31414/96; *Genovese v. Malta* (2011) App no. 53124/09, para. 30; *Ramadan v. Malta* (2016) App no. 76136/12, para. 85.

¹¹ ECtHR, *K2 v. the United Kingdom* (December 2017) App no 42387/13, paras 49-50; *Ghoumid and Others v. France* (2020) Apps nos. 52273/16 and others, paras 43-48.

¹² ECtHR, *Al-Jedda v. the United Kingdom* (2011) App no 27021/08, paras 99-101.

¹³ Institute on Statelessness and Inclusion, *Principles on Deprivation of Nationality as a National Security Measure* (March 2020) Principles 3 – 9.

¹⁴ ECtHR, *Rantsev v. Cyprus and Russia* (2010) App no 25965/04, paras 282-289; *Chowdury and Others v. Greece* (2017) App no. 21884/15, paras 103-104.

¹⁵ ECtHR, *Rantsev v. Cyprus and Russia* (2010) App no 25965/04, para. 286.

¹⁶ ECtHR, *Al-Jedda v. the United Kingdom* (2011) App no 27021/08, paras 99-101.

¹⁷ See Institute on Statelessness and Inclusion, *Principles on Deprivation of Nationality as a National Security Measure* (March 2020) Principles; UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons* (2014); *Convention on the Reduction of Statelessness* (adopted 30 August 1961, entered into force 13 December 1975) 989 UNTS 175.

the consequences of deprivation is all the greater. Moreover, reliance on a purported putative entitlement to an alternative citizenship, which is not effective in practice, cannot absolve the State of its international law obligations, including under the Convention.

States are obliged to consider positive obligations under Article 4 prior to deprivation

29. The Contracting Parties' Article 4 obligations do not cease once trafficking has occurred. Rather, they remain and include duties of protection, recovery and integration following trafficking. In this context, citizenship deprivation would materially impede the Contracting Parties' ability to fulfil their Article 4 obligations, rendering the practical and effective protection guaranteed under Article 4 illusory.

30. Under Article 4, prior to deciding whether to deprive an individual of their citizenship, the Contracting Party must: (i) assess whether the individual concerned has been a victim of trafficking,¹⁸ in particular as a child; (ii) determine what duties of protection, assistance, and non-punishment flow from that status, and (iii) take those duties into account in the decision-making process. The Contracting Party's failure to undertake such an assessment would render those protection obligations ineffective in practice.

31. ***Duty to Identify and Assess Trafficking Indicators:*** Article 4 imposes positive obligations on Contracting Parties to take operational measures to protect victims. These include a duty to identify victims where there are credible grounds to suspect exploitation.¹⁹ These obligations arise when authorities "knew or ought to have known" of circumstances giving rise to credible suspicion of trafficking.²⁰

32. ***Obligation to Discharge Protective and Investigative Duties:*** Article 4 further requires States to take appropriate protective and investigative measures once a credible risk of trafficking arises. This includes obligations to investigate potential exploitation and secure the victim's safety and recovery.²¹ The UN Special Rapporteur on Trafficking in Persons, especially women and children has noted that, "Article 4 ECHR, also entails a procedural obligation to investigate situations of potential trafficking" and "the need for a full and effective investigation covering all aspects of trafficking allegations from recruitment to exploitation is indisputable."²² Any State's failures in this respect would likely constitute a violation of the procedural limb of Article 4. The State cannot lawfully impose detrimental measures, such as citizenship deprivation, while leaving this obligation unfulfilled. Citizenship deprivation, particularly while the individual remains acutely vulnerable while outside their country, cannot serve to absolve or significantly limit the State's duty and capacity to fulfil these obligations in practice. In this context, rather than facilitating identification, protection, and recovery, citizenship deprivation would entrench the concerned individual's exposure to harm and effectively hinder the State's ability to fulfil its Convention obligations.

33. ***Duty of Protection and Assistance:*** Article 4 requires States to ensure practical and effective protection for trafficking victims and those at risk, including access to assistance, support, and recovery. According to UN Security Council Resolution 2331, States must "provide access to protection and assistance for identified victims without delay" and ensure that victims are "not penalised or stigmatised for their involvement in any unlawful activities in which they have been compelled to engage."²³ In this context, citizenship deprivation would enhance the risks human rights violations for the individual concerned, including by resulting in a denial of assistance and protection, excluding the person from the State's protective framework. Such an outcome is incompatible with the Convention's object and purpose.

34. ***Duty to Integrate Article 4 into Decision-Making:*** Article 4 obligations apply across all areas of State action, including citizenship and national security decision-making. According to the UN Security Council's Resolution 2388, States must "assess the individual situation" so as to enable "prompt identification of victims of trafficking" and ensure their treatment as victims.²⁴ This requires assessing whether citizenship deprivation

¹⁸ "States have an international obligation to identify, assist, and protect victims of trafficking" and "a failure to identify a trafficked person will likely result in a further denial of that person's human rights." Council of Europe Convention on Action against Trafficking in Human Beings (n 5) Arts. 10 and 12; OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002) Guideline 2.

¹⁹ ECtHR, *Rantsev v. Cyprus and Russia*, no. 25965/04, §§ 282-289; *Chowdury and Others v. Greece*, no. 21884/15, paras 103-104.

²⁰ ECtHR, *Rantsev v. Cyprus and Russia*, para. 286.

²¹ ECtHR, *Rantsev v. Cyprus and Russia*, paras 288-289.

²² Office of the United Nations High Commissioner for Human Rights, *Submission on Shamima Begum* (United Kingdom) (30 June 2022) para. 28.

²³ United Nations Security Council, Resolution 2331 (2016) on trafficking in persons in situations of armed conflict, S/RES/2331 (20 December 2016).

²⁴ United Nations Security Council, Resolution 2388 (2017) on trafficking in persons in armed conflict, S/RES/2388 (21 November 2017).

would undermine the State's duty to protect; impede investigation and accountability; or expose the individual concerned to further harm.

35. **Heightened Duties in Respect of Children:** Heightened and immediate obligations under Article 4 are owed in respect of children. Article 4(c) of the Council of Europe Convention on Action against Trafficking in Human Beings recognises that, "the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in human beings' even if this does not involve any of the means set forth in subparagraph (a) of this article."²⁵ Moreover, as the UN Special Rapporteur on trafficking in persons, especially women and children has noted, "children must always be treated primarily as victims and the best interest of the child must always be a primary consideration."²⁶ This requires a low identification threshold, a duty of urgency, and a requirement to prioritise protection over punitive measures. The failure to act on a credible suspicion of child trafficking and, instead, adopt a measure increasing the risk of harm, constitutes a violation of the Article 4 obligations.

Article 4 directly relevant to States' obligation to consider arbitrariness prior to citizenship deprivation

36. Where credible indicators of trafficking arise, prior to a citizenship deprivation decision, the State is required to assess whether the individual concerned was a trafficking victim, and whether any protective duties arose from that status. Failure to carry out such an assessment would be materially significant, as a finding that the individual concerned was a trafficking victim would directly affect considerations of whether or not citizenship deprivation may violate international law, including the Convention.

37. The prohibition of arbitrary deprivation of nationality is well established under international law.²⁷ Citizenship deprivation on national security grounds is presumptively arbitrary. This presumption may only be displaced if deprivation is, at a minimum, carried out in pursuance of a legitimate purpose; provided for by law; necessary; proportionate; and in accordance with procedural safeguards.²⁸ Even if all conditions are satisfied, a deprivation of nationality may still be arbitrary and unlawful if it leads to a violation of other Convention rights, in particular non-derogable rights.

38. **Legitimate purpose:** Deprivation must be carried out in pursuance of a legitimate purpose "that is consistent with international law and, in particular, the objectives of international human rights law,"²⁹ and is clearly defined.³⁰ Deprivation aimed at facilitating expulsion or preventing return directly limits the concerned State's ability to facilitate protection and recovery as per Article 4. Such a purpose also contravenes the

²⁵ Article 4(a) reads as follows: "'Trafficking in human beings' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs", Council of Europe Convention on Action against Trafficking in Human Beings, Article 4(a).

²⁶ Submission by the UN Special Rapporteur on trafficking in persons, especially women and children, in *H.F. and M.F. v. France* (App. No. 24384/19) and *J.D. and A.D. v. France* (App. No. 44234/20) before the European Court of Human Rights, para. 24.

²⁷ See, Eritrea-Ethiopia Claims Commission, *Partial Award (Civilian Claims)* (2004) 26 UNRIAA 195, para. 57; *Proposed Amendments to the Naturalisation Provision of the Constitution of Costa Rica* (Advisory Opinion OC-4/84) IACtHR Series A No. 4 (19 January 1984) paras 33-34; *Expelled Dominicans and Haitians v Dominican Republic* (2014) IACtHR Series C No. 282, para. 253; *Anudo Ochieng Naudo v. United Republic of Tanzania* (2018) AfCHPR App no 012/2015, para. 76; Tamás Molnár, 'The Prohibition of Arbitrary Deprivation of Nationality under International Law and EU Law: New Perspectives' (2015) *Hungarian Yearbook of International Law and European Law* 67, 74; Maureen Manly and Laura van Waas, 'The Value of the Human Security Framework in Addressing Statelessness', in Alice Edwards and Carla Ferstman, (eds), *Human Security and Non-Citizens* (CUP 2010), 63; Alice Edwards, 'The Meaning of Nationality' in Alice Edwards and and Laura van Waas (eds), *Nationality and Statelessness under International Law* (CUP 2014) 25-26.

²⁸ UN Human Rights Council, 'Human rights and arbitrary deprivation of nationality: Report of the Secretary General' (2013) UN Doc A/HRC/25/28, para 4; *Anudo Ochieng Anudo v Tanzania* (2018), Application no. 012/2015, para 79; ECtHR, *K2 v. United Kingdom* (2017), Application no. 42387/13, para 50. Similar reasoning can be found in consecutive cases, such as *Johansen v. Denmark* (2022), Application no. 27801/19.

²⁹ UN Human Rights Council, 'Human rights and arbitrary deprivation of nationality: Report of the Secretary General', A/HRC/13/34 (2009), para. 25.

³⁰ Glion Recommendation (2019), p. 9.

principle of non-expulsion of nationals under which the State has obligations both to the individual and their freedom of movement,³¹ and to fellow-States.³²

39. **Provided for by law:** Deprivations of nationality must conform with both international and domestic law, both to its letter and its object, to avoid an outcome that is unjust, illegitimate or unpredictable.³³ This includes the rules regarding deprivations rendering a person stateless, where the 1961 Convention is applicable, or where statelessness is independently relevant to the arbitrariness assessment. Legislative provisions, such as Section 40 of the British Nationality Act 1981, featuring grounds for citizenship deprivation on the basis of it being “conducive to the public good,” are imprecise and overly broad, and thereby violate the principle of legality. Moreover, Section 40 does not clarify the Secretary of State’s duties and obligations when a deprivation decision will likely engage other obligations, which, in turn, are also relevant “to the public good.” These include the State’s obligations of investigation, protection and recovery in relation to trafficking victims. By contrast, the 1961 Convention on the Reduction of Statelessness only permits citizenship deprivation that may result in statelessness on exceptional grounds, based on conduct “seriously prejudicial to the vital interests of the State.”³⁴

40. **Necessary:** Deprivation must be necessary for achieving the legitimate purpose.³⁵ With regard to Article 8, “necessity” entails that “the interference must correspond to a pressing social need, and, in particular, must remain proportionate to the legitimate aim pursued.”³⁶ If there is a less intrusive, less permanent, more proportionate way of achieving the same purpose, which does not interfere with other Convention rights, the State is obliged to pursue this other means. Given that citizenship deprivation and prohibition from re-entry directly impact the State’s ability to fulfil its obligations to trafficking victims, the question of necessity then also relates to Article 4. In assessing whether an interference was “necessary,” it is the State’s duty to also demonstrate the existence of the pressing security, social, or economic (and so forth) need behind the interference.³⁷ The fact that a State maintains a two-tiered citizenship structure, under which those born citizens with no (theoretical) access to another citizenship can never be deprived of their citizenship,³⁸ is demonstrative of the fact that the State has at its disposal other less intrusive means of achieving the same policy objectives (for those whose citizenship cannot be stripped).³⁹

41. **Proportionate:** States must undertake an individualised proportionality assessment in determining whether to deprive nationality. The assessment must include whether: i) the immediate and long-term impact of citizenship deprivation on the rights of the individual, their family, and on society is proportionate to the legitimate purpose being pursued; ii) deprivation is the least intrusive means of achieving the stated legitimate

³¹ Human Rights Committee, ‘General Comment No. 27: Freedom of movement (article 12)’ (1999) CCPR/C/21/Rev.1/Add.9, para. 21. ECtHR, *Naumov v. Albania* (2005), Application no. 10513/03, para. 5. See also the case of *e* CH/02/8679, 192-3 (Human Rights Chamber of Bosnia and Herzegovina): The Chamber declared denationalisation a violation of the ECHR, Protocol 4, Article 3, if undertaken for the “sole purpose” of expulsion. The Chamber reached this conclusion based on reading the absolute prohibition on the expulsion of nationals in conjunction with Art. 17 ECHR. Otherwise, the Chamber argued, “if States could simply withdraw the citizenship of one of their citizens in order to expel him without being in violation of Article 3 of Protocol No. 4 to the Convention, then the protection of the right enshrined in that provision would be rendered illusory and meaningless”.

³² This is widely recognised in early international law scholarship and in discussions at the 1930 League of Nations Hague Conference, as set out in Guy Goodwin-Gill, ‘Deprivation of Citizenship, Statelessness, and International Law’ (5 May 2014). He cites, among others, Lauterpacht’s work from 1933 which sets out that “The indiscriminate exercise by a State of the right of denationalising its subjects, when coupled with the refusal to receive them when deported from a foreign country, constitutes an abuse of rights which could hardly be countenanced by an international tribunal”. H. Lauterpacht, *The Function of Law in the International Community* (Oxford University Press 1933; repr’d 2011), 309 as cited in G. Goodwin-Gill, ‘Deprivation of Citizenship, Statelessness, and International Law’ (5 May 2014) p. 7.

³³ Article 8(4) 1961 Convention: A Contracting State shall not exercise a power of deprivation permitted by paragraphs 2 or 3 of this Article except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body.

³⁴ Article 8(3)(a)(ii) of the 1961 Convention on the Reduction of Statelessness; Glion Recommendation (2019), p. 9.; UNHCR, ‘Tunis Conclusions’ (2014), para. 68.

³⁵ ICCPR, Art. 12(3); Art. 52(1) Charter of Fundamental Rights of the EU; HRC General Comment No. 31, para. 6: “State Parties must refrain from violation of the rights recognised by the Covenant, and restrictions on any of those rights must be permissible under the relevant provisions of the Covenant. Where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights.”

³⁶ ECtHR, *Piechowicz v. Poland* (2012), Application no. 20071/07, para. 212.

³⁷ ECtHR, *Piechowicz v. Poland* (2012), Application no. 20071/07, para. 212.

³⁸ Reprieve and Runnymede, *Stripped: The Citizenship Divide*, December 2025.

³⁹ *Mutatis mutandis, A. and Others v. the United Kingdom* [GC] - 3455/05, Judgment 19 February 2009.

purpose; and (iii) deprivation is an effective means of achieving the stated legitimate purpose.⁴⁰ A central question is the extent to which deprivation impairs the individual's ability to exercise and enjoy other human rights.⁴¹ Deprivation directly engages Article 4 in this regard, by impeding the ability of the State to remedy and fulfil its obligations and duties due to the individual being rendered stateless and prohibited from entering the State. Further, other trafficking victims in similar circumstances have retained their citizenship, have been repatriated and have accessed various victim-centred support as required under Article 4.⁴²

Obligation to consider other Convention rights prior to deprivation

42. The UN Special Rapporteur on the promotion and protection of human rights while countering terrorism has emphasised that deprivation powers must never violate peremptory or non-derogable norms, nor may they impair the essence of any human right, including the right to enter and remain in one's own country, the prohibition against torture and other cruel, inhuman or degrading treatment or punishment, and the rights of the child.⁴³ This establishes an overarching limit on the scope of permissible State action. All of these rights also intersect with a trafficking victim's Article 4 rights and are therefore juridically relevant.

43. **Right to enter and remain in one's own country:** This right is not only as affirmed in the Human Rights Committee's General Comment No. 27 and further articulated by Article 8 of the International Law Commission Draft Articles on the Expulsion of Aliens, but is a precondition for the State's discharge of the obligation to protect and facilitate the recovery of a trafficking victim under Article 4 of the Convention.⁴⁴

44. **Freedom from torture and other cruel, inhuman or degrading treatment or punishment:** States have a duty to assess whether citizenship deprivation would lead to a real risk of torture or other cruel, inhuman or degrading treatment or punishment given its grave consequences and the absolute nature of Article 3 of the Convention. The UN Special Rapporteur on the Human Rights of Migrants has stated that, "substandard detention conditions may potentially amount to inhuman or degrading treatment."⁴⁵ This also relates to the right to liberty and security of person under Article 5. Failure to conduct a proper assessment of the consequences of a citizenship deprivation decision on the individual's Articles 3 and 5 rights, may perpetuate indefinite and arbitrary detention, and violate the right to freedom from torture or other cruel, inhuman or degrading treatment or punishment.

45. **Rights of the child:** Particular weight must be given to the situation of children, with their best interests being a primary consideration.⁴⁶ The Convention on the Rights of the Child prevents States from penalising individuals for circumstances arising in childhood, particularly those beyond their control, such as being a victim of trafficking.⁴⁷ States must take all appropriate measures to promote the recovery and reintegration of child victims in a healthy environment.⁴⁸ The Committee on the Rights of the Child's General Comment No. 24 also clarifies that children recruited by non-State armed groups and charged in counter-terrorism contexts may become victims of multiple violations and should be treated primarily as victims of violations of

⁴⁰ HRC General Comment No. 27 on Art. 12 ICCPR; UNHCR Guidelines No. 5 (2020), para. 94 ff; Human Rights and Arbitrary Deprivation of Nationality: Report of the Secretary General, A/HRC/25/28, para. 40; Tunis Conclusions (2013), paras 19 – 20.

⁴¹ UNHCR Guidelines No 5 (2020), para. 94; In assessing the impact on the individual, consideration must be given to the strength of the link of the person with the State in question, including birth in the territory, length of residence, family ties, economic activity as well as linguistic and cultural integration.

⁴² See, e.g., All-Party Parliamentary Group on Trafficked Britons in Syria, Report of the Inquiry by the All-Party Parliamentary Group on Trafficked Britons in Syria (2022), p. 30, 48 – 49; Reprieve, British Woman and Her Child Repatriated from North East Syrian Camp, 13 October 2022; Madeline-Sophie Abbas, British children associated with ISIS in camps in North-East Syria: counter-terrorism, security and children's rights concerns in repatriation decision-making, 3 December 2024; Rights and Security International, Global Repatriations Tracker.

⁴³ UN Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Martin Scheinin: ten areas of best practices in countering terrorism, 22 December 2010, A/HRC/16/51; See also Glion Recommendations 2019, p. 9-10.

⁴⁴ Human Rights Committee General Comment No. 27 on Art. 12 ICCPR: *a State Party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country*; Article 8 ILC Draft Articles on the Expulsion of Aliens: *a State shall not make its national an alien, by deprivation of nationality, for the sole purpose of expelling him or her*.

⁴⁵ UN Human Rights Council, Report of the Special Rapporteur on the rights of migrants, François Crépeau, A/HRC/20/24 (2012), para. 26.

⁴⁶ Article 3(1) CRC; ILEC Guidelines (2015), sections II.5 and II.6.

⁴⁷ Article 2(2) CRC.

⁴⁸ Article 39 CRC; see also UN Committee on the Rights of the Child, General Comment No. 6 (2005).

international law, instead of subjected to punitive measures.⁴⁹ These obligations are owed to victims regardless of the passage of time.

Citizenship deprivation is analogous to a criminal prosecution and is a “penalty” as per Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings

46. Nationality is an “inherent attribute” of every person and should never be withdrawn as a punishment or reprisal.⁵⁰ Citizenship deprivation is permanent, irreversible and carries a significant punitive effect. Not only is it a sanction or punishment, but also it is so disproportionate that it cannot serve as a legitimate purpose for an administrative process under international law.⁵¹

47. A decision to deprive citizenship through an administrative process devoid of the basic protections offered by a criminal trial and thereby impose one of the most severe penalties possible has been found to be tantamount to cruel, inhuman or degrading treatment or punishment. In *Trop v. Dulles*, the United States Supreme Court found that denaturalisation was cruel and unusual because “the punishment strips the citizen of his status in the national and international political community.”⁵² In addition to directly constituting inhumane treatment, the consequences of citizenship deprivation, such as leaving the individual stateless, may also violate this provision of international law and could rise to the level of constituting torture.⁵³

48. Under international law, it is well-established that due process obligations, such as those guaranteed by the Convention under Article 6 in the context of criminal trials, apply to other types of proceedings which, while not necessarily characterised as criminal under domestic law, have an analogous punitive character or stigmatising intent or effect, given the severity of the penalty or other adverse impact that the person concerned risks incurring. The nature, duration or manner of execution of certain sanctions – such as citizenship deprivation – evidence their punitive, “criminal character.”⁵⁴ Thus, “criminal charges” under Article 14(3) of the International Covenant on Civil and Political Rights “may also extend to acts that are criminal in nature with sanctions that, regardless of their qualification in domestic law, must be regarded as penal because of their purpose, character or severity.”⁵⁵ Article 6 the Convention also applies to disciplinary and other proceedings, and should also apply to citizenship deprivation.⁵⁶

49. Without a criminal conviction and the accompanying procedural safeguards of criminal law, citizenship deprivation violates “basic elements of the rule of law.”⁵⁷ Deprivation of citizenship rendering individuals effectively stateless removes access to consular protection and, where no State is willing to receive them, leads to *de facto* indefinite detention, since there is no country to which they can be deported.⁵⁸ This Court has previously held that stateless persons are highly vulnerable to be “left to languish for months and years” without State protection.⁵⁹ The UN Secretary General has similarly stated that “stateless persons are [...] uniquely vulnerable to prolonged detention and States should be sensitised to respect the rights of stateless persons to be free from arbitrary detention as a result of their stateless status.”⁶⁰ Such prolonged or indefinite detentions are inherently arbitrary, particularly where imposed in the absence of due process guarantees.⁶¹ In

⁴⁹ UN Committee on the Rights of the Child, General Comment No. 24 (2019), paras 97-101; see also Security Council resolution 2427 (2018).

⁵⁰ Inter-American Commission on Human Rights, ‘Third Report on the Situation of Human Rights in Chile’ (1977) OEA/Ser.L/V/II.40, Chapter 9, para. 10.

⁵¹ UN Economic and Social Council, A Study of Statelessness (August 1949) UN Docs E/1112; E/1112/Add.1, p. 146: “Deprivation of nationality should not be applied as a punishment”.

⁵² United States Supreme Court, *Trop v Dulles*, 356 US 86 (1958).

⁵³ African Commission on Human and Peoples’ Rights, *Amnesty International v Zambia* (1999), Communication 212/98. See also African Commission on Human and Peoples’ Rights, *John K. Modise v Botswana* (2000), Communication 97/93_14AR.

⁵⁴ See, *inter alia*, *Engel and Others v. The Netherlands*, (Application no. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72), Judgment, 8 June 1976.

⁵⁵ Human Rights Committee, ‘General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial’ (2007) CCPR/C/GC/32, para. 15.

⁵⁶ ECtHR, *Marusic v. Croatia* (2017), Application no. 79821/12, paras 72-73

⁵⁷ Commentary to the Principles on Deprivation of Nationality as a National Security Measure (2020)

⁵⁸ UN High Commissioner for Refugees, UNHCR Brief on Statelessness and Detention Issues, 27 November 1997. Human Rights Committee, General Comment No 35: Article 9 (Liberty and Security of Person), 16 December 2014, para 18: *The inability of a State party to carry out the expulsion of an individual because of statelessness or other obstacles does not justify indefinite detention.*

⁵⁹ ECtHR, *Kim v Russia* (2014), Application no. 44260/13, para 54.

⁶⁰ UN Secretary-General, Guidance Note of the Secretary General: The United Nations and Statelessness, June 2011.

⁶¹ Human Rights Committee, General Comment No 35: Article 9 (Liberty and Security of Person), 16 December 2014, paras 10 – 12; Rights and Security International, *Abandoned to Torture: Dehumanising Rights Violations against Children and Women in Northeast Syria*, 2025.

the circumstances they amount to unlawful deprivations of liberty which are arbitrary and carried out in defiance of the rule of law.⁶² The Council of Europe's Parliamentary Assembly has also expressed concern regarding the deprivation of liberty by Member States through administrative decisions particularly because such decisions lack procedural safeguards and are mostly made without the knowledge and/or the presence of the person concerned.⁶³ These interpretations correspond to the recommendations set out in the Tunis Conclusions that deprivation of nationality should only occur following a two-step process, logically beginning with a finding of guilt by a criminal court.⁶⁴

The Non-Punishment Principle

50. In light of the above, the interveners submit that citizenship deprivation decisions must be considered a "penalty" within the meaning of Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings and in light of the non-punishment principle recognised by this Court in *V.C.L and A.N. v. the United Kingdom*.⁶⁵ This principle requires that victims of trafficking not be penalised for unlawful acts committed as a direct consequence of their exploitation. It also entails a procedural obligation to assess, at an early stage, whether an individual may have been trafficked before imposing measures of a punitive or adverse character. Where the conduct of the individual concerned is plausibly linked to their recruitment and exploitation as a child, deprivation of citizenship constitutes a severe punitive measure imposed without proper consideration of their potential victim status.

51. Failure to promptly and accurately identify victims of trafficking not only denies them protection, but exposes them to further harm, and to being unlawfully and disproportionately penalised for acts they were compelled to commit. Given these consequences, prompt and accurate identification is of paramount importance to discharging the duty to protect.⁶⁶ Victims who were failed by the State should not be further penalised for unlawful acts they were compelled to commit.

52. While deprivation of citizenship is formally an administrative measure, its severity and consequences, including exclusion, insecurity, and exposure to harm, mean that it is, in effect, a penalty. The failure to consider whether the concerned individual's conduct resulted from trafficking prior to depriving them of their citizenship is therefore incompatible with the requirements of Article 4 and contrary to Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings.

Discriminatory punishment

53. The Committee on the Elimination of Racial Discrimination has addressed the "indirect discriminatory effects of certain domestic legislation, particularly legislation on terrorism, immigration, nationality, banning or deportation of non-citizens from a country, as well as legislation that has the effect of penalising without legitimate grounds certain groups or membership of certain communities," and has called on States to "eliminate the discriminatory effects of such legislation and in any case to respect the principle of proportionality in its application to persons (belonging to racial, ethnic and other minority groups)."⁶⁷ The Committee has also called upon States to ensure that those belonging to specific racial or ethnic groups do not face harsher punishments if accused of terrorism offences.⁶⁸ As stated by the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance "the same must be true of national origin and descent, as discrimination on both these grounds constitutes prohibited racial discrimination under [the International Convention on the Elimination of All Forms of Racial Discrimination]."⁶⁹

54. Citizenship deprivation on grounds such as being "conducive to the public good", notwithstanding the abovementioned obligations, creates a two-tiered citizenship system that is inherently discriminatory towards

⁶² UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, 'Written Evidence Submitted to the Joint Committee on Human Rights' (UK Parliament, 2023), para 6.

⁶³ CoE Committee on Legal Affairs and Human Rights (AS/Jur), 'Withdrawing nationality as a measure to combat terrorism: a human rights-compatible approach? Report', AS/Jur (2018) 49, para. 5.

⁶⁴ UNHCR, 'Tunis Conclusions' (2014), para. 27.

⁶⁵ ECtHR, *V.C.L and A.N. v. the United Kingdom* (nos. 77587/12 and 74603/12, paras 159-161).

⁶⁶ ECtHR, *V.C.L. and A.N. v United Kingdom*.

⁶⁷ Committee on the Elimination of Racial Discrimination, General Recommendation No. 31, para. 4(b).

⁶⁸ Committee on the Elimination of Racial Discrimination, General Recommendation No. 31, para. 34.

⁶⁹ UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, 'Amicus Brief before the Dutch Immigration and Naturalisation Service' (23 October 2018), para. 19.

racial minorities. Within the UK, for example, “people of colour,” are 12 times more likely to be at risk of citizenship deprivation than their white counterparts.⁷⁰

⁷⁰ Reprieve and Runnymede, *Stripped: The Citizenship Divide*, December 2025. Analysis reveals three in five people from non-white ethnic minorities are likely to be eligible, compared with just one in 20 people categorised as white. This is an increase from a 2021 study (British citizenship of six million people could be jeopardised by Home Office plans - *New Statesman*); where two in five people from non-white ethnic minorities (41%) were likely to be eligible, compared with just one in 20 people categorised as white (5%); See also Institute of Race Relations, 'Citizenship from Right to Privilege: a background paper on the history of citizenship stripping powers.'