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Vatandaşlığın Kaybettirilmesinde Ayrımcılığın Sınırları: Vatandaşlığa Kabul Edilmiş Göçmenler için Hukuki ve Etik İkilemler

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THE BOUNDARIES OF DISCRIMINATION IN CITIZENSHIP REVOCATION: LEGAL AND ETHICAL DILEMMAS FOR NATURALISED IMMIGRANTS

VATANDAŞLIĞIN KAYBETTİRİLMESİNDE AYRIMCILIĞIN SINIRLARI: VATANDAŞLIĞA KABUL EDİLMİŞ GÖÇMENLER İÇİN HUKUKİ VE ETİK İKİLEMLER

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ABSTRACT

In recent years, hundreds of individuals have been stripped of their citizenship under the guise of safeguarding national security. As the threat of terrorism looms large, Western governments have increasingly resorted to this drastic measure as part of their counter-terrorism strategies, prompting debates about its compatibility with international law and its implications for fundamental human rights. Despite extensive discussions, significant uncertainty persists about whether citizenship revocation complies with international legal standards, including States *erga omnes* obligations. This article argues that while States have a legitimate interest in national security, such measures often risk contravening human rights and eroding international legal norms. Particular attention is given to the precarious position of naturalised immigrants, who are disproportionately targeted and often lack the same legal protections as birthright citizens, rendering them especially vulnerable to rights violations. Drawing on international legal instruments, case law, and scholarly perspectives, this article critically examines citizenship revocation's legal and ethical dimensions and evaluates its alignment with international human rights obligations.

Key words: International human rights, sovereignty, citizenship revocation, discrimination, naturalised immigrants.

ÖZET

Son yıllarda, yüzlerce kişi ulusal güvenliği koruma bahanesiyle vatandaşlıklarından mahrum bırakılmıştır. Terör tehdidinin giderek büyümesiyle birlikte, batılı hükümetler bu radikal önlemi terörle mücadele stratejilerinin bir parçası olarak daha sık kullanmaya başlamış ve bunun uluslararası hukukla uyumluluğu ile temel insan hakları üzerindeki etkileri konusunda tartışmalar doğmuştur. Geniş çaplı tartışmalara rağmen, vatandaşlık iptali uygulamasının, devletlerin *erga omnes* yükümlülükleri de dahil olmak üzere, uluslararası hukuk standartlarına uygun olup olmadığına dair önemli bir belirsizlik devam etmektedir. Bu makale, devletlerin ulusal güvenliği sağlama konusundaki meşru çıkarlarını kabul etmekle birlikte, bu tür önlemlerin çoğu zaman insan haklarını ihlal etme ve uluslararası hukuk normlarını aşındırma riski taşıdığına dikkat çekmektedir. Özellikle, doğumla vatandaşlık kazanmış kişilere kıyasla daha sınırlı hukuki korumalara sahip olan ve orantısız biçimde hedef alınan, vatandaşlığa kabul edilmiş göçmenlerin kırılgan konumuna özel bir vurgu yapılmaktadır. Uluslararası hukuk metinleri, içtihatlar ve akademik yaklaşımlardan yararlanılarak hazırlanan bu makale, vatandaşlığın kaybettirilmesinin hukuki ve etik boyutlarını eleştirel bir bakışla incelemekte ve bu uygulamanın uluslararası insan hakları yükümlülükleriyle ne ölçüde bağdaştığını değerlendirmektedir.

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Anahtar kelimeler: Uluslararası insan hakları, egemenlik, vatandaşlığın kaybettirilmesi, ayrımcılık, vatandaşlığa kabul edilmiş göçmenler.

1. INTRODUCTION

Recognized as a fundamental human right in international legal instruments, citizenship serves as more than a legal status; it is a vital aspect of personal identity and the foundation for accessing other rights. At the same time, citizenship defines the relationship between individuals and the State, conferring both rights and duties. Historically, it has evolved from a political privilege to a universal right, essential for safeguarding individual identity, legal protection, and societal participation. However, its complexity becomes evident in its intersection with States sovereignty, particularly when national security concerns prompt States to revoke citizenship.

Citizenship reflects ongoing debates on its meaning and scope—issues universally relevant in the contemporary world. Particularly in the six decades following the adoption of the Universal Declaration of Human Rights (UDHR), various international and regional human rights instruments and principles have been developed to safeguard the rights outlined in UDHR. However, normative gaps in the legal framework concerning citizenship continue to exist, and the full realization of the right to citizenship remains challenging.[1]

The use of citizenship revocation as a counter-terrorism measure,[2] has raised significant legal and ethical concerns, particularly when it risks rendering individuals stateless. Such practices challenge core principles of international law, including proportionality, the prevention of statelessness, and the prohibition of arbitrariness. While often justified as necessary for national security, they raise important questions about the balance between State interests and individual rights, testing the limits of human rights protections.

To address these tensions, the discussion begins by tracing the historical development of citizenship, highlighting its transition from a selective privilege to a fundamental right embedded in international instruments. It then explores how international law protects

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1 Mirna Adjami and Julia Harrington, 'The Scope and Content of Article 15 of the Universal Declaration of Human Rights' (2008) 27 Refugee Survey Quarterly 94.

2 This article does not aim to provide a comprehensive discussion of the meaning and scope of terrorism, which would be more appropriately explored in a separate study. However, it is important to remind the reader that the definition of terrorism in the contemporary world is excessively broad. Powell, an advisor to the UN (United Nations) during the drafting of the Handbook on the Criminal Justice Response to Terrorism, emphasizes that this broad definition leaves significant room for abuse. She notes: *"The UN Charter imposes almost no express limits on the UN Security Council in its exercise of these powers. In this way, the UN Security Council is able to operate without any judicial oversight or consideration for the rules of natural justice in its listing mechanism … exercising untrammelled power in a manner which would be unthinkable in a domestic constitutional system subject to the rule of law*." Cathleen Powell, 'Defining Terrorism: How and Why', in *The Human Rights of Anti-Terrorism, eds. Nicole Laviolette and Craig Forcese* (Irwin Law Inc 2008) 139; Arianna Vedaschi and Kim Lane Scheppele (eds), *9/11 and the Rise of Global Anti-Terrorism Law: How the UN Security Council Rules the World* (Cambridge University Press 2021) 131 <https://www.cambridge.org/core/product/identifier/9781009023146/type/book> accessed 29 November 2024; Njuguna Catherine Wanjiru, 'Redefining Terrorism: Can State Actors Commit And Be Responsible For Acts Of Terrorism?' (Master Thesis, Cape Town 2022) 15. <https://open.uct.ac.za/server/api/core/bitstreams/4cee5ebc-e524-4584-b721-eab7f98a9ce2/content> accessed 30 November 2024.

against statelessness and arbitrary revocation of citizenship, analysing whether citizenship revocation can be reconciled with principles such as proportionality and non-arbitrariness. These discussions establish the basis for understanding the broader implications of revocation as a counter-terrorism tool. While these debates are examined on a global level, they also lead to an evaluation of how international principles are reflected and/or challenged in specific national and regional contexts.

This article adopts a comparative case law approach to assess how different legal systems engage with the international framework on citizenship revocation. By engaging with national laws in the United Kingdom (UK) and Ireland, alongside regional jurisprudence from the European Court of Human Rights (ECtHR), this analysis explores how legal systems reconcile security concerns with their human rights obligations. By examining legal standards, procedural safeguards, and the role of courts in these cases, the article seeks to identify divergences and convergences in state practice, especially in contexts involving naturalised immigrants.

Through this comparative lens, the article evaluates whether states can lawfully revoke citizenship while remaining compliant with international human rights law. It pays particular attention to the discriminatory impact on naturalised immigrants, the use of deprivation powers in counter-terrorism contexts, and the evolving role of courts in mediating the tension between state sovereignty and individual rights. This method allows for a grounded analysis of how legal norms are applied in practice, and whether the revocation of citizenship can ever be consistent with the international legal order.

2. THE HUMAN RIGHT TO CITIZENSHIP IN INTERNATIONAL LAW

2.1. CITIZENSHIP AS THE CORNERSTONE OF STATEHOOD AND ITS HISTORICAL OVERVIEW

Beyond international universal rights, individuals hold specific entitlements derived from their affiliation with communities, often referred to as citizenship,[3] or membership,[4] rights. Citizenship has historically been viewed as a fundamental element of national self-definition, closely tied to identity. In many cases, it aligns with ethnic, religious, or other sociocultural markers that correspond to specific territorial boundaries.[5] This historical nexus illustrates how, in the modern era, citizenship remains deeply intertwined with both national identity and territorial sovereignty, serving as a key mechanism for defining belonging within a state.

Citizenship is the only human right that is defined in relation to a sovereign territory. While the executive has the authority to regulate immigration in the interest of the common

[3] John Tasioulas, 'Saving Human Rights from Human Rights Law' (2021) 52 Vanderbilt Law Review 1191.

[4] The concept of citizenship made its way from Anglo-Saxon debates into German-speaking regions, where it intersected with the older term Staatsangehörigkeit (nationality), which specifically refers to the legal aspect of State membership. Thomas Faist, 'Shapeshifting Citizenship in Germany: Expansion, Erosion and Extension' (2013) Bielefeld: Universität Bielefeld 115 <https://d-nb.info/1186510234/34> accessed 1 November 2024.

[5] Peter J Spiro, 'A New International Law of Citizenship' (2011) 105 American Journal of International Law 694.

good, this power is often viewed as a legitimate policy prerogative of the legislature and executive, even if it may disadvantage naturalised citizens. However, although the authority to control immigration derives from the sovereign power of the state, the Irish Human Rights and Equality Commission contends that sovereignty today is a more relativised concept. In the contemporary world, sovereignty does not necessarily equate to absolute control over immigration, particularly when such control undermines principles like equality, which are increasingly seen as integral to modern governance.[6]

In international law, the Montevideo Convention (MC) defines a State through core elements. A permanent population, a defined territory, a government, and the ability to engage in relations with other States.[7] A *permanent population*, as defined in the MC, refers to a stable and organized community within a specific territory. In contemporary practice, this community is often equated with a state's citizenry, reflecting the legal bond between individuals and the state, which forms the basis for mutual rights and duties.[8]

This makes citizenship,[9] one of the elements of statehood. Hence, citizenship directly impacts statehood, and *vice-versa*, statehood shapes the framework of citizenship. The authority to determine access to citizenship and the rules governing it is, therefore, central to the state's identity and sovereignty as a political entity.[10] It must be stated that over the centuries, defining citizens' rights has been instrumental in establishing principles like sovereignty and citizenship, deepening power struggles and quests for identity as territorial

6 Chidi Anselm Odinkalu, 'Chapter 6. Natives, Subjects, and Wannabes: Internal Citizenship Problems in Postcolonial Nigeria' in Rhoda Howard-Hassmann and Margaret Walton-Roberts (eds), *The Human Right to Citizenship* (University of Pennsylvania Press 2015) 97 <https://www.degruyter.com/document/doi/10.9783/9780812291421-007/html> accessed 5 November 2024; Áine Doyle, 'Citizenship Revocation: An Opportunity for Change in Ireland' [2023] University College Dublin Law Review <https://theucdlawreview.com/2023/04/19/citizenship-revocation-an-opportunity-for-change-in-ireland/#_edn7> accessed 2 December 2024.

7 Article 1: *"The State as a person of international law should possess the following qualifications : (a) a permanent population ;(b) a defined territory ;(c) government ;and (d) capacity to enter into relations with the other States."* Montevideo Convention on the Rights and Duties of States 1933 (3802) 25.

8 Barbara von Rütte, *The Human Right to Citizenship: Situating the Right to Citizenship within International and Regional Human Rights Law* (Brill 2022) 59-60; 'Citizenship and Participation' <https://www.coe.int/en/web/compass/citizenship-and-participation#3> accessed 7 November 2024; Amy Tikkanen, 'Citizenship', *Encyclopedia Britannica* (2024) <https://www.britannica.com/topic/citizenship> accessed 7 November 2024.

9 In some EU Member States, a difference is drawn between citizenship and nationality. However, within the EU framework and for the purposes of this glossary, the two terms are used interchangeably. In countries that do differentiate, citizenship typically refers to the specific legal rights and responsibilities held by citizens. Notably, sources such as the European Convention on Nationality, the IOM Glossary, and the GLOBALCIT Glossary on Citizenship and Electoral Rights favour the use of the term nationality. 'Citizenship' <https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/citizenship_en> accessed 11 November 2024. For the sake of consistency throughout this article, the term citizenship will be used to refer to the legal bond between an individual and a state.

10 von Rütte (n 8) 60.

boundaries took shape.[11]

The historical development of citizenship reveals not only its legal utility but also its function as a tool of statecraft. In the formation of the modern nation-state, citizenship became instrumental in consolidating political authority and homogenising diverse populations under a common national identity. As Anderson argues in "Imagined Communities," the nation is *"an imagined political community,"*[12] and citizenship acts as the legal mechanism through which individuals are imagined as members of this bounded entity.

This conceptual evolution underscores that citizenship, beyond merely denoting legal status, has operated as a strategic instrument of inclusion and exclusion—determining who belongs and who does not. The exclusivity embedded in historical citizenship regimes laid the groundwork for policies that continue to shape access to rights and privileges, from voting and residency to national security protections.

A closer examination of history reveals how this dynamic underpins modern legal systems and the concept of the nation-state.[13] To understand the role of citizenship more comprehensively, it is valuable to look at historical foundations. Tracing its evolution from the early frameworks of ancient civilizations to its transformation in the modern era reveals the foundational principles that underpin and inform contemporary discussions.

Historically, the notion of citizenship can be traced back to ancient Greece, where citizens held the legal right to engage in State affairs. However, citizenship was highly exclusive groups such as slaves, peasants, women, and resident foreigners were not granted this status and were considered subjects instead. For those privileged as citizens, civic virtue—the responsibility of being a good citizen—was central. Participation was regarded not just as a right but primarily as a duty. A citizen who did not meet his responsibilities was considered socially disruptive.[14]

The concept of *good citizen* and its evolving standards continue in contemporary world to be a subject of legal debate. For instance, in naturalisation procedures today, applicants are often expected to demonstrate that they are good citizens.[15] This requirement can determine the success or failure of their application. However, the criteria for what constitutes a *good citizen* are frequently vague, inconsistently applied, and open to interpretation by

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[11] The concept of citizenship associated with State sovereignty has historically been evident in the Ottoman Empire as well. During this period, consular courts were established to resolve disputes among citizens of foreign States benefiting from capitulations. These courts functioned by designating the relevant consulate as the competent judicial authority, allowing foreign citizens to seek justice through their own diplomatic representatives. For detailed information about the history of legal pluralism, see Vebi Levni, 'Legal Pluralism: The Experience of Yugoslavia During and After the Ottoman Empire' (Master Thesis, Kocaeli 2024) 81-82, 97 <https://tez.yok.gov.tr/UlusalTezMerkezi/> accessed 3 November 2024.

[12] Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Revised Edition, Verso 2006) 6.

[13] Yuval Feinstein, 'Nation-State', *Encyclopedia Britannica* <https://www.britannica.com/topic/nation-state> accessed 4 November 2024.

[14] 'Citizenship and Participation' (n 8).

[15] *Talla v Minister for Justice and Equality* App no 2019/184 (The Court of Appeal, 12.05.2020).

state authorities. This raises critical questions about who holds the power to define these standards, and whether such assessments risk entrenching exclusionary or discriminatory practices under the guise of character evaluation.

After ancient Greece, as the Roman Empire expanded, citizenship evolved as a tool to build loyalty among diverse populations, encouraging allegiance both to local communities and to the empire as a whole. Citizens were expected to show allegiance to Rome, which in turn granted them privileges such as freedom of trade and movement within the empire. This policy facilitated easier tax collection and reduced the need for costly military presence in regions populated by Roman citizens. Over time, Roman citizenship shifted from a marker of political involvement to a more judicial role, representing the rule of law rather than political engagement. Nevertheless, active citizenship rights largely remained with the elite, so citizenship still held a degree of symbolic status.[16]

Unlike the active civic engagement in classical times, citizenship in the Middle Ages was largely passive. The classical ideal of *vita activa* shifted towards a *vita contemplativa*, where people were expected to accept their fixed roles within a social hierarchy, with little emphasis on active civic involvement. This transition marked a departure from the classical notion of citizenship, though not from citizenship itself.[17]

An important aspect of medieval citizenship, especially regarding naturalisation, was the equality of birthright and naturalised citizens. Since both groups were governed under the same citizenship laws, it became unacceptable to distinguish legally between those born into citizenship and those who obtained it later.[18] The modern concept of citizenship, however, emerged with the revolutionary changes of the late 18th century. The modern concept of citizenship is frequently attributed to the 1789 French Revolution (FR).

Although it is true that the FR was the first to establish citizenship as a cornerstone of the modern socio-political order, it was the British experience, including the pivotal American developments over the preceding one-and-a-half centuries, that laid the groundwork for the shift from a monarch–subject dynamic to a state–citizen relationship. Paradoxically, the terms citizen and citizenship were rarely used in their liberal sense within the English-speaking world.[19]

With the FR, citizenship took on a new and unprecedented significance, especially compared to the medieval period.[20] The development of constitutionalism brought about declarations such as the *Virginia Declaration of Rights,*[21] and the *Declaration of the Rights of Man*

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16 'History Of Citizenship' <https://greenschoolsireland.org/wp-content/uploads/2024/01/History-of-Citizenship.pdf> accessed 7 November 2024.

17 Gonçalo Matias, *Citizenship as a Human Right: The Fundamental Right to a Specific Citizenship* (Palgrave Macmillan 2018) 32.

18 ibid 32.

19 Derek Benjamin Heater, *What Is Citizenship?* (Polity Press 1999) 9.

20 Matias (n 17) 33.

21 *"....all men are by nature equally free and independent, and have certain inherent natural rights, of which when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity...."* Declaration of Rights 1776.

and of the Citizen,[22] which outlined citizens' fundamental rights and freedoms.[23] Moreover, for the first time, a codified regulation of citizenship appeared in the Constitution.[24]

Rogers Brubaker elucidates the transformative impact of the FR on the concept of citizenship, stating: *"The formal delimitation of the citizenry; the establishment of civil equality, entailing shared rights and shared obligations; the institutionalization of political rights; the legal rationalization and ideological accentuation of the distinction between citizens and foreigners; the articulation of the doctrine of national sovereignty and of the link between citizenship and nationhood; the substitution of immediate, direct relations between the citizen and the state for the mediated, indirect relations characteristic of the ancien régime—the Revolution brought all these developments together on a national level for the first time."*[25]

Additionally, the dynamic interaction between state sovereignty and citizenship has continued to evolve in the face of globalisation. As global migration increases and the number of individuals residing outside their country of origin, questions surrounding dual or multiple citizenships and the recognition of non-citizen residents challenge the classical model of one state–one citizenship.

The increasing prevalence of transnational identities calls into question the adequacy of rigid citizenship regimes. For instance, the European Union's introduction of EU citizenship, supplementing national citizenship without replacing it,[26] reflects this shift toward a multi-layered legal identity. In this way, while rooted in state-centric principles, citizenship has begun to reflect more pluralistic and flexible conceptions of belonging that exceed the confines of territorial sovereignty.

2.2. CITIZENSHIP AS A FUNDAMENTAL HUMAN RIGHT

These revolutionary concepts are highly significant and were probably only properly interpreted much later in the era of Universal Human Rights.[27] From 1920 to 1930, the international community demonstrated an extraordinary focus on citizenship, recognizing

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[22] *Article 6: "The Law is the expression of the general will. All citizens have the right to take part, personally or through their representatives, in its making. It must be the same for all, whether it protects or punishes. All citizens, being equal in its eyes, shall be equally eligible to all high offices, public positions and employments, according to their ability, and without other distinction than that of their virtues and talents."* Declaration of the Rights of Man and of the Citizen 1789.

[23] Heater (n 19) 10.

[24] *Title 2 § 2: "French citizens are: Those who are born in France of a French father; Those who, born in France of a foreign father, have fixed their residence in the kingdom; Those who, born in a foreign country of a French father. have become established in France and have taken the civic oath; Lastly, those who, born in a foreign country and descended in any degree whatsoever from a French man or a French woman expatriated on account of religion, may come to live in France and take the civic oath." § 3: "Those residing in France, who were born outside of the kingdom from foreign parents, become French citizens after five years of continued domicile in the kingdom, if they have in addition acquired real estate, or married a French woman, or formed an agricultural or commercial establishment, and have taken the civic oath."* French Constitution 1791.

[25] Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (6th edn, Harvard Univ Press 2002) 35.

[26] Antje Wiener, 'Making Sense of the New Geography of Citizenship: Fragmented Citizenship in the European Union' (1997) 26 Theory and Society 548. <http://link.springer.com/10.1023/A:1006809913519> accessed 13 June 2025.

[27] Matias (n 17) 36.

its crucial role in the evolving international legal order. During this period, the League of Nations prioritized citizenship as one of the key areas requiring codification.[28]

In its advisory opinion in the *Nationality Decrees Issued in Tunis and Morocco* case (1923), the Permanent Court of International Justice (PCIJ) —which was the predecessor to the International Court of Justice (ICJ)— concluded that matters of citizenship fall exclusively within the sovereign jurisdiction of States, affirming a state's inherent right to determine its citizens. The Court held that: *"…From this point of view, the Court considers the contention that France enjoys in Tunis and Morocco the same exclusive right to legislate on questions of nationality as in France itself, and that the local sovereignty of the protected State in conjunction with the public powers exercised by the protecting State may be equivalent to full sovereignty…"*[29]

In fact, it is a long-established rule of international law that States are—at least *a priori*—free to determine who is and who is not a citizen.[30] International law indeed, through the adoption of international treaties, has introduced important constraints on how States exercise this discretion, but the power to determine citizenship still largely remains a sovereign prerogative.[31]

The authority of States to determine their own citizens and the limits of this authority were first codified in the Hague Convention (HC). HC recognizes the sovereign right of States to define their citizens, but it also stipulates that this authority must be exercised in accordance with international conventions, customary international law, the principles of law generally recognised regarding citizenship. HC establishes that the exclusive competence of States in citizenship matters is subject to international legal standards, and any deviation from these standards may lead to non-recognition by other States.[32]

The discussions during this period primarily focused on establishing positive legal norms and harmonizing national citizenship laws, rather than framing citizenship as a *human right*. An analysis of international treaties on citizenship, from the HC to the present, demonstrates a shift towards emphasizing specific aspects of citizenship and safeguarding particular rights.

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[28] ibid 42.

[29] United Nations, *Summaries of Judgments, Advisory Opinions and Orders of the Permanent Court of International Justice. 1922/40* (2012) 9 <https://legal.un.org/PCIJsummaries/documents/english/PCIJ_FinalText.pdf> accessed 8 November 2024; F. C. v Docket II Series B no 4 (PCIJ, 08.02.1923).

[30] Radolfo Riberio, 'Protecting the Rights of the Rightless: The UN Human Rights Committee and the Right to Acquire a Nationality under International Law' *European Journal of International Law* (Blog, 11 February 2021) <https://www.ejiltalk.org/protecting-the-rights-of-the-rightless-the-un-human-rights-committee-and-the-right-to-acquire-a-nationality-under-international-law/> accessed 8 November 2024.

[31] The modern concept of State sovereignty in international law originates from the Peace of Westphalia of 1648, which established the framework for sovereign, territorially independent, and formally equal nation-states in Europe. Since then, State sovereignty has been a cornerstone of the legitimacy and autonomy of nation-states as entities under international law. However, it continues to be a subject of significant debate to this day. von Rütte (n 8) 61.

[32] Article 1: *"It is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality."* Convention on Certain Questions Relating to the Conflict of Nationality Laws 1930 (179) 99.

These include the legal status of stateless individuals, diplomatic protection, dual citizenship, naturalisation, gender equality in citizenship laws, children's rights, and the protection of civil and political rights. These developments have placed both positive and negative obligations on States and individuals, reflecting an evolving international framework for citizenship.[33]

Today, the right to a citizenship is recognized as a universal fundamental human right, encompassing the ability of individuals to acquire, change, and retain their citizenship.[34] The right to a citizenship is recognized in a series of international and regional legal instruments, including the UDHR, the International Convention on the Elimination of All Forms of Racial Discrimination, the European Convention on Human Rights (ECHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Nationality of Married Women.[35] International law, asserts that while States have the authority to determine who qualifies as their citizens, this power is not unrestricted; States must adhere to their human rights obligations when granting or revoking citizenship.[36]

Although human rights have advanced greatly, the UDHR remains subject to criticism, especially its implementation and interpretation. For instance, when Article 15 § 1 of the UDHR asserts that *everyone* has the right to a citizenship—emphasizing the universal nature of this right—a key question arises in interpreting this provision: *"Who is entitled to the right to citizenship?"* The rights enshrined in the UDHR are generally considered human rights, inherent to all individuals. Nonetheless, the phrasing *everyone has the right to a nationality* could lead interpreters to conclude that the right is to have one citizenship and not a *certain* citizenship.[37]

Secondly, Article 15 § 2 of the UDHR raises the issue of when revocation of citizenship constitutes arbitrariness. A broad interpretation of arbitrariness prevails, encompassing all State actions—legislative, administrative, or judicial—that exhibit elements of inappropriateness, injustice, illegitimacy, or lack of predictability.[38] As these examples illustrate, there is no clear or exhaustive standard for determining arbitrariness in this context.

According to Foster and Lambert, to avoid being arbitrary, the revocation of citizenship must conform to domestic legal frameworks and meet specific procedural and substantive

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[33] Spiro (n 5) 700-714.

[34] Article 15 § 1: *"Everyone has the right to a nationality."* § 2: *"No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."* Universal Declaration of Human Rights 1948 (A/RES/217(III)) 1.

[35] For a more comprehensive list of relevant legal instruments, see 'International Standards Relating to Nationality and Statelessness' <https://www.ohchr.org/en/nationality-and-statelessness/international-standards-relating-nationality-and-statelessness> accessed 5 November 2024.

[36] 'OHCHR and the Right to a Nationality' <https://www.ohchr.org/en/nationality-and-statelessness> accessed 5 November 2024.

[37] Matias (n 17) 49.

[38] Iseult Honohan, 'Just What's Wrong With Losing Citizenship? Examining Revocation of Citizenship From Non-Domination Perspective' (2020) 24 Citizenship Studies 355, 358; 'Human Rights and Arbitrary Deprivation of Nationality' (2009) Report of the Secretary-General A/HRC/13/34, para 25 <https://www.right-docs.org/doc/a-hrc-13-34/> accessed 10 November 2024.

standards under international human rights law. This includes adherence to the principle of proportionality, requiring that the action serve a legitimate purpose, be the least intrusive means available, and remain proportionate to the interest at stake. Additionally, the decision must be documented in writing and subject to effective administrative or judicial review.[39]

3. INTERNATIONAL SAFEGUARDS AGAINST STATELESSNESS

3.1. INTERNATIONAL PROTECTIONS AGAINST ARBITRARY CITIZENSHIP REVOCATION

The adverse impact of statelessness and citizenship-related barriers,[40] continues to highlight the critical role that legal identity plays in accessing fundamental rights and protections. Building on Article 15 of the UDHR, which affirms the right to be free from arbitrary revocation of citizenship, Article 8 § 1 of the 1961 Convention on the Reduction of Statelessness (1961 Convention) imposes an obligation on States to prevent statelessness resulting from the loss of citizenship.[41]

Although Article 8 allows for the revocation of citizenship on certain narrowly defined and legitimate grounds, even when it leads to statelessness, it includes a crucial safeguard by mandating that such actions only take place after the individuals concerned are provided with due process protections. Similarly, just as the 1951 Refugee Convention (RC) does not incorporate Article 14 of the UDHR, which proclaims asylum as a human right, the 1954 and 1961 Statelessness Conventions also fail to explicitly recognize Article 15 of the UDHR

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[39] Michelle Foster and Hélène Lambert, 'Statelessness as a Human Rights Issue: A Concept Whose Time Has Come' (2016) 28 International Journal of Refugee Law 578.

[40] For instance, a recent survey evaluating the world's most *powerful* passports ranked countries based on the level of travel freedom their citizens possess. See 'Global Passport Power Rank 2024' *Passport Index* (Web) <https://www.passportindex.org/byRank.php> accessed 1 November 2024.

[41] *"8 § 1. A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless. 2. Notwithstanding the provisions of paragraph I of this article, a person may be deprived of the nationality of a Contracting State: (a) should lose his nationality; in the circumstances in which, under paragraphs 4 and 5 of article 7, it is permissible that a person (b) where the nationality has been obtained by misrepresentation or fraud. 3. Notwithstanding the provisions of paragraph 1 of this article, a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time: (a) that, inconsistently with his duty of loyalty to the Contracting State, the person (i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or (ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State; (b) that the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State. 4. 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."* Ireland's declaration for the article: *"In accordance with paragraph 3 of article 8 of the Convention Ireland retains the right to deprive a naturalised Irish citizen of his citizenship pursuant to section 19 (1) (b) of the Irish Nationality and Citizenship Act, 1956, on grounds specified in the aforesaid paragraph."* Convention on the Reduction of Statelessness 1961 (989).

as the foundational right underpinning efforts to address and reduce statelessness. [42]

International human rights law provides robust protections against the arbitrary revocation of citizenship through several key instruments. The 1961 Convention prohibited the revocation of citizenship based on race, ethnicity, religion, or political orientation, and required that revocation for other causes be made contingent on having acquired citizenship in another state. Article 9 states that, *"A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds."* Convention established a framework to prevent future cases of statelessness.

It limited States unrestricted control over citizenship by imposing a positive obligation on States to eliminate and prevent statelessness in their citizenship laws and practices. Legal scholars argues that 1961 Convention reflects the UDHR's goal of ensuring that no individual is arbitrarily revoked of their citizenship, a principle aimed at combating statelessness. The approach specifically targeted mass denationalizations, such as those carried out by the Nazi regime against German Jews. However, while some pushed for a universal standard prohibiting arbitrary revocation of citizenship, the establishment of such a norm remained a subject of debate, and no clear standard for arbitrariness was defined. [43]

The European Convention on Nationality (ECN) recognizes this prohibition as a general principle of international law.[44] The ECN, adopted by the Council of Europe, is a key regional instrument on citizenship, consolidating widely accepted international legal norms into a single framework and advancing the normative framework of citizenship laws by providing clear, actionable provisions for States to incorporate into their legal systems. However, according to Pilgram the success of the ECN is undermined by several issues.

> *"1. The ECN attracted more reservations than any of the other specialised or general human rights treaties.*
>
> *2. The absence of any form of independent reviewing and enforcement mechanism makes it difficult to monitor compliance and promote progress concerning the standards set by the Convention.*
>
> *3. Although common obstacles to ratification are state objections to only a few of the ECN's provisions, these obstacles are very significant.*

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[42] Adjami and Harrington (n 1) 97.

[43] 1961 Statelessness Convention; Spiro (n 5) 711; Adjami and Harrington (n 1) 96-97.

[44] *Article 18 § 1 (a): "Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability."* Convention on the Rights of Persons with Disabilities 2006. Convention on the Rights of Persons with Disabilities 2006; Article 18 § 5 (d) (iii): *"In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: The right to nationality."* CERD. International Convention on the Elimination of All Forms of Racial Discrimination 1965; Article 20 § 3: *"No one shall be arbitrarily deprived of his nationality or of the right to change it."* ACHR. American Convention on Human Rights 1969; Article 29 § 1: *"Everyone has the right to nationality. No one shall be arbitrarily or unlawfully deprived of his nationality."* ArCHR. Arab Charter on Human Rights 2004; Article 4 § c: *"no one shall be arbitrarily deprived of his or her nationality".* European Convention on Nationality 1997 (166).

- The single most prominent obstacle to ratification appears to be an unwillingness to be bound by the ECN's prohibition of discrimination on the basis of race, national or ethnic origin (ECN article 5(1)) and also between nationals by birth and those who acquired nationality subsequently (ECN article 5(2)). Note that the latter principle constitutes a recommendation rather than a clear prohibition.

- State objections to offering administrative or judicial review (ECN article 12) and to charging 'reasonable' fees (ECN article 13(1)) represent further obstacles to ratification.

- The ECN demonstrates and consolidates a gradual transition from an understanding of citizenship as privilege to an understanding of citizenship as right in international law on nationality. Not all national codes sit easily with this increased emphasis on rights of the individual, including foreign residents."[45]

Like the 1961 Convention, the ECN prioritizes the prevention of statelessness and the non-discriminatory enjoyment of citizenship rights. Nonetheless, it introduces notable innovations, particularly its stricter approach to statelessness arising from the loss of citizenship. The ECN permits only one exception—when citizenship was obtained through fraud, false information, or concealment of relevant facts—unlike the 1961 Convention, which allows a few additional grounds for revocation.[46]

Regional instruments like the ECN and international frameworks such as the 1961 Convention provide crucial legal standards, but their practical implementation varies widely among States. The discursive shift towards recognizing a right to citizenship did not lead to the establishment of broadly enforceable international norms. Article 15 of the UDHR, which enshrines the right to citizenship, does not impose an obligation on any specific State to ensure its fulfilment. Furthermore, the Declaration itself lacks legal binding force, limiting its capacity to create actionable duties under international law. [47]

On the other hand, it is essential to point out that rulings by the ECtHR in this area have opened a promising path, offering hope for progress. In *Genovese v. Malta*,[48] the Court ruled that denying citizenship to a child born out of wedlock, based solely on the Maltese parent's gender, constituted discrimination under Article 14,[49] in conjunction with Article 8 of the

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[45] Lisa Pilgram, 'European Convention on Nationality (ECN) 1997 and European Nationality Laws' Policy Brief No. 4 EU Democracy Observatory on Citizenship 1 <https://globalcit.eu/wp-content/uploads/2010/06/policy%20brief%20International%20Law.pdf> accessed 7 November 2024.

[46] Laura van Waas, 'Fighting Statelessness and Discriminatory Nationality Laws in Europe' (2012) 13 European Journal of Migration and Law 247-249.

[47] Spiro (n 5) 710.

[48] *Genovese v Malta* App no 53124/09 (ECtHR, 11.10.2011).

[49] *"Article 14: The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."* European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (213 UNTS 221).

ECHR.[50] This decision underscored the importance of access to citizenship as an element of personal identity, protected under the right to private life.

Similarly in *Ramadan v. Malta,*[51] ECtHR has consistently held that arbitrary revocation of citizenship can, in certain cases, violate the ECHR due to its profound impact on an individual's private life.[52] However, while this interpretation is laudable, it raises critical questions about whether citizenship should be viewed solely through the lens of private life or recognized as an independent, fundamental human right. The current framework of the ECHR does not explicitly recognize the right to citizenship, leaving it dependent on an indirect interpretation through Article 8. This omission creates gaps in the legal protection of individuals, particularly stateless persons, who are often excluded from accessing remedies under the Convention.

Recognizing the right to citizenship as a standalone human right would reflect its intrinsic importance to personal identity, State membership, and access to rights. Citizenship is not merely a private matter. It serves as a legal bond between an individual and the state, enabling the exercise of civil, political, and social rights. Without explicit recognition, individuals remain vulnerable to the arbitrary deprivation of citizenship, with limited recourse under international human rights law. This argument gains further support from the African Committee in its findings on citizenship and statelessness. The Committee emphasized that the prolonged refusal to grant Nubian children a secure citizenship breaches their right to acquire a citizenship. In the absence of a clear legal status, these children effectively face statelessness and are left exposed to significant uncertainty and vulnerability throughout their lives.[53]

Building on these international and regional efforts, the inclusion of statelessness and access to citizenship in two Global Compacts signals a broader acknowledgment of statelessness as a critical issue inherently linked to migration, particularly forced displacement.[54] The Global Compact on Refugees also acknowledges that statelessness can serve both as a cause and a consequence of refugee movements, emphasizing the need for international

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[50] *"Article 8 § 1: Everyone has the right to respect for his private and family life, his home, and his correspondence. 8 § 2: There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."* ibid.

[51] *Ramadan v Malta* App no 76136/12 (ECtHR, 17.10.2016).

[52] See also further cases where the ECtHR found a violation of Article 8 in matters relating to citizenship revocation. <https://www.institutesi.org/news/european-court-of-human-rights-rules-that-nationality>.

[53] *Nubian Children v Kenya* Series C no 130 (African Committee of Experts on The Rights And Welfare of The Child, 08.09.2005).

[54] The most recent initiative at the UN level was the adoption of the New York Declaration for Refugees and Migrants on 19 September 2016. This landmark Declaration resulted in the creation of two significant Compacts. The Global Compact for Safe, Orderly and Regular Migration and the Global Compact on Refugees, both aimed at enhancing international cooperation on migration and refugee issues. von Rütte (n 8) 140, 142; 'Global Compact for Safe, Orderly and Regular Migration' <https://documents.un.org/doc/undoc/gen/n18/451/99/pdf/n1845199.pdf> accessed 9 November 2024.

cooperation to mitigate its impact.[55] Moreover, Global Alliance to End Statelessness by the UN reinforces this commitment by fostering collaboration among States, UN agencies, and civil society.[56]

Collectively, all these instruments affirm a global commitment to preventing statelessness and safeguarding the right to citizenship. The ICJ has affirmed that certain international obligations, particularly those concerning fundamental human rights, possess an *erga omnes* character—duties owed to the international community. In the Barcelona Traction case, the ICJ identified obligations concerning the protection of human rights as having an *erga omnes* character, emphasizing that such obligations are the concern of all States.[57]

Even though various international and regional initiatives reflect a shared commitment to preventing and reducing statelessness, many of them lack concrete enforcement mechanisms or effective remedies to fully protect individual rights. This gap allows domestic legal systems to exercise considerable discretion in citizenship matters, often resulting in arbitrary or discriminatory practices that leave individuals stateless.[58] At both the European and universal levels, the enforcement of principles aimed at preventing statelessness and ensuring the *non-discriminatory* enjoyment of citizenship remains inconsistent.[59]

3.2. STATELESSNESS AS A HUMAN RIGHTS ISSUE

It can be posited that the conceptual significance of citizenship has arguably diminished in the era of the United Nations, largely due to the broader acknowledgment of human rights that are inherent to every individual based on their intrinsic humanity, rather than their legal status as a national of any given state. Nevertheless, practical experience demonstrates that citizenship—whether it involves having an undesirable one or lacking any citizenship altogether—continues to be a significant source of disadvantage, disempowerment, exclusion, and human suffering.[60]

International law grapples with the dual reality of upholding universal human rights while addressing the practical challenges posed by statelessness and exclusion. To be stateless means that a person is not recognized as a citizen of any state, leaving them excluded from the protection and rights afforded by national citizenship. Statelessness, as a violation of the right to a citizenship under Article 15 of the Universal Declaration of Human Rights (UDHR), remains one of the most neglected areas of the global human rights agenda. This neglect is often exacerbated by the argument that States should prioritize the human rights of their own citizens, ensuring that any advancements in the rights of non-citizens do not

[55] 'Global Compact on Refugees' (High Commissioner for Refugees 2018) A/RES/73/151, 2.9 Statelessness para. 83 <https://www.unhcr.org/media/global-compact-refugees-booklet> accessed 12 November 2024.

[56] 'Global Alliance to End Statelessness' <https://www.unhcr.org/news/press-releases/unhcr-new-global-alliance-launched-consign-statelessness-history> accessed 13 November 2024.

[57] *Barcelona Traction, Light and Power Company, Limited v the Kingdom of Belgium* App no 1962 (ICJ, 05.02.1970)

[58] von Rütte (n 8) 140, 142.

[59] van Waas (n 46) 249.

[60] Brian Opeskin, 'The Human Right to Citizenship: A Slippery Concept' (2016) 28 International Journal of Refugee Law 355.

come at the expense of those at home. Such an approach reflects a *citizens first* principle, which can further marginalize stateless individuals and hinder efforts to address their plight.[61]

The international human rights protection system has made significant progress since World War II, yet citizenship continues to play a decisive role in determining how individuals are treated. The rights people can effectively exercise remain largely dependent on their country of citizenship. Although international human rights law provides certain guarantees for both citizens and non-citizens, many States fail to implement these protections effectively. This inconsistency leaves stateless individuals particularly vulnerable, exposing the gap between international commitments and their practical enforcement. Much of this failure stems from the inability or unwillingness of numerous countries to adhere to international conventions, resulting in stateless individuals being systematically denied their rights on a global scale.[62]

Citizenship law itself operates within this contested space, navigating complex ideas about who qualifies as a member and by what standards.[63] This complex framework becomes even more critical in the context of immigration. Due to compelling circumstances, individuals may voluntarily or forcibly,[64] leave their home countries, relocating to areas under another States jurisdiction.[65] Although some immigrants maintain legal and emotional ties to their country of origin, benefiting from its protection, others are left without safeguards, either because they are denied protection, revoked of it, or choose not to seek it.

A distinction is often made between *de jure* and *de facto* stateless persons. *De jure* stateless individuals are those who are not citizens of any State. *De facto* stateless persons are individuals who having left their country of citizenship, no longer receive protection or assistance

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61 Kristy A Belton, 'Chapter 2. Statelessness: A Matter of Human Rights' in Rhoda Howard-Hassmann and Margaret Walton-Roberts (eds), *The Human Right to Citizenship* (University of Pennsylvania Press 2015) 31 <https://www.degruyter.com/document/doi/10.9783/9780812291421-003/html> accessed 5 November 2024; Tasioulas (n 3) 1200.

62 David Owen, 'On the Right to Have Nationality Rights: Statelessness, Citizenship and Human Rights' (2018) 65 Netherlands International Law Review, 300; Nasir Uddin, 'Chapter 4. State of Stateless People: The Plight of Rohingya Refugees in Bangladesh' in Rhoda Howard-Hassmann and Margaret Walton-Roberts (eds), *The Human Right to Citizenship* (University of Pennsylvania Press 2015) 62 <https://www.degruyter.com/document/doi/10.9783/9780812291421-005/html> accessed 5 November 2024.

63 Anupama Roy, *Citizenship Regimes, Law, and Belonging: The CAA and the NRC* (Oxford University Press Oxford 2022) 4 <https://academic.oup.com/book/43025> accessed 6 November 2024."plainCitation":"Anupama Roy, Citizenship Regimes, Law, and Belonging: The CAA and the NRC (Oxford University Press 2022).

64 For a comprehensive examination of the distinctions between voluntary and forced migration see, Oliver Bakewell, 'Unsettling the Boundaries Between Forced and Voluntary Migration' in Emma Carmel, Katharina Lenner and Regine Paul (eds), *Handbook on the Governance and Politics of Migration* (Edward Elgar Publishing 2021) <https://china.elgaronline.com/view/edcoll/9781788117227/9781788117227.00017.xml> accessed 5 November 2024.

65 Over the past fifty years, the global number of international migrants has risen significantly. In 2020, an estimated 281 million people were residing outside their countries of birth—an increase of 128 million since 1990 and more than three times the figure recorded in 1970. International Organization for Migration, 'World Migration Report 2024' (United Nations 2024) <https://publications.iom.int/books/world-migration-report-2024> accessed 5 November 2024.

from their national authorities—either because such protection is denied or because they have renounced it. Stateless persons, in the legal sense, are those who are not recognized as citizens by any State under its laws. In contrast, *de facto* stateless individuals still possess citizenship but lack State protection while abroad. These individuals might be better referred to as *unprotected persons*, with *de facto* unprotected persons distinguished from *de jure* unprotected persons, the latter being truly stateless.[66]

Refugees may fall into either category. They may be *de jure* unprotected if stateless, or *de facto* unprotected if they retain citizenship but lack protection. UNHCR's mandate to offer international protection to refugees extends beyond individuals who meet the eligibility criteria for refugee status under the 1951 Convention and its 1967 Protocol. It also includes those who fall under the broader refugee definition outlined in the Office's mandate. As such, UNHCR's responsibilities encompass de facto stateless individuals who qualify for protection under the 1951 Convention and 1967 Protocol, as well as many de facto stateless persons covered by regional complementary protection frameworks.[67]

The disconnection places certain individuals in highly vulnerable positions, further complicating their sense of belonging and exposing them to legal and social marginalization.[68] Citizenship law, operating within these contested boundaries, must navigate these challenges to provide meaningful inclusion and protection. Statelessness—the lack of a citizenship—can severely restrict a person's ability to access essential services such as education, healthcare, employment, financial services, or even the right to marry.[69] Its consequences are now increasingly framed as human rights violations, as it often leads to systemic discrimination and heightened vulnerability, including exposure to exploitation and human trafficking.[70]

Especially the unequal treatment of women in citizenship laws increases their vulnerability to statelessness, both by being born stateless and by later becoming stateless. In countries with neglected birth registration systems, women may be born stateless due to a lack of documentation verifying their place of birth. Women can lose their citizenship if their identity documents are lost or stolen during conflicts, leaving them unable to prove their citizenship.[71]

This issue is particularly severe in post-colonial or divided nations, where political uphe-

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66 Manley O. Hudson, 'Report on Nationality, Including Statelessness' (1952) A/CN.4/50 17. <https://legal.un.org/ilc/documentation/english/a_cn4_50.pdf> accessed 11 November 2024.

67 Hugh Massey, 'UNHCR and De Facto Statelessness' (2010) LPPR/2010/01 65-66. <https://www.unhcr.org/sites/default/files/legacy-pdf/4bc2ddeb9.pdf> accessed 13 November 2024.

68 Moh Asmahil Kohan, *Vatansızlık: Uluslararası Temel Belgelerde Vatansız Kişiler ve Hakları* (Migration Research Foundation 2024) 224 <https://tjds.org.tr/index.php/tjds/article/view/88/91> accessed 1 December 2024.

69 ECtHR highlighted that the applicants erasure from the residence register and lack of personal documents resulted in the loss of access to fundamental social and economic rights, including the right to work, health insurance, and pension benefits. *Hoti v Croatia* App no 63311/14 (ECtHR, 26.07.2018).

70 Foster and Lambert (n 39) 567.

71 Neda Shaheen, 'Discriminatory Nationality Laws Must Be Eliminated In Order To Eradicate Statelessness' (2018) 11 DePaul Journal for Social Justice 11.

avals have rendered many stateless. For instance, the dissolution of Yugoslavia left thousands without documentation to verify their origins. In human trafficking cases, women often have their documents confiscated or destroyed, stripping them of their citizenship and legal protection.[72] According to Mullally, *"the concern to respond to women's apparent vulnerability continues to be a core motivating impulse in the anti-trafficking movement, at both the national and international levels."*[73]

Children are another vulnerable group to consider. International law recognizes the right of every individual, particularly children, to possess a citizenship.[74] States adhering to the principle of *jus soli* have a duty to grant citizenship to children born on their territory, thereby preventing statelessness. The Committee on the Rights of the Child supports this interpretation. It has concluded that the Convention on the Rights of the Child (CRC) should be interpreted to mean that States must take all steps to ensure children born in the State acquire a citizenship. Furthermore, the Committee has stated that, where the State cannot secure the child's citizenship through State cooperation elsewhere, then the State must grant its citizenship.[75]

Around the globe, millions of individuals find themselves in dilemma, enduring the hardships of being *stateless*.[76] Stateless individuals are unable to claim rights from any state. To lack a nationality or citizenship is to stand exposed in the realm of international affairs. It is to exist as an isolated individual, without the protection of a State, vulnerable to aggression, exploitation, and exclusion, caught in an unequal struggle with little chance of prevailing.[77] For many, their only hope of enjoying citizenship lies in the prospect of naturalisation, which offers a critical pathway to gaining legal recognition and the associated rights and protections of citizenship.

It must never be overlooked that history offers powerful warnings about the devastating consequences of denationalization. Far from being just a legal measure, it has often paved the way for serious human rights violations. Under the Nazi regime, for instance, Jews were deliberately revoked of their citizenship, rendering them stateless and exposing them to systematic persecution. Without the protection of any state, stateless individuals were left defenceless, with no country willing or able to act on their behalf. This dark chapter in his-

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[72] ibid 11-12.

[73] Siobhán Mullally, 'Trafficking in Persons, Especially Women and Children' (UN Human Rights Office 2024) A/79/161, §50 <https://documents.un.org/doc/undoc/gen/n24/210/33/pdf/n2421033.pdf> accessed 13 November 2024.

[74] *"Article 7 § 1: Every child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality, and, as far as possible, the right to know and be cared for by their parents. § 2: States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under relevant international instruments, particularly in cases where the child would otherwise be stateless."* Convention on the Rights of the Child 1989 (27531).

[75] William Thomas Worster, 'The Obligation to Grant Nationality to Stateless Children Under Treaty Law' (2019) 24 Tilburg Law Review 210.

[76] 'OHCHR and the Right to a Nationality' (n 36).

[77] Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (University of Pennsylvania Press 1999) 80.

tory highlights the urgent need to prevent statelessness, as its impact goes far beyond legal marginalization and can lead to severe abuses—even genocide.[78]

4. THE USE OF CITIZENSHIP REVOCATION AGAINST NATURALISED IMMIGRANTS AS A COUNTER-TERRORISM MEASURE

4.1. THE HUMAN RIGHT TO NATURALISATION

Since the time of the FR, citizenship has been closely linked to efforts aimed at dismantling legal inequalities. Paradoxically, as the 21st century began, the global practice of assigning citizenship based on birthright has emerged as a significant obstacle to both mobility and access to opportunities.[79] The challenge today lies in addressing the injustice of a birthright transmission system that allows morally arbitrary circumstances of birth to dramatically shape people's life chances, while simultaneously preserving the collective good and the sense of belonging that citizenship provides.[80]

Emerging State practices enable both locals and immigrants to reshape their identities around a narrative of inherited traits, which frames aspects like class and race as though they were biologically determined.[81] If citizenship is understood in terms of heritability, then naturalised citizens—those who have acquired citizenship rather than inherited it by birthright—may be viewed as inherently different or less *permanent* members of the nation. This perception can make naturalised citizens more vulnerable to revocation, as they may be seen as not fully belonging in the same way as birthright citizens, whose identity and rights are often viewed as *inherited*.

According to Brubaker, citizenship functions as both an instrument and an object of social closure, reflecting its inherently bounded nature. The boundaries of belonging are drawn differently across various political systems. This was true in ancient Greece, where, as Aristotle observed, *"the man who is a citizen in a democracy is often not one in an oligarchy."* It remains true in modern Europe today, where an immigrant who would qualify for citizenship in one polity might not be eligible in another.[82]

There are currently three interconnected means of acquiring citizenship. (1) Through descent, known as *jus sanguinis*, (2) by being born within a country's territory, referred to as *jus soli*, (3) and an emerging alternative, the stakeholder principle or *jus nexi*, which emphasizes a genuine and lasting connection to the political community, granting citizenship rights to those with a real and effective link or a permanent interest in membership. Acqu-

[78] Audrey Macklin, 'Citizenship Revocation and the Privilege to Have Rights' [2014] SSRN Electronic Journal 8 <http://www.ssrn.com/abstract=2507786> accessed 13 November 2024.

[79] Ayelet Shachar, 'The Worth of Citizenship in an Unequal World' (2007) 8 Theoretical Inquiries in Law 368 <https://www.degruyter.com/document/doi/10.2202/1565-3404.1154/html> accessed 4 November 2024.

[80] Ayelet Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Harvard University Press 2009) 85.

[81] Bill Maurer, '"Belonging," Citizenship and Flexible Specialization in a Caribbean Tax Haven (British Virgin Islands)' (1993) PoLAR: Political and Legal Anthropology Review 9 15.

[82] Brubaker (n 25) 75.

iring citizenship through jus sanguinis principle, or citizenship by descent, was seen as a necessary response to the challenges of emigration and depopulation, which threatened the nation-building process.[83]

Naturalisation,[84] remains the sole legal route to obtain citizenship after birth.[85] As a matter of State practice, virtually all countries offer a pathway for naturalisation, allowing individuals to acquire citizenship following birth. This practice is increasingly seen as a requirement under international law. The RC for instance, encourages States to facilitate the naturalisation of refugees. Article 34 states that: *"The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings."*[86]

The understanding of RC is further supported by the ECN, which mandates that Member States ensure the possibility of naturalisation of persons lawfully and habitually resident on their territory.[87] Even though the Explanatory Report of the Convention states that the right to citizenship does not diminish the sovereign discretion of States, the actual shift introduced by the Convention reveals a deeper transformation. While the Report highlights that the primary aim is to prevent statelessness, which is recognised as a rule of customary international law, [88] the Convention also reflects a growing understanding of naturalisation as more than a discretionary act.

This shift reflects the evolving understanding of naturalisation, transforming it from a discretionary *favour* into a recognized *right.* Political theorist Benhabib supports this view, arguing that: *"Would be objectionable from a moral point of view is the absence of any procedure or possibility for foreigners and resident aliens to become citizens at all; that is, if naturalisation were not permitted at all, or if it were restricted on the basis of religious, ethnic, racial, and sexual preference grounds, this would violate the human right to membership."*[89]

For decades, the right to belong to a community has been regarded as fundamental, often

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[83] Gijsbert Oonk, 'Sport and Nationality: Towards Thick and Thin Forms of Citizenship' (2022) 24 National Identities 199; Siobhán Mullally, 'Defining The Limits of Citizenship: Family Life, Immigration and "Non-Nationals" In Irish Law' (2004) 39 Irish Jurist 335-336.

[84] That is any mode of acquisition after birth of a citizenship not previously held by the target person that requires an application by this person or their legal agent as well as an act of granting citizenship by a public authority. *Naturalisation* <https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/naturalisation_en> accessed 11 November 2024.

[85] Shachar (n 80) 113.

[86] Convention Relating to the Status of Refugees 1951 (UNTS 189).

[87] *"Article 6 § 3: Each State Party shall provide in its internal law for the possibility of naturalisation of persons lawfully and habitually resident on its territory. In establishing the conditions for naturalisation, it shall not provide for a period of residence exceeding ten years before the lodging of an application."* European Convention on Nationality.

[88] 'Explanatory Report to the European Convention on Nationality' (1997) 166, 7-8 <https://rm.coe.int/16800ccde7> accessed 10 November 2024.

[89] Spiro (n 5) 723; Seyla Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge University Press 2004) 141 <https://www.cambridge.org/core/product/identifier/9780511790799/type/book> accessed 6 November 2024.

termed the *right to have rights* and the *sine qua non* of various basic rights. [90] Belonging is often shaped by factors beyond the legal frameworks of citizenship or residency and is influenced by what have been called *identity-infused* definitions of inclusion and exclusion.[91] Together, these levels help to construct and reinforce the boundaries of political communities, defining who is accepted as a member and who is not. This interplay between legal status and social belonging is particularly evident in citizenship frameworks.

A critical manifestation of this interplay arises in systems that differentiate between birthright citizens and those acquiring citizenship through naturalisation, creating a hierarchical or two-tiered citizenship structure evident across multiple jurisdictions. For instance, in France, under Article 25 § 1 of the French Civil Code, citizenship revocation explicitly targets only those individuals who became citizens through naturalisation. According to this provision, denaturalisation can only occur if the acts were committed before the acquisition of French citizenship or within a period of ten years following it. In cases of particularly grave crimes, such as those outlined in Article 25 § 1, this time frame is extended to fifteen years.[92]

Ireland similarly distinguishes naturalised citizens from birthright citizens in terms of the security of their citizenship. Under Section 19 of the Irish Nationality and Citizenship Act 1956, the Minister for Justice has the discretion to revoke a certificate of naturalisation if satisfied certain conditions are met, creating a distinct vulnerability for naturalised citizens.[93] Within this system, certain individuals enjoy secure citizenship, while others face the risk of having their citizenship revoked.[94] This practice raises concerns of discrimination, as it differentiates between citizens based on how they acquired their status.

The power to revoke the citizenship of naturalised citizens is inherently discriminatory, as it is a law which targets only certain categories of citizens. Additionally, the requirement for naturalised Irish citizens residing abroad to file an annual "Declaration of Intention" to retain their citizenship raises significant concerns about whether this practice constitutes

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[90] Hannah Arendt, *The Origins of Totalitarianism* (New ed with added pref, Harcourt Brace Jovanovich 1973) 298-299; Matthew J Gibney, 'Should Citizenship Be Conditional? The Ethics of Denationalization' (2013) 75 The Journal of Politics 646, 651.

[91] Yuval-Davis offers a framework for understanding belonging at three levels: (1) Social locations (including race, gender, and birthplace), (2) emotional and identity-based aspects (such as language, culture, and sometimes religion), (3) and values connected to ethics and politics, like democracy and human rights. Maurer (n 81) 10; Nira Yuval-Davis, 'Belonging and the Politics of Belonging' (2006) 40 Patterns of Prejudice 197.

[92] Code Civil 2016.

[93] *"Article 19 § 1: The Minister may revoke a certificate of naturalisation if he is satisfied—(a) that the issue of the certificate was procured by fraud, misrepresentation whether innocent or fraudulent, or concealment of material facts or circumstances, or (b) that the person to whom it was granted has, by any overt act, shown himself to have failed in his duty of fidelity to the nation and loyalty to the State, or (c)...., or (d) that the person to whom it is granted is also, under the law of a country at war with the State, a citizen of that country, or (e) that the person to whom it is granted has by any voluntary act other than marriage acquired another citizenship."* Irish Nationality and Citizenship Act 1956.

[94] Joint Submission, 'Universal Periodic Review' (The Immigrant Council of Ireland (Immigrant Council), European Network on Statelessness (ENS), and Institute on Statelessness and Inclusion (ISI) 2021) Review 39th Session 11-12 <https://www.statelessness.eu/sites/default/files/2022-11/ENS-UPR_39_Submission_Ireland.pdf> accessed 11 November 2024.

unequal and discriminatory treatment.[95] This legal approach fosters the marginalization of naturalised citizens, creating a reality in which a naturalised citizen may acquire Irish citizenship but, as Otukoya states, is never fully recognised as *"genuinely Irish."*[96]

International human rights law, such as ICCPR, emphasizes equal protection under the law without discrimination. Article 26 states that, *"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."*[97] This provision provides grounds for legal challenges against the unequal treatment of naturalised citizens. However, in practice, naturalised citizens are particularly at risk, as there are no explicit safeguards to prevent the revocation of their citizenship from resulting in statelessness,[98] leaving them exposed to legal and social disenfranchisement.

Beyond citizenship revocation, Irish law permits the refusal or cancellation of passports, such as when a child born in Ireland doesn't qualify for citizenship due to their parent's status. While an appeal process exists, there are no safeguards to prevent statelessness during this period. Ireland's approach should align with CRC, emphasizing the child's right to citizenship, the best interests of the child, and non-discrimination. Compared to international standards, including the Principles on Deprivation of Nationality, Irish law lacks sufficient protections against statelessness and disproportionately affects naturalised citizens, often from minority backgrounds.[99] The distinction between birthright and naturalised citizens becomes even more evident, particularly when considering the additional requirements placed on naturalised citizens.[100]

On the one hand, unlike birthright citizens, naturalised individuals undergo a thorough evaluation process, including background checks and an oath of allegiance, sometimes even relinquishing their original citizenship. This act of dedication is a more deliberate choice compared to birthright citizens, who inherit their citizenship without any comparable commitment. Consequently, naturalised citizens are more vulnerable to revocation, highlighting the inequities between the two groups. Their commitment appears more substantial, as they

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[95] Doyle (n 6); *"Article 19 § 1—(c) that (except in the case of a certificate of naturalisation which is issued to a person of Irish descent or associations) the person to whom it is granted has been ordinarily resident outside Ireland (otherwise than in the public service) for a continuous period of seven years and without reasonable excuse has not during that period registered annually in the prescribed manner his name and a declaration of his intention to retain Irish citizenship with an Irish diplomatic mission or consular office or with the Minister."* Irish Nationality and Citizenship Act 1956.

[96] Bashir Otukoya, 'Bheith Éireannach (Becoming Irish): Privilege or Right' (2016) 27 Irish Studies in International Affairs 57, 70.

[97] International Covenant on Civil and Political Rights 1966 (999).

[98] 'Joint Submission Universal Periodic Review' (n 94) 11-12.

[99] ibid 1-13.

[100] In Ireland, historically a land of emigration, debates around immigration and citizenship did not become central to political discussions until more recent years. Mullally, 'Defining The Limits of Citizenship: Family Life, Immigration and "Non-Nationals" In Irish Law' (n 83) 336.

make life-altering choices that birthright citizens do not face.[101]

The issue of revoking citizenship for naturalised individuals becomes even more critical in the context of evolving global trends, where counter-terrorism and security measures increasingly blur the lines between administrative actions and punitive revocations. In exploring the punitive nature of citizenship revocation, Sandra Mantu argues that *"we are actually witnessing a new way of conceptualising state power whereby depriving individuals of their citizenship status is a form of penal sanction to be applied to citizens in response to perceived crimes against public security by act or by association."*[102] This perspective highlights the shift in how States exercise authority over individuals, framing citizenship revocation not merely as an administrative measure but as a punitive response with significant consequences for the individual concerned.

On the other hand, disregarding the international non-punishment principle may result in additional grave human rights violations.[103] The past two decades have seen a convergence of counter-terrorism laws, immigration policies, and citizenship regulations. Countries like Canada, Australia, the UK, and several European nations have enacted or are considering laws that allow for citizenship revocation based on suspicions of terrorism.[104] Such developments amplify the existing disparities, further entrenching a system where certain citizens remain at risk of losing their status, reflecting broader debates around national security and human rights.[105]

4.2. COMPARATIVE CASE LAW IN CITIZENSHIP REVOCATION

While international law permits the revocation of citizenship under very limited circumstances, its use in addressing national security concerns, particularly in cases involving individuals detained in Syria, has sparked significant debate.[106] Shamima Begum (SM), for instance, left her home country of the UK as a teenager to join ISIS in Syria and was later

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[101] Shachar (n 79) 374.

[102] Sandra Mantu, 'Citizenship in Times of Terror: Citizenship Deprivation in the UK' [2015] Centre for Migration Law Faculty of Law Radboud University Nijmegen, 5 <https://repository.ubn.ru.nl/bitstream/handle/2066/143370/143370.pdf?sequence=1&isAllowed=y> accessed 26 November 2024.

[103] Siobhán Mullally, 'Implementation of the Non-Punishment Principle' (United Nations General Assembly 2021) A/HRC/47/34 3 <https://documents.un.org/doc/undoc/gen/g21/108/00/pdf/g2110800.pdf> accessed 9 December 2024.

[104] Zahra Babar, 'The "Enemy Within": Citizenship-Stripping in the Post–Arab Spring GCC' (2017) 71 The Middle East Journal 528.

[105] Historically, Western democracies restricted the withdrawal of citizenship to naturalised individuals, treating it as an administrative measure for cases like fraudulent acquisition. T Alexander Aleinikoff, 'Theories of Loss of Citizenship' (1986) 84 Michigan Law Review 1471-1503; According to Craig Forcese, those proceedings were mired in court battles, not least because the grounds for revocation were limited to fraud—or more precisely, to obtaining citizenship by *"false representation or fraud or by knowingly concealing material circumstances."* Craig Forcese, 'A Tale of Two Citizenships: Citizenship Revocation for "Traitors and Terrorists"' [2013] SSRN Electronic Journal 553.

[106] von Rütte (n 8) 287; Tanya Mehra, 'Deprivation of Nationality after a Terrorist Conviction: The Uncomfortable Truth' *The International Centre for Counter-Terrorism* (5 April 2024) <https://www.icct.nl/publication/deprivation-nationality-after-terrorist-conviction-uncomfortable-truth> accessed 14 November 2024.

revoked of her British citizenship in the interest of national security.[107] One of the central and most debated aspects of SM's defence is the assertion that she was a victim of human trafficking.

As a minor at the time, she was allegedly groomed or coerced by ISIS recruiters, who persuaded her and two other girls of similar age to leave the UK and travel to Syria. Upon her arrival, she was swiftly married, which her legal representatives argue is clear evidence that she was trafficked for the purposes of sexual exploitation and domestic servitude. In her appeal, SM's lawyers placed significant emphasis on this trafficking claim. Importantly, the Special Immigration Appeals Commission (SIAC) recognised that there were credible grounds to suspect she had indeed been trafficked to Syria.[108]

According to both international standards and domestic UK policy, such circumstances should prompt protection and support rather than punishment. Nevertheless, SIAC ultimately held that the trafficking concerns did not override national security considerations. The tribunal concluded that, even if she had been subjected to exploitation, the Home Secretary had the legal authority to prioritise her classification as a security threat.[109] These objections highlight broader issues, as the debate over citizenship revocation remains deeply intertwined with the so-called *war on terror*, national security priorities, and the adoption of increasingly strict immigration and denaturalisation policies.[110]

UN experts have raised concerns about the decision to revoke SM's citizenship, highlighting her vulnerability as a potential victim of trafficking and calling for the UK Government to reconsider its approach. They emphasized the importance of ensuring protections for individuals at risk, particularly in cases involving trafficking. They stressed that, *"under international, European and UK law, any supposed question of consent or voluntariness, or use of force, deception or coercion is irrelevant, where the victim of trafficking is a child."*[111]Additionally, revocation policies do not guarantee protection against other forms of exploitation, such as sexual exploitation, which could affect men as well as women.

The case of Ali Charaf Damache (ACD) in Ireland similarly underscores the complexities of citizenship revocation in the context of national security. ACD, a naturalised Irish

[107] The Court of Appeal concluded that the decision to revoke SM of her British citizenship was not unlawful. As a result, SM's appeal from the decision of the Special Immigration Appeals Commission (SIAC) was dismissed. Begum v The Secretary of State for The Home Department Civ 152 (The Court of Appeal, 23.02.2024).

[108] Vebi Levni and Nicole Cumiskey, 'Revocation of Shamima Begum's Citizenship: What Happened and What Comes Next?' (*Irish Centre for Human Rights*, 24 April 2025) <https://ichrgalway.org/2025/04/24/revocation-of-shamima-begums-citizenship-what-happened-and-what-comes-next/> accessed 12 June 2025.

[109] ibid.

[110] Shai Lavi, 'Citizenship Revocation as Punishment: On the Modern Duties of Citizens and Their Criminal Breach' (2011) 61 University of Toronto Law Journal 784.

[111] 'UN Experts Deplore Continuing Failures of Protection for Shamima Begum' (Human Rights Office of the High Commissioner 2024) <https://www.ohchr.org/en/press-releases/2024/03/un-experts-deplore-continuing-failures-protection-shamima-begum> accessed 29 November 2024.

citizen who also holds Algerian citizenship,[112] was implicated in terrorism-related activities, leading to legal proceedings and his subsequent conviction.[113] Following these events, the Irish Minister for Justice sought to revoke his Irish citizenship under Article 19 of the Act of 1956. Nonetheless, the Supreme Court of Ireland struck down the revocation process,[114] ruling that it failed to meet the *high standards of natural justice* required for such a significant decision.

The Court declared that the existing law governing the revocation of citizenship was unconstitutional on the grounds of natural justice, citing insufficient safeguards. It held that any revocation process must adhere to fair procedures and incorporate adequate protections to safeguard the rights of individuals facing the loss of citizenship. The Court emphasized that the procedure for revoking someone of their citizenship must meet minimum procedural standards to align with the State's human rights obligations. Consequently, procedural safeguards are necessary to prevent individuals from becoming stateless if their naturalisation certificate is revoked.[115]

In ACD case, the Irish Human Rights and Equality Commission (IHREC) intervened as *amicus curiae*, emphasizing the importance of procedural fairness and judicial oversight to prevent executive overreach. The IHREC warned that revoking citizenship without robust safeguards could violate fundamental rights and set a dangerous precedent.[116] This reflects broader international concerns regarding the use of citizenship stripping as a counter-terrorism measure, which is often criticized for undermining due process and fundamental human rights.

The principle of legal proportionality plays a central role in cases concerning the revocation of citizenship as a counter-terrorism measure. To satisfy this standard, any measure resulting in the loss of citizenship must pursue a legitimate aim in line with the objectives of international human rights law and must represent the least intrusive means available to

[112] According to Article 22 of the Algerian Citizenship Code, any individual's citizenship may be revoked. This broad scope raises significant concerns when considered alongside the views of UN experts, particularly in cases where revocation risks rendering individuals stateless. If Ireland had revoked ACD's citizenship, he could also lose his Algerian citizenship under Article 22, which permits revocation for acts deemed harmful to State interests. This could leave him stateless, raising significant human rights challenges, as statelessness often results in the loss of fundamental protections under international law. Algerian Citizenship Code 1970 [Decree no. 70-86].

[113] Damache v Minister for Justice IEHC 444 (The High Court, 31.05.2019)

[114] The new Bill is signed by the Irish President on 23 July 2024, with several concerns. These include restrictive timeframes for naturalised citizens to respond to revocation notices (as little as 28 days under Sections 19(IC) and (IJ), limitations on the method of serving such notices, and doubts about the independence of the Committee of Inquiry, whose procedures will be determined by the Minister. Furthermore, the Bill permits withholding reasons for revocation when national security is invoked (Section 19(1O) which further compromises transparency and procedural fairness. Courts, Civil Law, Criminal Law and Superannuation (Miscellaneous Provisions) Act 2024 <https://www.oireachtas.ie/en/bills/bill/2024/48> accessed 7 November 2024.

[115] Damache v Minister for Justice IESC 6 (The Supreme Court, 10.02.2021).

[116] 'Outline Submissions in Respect of the Final Orders of the Supreme Court' <https://www.ihrec.ie//app/uploads/2021/01/Damache-v-MJE-ors-2019-141-IHREC-Submissions-FINAL-111220_310243.pdf> accessed 13 November 2024.

achieve that aim.[117] This ensures that state actions remain balanced and do not exceed what is necessary in a democratic society.

Indeed, there is no explicit safeguard in Irish legislation to prevent statelessness in cases where an individual's certificate of naturalisation is revoked. In 2022, the UNHCR recommended amending citizenship revocation laws to include protections against statelessness in individual cases.[118] Nevertheless, these recommendations were not incorporated into the revised legislation. The Minister for Justice stated during the debate that statelessness could be considered in revocation decisions should such a scenario arise. This has raised concerns for the Immigrant Council of Ireland, particularly due to the lack of a formal statelessness determination procedure in Ireland.[119]

There are also particular risks of creating de facto statelessness, which raises significant concerns under international human rights law. For dual citizens, evaluating the genuine nexus to their country of origin is crucial; revocation without substantive ties to another State can leave individuals vulnerable to legal limbo,[120] undermining the obligation to prevent and reduce statelessness. This is crucial to ensuring that all citizens—whether by birth or naturalisation—are afforded equal dignity and protection under the law.

Last but not least, the principle of non-refoulement prohibits deporting individuals to countries where they may face persecution, torture, or other serious harm.[121] Revoking citizenship in such cases could pave the way for deportation to jurisdictions with severe irreversible human rights violations, including the death penalty,[122] violating international law and compromising Ireland's role as a protector of fundamental human rights.[123]

This practice erodes the universality of citizenship, reducing it from a protected right to a revocable privilege. Judicial interpretations of citizenship revocation reflect this divide. The Irish Supreme Court declared citizenship revocation unconstitutional in the ACD case. Conversely, the ECtHR unanimously upheld Denmark's decision to revoke the citizenship

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[117] Fionnuala Ní Aoláin, 'The Human Rights Consequences of Citizenship Stripping in the Context of Counter-Terrorism with a Particular Application to North-East Syria' (The United Nations Special Rapporteur on Counter-Terrorism and Human Rights 2022) 13 <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/Final-Report-Deprivation-Citizenship.pdf> accessed 13 November 2024.

[118] Filippo Grandi, 'Mapping Statelessness in Ireland' (The UN Refugee Agency 2022) 7 <https://www.unhcr.org/ie/sites/en-ie/files/2023-05/2022_Statelesseness_Ireland-print%20%282%29.pdf> accessed 13 November 2024.

[119] 'Seanad Éireann Debate' (17 July 2024) <https://www.oireachtas.ie/en/debates/debate/seanad/2024-07-17/22/> accessed 13 November 2024; 'To Members of Seanad Éireann' <https://www.iccl.ie/wp-content/uploads/2024/07/240716-ICCL-Letter-to-Senators-on-Revocation-of-Citizenship-.pdf> accessed 13 November 2024.

[120] 'Statelessness' *Immigrant Council of Ireland* <https://www.immigrantcouncil.ie/campaign/statelessness> accessed 17 November 2024.

[121] 'The Principle of Non-Refoulement under International Human Rights Law' <https://migrationnetwork.un.org/resources/principle-non-refoulement-under-international-human-rights-law> accessed 22 November 2024.

[122] 'The Death Penalty in Law and Practice Algeria' *Together Against the Death Penalty* (2023) <https://www.ecpm.org/app/uploads/2022/10/flyer-ALGERIE-GB-171022-MD.pdf> accessed 17 November 2024.

[123] Ireland presents itself as a strong supporter of international human rights and upholds a liberal tradition grounded in the protection of individual rights. Mullally, 'Defining The Limits of Citizenship: Family Life, Immigration and "Non-Nationals" In Irish Law' (n 83) 334.

of a dual national involved in counter-terrorism activities and to ban him from re-entering Denmark, even though he had children residing in the country.[124]

The revocation was based on Section 8B § 1 of the Danish Nationality Act, which permits the deprivation of nationality for dual citizens convicted of terrorism-related offences.[125] Although Johansen held Tunisian citizenship, his ties to Tunisia were limited to brief visits and some cultural familiarity. Nevertheless, the ECtHR found no violation of Article 8 of the ECHR, accepting that the Danish authorities had conducted an adequate and proportionate review of the case.[126]

While the Court acknowledged Johansen's attachment to Denmark, it held that his connection to Tunisia was not "insignificant," despite being largely symbolic. This decision has been widely criticised for contributing to the legal ambiguity surrounding the threshold of connection to another state that would render revocation disproportionate.[127] As the Court continues to afford States a wide margin of appreciation in terrorism-related cases,[128] Johansen exemplifies a growing jurisprudence that, despite its reference to proportionality and human rights safeguards, offers limited substantive protection against the revocation of citizenship.

Well-established case-law underscores the importance of a genuine nexus between the individual and the States.[129] When an individual's actions fundamentally betray this nexus, the erosion of mutual bonds could, in limited circumstances, justify the loss of citizenship. Nonetheless, any decision to revoke citizenship must be accompanied by rigorous procedural safeguards, clear adherence to human rights norms, and thorough judicial oversight to ensure it remains an exceptional measure, strictly proportionate to the nature and severity of the individual's breach of loyalty.

Punitive measures like citizenship revocation risks exacerbating security threats rather than addressing them. Stripping individuals of their citizenship can lead to alienation and resentment, potentially fostering further radicalization and strengthening ties to extremist networks.[130] Instead, effective counter-terrorism strategies should prioritize accountability through judicial processes, ensuring that perpetrators are held responsible within the framework of the rule of law, rather than displacing the problem through exclusion.

In this context, national and regional courts must critically assess the legal frameworks

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[124] Johansen v Denmark App no 27801/19 (ECtHR, 01.02.2022).

[125] Article 8B. (1). *"A person convicted of violation of one or more provisions of Parts 12 and 13 of the Criminal Code may be deprived of his or her Danish nationality by court order unless this will make the person concerned stateless."* Consolidated Act on Danish Nationality 2004 (Act No 422).

[126] Christian Prener, 'The ECtHR on Citizenship Revocation: Solving or Compounding the Confusion?' (*Global Citizenship Observatory*, 29 March 2022) <https://globalcit.eu/the-ecthr-on-citizenship-revocation-solving-or-compounding-the-confusion/> accessed 13 June 2025.

[127] ibid.

[128] Ghoumid and others v France App no 52273/16 (ECtHR, 25.09.2020).

[129] *Nottebohm Case* Liechtenstein v Guatemala no 18 (ICJ, 06.04.1955).

[130] Many stakeholders interviewed for the Tanya's study in the Netherlands expressed their concern that revocation of citizenship is counter-productive and can lead to re-engaging with radical networks. Mehra (n 106).

governing citizenship revocation and the treatment of naturalised citizens to ensure alignment with international standards. This is necessary to uphold the principles of equality and non-discrimination, guaranteeing that all citizens, whether by birth or through naturalisation, are treated with equal dignity and legal protection.[131] Revocation of citizenship should be handled as a judicial matter rather than an administrative one, incorporating procedural safeguards and respecting the requirements of natural justice.[132]

5. CONCLUSION

The case law demonstrates the tensions inherent in balancing national security with individual rights, particularly within the context of citizenship revocation. These tensions span both scholarly debates and judicial decisions across jurisdictions, underscoring the lack of consensus on the issue. Lavi argues that revocation, as an inherently political act, should serve as a punitive response to political crimes, such as terrorism.[133] According to this view, individuals who commit politically motivated violence effectively renounce their citizenship by violating the constitutional bond that sustains the state's self-governance.[134]

In contrast citizenship scholar, Gibney warns that citizenship revocation, even in cases of terrorism, conflicts with fundamental human rights principles. He argues that using revocation as a tool to punish or protect the State risks creating a hierarchy of citizenship, where naturalised individuals are disproportionately vulnerable. [135] Macklin also warns that such measures pose significant human rights risks, particularly when they result in statelessness. She argues that revocation undermines the core value of citizenship and breaches international norms protecting the right to citizenship.[136]

While this article has demonstrated that revocation of citizenship may result in grave consequences, including statelessness and *erga omnes* breaches of *jus cogens* norms, it may be overly simplistic or idealistic to advocate that the practice is entirely unlawful or unconstitutional in the contemporary complex global landscape. PCIJ established early on that citizenship matters fall primarily within the sovereign jurisdiction of States, affirming each

[131] Prime Minister Justin Trudeau emphasized that making citizenship conditional for certain individuals undermines the value of citizenship for all Canadians. It can be suggested that Ireland adopt a similar perspective in its approach to citizenship policies. Vice News, '"A Canadian is a Canadian": Liberal Leader Says Terrorists Should Keep Their Citizenship' (28 September 2015) <https://www.vice.com/en/article/7xaxby/a-canadian-is-a-canadian-liberal-leader-says-terrorists-should-keep-their-citizenship> accessed 03 December 2024.

[132] Given the significance of citizenship to an individual, the process for its revocation must be thorough and robust. In line with Resolution 32/5 of the Human Rights Council, endorsed by the UN General Assembly in July 2016, the procedure must observe minimum procedural standards in order to comply with the States human rights obligations. This necessitates the involvement of an independent and impartial decision-maker. 'Ireland - Damache v Minister for Justice' <https://caselaw.statelessness.eu/caselaw/ireland-damache-v-minister-justice> accessed 27 November 2024.

[133] Shai Lavi, 'Citizenship Revocation as Punishment: On the Modern Duties of Citizens and Their Criminal Breach' (2011) 61 University of Toronto Law Journal 805-808.

[134] Babar (n 104) 529.

[135] Matthew J Gibney, 'Should Citizenship Be Conditional? The Ethics of Denationalization' (2013) 75 The Journal of Politics 646-657.

[136] Macklin (n 78) 50-51.

States inherent right to determine its citizens. The well-established Nottebohm case also underscores the importance of a genuine nexus between the individual and the State, illustrates that State discretion in matters of citizenship retains legal and normative weight within the current global framework.

Together, these principles demonstrate that State authority over citizenship retains legal weight, even amid growing human rights scrutiny in the global landscape. As a result, in exceptional cases such as individuals who lead organisations responsible for mass atrocities or serious human rights violations, international law may justify revocation. In these circumstances the principle of proportionality may support revocation as a rare and extraordinary measure if it serves the legitimate aim of protecting public safety.

As stated by the United Nations Special Rapporteur on Counter-Terrorism and Human Rights Ní Aoláin, for the revocation of citizenship to be proportionate, measures must serve a legitimate purpose consistent with the objectives of international human rights law and be the least intrusive means necessary to achieve the aim pursued by the State.

Effective counter-terrorism measures must prioritize accountability over the exclusion of individuals from communities. States must prosecute individuals within the rule of law framework, ensuring fair trials and adherence to justice principles. Administrative revocation procedures undermine procedural safeguards and erode public trust in legal systems. Instead, decisions about citizenship revocation must be firmly rooted in judicial processes that uphold natural justice, proportionality, and international human rights standards.

However, any discussion of the lawfulness or legitimacy of citizenship revocation must also confront the discriminatory practices often embedded in its application. In many jurisdictions, revocation powers disproportionately target naturalised citizens, while birthright citizens are largely shielded from similar measures. This disparity undermines the principle of equality before the law and reinforces a two-tiered system of citizenship. Unlike birthright citizens, naturalised individuals undergo a thorough evaluation process, including background checks and an oath of allegiance, and are often required to relinquish their original citizenship.

This act reflects a deliberate and legally conscious decision to join a new political community—one that arguably demonstrates a deeper level of commitment than the unexamined inheritance of citizenship at birth. Yet despite fulfilling legal obligations and often showing strong integration, naturalised immigrants remain more vulnerable to the loss of status. Such differentiation risks normalising a hierarchy of citizenship that is fundamentally incompatible with international human rights standards.

On the other hand, the traditional genuine nexus between citizenship and State sovereignty demands reassessment considering contemporary challenges. As Doyle quoted, sovereignty is no longer an absolute authority but a concept that must be balanced with human rights principles like equality. A global approach, wherein States voluntarily cede sovereign powers over citizenship to a transnational entity, could offer a transformative solution.

The establishment of a transnational framework under the United Nations or another international body to oversee denaturalisation policies would ensure alignment with global

human rights norms. Such a system could either suspend or entirely prohibit citizenship revocation through binding international regulations. This approach would address critical issues such as statelessness and fundamental human rights violations while advancing a more equitable global standard for citizenship.

A transnational system that treats citizenship as an inseparable part of human rights would not only protect individuals but also establish the foundation for a more just and inclusive global order. This framework, which is very significant for immigrants who acquire their citizenship through naturalisation, would guarantee the fundamental rights of individuals, irrespective of whether citizenship is acquired by birth or through naturalisation, ensuring uniform protections for all.

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