



## Depriving a suspected terrorist of his citizenship was lawful under the Convention

In its decision in the case of [K2 v. the United Kingdom](#) (application no. 42387/13) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

K2 was suspected of taking part in terrorism-related activities in Somalia. In 2010, the Secretary of State for the Home Office deprived him of his UK citizenship and barred him from re-entering the country.

*K2 claimed that these decisions had violated his right to respect for private and family life under Article 8, and had been discriminatory.*

The Court ruled that the complaints were inadmissible, as they were clearly without merit. Although an arbitrary denial or revocation of citizenship might in some circumstances raise an issue under Article 8, because of its impact on the private life of an individual, the Court found that no such issue arose in the present case. The Home Secretary at the time had acted swiftly and diligently, and in accordance with the law. K2 had had a statutory right to appeal and access to judicial review but the UK courts had rejected his claims after giving them a comprehensive and thorough examination. Though some of the case against K2 had been kept secret for security reasons, his special advocate had had access to this information, and the nature of the case was broadly known to K2.

*K2 also argued that he could not properly make his case from abroad, because of fears that his communications could be intercepted by Sudanese counter-terrorism authorities that would then harm him.*

The Court held that Article 8 cannot be interpreted so as to impose an obligation on States to facilitate the return of every person deprived of citizenship in order for them to pursue an appeal against that decision. The UK court had rejected K2's claims about not being able to argue his case from abroad, and the Court did not consider itself in a position to call into question that finding. Furthermore, the UK court had adopted a cautious approach to the case given the absence of instructions from the applicant, but still found conclusive evidence that he had been engaged in terrorism-related activities. In any case, it was K2 who had originally chosen to leave the country. Finally, the Court noted that K2 would not be left stateless by the loss of UK citizenship (as he had Sudanese citizenship), and the interference to his private and family life caused by the deprivation of citizenship was limited. In these circumstances, the deprivation of citizenship had been lawful under Article 8.

### Principal facts

K2 was born in Sudan. He arrived in the UK as a child and became a naturalised UK citizen in 2000.

In 2009 K2 was arrested and charged with a public order offence, but, before he was required to surrender his bail, he left the UK.

There is a dispute whether from the UK he went directly to Sudan or whether he first travelled with two extremist associates to Somalia, where he engaged in terrorism-related activities linked to Al-Shabaab.

On 14 June 2010, the Secretary of State for the Home Office, having notified him of her intention to do so, made an order depriving him of his UK citizenship. On the same day, the Home Secretary

notified K2 of her decision to exclude him from the UK, on account of his terrorism-related activities and his links to extremists. It is common ground that at this time he was in Sudan.

K2 brought two sets of proceedings to challenge these decisions: a judicial review of the decision to exclude him and an appeal against the decision to deprive him of citizenship.

In the judicial review proceedings, K2 primarily complained that his exclusion from the UK had undermined his ability to challenge the deprivation of his citizenship in court. However, the High Court dismissed the claim in July 2011. The Court of Appeal upheld the judgment on appeal, and the Supreme Court refused further permission to appeal in February 2013.

The citizenship issue came before the Special Immigration Appeals Commission (“SIAC”). Though some of the case against K2 had been kept secret for security reasons, his special advocate had had access to this information, and the nature of the case was broadly known to K2. K2 claimed that he could rebut the allegations of terrorism-related activities, but maintained that he was unable to do so whilst he remained in Sudan. He asserted that he feared that his communications were subject to surveillance by the Sudanese authorities and that communicating about his case would expose him to a risk of harm from them.

SIAC rejected this argument in December 2014. It held that there were at least three viable means of communication between K2, his lawyers, and SIAC (“discreet” communications with lawyers in Sudan; internet-based communications such as email or skype; and through visiting friends or relatives). There was therefore no good reason why K2 could not instruct his lawyers and engage with the case. One year later, SIAC gave judgment on the substantive part of the appeal. It found that there was “conclusive” evidence that K2 had established associations with known extremists and that he had travelled to Somalia in the company of extremists to engage in terrorism-related activities. Furthermore, the court found it highly probable that the terrorism-related activities were, at least in part, directly involved with Al-Shabaab. The court concluded that the Home Secretary had been fully justified in deciding to deprive K2 of his British citizenship and dismissed the appeal. The Court of Appeal refused K2’s application for permission to appeal the judgment in July 2016.

## Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 27 June 2013.

K2 complained that the decisions to deprive him of his British citizenship and exclude him from the UK had violated his rights under Article 8 (right to private and family life). He further complained under Article 14 (prohibition of discrimination) read together with Article 8 that he had been treated differently from British citizens considered a threat to national security who did not hold a second nationality; and from non-national residents who enjoyed a suspensory appeal against the revocation of leave to remain in the United Kingdom.

The decision was given by a Chamber of seven, composed as follows:

Linos-Alexandre **Sicilianos** (Greece), *President*,  
Kristina **Pardalos** (San Marino),  
Ledi **Bianku** (Albania),  
Aleš **Pejchal** (the Czech Republic),  
Robert **Spano** (Iceland),  
Armen **Harutyunyan** (Armenia),  
Pauliine **Koskelo** (Finland), *Judges*,

and also Abel **Campos**, *Section Registrar*.

## Decision of the Court

### Article 8 (right to private and family life)

#### **The deprivation of UK citizenship**

The Court noted that an arbitrary denial or revocation of citizenship might in some circumstances raise an issue under Article 8, because of its impact on the private life of an individual. Two issues fell to be considered: whether the revocation was arbitrary, and what the consequences were for the applicant.

The removal of K2's citizenship was not arbitrary. First, it was done "in accordance with the law", because section 40(2) of the British Nationality Act 1981 empowers the Home Secretary to make an order depriving a person of British citizenship; and the Crown enjoys a common law prerogative power to exclude a person from the UK. Second, the authorities had acted swiftly and diligently: evidence suggested that K2 had left the UK in October 2009 and engaged in terrorist-related activities in Somalia; and the Home Secretary had deprived him of his citizenship in June 2010. Third, the Court noted that K2 had enjoyed sufficient procedural safeguards in relation to the decision. He had had a statutory right of appeal to SIAC, before which he had been provided with a statement setting out clearly the details of the national security case against him. In relation to the closed material, the Court noted that K2 had been represented by counsel and Special Advocates who had been appointed in order to address this evidence. The Court noted that it has previously held that similar SIAC proceedings had contained sufficient guarantees as required by Article 8.<sup>1</sup>

K2 had argued that he had been denied the opportunity to effectively participate in the proceedings due to his exclusion from the UK, claiming that communicating with his lawyers from Sudan would have put him at risk of harm from the Sudanese authorities. However, an out-of-country appeal does not necessarily make a decision to revoke citizenship "arbitrary", and Article 8 cannot be interpreted so as to impose a positive obligation on States to facilitate the return of every person deprived of citizenship in order to pursue an appeal against that decision. SIAC had found that K2's fears about his communications being intercepted were unfounded – and this conclusion was not inconsistent with the findings of the High Court and the Court of Appeal in the judicial review proceedings. Moreover, SIAC had taken an especially rigorous approach to the evidence, given the absence of instructions from K2, but had still found conclusive evidence of terrorism-related activities. Finally, the Court also noted the reason why K2 had had to make the appeal from outside the UK: his decision to flee the country before he was required to surrender his bail.

As for the consequences of the revocation of citizenship, the Court noted that K2 was not rendered stateless by the decision, as he was entitled to (and has since obtained) a Sudanese passport. Furthermore, the Court noted SIAC's findings, that K2 had left the UK prior to the decision to deport him; that his wife and child were no longer living in the UK and could freely go to Sudan; and that the applicant's own natal family could – and did – visit him reasonably often.

In view of these considerations, the Court held K2's claim that his deprivation of citizenship had violated Article 8 to be manifestly ill-founded.

#### **Exclusion from the UK**

Though the Court noted that the decision to exclude K2 from the UK had interfered with his private and family life, it also noted the limited nature of the interference, and SIAC's clear findings concerning the extent of his terrorism-related activities. The decision to exclude him was therefore not disproportionate with the legitimate aim of protecting the public from the threat of terrorism. The Court therefore held that this part of K2's application was also manifestly ill-founded.

1. *I.R. and G.T. v. the United Kingdom (dec.)*, nos. 14876/12 and 63339/12, §§ 63-65, 28 January 2014

### [Article 14 \(prohibition of discrimination\) read together with Article 8](#)

In regard to K2's complaint that he had been treated differently from British citizens considered a threat to national security – on the grounds that he possessed a second nationality – the Court noted that this argument had not been raised in the domestic courts. K2 had therefore failed to exhaust the domestic remedies available to him.

K2 also complained that he had been treated differently from non-national residents, because they enjoy a suspensory appeal against a decision to revoke their leave to remain in the UK. The Court held that this argument was misplaced. K2 had been denied an in-country appeal not because he was a British citizen, but because he had already left the UK of his own volition when the impugned decisions were taken. A non-national resident who had his leave to remain cancelled while out of the country would also not be permitted to return for the purposes of an appeal. Accordingly, the Court held that this part of the complaint was manifestly ill-founded, and therefore inadmissible.

*The decision is available only in English.*

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