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Selected issues regarding children's rights in the war on terror with a particular focus on Syria

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Keywords

terrorism, children, children's rights, repatriation, jurisdiction, Syria

Abstract

The aim of the article is to analyse the legal situation of the children held in camps in northeast Syria. The situation in the camps is devastating and poses a threat to the children's right to life as well as physical and mental integrity. The article explores whether the states of citizenship of these children exercise any jurisdiction over them, and if the answer is affirmative, to what extent they exercise this jurisdiction. Next, the research will focus on the question of whether the states of citizenship have the obligation to repatriate those children from Syria. To this aim, the status of these children as victims of human trafficking will be also examined. Lastly, the deliberations will focus on the policy of citizenship revocation that is applied by some states in terrorism combatting and it will be studied whether this policy can be applied to children in conformity with international law. It results from the analysis that states have obligations towards children placed in the Syrian camps being their nationals, especially an obligation to repatriate them and to enable their rehabilitation and reintegration.

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I. Introduction

Due to the prolonged conflict in Syria, this state remains one of the most dangerous places in the world. Fleeing armed conflict or the ISIS, around 60 000[1] people of mostly women and children[2] found shelter in camps like Al Hol and Roj in northeast Syria, which are under the control of the Syrian Democratic Forces (SDF) and the Autonomous Administration of North and East Syria (AANES)[3]. These people are kept there in deteriorating conditions with increasing violence[4], including the spread of the Da'esh (ISIS) cells in these camps and indoctrination of minors, leading to further radicalisation[5]. Some of these people are citizens of at least 57 other states, as results from the UN experts' call to those states to repatriate their citizens[6]. Nevertheless, the problems with this repatriation raises several legal issues. The aim of this article is to discuss the ones related to

1 Office of the High Commissioner for Human Rights, 'Syria: UN experts urge 57 States to repatriate women and children from squalid camps' *(Office of the High Commissioner for Human Rights*, 8 February 2021) <https://www.ohchr.org/en/press-releases/2021/02/syria-un-experts-urge-57-states-repatriate-women-and-children-squalid-camps?LangID=E&NewsID=26730> accessed 18 July 2023.

2 According to the European Parliament, these are 94%: European Parliament resolution of 11 March 2021, The Syrian conflict – 10 years after the uprising (2021/2576 (RSP)). Around 80% of children are under 12 years: Saeed Bagheri, Alison Bisset, 'International Legal Issues Arising from Repatriation of the Children of Islamic State' (2022) 27 JC&SL 367.

3 Syrian Kurdistan is a *de facto* autonomous region with its own administration since 2013. In 2014 it proclaimed a "Democratic Autonomous Administration of Rojava", and in 2018 it was renamed to AANES – ECtHR, *H.F. and others v. France,* Appl. nos. 24384/19 and 44234/20, Judgment of 14 September 2022, 13-14.

4 Imran Riza, Muhannad Hadi, 'Joint Statement on the Deteriorating Security at Al Hol Camp' (21 January 2001).

5 *F.B. et al. v France* (2019) appl. nos. 77/2019, 79/2019 and 109/2019, views of 9 March 2022, 3.8. UNSC, *Letter dated 31 December 2020 from the Analytical Support and Monitoring Team in accordance with paragraph (a) of annex I to resolution 2368 (2017) addressed to the Chair of the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities,* 3 February 2021, S/2021/68. ECtHR, *H.F. and others v. France,* 19-20. PACE Recommendation 2069/2020, *International obligations concerning the repatriation of children from war and conflict zones,* available at: https://pace.coe.int/en/files/28582/html, 2023-07-23. Helen Stenger, 'Victim versus villain: Repatriation policies for foreign fighters and the construction of gendered and racialised "threat narratives"' (2023) EJIS 8, 2.

6 Office of the High Commissioner for Human Rights, 'Syria: UN experts urge 57 States... United Nations, Return and Repatriation of Foreign Fighters and their families' *(Office of the High Commissioner for Human Rights*, 7 July 2023) <https://www.ohchr.org/en/special-procedures/sr-terrorism/return-and-repatriation-foreign-fighters-and-their-families> A call to repatriate women and children from camps in the northeast Syria was also made by the UN Secretary General: UN Secretary General, Children and armed conflict. Report of the Secretary General, Doc. A/74/845-S/2020/525 (June 9, 2020) <https://reliefweb.int/sites/reliefweb.int/files/resources/15-June-2020_Secretary-General_Report_on_CAAC_Eng.pdf> accessed 1 September 2023.

the children's rights and the states' obligations toward them. Some of these children allegedly collaborated with the Da'esh. They were either born in Syria or travelled there with their parents.

States are entitled to and at the same time obliged to protect public security and order within their own borders, including safeguarding their territory from terrorist threat. That is why the repatriation of the mentioned children might raise public security concerns[7]. On the other hand, children due to their age are very susceptible to influence of other people, some of them might be particularly vulnerable to radicalisation. In this paper it will be discussed whether public security concerns should prevail over rights of these children and whether states have any obligation towards radicalised minors being foreign fighters.

The deliberations cannot be detached from the conditions in which these children are being kept. The camps are located in an area covered by armed conflict. Apart of the aforementioned spread of Da'esh, the situation in the camps like Al-Hol or Roj is characterised as inhuman. The basic sanitary needs are not safeguarded, there is lack of basic necessities, like food, water or health care and education. Children die, suffer from war injuries, and PTSD[8]. Adolescent girls are disproportionally affected by sexual and gender-based violence, human trafficking, child marriage, and exploitation. A lot of births are never registered, so the children lack civil documentation and are exposed to statelessness[9].

States raise that due to the armed conflict on the Syrian territory, they are unable to provide for safe repatriation ways. State officials do not travel to these territories and diplomatic missions have been withdrawn several years ago. Nevertheless, it has to be added that the SDF and the AANES constantly express their wish to cooperate in repatriating foreign nationals to their states of origin and some repatriations have already taken place[10]. Therefore, technically these

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7 The PACE even indicates that this reluctance in repatriation is often rooted in ungrounded or overblown fears of terrorism, as well as xenophobia and Islamophobia, peddled by irresponsible actors in the media (including on social media): PACE, Committee on Social Affairs, Health and Sustainable Development, 'International obligations concerning the repatriation of children from war and conflict zones' (January 2020). <https://pace.coe.int/en/files/28498/html> accessed 23 July 2023.

8 UNCRC, *F.B. et al. v France* (2022), 6.5. ECtHR, *H.F. and others v France,* 19-25.

9 UN HRCouncil, *"They have erased the dreams of my children": children's rights in the Syrian Arab Republic*, Conference Room Paper of the Independent International Commission of Inquiry on the Syrian Arab Republic Doc. A/HRC/43/CRP.6 (13 January 2020). UN, 'Key principles for the protection, repatriation, prosecution, rehabilitation and reintegration of women and children with links to United Nations listed terrorist groups' April 2019, <https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/key_principles-april_2019.pdf> accessed 23 July 2023. European Parliament resolution of 11 March 2021, The Syrian conflict – 10 years after the uprising (2021/2576 (RSP)).

10 E.g. France repatriated 35 children: UNCRC, *F.B. et al. v France* (2022), 6.4. UNCAT, *C.P. and others v France,* 7.3. The Finnish government has also repatriated children with their mothers: Letter of Finland to the High Commissioner of Human Rights (26 March 2021).

repatriations can be organised and this article will not deplore this technical aspect of the repatriation issue. It will focus on legal issues, as the first part of this paper will be devoted to problems of jurisdiction. Afterwards, the obligation to repatriate the children from the Syrian camps will be discussed. Lastly, the paper will focus on the policy of citizenship revocation applied by some states in the fight against terrorism.

II. Jurisdiction

In the first place, states claim that they do not exercise jurisdiction over the children that are kept in the camps in northeast Syria, as this territory is under effective control of the SDF and the AANES, and therefore states have no positive obligation to protect human rights of children in these camps[11]. Even some domestic courts confirmed that the specific situation of these children does not justify exception to the principle of territorial jurisdiction of states[12] and the repatriation falls within conducting international relations, as it includes negotiations with a foreign state, and therefore it falls outside judicial competence of courts[13]. As a result, if a state has no jurisdiction over an individual, it has no obligation towards this individual as well[14].

Germany has repatriated four women and 19 children: Letter of Germany to the High Commissioner of Human Rights (25 March 2021). Norway has repatriated five orphans and two children along with their mother: Letter of Norway to the High Commissioner of Human Rights (26 March 2021). Sweden has facilitated the repatriation of several orphaned children: Letter of Sweden to the High Commissioner of Human Rights (26 March 2021). The United States repatriated 12 adults and 16 children: Letter of The United States to the High Commissioner of Human Rights (7 June 2021) All letters available at: <https://www.ohchr.org/en/special-procedures/sr-terrorism/return-and-repatriation-foreign-fighters-and-their-families> accessed 22 July 2023.

11 E.g. Letters sent to the UN High Commissioner on Human Rights by: Denmark (31 March 2021), the Netherlands (12 April 2021), Norway (26 March 2021), Spain (20 May 2021), Sweden (26 March 2021), the United Kingdom (16 April 2021) – all available at: https://www.ohchr.org/en/special-procedures/sr-terrorism/return-and-repatriation-foreign-fighters-and-their-families, 2023-07-22.

12 The Dutch Supreme Court, judgment no. 19/05666 of 26 June 2020, NL:HR:2020:1148.

13 Administrative Tribunal of Paris, ordonnance of 9 April 2019, no. 1906076/9. Administrative Tribunal of Paris, ordonnance of 9 April 2019, no. 1906077/9. Council of State (France), ordonnance of 23 April 2019, no. 429668. Council of State (France), ordonnance of 23 April 2019, no. 429669. Council of State (France), decision of 9 September 2020, no. 439520

14 Dalia Palombo, 'Extraterritorial, Universal, or Transnational Human Rights Law?' (2023) Israel L Rev. 56, 97.

As a rule, it is presumed that states' jurisdiction has a territorial character[15]. Nevertheless, acts of states that are performed or produce effects outside their territories can exceptionally constitute an exercise of jurisdiction, if there exist special features justifying it and it is limited by the sovereign territorial rights of the other relevant states[16]. In international law, the instances of extraterritorial jurisdiction are military occupation and exercising authority and control over a foreign person. Moreover, it is emphasized that a state cannot commit human rights violations on a territory of another state, which violations it could not perpetrate on its own territory[17]. The UN Human Rights Committee (UNHRC) even noticed that a state can exercise control over a person if it impacts the rights of this person in significant and foreseeable manner[18].

To this regard we can point out the following cases of extraterritorial jurisdiction in matters relating to human rights protection indicated by the European Court of Human Rights (ECtHR): where a state exercises effective control over another territory, where state authorities act abroad or their actions produce extraterritorial effects, expulsion and extradition cases, and lastly, consular and flag jurisdiction cases[19]. These are the instances in which a state is considered to exercise functional sovereignty abroad[20]. According to the ECtHR, extraterritorial jurisdiction might serve to fill lacunas in the system of human

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15 Article 2(1) of the International Covenant on Civil and Political Rights, UNTS 999, p. 407, Article 1 of the European Convention on Human Rights, UNTS 213, p. 221, Article 1(1) of the Inter-American Convention on Human Rights, UNTS 1144, p. 123, art. 22(1) of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UNTS 1465, p. 85. L. Garlicki, *Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności. Tom I. Komentarz do artykułów 1-18* (2010), 38-39.

16 ECtHR, *Banković and others v Belgium and others,* Appl. no. 52207/99, decision of 12 December 2001, 59-61, 67. ECtHR, *Al-Skeini and others v the United Kingdom,* Appl. no. 55721/07, judgment of 7 July 2011, 131.

17 ECtHR, *Cyprus v Turkey,* Appl. no. 25781/94, judgment of 10 May 2001, 71. UNHRC, *Salidas de Lopez v Uruguay,* Appl. no. 52/1979, views of 29 July 1981, CCPR/C/13/D/52/1979, 12.3. UNHRC, *Celiberti de Casariego v. Uruguay,* Appl. no. 56/1979, views of 29 July 1981, CCPR/C/13/D/56/1979, at. 10.3. Dalia Palombo, 'Extraterritorial, Universal...', 97. UN Special Rapporteurs, *Extra-territorial jurisdiction of States over children and their guardians in camps, prisons, or elsewhere in the northern Syrian Arab Republic,* <https://www.ohchr.org/Documents/Issues/Executions/UNSRsPublicJurisdictionAnalysis2020.pdf> accessed 1 September. Francesca Capone, 'The children (and wives) of foreign ISIS fighters: Which obligations upon the States of nationality?', (2019) *QIL* 27, 91.

18 UNHRC, *General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life,* 30 October 2018, CCPR/C/GC/36, 63.

19 ECtHR, *Banković,* 70-71. ECtHR, *Al-Skeini,* 133-136. ECtHR, *Issa and others v. Turkey,* Appl. no.31821/96, judgment of 16 November 2004, 68-69.

20 Sarah Miller, 'Revisiting Extraterritorial Jurisdiction: A Territorial Justification for Extraterritorial Jurisdiction under the European Convention', (2010) *EJIL* 20, 1225, 1227, 1245.

rights protection[21], nevertheless not every vacuum would necessarily trigger its application.

Analysing the issue of jurisdiction over the children held in the Syrian camps, the UN Committee on the Rights of the Child (UNCRC) emphasised that state's jurisdiction is not limited to its territory, as states may have jurisdiction in respect of domestic acts that are performed, or produce direct and foreseeable effects outside its national borders. According to the Committee, states should take extraterritorial responsibility for the protection of children who are their nationals outside their territories through child-sensitive, rights-based consular protection. Regarding the children in the Syrian camps, the state is well aware about the conditions in those places that pose an imminent risk of irreparable harm to the children. At the same time, as the state of nationality, it has the capability and the power to protect the rights of these children[22]. For these reasons the UNCRC recognised jurisdiction of France over the French children and of Finland over the Finnish children in the Syrian territory.

In *H.F. and others v France*, the ECtHR accepted France's jurisdiction on an extremely exceptional basis. The Court emphasized that the mere fact that an applicant brings proceedings in a state with which he or she has no connection does not suffice to establish that state's jurisdiction. Moreover, despite the fact that France has some military presence in Syria, it does not exercise any effective control over the north-east Syrian territory and even if some of its decisions have an impact on the situation of individuals residing abroad, it does not establish its jurisdiction over these individuals[23].

The Court decided that the French jurisdiction is triggered by the special features of the children concerned in relation to Article 3(2) of the Protocol No. 4 to the Convention[24], although the interpretation of this provision should take into account new challenges for security and defence. The special features that the Court took into consideration were the fact that these children face a real and imminent threat to their lives and physical well-being, on account of the living conditions and safety concerns in the camps, which are incompatible with respect for human dignity, the form and the length of their detention in the camps and the

21 ECtHR, *Cyprus v Turkey,* 78.

22 UNCRC, *L.H. et al. v France,* Appl. no. 77/2019, decision of 25 February 2021, CRC/C/86/D/R.77/2019, 8.5-8.8. UNCRC, *F.B. et al. v France,* Appl. nos. 79/2019 and 109/2019, decision of 2 November 2020, CRC/C/85/D/109/2019, 9.5-9.7. UNCRC, *P.N. et al. v. Finland,* Appl. no. 100/2019, views of 20 October 2022, CRC/C/91/D/100/2-19, 10.7-10.10.

23 ECtHR, *H.F. and others v France,* 187-188, 191-203.

24 No one shall be deprived of the right to enter the territory of the State of which he is a national.

number of the repatriation requests made based on the fundamental values of democratic societies[25].

Also, the UNCAT decided that in these specific cases, states of nationality have jurisdiction. The Committee accentuated that jurisdiction covers not only national territory of a state, but it also includes all areas where the state exercises, directly or indirectly, in whole or in part, *de jure* or *de facto* effective control, in accordance with international law[26].

In the specific case of children located in northeast Syria camps the UNCAT noticed that the effective control over this territory is exercised by non-state actors who publicly announced that they neither have the means, nor the will to take care of children detained in these camps and that they were expecting the states of nationality to take care of these children and to repatriate them. These children are detained in conditions that pose an imminent risk to their lives and their physical and mental integrity and, at the same time, their state of nationality has the power to protect their rights by taking measures to repatriate them[27].

The UN Special Rapporteurs noticed as well that the acts and omissions of states in relation to their nationals held in camps in Syria are most likely to engage their jurisdiction *ratione personae*. Nevertheless, this jurisdiction covers not all but only some of these rights, namely those over which states have a *de facto* control, as the rights can be "divided and tailored". To this regard the Rapporteurs concluded that states of nationality have sufficient control over the children's right to enter their own country and therefore, they have jurisdiction in respect to that particular right and the rights it influences, like the right to life or the prohibition of torture or other cruel, inhuman or degrading treatment, which are endangered due to the situation in the Syrian camps[28].

It has to be borne in mind that the jurisdiction is triggered by a specific and devastating situation of the children concerned and by the fact, that states have the power, ability and competence to remedy this situation. At the same time, there exists a citizenship bond between these children and the state. Moreover, the issue concerns the right to repatriation or, more specifically, the right of a citizen to enter the territory of the state of citizenship. This right can be raised only when an individual is present abroad and once returned to the territory of the state of citizenship the problem would no longer exist. Therefore, this interpretation of extraterritorial jurisdiction should not be extended to other situations, as it is extremely extraordinary.

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25 ECtHR, *H.F. and others v France,* 204-214.

26 UNCAT, *General Comment no. 2 (2007),* 24 January 2008, CAT/C/GC/2, 16.

27 UNCAT, *C.P. and others v France,* Appl. No. 922/2019, decision of 19 January 2023, CAT/C/75/D/922/2019, 6.6-6.8.

28 UN Special Rapporteurs, *Extra-territorial jurisdiction of States...*

III. Obligation of repatriation

In general, states as sovereigns decide who can enter their territory, although this competence is not unlimited. In the first place, everyone has the right to enter the state, of which one is a citizen and no one can be arbitrarily deprived of this right[29]. Nevertheless, in international law, both customary and conventional, it is emphasized that despite the existence of this right, there exist no obligation of states to repatriate their citizens, as it falls within diplomatic and consular relations[30]. With regards to nationals held in the Syrian camps states' policies differ from unconditional repatriation, that treats foreign fighters as victims and in need of rehabilitation, to a denial of repatriation, that treats foreign fighters as threats to national security[31]. Some states even hinder repatriation of children by imposing pre-requisites thereto like DNA testing in case of children whose nationality cannot be easily established or refusing repatriation because of the fear of radicalisation of those children[32]. Within the ISIS children aged just 6 years have been exposed to indoctrination, whereas those aged 9 years started to receive military training[33].

The issue of repatriation was examined by the UN Committee on the Rights of the Child. In this place it has to be reminded that the situation of minors, in relation to adults, is special. As it is stated in Article 3 of the UN Convention on the Rights of the Child, in all actions concerning children state authorities shall give a primary consideration to the best interests of the child. For these reasons Article 6 of the Convention not only protects life of all children, but it obliges states to ensure to the maximum extent possible the survival and development of the child, whereas Article 37a introduces an absolute prohibition of torture or other cruel, inhuman, or degrading treatment of children. The Convention imposes on states also positive obligations to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised therein (Article 4).

On the basis of these provisions the UNCRC decided that France had the obligation to repatriate minors being their citizens from Syria, together with their mothers. Afterwards France should support the reintegration and resettlement of

29 Article 13(2) of the Universal Declaration of Human Rights, Article 12(4) of the International Covenant on Civil and Political Rights, Article 12(2) of the African Charter on Human and Peoples' Rights, Article 22(5) of the Inter-American Convention on Human Rights, and Article 3(2) of the Protocol No. 4 to the European Convention on Human Rights.

30 ECtHR, *H.F. and others v France,* 258-259. Saeed Bagheri, Alison Bisset, 'International Legal Issues...', 367.

31 Helen Stenger, 'Victim versus villain...', 2-4, 12-13.

32 Saeed Bagheri, Alison Bisset, 'International Legal Issues...', 380-382.

33 Francesca Capone, 'The children (and wives)..., 76.

each child who has been repatriated or resettled. The UNCRC emphasized that those children were at imminent and foreseeable risk of death or serious injury and at the same time medical care is lacking in the camps and some of the children even suffer from war injuries. All this has a negative impact on their development, contrary to the child's best interests and cannot be described as anything other than cruel, inhuman, or degrading treatment[34]. The same reasoning was adopted by the UNCRC in *P.N. et al. v. Finland*[35].

In January 2023, the UNCAT delivered its decision regarding the same problem and concluded that France violated Article 2(1) of the UN Convention against Torture by not taking all appropriate measures at its disposal to repatriate their nationals from the Syrian camps, despite the fact that France knew about the inhuman conditions in which people are living in these camps. The reasoning of this decision was similar to the statement of reasons adopted by the UNCRC[36].

Contrary to the UNCRC and the UNCAT, the European Court of Human Rights did not find that the obligations of states are this far reaching and concluded that France should only re-examine the requests to enter French territory, while ensuring that appropriate safeguards are afforded against arbitrariness. Yet this does not mean that domestic courts would have to order the requested repatriations[37].

When analysing this issue, the Court noticed that regarding the right to entry within a state's territory, all citizens must be treated equally and would not depend on whether previously an individual left the territory voluntarily or was born abroad and has never been to this territory yet. This right covers not only some negative obligations of a state that should refrain from depriving individuals of this right to entry, but also in specific circumstances it might include some positive actions on the part of the state, as the Convention should be applied in a way that permits it to be practical and effective and not theoretical and illusory[38].

The situation of children in the camps in northeast Syria is exceptional, as the conditions in the camp are incompatible with international humanitarian law regarding safety, healthcare, protection of human dignity and the prohibition of humiliating and degrading treatment. Additionally, all French nationals detained there have had arrest warrants issued against them, so even if repatriated, they would be subjected to decisions of domestic courts. Nevertheless, the most important aspect of the case is that repatriation requests are made on behalf of minors and states should take into account the children's best interests and their

34 UNCRC, *F.B. et al. v France* (2022), 3.10, 6.6-6.11, 8.

35 UNCRC, *P.N. et al. v Finland,* 11.3-13.

36 UNCAT, *C.P. and others v France,* 7.4-8.

37 ECtHR, *H.F. and others v France,* 280-282.

38 ECtHR, *H.F. and others v France,* 243-263.

particular vulnerability. That is why, in decisions on repatriation, independent authority should safeguard, that there is no arbitrariness in the decision-making process, and that the situation of the children is thoroughly examined on a case-by-case basis, taking into consideration individual circumstances of every particular case[39].

Yet, in the case of minors, the decisions and reasoning of the UNCRC and the UNCAT are more persuasive than the outcome of the judgment of the ECtHR. On numerous occasions the ECtHR accentuated that the rights enshrined in the convention should be practical and effective and not theoretical and illusory[40]. The obligation to repatriate children from the Syrian camps should be therefore unconditional, as they have no other way of safeguarding their right to enter the territory of the state of their citizenship. Even if a minor was a child-soldier, the child's best interests should prevail.

The issue of child-soldiers could have been analysed by the UNCRC, the UNCAT and the ECtHR more thoroughly. What is lacking in the above-mentioned deliberations is the reference to the provisions regulating combatting human trafficking. According to the Convention of Council of Europe[41] "trafficking in human beings" means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, a position of vulnerability, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (Article 4(a)). However, if the victim of human trafficking is a minor, the recruitment, transportation, transfer, harbouring, or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in Article 4(a) (Article 4(c)).

Moreover, as it is stated in Article 35 of the UN Convention on the Rights of the Child, states are obliged to take all appropriate measures to prevent the traffic in children for any purpose and in any form. Article 36 of this Convention adds a states' obligation to protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

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39 ECtHR, *H.F. and others v France,* 272-284.

40 ECtHR, *Scordino v Italy (No. 1),* Appl. no. 36813/97, judgment of 29 March 2006, 192. ECtHR, *Prince Hans-Adam II of Lichtenstein v Germany,* Appl. no. 42527/98, judgment of 12 July 2001, 45. ECtHR, *Waite and Kennedy,* Appl. no. 26083/94, judgment of 18 February 1999, 67.

41 Convention on action against trafficking in human beings, Warsaw, 16 May 2005, CETS 197.

Also, the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children[42] has to be taken into consideration. The protocol underlines a particular vulnerability of children. It obliges states to take into account the age, gender, and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education, and care (Article 6(4)) and to protect victims of trafficking in persons, especially children, from revictimisation (Article 9(1)(b)). In addition, states should alleviate the factors that make persons vulnerable to trafficking, such as poverty, underdevelopment, and a lack of equal opportunity (Article 9(4)).

The European Union law also grants to children a special status when combatting human trafficking. The directive 2011/36/EU[43] emphasises that children are more vulnerable than adults and therefore at greater risk of becoming victims of trafficking in human beings. In the application of this directive, the child's best interests must be therefore a primary consideration. The penalties for human trafficking should be more severe if a victim is particularly vulnerable, which includes children in the first place[44]. Children shall as well have the right to such protection and care as is necessary for their well-being and their age and maturity should be taken into consideration in deciding on matters related to them. In all actions relating to children the child's best interests must be a primary consideration (Article 24 (1)(2) EU Charter[45]). In 2019 the European Parliament called upon the EU Member States to repatriate all European children from Syria and to provide the necessary support for their rehabilitation and reintegration[46].

On the basis of all the above-mentioned provisions it can be concluded that even if a child was radicalised and went to Syria to join Da'esh voluntarily, he or she has to be treated as a victim of human trafficking and not merely as a perpetrator of an act that threatens national security[47]. The UN even recommends that in cases of children there should be a presumption against prosecution, and even if the presumption is rebutted, the prosecution should respect recognised

42 GA Res. 55/25, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime,* UNTS 2237 (15 November 2000), p. 319.

43 Directive 2011/36/EU of the European Parliament and of the Council of 05.04.2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101/1, 15 April 2011.

44 Motives 8 and 12.

45 Charter of Fundamental Rights of the European Union, OJ C 326, p. 391, 26.10.2012.

46 European Parliament resolution of 26 November 2019 on children's rights on the occasion of the 30th anniversary of the UN Convention on the Rights of the Child (2019/2876 (RSP)). European Parliament resolution of 11 March 2021, The Syrian conflict – 10 years after the uprising (2021/2576 (RSP)).

47 UN Human Rights Council, *Report of the Special Representative of the Secretary-General for Children and Armed Conflict,* Doc. A/HRC/40/49 (26 December 2018), 18.

standards of juvenile justice[48]. It needs to be remembered that minors are vulnerable and immature, that is why the measures that might seem adequate in relation to adults, will be disproportionate when deciding on children's rights. This reasoning is strengthened by Article 24(1) ICCPR that grants to children such measures of protection that are required by their status as minors, thus distinguishing their situation from adults.

In addition, the Council of Europe Convention on action against trafficking in human beings stipulates that a state of which a victim is a national of or in which that person had the right of permanent residence at the time of entry into the territory of the receiving state shall, with due regard for his or her rights, safety and dignity, facilitate and accept, his or her return without undue or unreasonable delay (Article 16 (1)). That is why, at least within the Council of Europe, states have the obligation to repatriate children being foreign fighters and not only an obligation to examine the repatriation cases without arbitrariness, as on the basis of this Convention children, even if they are child-soldiers[49], they would be victims of human trafficking even if they voluntarily went to Syria.

This argumentation is supported by international humanitarian law, as these children are on territory covered by an armed conflict. Thus, these children should be object of special respect and shall be protected against any form of indecent assault. Even if children under 15 years take direct part in hostilities, they still shall continue to benefit from special protection[50]. The rules of international humanitarian law regarding children are repeated in Article 38 of the Convention on the Rights of the Child, and Article 1, Article 2 and Article 4(a) of the Optional Protocol to the Convention raised the age of protection of children from recruitment to armed forces to 18 years old. Moreover, states shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an

48 UN, *Key principles for the protection...* UN Special Rapporteurs, *Extra-territorial jurisdiction of States...*

49 A child soldier is a child associated with an armed force or armed group, as well as any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities – 'The Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (the Paris Principles)' (February 2007), <https://www.unicef.org/mali/media/1561/file/ParisPrinciples.pdf> accessed 22 July 2023. Paris Principles prohibit in absolute terms the use of children as soldiers and grant to these children a right to reintegration and protection from further stigmatisation.

50 Additional Protocol I to the Geneva Conventions of 12.08.1949 (1977), UNTS 1125, p. 3, Article 77. Additional Protocol II to the Geneva Conventions of 12.08.1949 (1977), UNTS 1125, p. 609, Article 4(3)(c)(d).

environment which fosters the health, self-respect, and dignity of the child[51]. States should cooperate in the rehabilitation and social reintegration of persons who are victims of child recruitment to armed forces[52]. These provisions refer especially to children in a situation like the one in the Syrian camps and the most appropriate measure that should be adopted on the basis thereof is the repatriation. Moreover, a repatriation might contribute to prevention of the future recruitment of these children[53].

Also, the UN bodies suggest that the repatriation of children is a fulfilment of states' primary responsibility for their own nationals. Within the UN it is as well underlined that in the case of children it should not be assumed that they have been actively participating in terrorism-related activities, and moreover that they might have had little to say in decisions affecting their lives. For these reasons they should be granted due process guarantees and other adequate protections in order not to compound the trauma and not to continue the cycle of violence. The measures taken towards these children should include repatriation, justice, prosecution (where appropriate), rehabilitation and reintegration, access to psychological and support services[54].

The UN Security Council (UNSC) is aware of the problem and as a solution it recommends developing and implementing prosecution, rehabilitation, and reintegration strategies for returning foreign terrorist fighters[55]. This refers especially to children that may have served in many different roles, including as supporters, facilitators, or perpetrators of terrorist acts, that they require a special focus when developing strategies towards them with account taken of their age sensitivities[56]. It is resolution 2225 (2015) on Children and Armed Conflict of the UNSC that even suggested that regarding child-soldiers, states should consider non-judicial measures as alternatives to prosecution and detention that focus on

51 Article 39 of the Convention on the Rights of the Child, UNTS 1577, p. 3.

52 Article 7(1) of the Optional Protocol to the Convention on the Rights of the Child, UNTS 2137, p. 222.

53 Saeed Bagheri, Alison Bisset, 'International Legal Issues...', 374-375.

54 UN, *Key principles for the protection*... Similarly: UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, *Technical Recommendations on Human Rights and Counter-Terrorism for the 7th Biennial Review of the Global Counter-Terrorism Strategy (A/RES/72/284),* <https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/GlobalStrategy/TechnicalRecommendations.pdf> 23 July 2023. UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, *Human rights impact of counter-terrorism and countering extremism policies and practices on the rights of women, girls and the family*, Doc. A/HRC/46/36 (22 January 2021). UN Special Rapporteurs, *Extra-territorial jurisdiction of States...* UNGA, *Resolution 60/1, 2005 World Summit Outcome,* 24.10.2005, A/Res/60/1 (24 October 2005), 117.

55 SC Res. 2178 (2014).

56 SC Res. 2396 (2017).

rehabilitation and reintegration. The deprivation of liberty of these children and prosecution should be a last-resort measure applied against them[57]. States should remember that these children have been abducted, recruited, used, and exposed to violence at an early age and they should not be doubly victimised[58].

For example, in its legislation France notices the exceptional situation of these children, in the inter-ministerial instruction of 23 February 2018[59] in which it underlines that these children have grown up in a climate of extreme violence. Therefore, specific measures of care and support for these children should be adopted, taking into consideration their age and individual situation. The public prosecutor is informed in the first place about the planned return and he or she informs competent local authorities and the juvenile judge who decides on specific child protection measures. These children should be granted medico-psychological care and assistance, as well as an adequate education. Yet, despite this legislation, France has been reluctant in repatriation and this makes the French attitude towards the problem even more incomprehensible.

As it was mentioned at the beginning of the paper, only some of the children held in the Syrian camps were allegedly engaged in supporting the ISIS. The other are merely family members of the foreign terrorist fighters. For these reasons, some states would prefer to repatriate only the children without their parents, who are considered to pose a threat to national security. Nevertheless, this would be contrary to the children's best interests, as it would mean a separation of children from their parents. Moreover, the SDF does not permit such separation against the mothers' wishes[60]. The UN Secretary General called states to repatriate the children from the Syrian camps with simultaneous maintenance of family unity[61].

For the aforementioned reasons, it has to be concluded that states have an unconditional obligation to repatriate children held in the Syrian camps being their nationals, irrespective of the children's personal behaviour and activities. Even if they can be considered to be child-soldiers, children's best interests and rights should prevail. Only repatriation can protect these children from threats to

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57 UN Secretary General, 'Key principles for the protection, repatriation, prosecution, rehabilitation and reintegration of women and children with links to United Nations listed terrorist groups' <www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/key_principles-april_2019.pdf> accessed 2 September 2023. Francesca Capone, 'The children (and wives)...', 73.

58 UN Human Rights Council, *Report of the Special Representative of the Secretary-General for Children and Armed Conflict,* Doc. A/HRC/40/49 (26 December 2018), 17.

59 France, 'Instruction relative à la prise en charge des mineurs à leur retour de zone d'opérations de groupements terroristes (notamment la zone irako-syrienne' (23 February 2018) <https://www.legifrance.gouv.fr/download/pdf/circ?id=43128> accessed 22 July 2023.

60 Saeed Bagheri, Alison Bisset, 'International Legal Issues...', 365.

61 UN Secretary General, *Key principles for the protection...*

their lives and physical and mental integrity, and it can prevent their further radicalisation as well. To keep family unity, children should be repatriated together with their parents, even if they are foreign fighters. After all, once the repatriation takes place, these parents would be subjected to prosecution for the committed terrorist crimes.

IV. Withdrawal of citizenship

The deliberations contained in the previous parts of the paper lead to a question of whether states can apply deprivation of citizenship as a method for protecting their citizens and territory from terrorist threat in relation to children. Of course, it results from state's sovereignty that states are entitled to settle their own legislation regarding the rules relating to the acquisition of their nationalities. Nationality, as a legal bond between a person and a state, has its most immediate and far-reaching effects within the legal system of a state conferring it. It serves to determine that the person upon whom it is granted enjoys the rights and is bound by the obligations which the law of the state grants to or imposes on its nationals[62]. The sovereignty of a state's decision regarding nationality applies equally to deprivation of citizenship, yet such decisions are subjected to public international law, including customary law, and they cannot be arbitrary[63] nor they can lead to statelessness[64]. As it was underlined by the UNHRC, states must not, by stripping a person of nationality, arbitrarily prevent a person from returning to his or her country[65]. In determining arbitrariness, regard must be taken to whether the revocation was in accordance with the law, whether it was accompanied by the necessary procedural safeguards, including whether the

62 *Nottebohm Case (Lichtenstein v Guatemala)* (1955) Judgment ICJ Reports, (1955) 4.

63 Władysław Czapliński, Anna Wyrozumska, *Prawo międzynarodowe publiczne* (2014), 151-152. 244-245. Also Article 15 of the Universal Declaration of Human Rights indicates that everyone has the right to a nationality and no one shall be arbitrarily deprived of their nationality nor denied the right to change their nationality. According to the European Convention on Nationality (Strasbourg, 6 November 1987), each state is entitled to determine under its national law who are its nationals, however, this law will be accepted by other states so far as it is consistent with applicable international conventions, customary international law and the principles of law generally recognised with regard to nationality (Article 3). Article 20(3) of the American Convention on Human Rights (San José, 22 November 1969): No one shall be arbitrarily deprived of their nationality or of the right to change it. UN Human Rights Council, *Human rights and arbitrary deprivation of nationality,* Doc. A/HRC/25/28 (19 December 2013).

64 Leslie Esbrook, 'Citizenship unmoored: expatriation as a counter-terrorism tool', (2016) *U. Pa. J. Int'l L* 37(4), 1301.

65 UNHRC, *General comment no. 27 (67): Freedom of movement (article 12),* 01.11.1999, CCPR/C/21/Rev.1/Add.9, 21.

person deprived of citizenship was allowed the opportunity to challenge the decision before courts affording the relevant guarantees; and whether the authorities acted diligently and swiftly[66]. The International Law Commission considers a deprivation of nationality abusive and arbitrary if it is made for the sole purpose of expulsion[67].

The obligation to avoid statelessness is considered to be a part of customary international law[68], yet even the existing conventions in this area provide for some exceptions, like Article 8 of the 1961 Convention on the Reduction of Statelessness[69]. In the analysed field, the most important will be the provision of Article 8(3)(a)(ii) that permits the state to deprive the nationality of a person that, inconsistently with his duty of loyalty to that state, has conducted himself in a manner seriously prejudicial to the vital interests of the state. Similarly, the issue is treated by the European Convention on Nationality, which conveys everyone is entitled to nationality and statelessness shall be avoided. A deprivation of nationality cannot be arbitrary (Article 4(a)(b)(c)), but it is permissible if the conduct of the person concerned is seriously prejudicial to the vital interests of the state (Article 7(1)(d)). Travelling to territory covered by an armed conflict (Syria) and joining a terrorist organisation (the ISIS) cannot be seen differently as prejudicial to interests of a state combatting terrorism and disloyal in relation to this state.

Within the European Union, deprivation of national citizenship must be also in accordance with the EU law, as it means a simultaneous withdrawal of the EU citizenship together with rights connected therewith. As it was underlined by the Court of Justice of the European Union (CJEU), it must be verified whether the EU-law principle of proportionality has been observed, in particular, whether the loss of citizenship is justified in relation to the gravity of the offence committed by the person concerned, to the lapse of time between the naturalisation decision and the withdrawal decision and to whether it is possible for that person to recover their original nationality[70].

In case of foreign terrorist fighters, states refer to the withdrawal of citizenship as a way of protecting their nations from terrorist threat. This policy is applied by

66 ECtHR, *Ramadan v. Malta,* Appl. no. 76136/12, judgment of 21 June 2016. ECtHR, *K2 v. UK,* Appl. no. 42387/13, decision of 9 March 2017.

67 International Law Commission, *Report of the sixty sixth session (5 May-6 June and 7 July-8 August 2014),* UN Doc. A/69/10, 32.

68 Leslie Esbrook, 'Citizenship unmoored...', 1301. Lavinia Spieß, Louise Pyne-Jones, 'Children at risk of statelessness in the fight against terrorism' (2022) Statelessness and Citizenship Review 4(1), 57.

69 UN Convention on the Reduction of Statelessness, New York, 30 August 1961.

70 C-135/08, *Rottman* (EU:C:2010:104), 55-56. C-221/17, *Tjebbes* (EU:C:2019:189), 40-42.

the United Kingdom[71], Australia[72], France[73], Belgium[74], Austria[75], Germany[76], the United States[77], as well as by Israel, Denmark, the Netherlands, and Switzerland[78]. Some of the above mentioned laws expressly permit a citizenship revocation even if the person concerned is a minor, like for example section 36B(1) of the Australian Citizenship Act 2007, that sets the age limit for citizenship withdrawal at 14 years. On the other hand, the German law provides *expressis verbis* that withdrawal of citizenship cannot take place if the person concerned is a minor[79].

In 2014 Canada passed a law permitting to revoke citizenship if the person concerned was convicted of a terrorism offence or an offence outside Canada that, if committed in Canada, would constitute a terrorism offence and sentenced to at least five years of imprisonment[80]. Nevertheless, this law was repealed in 2017[81]. There are also states in which a constitution expressly prohibits citizenship stripping[82].

For the purposes of this article, the legislation of the United Kingdom, Australia, France, Belgium, Austria, Germany, Canada, and the United States will be briefly depicted, as in the author's view the presentation of these regulations would be appropriate to demonstrate different attitudes towards withdrawal of citizenship. In the United Kingdom, the Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good if the citizenship status results from the person's naturalisation, the Secretary of State is satisfied that the deprivation is conducive

71 British Nationality Act 1981, section 40(2)(3).

72 Australian Citizenship Act 2007, section 36B.

73 Code civile, article 25(1).

74 Code de la nationalité belge, Article 23 § 1(2).

75 Staatsbürgerschaftgesetz 1985, § 33(2).

76 Staatsangehörigkeitgesetz 1913, § 28(1)(2).

77 Expatriate Terrorist Act, 8 USC 1481.

78 Helen Stenger, 'Victim versus villain...', 18. Leslie Esbrook, 'Citizenship unmoored...', 1285-1289. Lavinia Spieß, Louise Pyne-Jones, 'Children at risk of statelessness...', 38-42. Maarten P. Bolhuis, Joris van Wijk, 'Citizenship Deprivation as a Counterterrorism Measure in Europe; Possible Follow-Up Scenarios, Human Rights Infringements and the Effect on Counterterrorism' (2020) European Journal of Migration and Law 22, 341-348.

79 Staatsangehörigkeitgesetz 1913, § 28(2)(1).

80 An Act to amend the Citizenship Act and to make consequential amendments to other Act, S.C. 2014, c. 22, Section 10(1)(2).

81 An Act to amend the Citizenship Act and to make consequential amendments to other Acts, S.C. 2017, c. 14, Section 3(1).

82 Article 34(2) of the Polish Constitution provides that a Polish citizen cannot lose the Polish citizenship, unless they renounce themselves of citizenship. Article 20 of the Constitution of the Republic of South Africa stipulates that no citizen may be deprived of citizenship.

to the public good because the person, while having that citizenship status, has conducted him or herself in a manner which is seriously prejudicial to the vital interests of the state and the Secretary of State has reasonable grounds for believing that the person is able, under the law of a country or territory outside the United Kingdom, to become a national of such a country or territory[83]. If the Secretary of State reasonably considers it necessary, in the interests of national security, they should not give the person concerned a written notice about the order on withdrawal of citizenship[84]. The decision may be subjected to an appeal[85].

In Australia the decision on the withdrawal of citizenship is taken by the Minister for Home Affairs if a person engages in a terrorist conduct, the conduct demonstrates that the person has repudiated their allegiance to Australia and it would be contrary to the public interest for the person to remain an Australian citizen[86]. The order of the Minister might be subjected to the review of the High Court of Australia[87] or to the Federal Court of Australia[88].

Article 25(1) of the French civil code permits to deprive a naturalised French citizen of his or her citizenship unless such withdrawal would result in statelessness. The reasons for citizenship stripping can be conviction of a crime constituting an attack on fundamental interests of the French nation or an act of terrorism. In Belgium, also only naturalised citizens can be deprived of their citizenship if they seriously fail in their duties as Belgian citizens[89]. The decision is taken by the relevant court of appeal[90]. The Austrian law provides for revocation of citizenship when a person voluntarily takes part in armed conflict as a member of an organised armed group, yet such withdrawal cannot lead to statelessness[91]. The procedure starts *ex officio* or at the request of the Federal Minister of Home Affairs, who has then the status of the party in the proceedings[92]. Also, the German law provides for the loss of citizenship if a German citizen voluntarily takes part in an armed operations of a terrorist organisation abroad, under the condition that this would not render him or her stateless[93].

83 British Nationality Act 1981, section 40(2)(3).

84 British Nationality Act 1981, section 40(5)(5A).

85 British Nationality Act 1981, section 40(A).

86 Australian Citizenship Act 2007, section 36B(1)(5).

87 Australian Constitution, section 75.

88 Judiciary Act 1903, section 39B.

89 Code de la nationalité belge, Article 23 § 1(2).

90 Code de la nationalité belge, Article 23 § 3.

91 Staatsbürgerschaftgesetz 1985, § 33(2).

92 Staatsbürgerschaftgesetz 1985, § 35.

93 Staatsangehörigkeitgesetz 1913, § 28(1)(2).

Such withdrawal of citizenship subsequently permits a state to extradite a perpetrator of a terrorist offence from its territory or to prevent their re-entry into its territory, as since the moment of deprivation of citizenship a person becomes an alien. It is a well-established principle of international law that states have the right to control the entry, residence, and expulsion of aliens. These states raise that in such circumstances withdrawal of citizenship will be in fact a result of the choices and actions of the affected person[94].

The legality of citizenship revocation is disputable. The states that apply it in combatting terrorism raise the national security concerns and the needs to protect their nations from terrorist threat by preventing terrorist attacks on their territory or by stopping their own nationals from joining terrorist groups[95]. Moreover, it is emphasised that persons becoming foreign terrorist fighters showed the highest disloyalty towards their state of nationality[96]. On the other hand, it is raised that laws on revoking nationality violate international law, because they are disproportionate, as they cannot be seen as the least intrusive measure available in combatting terrorism[97]. Furthermore, they often render a person stateless and are combined with the breach of the principle of non-discrimination, as they usually concern only naturalised citizens with migrant backgrounds and not those who gained their citizenship by birth[98]. Their effect is also illusory, as they do not eliminate the terrorist threat, but they only export the risk elsewhere[99].

The Institute on Statelessness and Inclusion elaborated principles on deprivation on nationality as a national security measure[100] according to which states, as a rule, should not refer to the revocation of citizenship to protect national security. If they introduce exceptions thereto, they should be interpreted narrowly in situations in which it has been determined by a lawful conviction that meets

94 ECtHR, *A.S. v France* Appl. no. 46240/15, judgment of 19 April 2018. ECtHR, *K2 v UK,* Appl. no. 42387/13, decision of 9 March 2017. ECtHR, *Ghoumid and Others v France* Appl. nos. 52273/16, 52285/16, 52290/16, 52294/16 and 52302/16, judgment of 25.06.2020. ECtHR, *Johansen v Denmark,* Appl. no. 27801/19, decision of 1 February 2022.

95 Lavinia Spieß, Louise Pyne-Jones, 'Children at risk of statelessness..., 34.

96 Helen Stenger, 'Victim versus villain:...', 16. Maarten P. Bolhuis, Joris van Wijk, 'Citizenship Deprivation as a Counterterrorism Measure...', 339. UK Supreme Court, *Begum v. Home Secretary* [2021] UKSC 7.

97 Christophe Paulussen, 'Stripping foreign fighters of their citizenship: International human rights and humanitarian law considerations' (2021) *IRRC* 103(916-917), 611.

98 Francesca Capone, 'The children (and wives)..., 79. Lavinia Spieß, Louise Pyne-Jones, 'Children at risk of statelessness...', 44-45, 58. Christophe Paulussen, 'Stripping foreign fighters...', 611-612.

99 Lavinia Spieß, Louise Pyne-Jones, 'Children at risk of statelessness...', 48.

100 Institute on Statelessness and Inclusion, 'Principles on deprivation of nationality as a national security measure' <https://files.institutesi.org/PRINCIPLES.pdf> 2 September 2023.

international fair trial standards, that the person has conducted themselves in a manner seriously prejudicial to the vital interests of the state. This possibility is subjected to limitations that should include: the avoidance of statelessness, the prohibition of discrimination, the prohibition of arbitrariness, the right to a fair trial, remedy and reparation and other obligations and standards set forth in international human rights law, international humanitarian law and international refugee law (principle 4). It can be pointed out that at least the legislation of the United Kingdom, the Netherlands, Denmark, and Australia does not require a previous conviction to strip a person of their citizenship[101].

The Parliamentary Assembly of the Council of Europe (CoE) indicates that even in cases of terrorist threat deprivation of citizenship should respect human rights laws, it shall be decided or reviewed by a criminal court, with full respect for all procedural guarantees, it shall not be discriminatory, as it often implies direct or indirect discrimination against naturalised citizens, it shall be proportionate to the pursued objective, and shall be applied only if other measures foreseen in domestic law are not effective. In any case, a deprivation of citizenship cannot be preventive in nature[102]. As the issue raises serious legal concerns with regard to adults, this aspect will not be discussed here further in detail, as the aim of the article is to focus on children's rights.

The issue of citizenship revocation appears unproblematic when discussing the situation of an alleged foreign fighter being a minor. As already stated, such children might be both perpetrators and victims of criminal acts (like human trafficking) and in their situation the primary concern should be the child's best interests. Although they are radicalised and some of them voluntarily travelled to Syria, such decisions could be a result of their vulnerability and immaturity. These children should be repatriated and relevant measures should be adopted in relation to them, which may include not only penalisation for terrorist offences, but also resocialisation and reintegration. Therefore, withdrawal of citizenship should not in any way concern minors.

With regard to citizenship revocation, the Parliamentary Assembly of the CoE recommends that states should refrain from depriving minors of nationality in combatting terrorism and emphasises that a deprivation of nationality of a parent must not lead to the deprivation of the nationality of his or her children[103], as they should be protected against discrimination or punishment on the basis of

101 Lavinia Spieß, Louise Pyne-Jones, 'Children at risk of statelessness...', 39.

102 Parliamentary Assembly of the Council of Europe, 'Withdrawing nationality as a measure to combat terrorism: a human rights compatible approach*?'* (Resolution 2263 (2019) of 25 January 2019) <https://pace.coe.int/en/files/25430/html> accessed 29 August. Similarly: Helen Stenger, 'Victim versus villain...', 18.

103 ibid.

the activities of their parents or guardians[104]. Within this issue also the UNCRC accentuated that a child has its own right to nationality and should not be deprived thereof on any ground and regardless of the status of his/her parents[105]. This raises doubts as to the compatibility of Danish law with children's rights, providing that children born to 'ISIS parents' do not receive Danish citizenship[106].

Article 8(1) of the Convention on the Rights of the Child underlines that nationality is a part of a child's identity that should be respected by states, taken into consideration in the assessment of the child's best interests and their evolving capacities[107]. To this regard, the League of Arab States even noticed that gaps in "Belonging and Legal Identity" are important causes of despair and frustration which lead to the increase of crime and terrorism. That is why it encouraged the member states to adopt relevant measures safeguarding the rights of the children in the region to enjoy a legal identity, including a nationality[108]. It can be concluded that the League considers the maintenance of the bond of nationality with respect to children as a way of preventing terrorism by creation of the sense of belonging of a child to the community of the relevant state. The lack of feeling of belonging and the prolonged stay in extreme circumstances that include hunger, poverty, lack of access to medical and education services, are seen as pushing individuals to joining terrorist groups like the ISIS[109]. Stateless children, marginalised and deprived of care and identity, are at risk of being trafficked and recruited into terrorist organisations and facing human rights violations[110] when they should be protected from all of it.

For these reasons, it has to be determined that in no circumstances should states should refer to citizenship revocation in the case of children, as such a measure would be disproportional and thus arbitrary. The children held in Syrian camps should be repatriated and then subjected to de-radicalisation process. Only this way can states neutralise further security threats[111]. As it was emphasised by

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104 Lavinia Spieß, Louise Pyne-Jones, 'Children at risk of statelessness...', 61-62.

105 UNCRC, *Consideration of reports submitted by States parties under article 44 of the Convention. Concluding observations: Ukraine,* 21 April 2011 CRC/C/UKR/CO/3-4, 38.

106 Helen Stenger, 'Victim versus villain...', 16. Lavinia Spieß, Louise Pyne-Jones, 'Children at risk of statelessness...', 40.

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

108 League of Arab States, *Arab Declaration on Belonging and Legal Identity,* (28 February 2018) <https://www.refworld.org/docid/5a9ffbd04.html> accessed 28 August 2023.

109 Helen Stenger, 'Victim versus villain...', 17-18. Saeed Bagheri, Alison Bisset, 'International Legal Issues...', 383.

110 Lavinia Spieß, Louise Pyne-Jones, 'Children at risk of statelessness...', 52, 60. Maarten P. Bolhuis, Joris van Wijk, 'Citizenship Deprivation as a Counterterrorism Measure...', 340.

111 Francesca Capone, 'The children (and wives)..., 77.

the UN Secretary General, states should accept their nationals (including children), children born to their nationals, grant those children nationality, and take action to prevent them from becoming stateless[112].

V. Conclusion

It is beyond any doubt, that children due to their immaturity and vulnerability deserve a special protection from the international community, especially from the state of their nationality. For this reason, their situation and activities should be assessed in a particular way, taking into account the child's best interests in the first place.

This assumption is of an utmost importance when analysing states' obligations with regard to children held in the Syrian camps being their nationals. These children are found to be in a situation devastating to their lives, as well as physical and mental integrity. Some of these children radicalised and went to Syria voluntarily to join the ISIS, while others were taken there by their parents, abducted, or born there in the foreign terrorist fighters' families.

This very special situation of these children calls for states of their citizenship to exercise jurisdiction over the children's right to repatriation or, in other words, the right to enter the territory of a state of their nationality. This interpretation of extraterritorial jurisdiction of states is extremely extraordinary and should not be extended to other situations.

Not only do states of nationality have jurisdiction, but they also have an obligation to repatriate the children from the Syrian camps, as it is the only way to safeguard the well-being of these children compatible with international law. After their return they should be subjected to deradicalisation, rehabilitation, and reintegration in the first place, detention and prosecution should be the measures of the last resort. Even child-soldiers should be regarded as victims of human trafficking and they should not be revictimised. Where relevant, the children should be repatriated together with their parents to maintain family unity.

Although a withdrawal of citizenship might seem to be a tempting and an easy policy for states to dispose of the problem, especially of radicalised minors, it should not be applied against children, as they should be regarded as victims and not as perpetrators. Nevertheless, some states withdraw citizenship of foreign fighters, including children. As it was discussed in the paper, such citizenship stripping is not compatible with international law. It might be also counter-productive, as the lack of feeling of belongingness might lead to further

[112] UN Secretary General, 'Key principles for the protection...

radicalisation. Together with a refusal to repatriate this does not contribute to combatting terrorist threat, but it only places this threat on another territory.

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