SPECIAL IMMIGRATION APPEALS COMMISSION

Appeal No: **SC /181/2021**
Hearing Date: **28 - 31 October 2025**
Date of Judgment: **19 February 2026**

Before

THE HONOURABLE MR JUSTICE JOHNSON
UPPER TRIBUNAL JUDGE KEITH
MS MARY CALAM

Between

D10

Appellant

and

THE SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Respondent

OPEN JUDGMENT

Mr Hugh Southey KC and Mr Alex Burrett (instructed by **JD Spicer Zeb Solicitors**) appeared on behalf of the Applicants

Ms Lisa Giovannetti KC and Mr Will Hays (instructed by **the Government Legal Department**) appeared on behalf of the Secretary of State

Mr Martin Goudie KC and Mr David Lemer (instructed by **the Special Advocates' Support Office**) appeared as Special Advocates

Introduction

1. D10 appeals to the Special Immigration Appeals Commission ("SIAC") against a decision of the Secretary of State to make an order depriving him of his status as a citizen of the United Kingdom ("the decision"). He has the benefit of anonymity. For that reason, we do not disclose in this judgment the country where he currently resides (and of which he is a national).

2. The issues as defined by the draft re-re-re-re-amended grounds of appeal are whether:

   (1) The Secretary of State acted unreasonably/disproportionately in depriving the appellant of his citizenship.

   (2) The decision is incompatible with rights to family life under article 8 of the European Convention on Human Rights ("the Convention").

   (3) The decision is incompatible with the prohibition of inhuman and degrading treatment under articles 2 and 3 of the Convention.

   (4) D10 has been unfairly deprived of safeguards under EU law.

   (5) The briefing provided to the Secretary of State was unfair and unbalanced.

   (6) There has been a failure to keep the national security case up to date.

   (7) The decision failed to take proper account of D10's acquittal of criminal charges in Greece.

   (8) There was a failure to provide reasons for the decision which engaged with D10's acquittal and with further information provided by D10 about his family life.

The factual background

3. D10 was born in 1978. He is a national of a non-European country ("the country").

4. D10 arrived in the United Kingdom on 8 June 2002. He claimed asylum on the basis of his political opinion. He was granted refugee status and indefinite leave to remain. In 2007, D10 was granted citizenship of the United Kingdom.

5. D10's wife lawfully entered the United Kingdom in 2005. She was granted indefinite leave to remain. In 2008, she too was granted United Kingdom citizenship. The couple have two children. The eldest is now an adult but suffers from global development delay which means that he behaves and thinks like an 8-year-old. The youngest is in his early teens. D10 worked in the restaurant business in the United Kingdom.

6. In May 2019, D10 was arrested on a European Arrest Warrant in respect of an allegation that he had been involved in importing 2.1 tonnes of heroin into Greece. An order was made for his extradition. Permission to appeal against that order was refused. D10 was therefore extradited to Greece in November 2020.

7. On 27 January 2021, the Secretary of State deprived D10 of his citizenship on the grounds that he was an agent of the country's intelligence service and that it was conducive to the public good to do so.

8. D10 was prosecuted in Greece on drugs charges. He was acquitted in April 2022. The court found that there was no evidence to show any participation in the drug trafficking that had

been attributed to him. Following his acquittal, D10 says he was required to depart from Greece to the country.

9. In the summer of 2023, D10's wife and children went to live with him in the country. They remain there with him.

The evidence

10. In his re-amended grounds of appeal the appellant said he had "never been involved in working for the [country's intelligence service] but he had contact with a distant relative, hereinafter anonymised as 'ABC' who he now understands from media reports may have been working for [that intelligence service]." There were also media reports about ABC's involvement in drugs and assassinations. Subsequently, D10 acknowledged closer links with ABC than might be suggested by simply being a distant relative. Much of the OPEN evidence concerns D10's links with ABC.

11. We heard live evidence from D10 and BW.

D10

12. D10 provided two witness statements (the first of which is detailed and lengthy). He gave evidence by video link. He adopted his witness statements and was cross-examined.

13. D10 denies that he is or ever has been a threat to national security or an agent of the country's intelligence service. He says that the country would not employ a person of his ethnicity and religious background. He says that he understands that the Secretary of State's decision may have been made as a result of his relationship with ABC. His father and ABC's father are first cousins. He and ABC spent a lot of time with each other when they were growing up; they were friends as well as cousins. In the 1990s ABC moved to Turkey. The friendship continued whilst ABC was in Turkey and D10 was in the United Kingdom.

14. In his witness statement, D10 stated that, in 2012 or 2013 ABC asked D10 to purchase a luxury watch for him, because it was cheaper in the United Kingdom than in Turkey and because the particular brand (Audemars Piguet) was more readily available in the United Kingdom. ABC paid D10 £2,000 (in addition to the price of the watch) for his help. D10 went to Greece to give ABC the watch. It turned out that the watch was faulty. D10 called the vendor who agreed to (and did) bring a replacement watch to Greece, and the faulty watch was exchanged. In cross-examination, D10 gave a different account about this. He said that although the watch dealer had said that he would come to Greece, he did not do so, and there was no reason for the watch dealer to meet ABC. Instead, D10 took the faulty watch back to London where it was exchanged, and D10 then took the replacement to Greece where he again met ABC. ABC paid all D10's travel costs.

15. D10 did not believe the media reporting about ABC because it did not represent the man he knew, and because he considered that the reporting was pursued by media organisations that were opposed to part of the Turkish government. He considered the reporting was part of an agenda because ABC had been close to the Turkish government. However, D10 says that he was later contacted by MI5 who asked questions about ABC. That made him think twice, and he asked ABC about it. ABC said that the reporting was attributable to one of his enemies who was in jail and who bribed journalists to file reports that were damaging to ABC. D10 was satisfied with this explanation. He had never seen ABC dealing in drugs, although he did know he had been in prison in Turkey between 2007 and 2010 in relation to drugs offences. D10 was also aware that ABC's daughter had been murdered and that

ABC believed that he had been the real target and that she had been the victim of an international drugs smuggling gang. He believed that ABC did have some connections with the country's intelligence service.

16. D10 says that during his interview with MI5 he was shown a photograph of two men who had been introduced to him by ABC. He recognised them and believed them to be business men who were looking for business opportunities in European countries. ABC had asked for D10's help in finding and booking accommodation for them in Switzerland for a trip in 2017. D10 joined them, and also ABC's son, in Switzerland. D10 did not know why the meeting was in Switzerland rather than Turkey, save that ABC's son had wanted to see Switzerland. D10 was content to leave his family and business to help ABC, even though he knew that there were reports of him being a drug dealer and there being a gunmen who wanted to target him; he did not consider that there was any risk in Switzerland.

17. D10 also travelled to Albania in 2017 to meet ABC. That was because ABC wanted to buy aluminium window frames and they were much cheaper in Albania than in Turkey. D10 travelled by plane and ABC travelled in his own car from Turkey. From Albania, they drove to Austria via other countries. D10 flew back to the United Kingdom from Austria. He thinks that ABC went to Holland and Belgium.

18. D10 says that he has travelled with ABC to other countries as well, specifically Belgium, Turkey, Austria and Dubai. He agrees that his relationship with ABC was closer than he had acknowledged in his grounds of appeal.

19. After he was acquitted in Greece, D10 expected to be released so that he could come back to the United Kingdom. However, he was held in a centre for about 5 days and then he was sent to the country. He told his lawyer that he wanted to apply for asylum in Greece, but he understood that he was unable to do that. As he gave this answer, Hugh Southey KC, for D10, objected that the questioning impermissibly trespassed on matters that are subject to legal professional privilege. The questioning was not pursued further. D10 has remained at liberty in the country, albeit he has kept a low profile. He tries to spend most of his time at home and only goes outside where necessary. His children become distressed if he is away for more than 10 or 15 minutes.

20. Last year, D10 accompanied his uncle to the passport office for him to complete his passport forms. He was arrested and told that he was a fugitive from army service. He was released after completing a form to the effect that he would present himself for army service within 30 days. He was told that if he did not do that he would be arrested and forced to do military service. He has not attended for military service, and has not been arrested. He says that is because he has kept himself hidden.

21. Earlier this year, there was a major cultural celebration in his town. Around 200,000 – 300,000 people attended. D10 was nervous about attending, because the celebration could be controversial, but the mood was good. The celebration had been organised by one of his cousins. The cousin received a call from the country's intelligence service and was asked to present himself at their office. D10 agreed to drive his cousin to the office. He was the only person who could drive him. He did not intend to go inside the office. However, when he arrived, his car was stopped by an officer and he was told to get out. Someone referred to him as "the MI5 guy". He was taken to a room where an officer began kicking and slapping him and accusing him of working for MI5. D10 denied that he had worked for

MI5. After about 3 hours he was thrown out, and he returned home with his cousin. His cousin said that he had been questioned about the cultural celebrations.

BW

22. BW says that MI5 assess that D10 is an agent of the country's intelligence service and that he would pose a risk to the national security of the United Kingdom if he were permitted to return to the United Kingdom. He does not dispute that D10 is related to ABC, but says that it is assessed that their relationship goes beyond that.

23. BW points out that D10 claimed in his original grounds of appeal that ABC was merely a distant relative, whereas it was clear from the evidence that they had been closely involved with each other over a prolonged period of time. He says that it is assessed that D10 is still not revealing the true extent of his relationship with ABC. Notwithstanding the evidence that has been provided by D10, BW says that the assessment that he is an agent of the country's intelligence service is maintained.

24. The submission that was made to the Secretary of State was provided by Home Office officials based on information from MI5. BW did not think that anyone questioned D10's account of the difficulties faced by his family, and particularly his eldest son.

25. BW denied that the assessment that D10 worked for the country's intelligence service was based on the allegation of criminal conduct in the European Arrest Warrant. He said that the basis for that assessment was set out in CLOSED evidence. What was important was D10's association with ABC. The drugs allegations were a part of that, but the fundamental point was that D10 associated with ABC, and this relationship was broader than just a familial relationship or drug dealing activity. Although D10 was acquitted and the Greek courts had not apparently regarded the relationship between ABC and D10 as sinister, that finding did not undermine the point that they were close associates. The acquittal was not a significant piece of information; it was either irrelevant or of only marginal relevance. It was believed that their relationship was deeper than a purely familial relationship, but BW could only elaborate on this in CLOSED. He accepted that association with a drug dealer does not in itself indicate criminality. He accepted that D10 had given details of email accounts during a port stop, and that the officer had considered that D10 had been cooperative. BW accepted that D10 may have been cooperative, but he also said that there were some inconsistencies in his account of his relationship with ABC. BW said he could give more detail about this in CLOSED. BW declined to confirm or deny whether D10 had met MI5. As to whether there had been any delay in taking action (having regard to the fact that the European Arrest Warrant was issued in February 2019 and drugs had been seized in 2014), BW said he could give further details in CLOSED. He maintained that there was a proper justification for the deprivation of D10's citizenship. If D10 made an application for entry clearance, then the intelligence case would be taken into account in deciding whether to object to clearance being granted. In respect of the risks that D10 might face in the country, BW said that if (as he assessed) D10 was an agent of the country's intelligence service then that would likely be a protective factor.

Closed evidence

26. We heard further evidence in CLOSED. In the course of that evidence, BW was asked to, and he did, expand on the answers he had given in OPEN where he said that there was more detail that he could give in CLOSED. BW was cross-examined by Martin Goudie KC for the Special Advocates.

27. For the reasons that we have given in our CLOSED judgment, we are satisfied that the Secretary of State was entitled to conclude that D10 was an agent of the country's intelligence service, and that the deprivation of his citizenship is conducive to the public good. More than that, we have concluded that assessment is highly likely to be correct (although not to the point where it is established to the criminal standard of proof – there remains a possibility that it is incorrect).

The legal framework

Deprivation

28. The Secretary of State may deprive a person of their British nationality if she is satisfied that is conducive to the public good: s40(2) British Nationality Act 1981 ("BNA").

Policy framework

29. The Secretary of State has published policy guidance on the meaning of "conduciveness to the public good" for the purpose of s40(2) BNA. This is set out in chapter 55 of the Secretary of State's Nationality Instructions, "Deprivation and Nullity of British Citizenship." This states that it means "depriving in the public interest on the grounds of involvement in terrorism, espionage, serious organised crime, war crimes or unacceptable behaviours." As a matter of policy, the Secretary of State will not deprive a person of citizenship if that would expose them to a real risk of inhuman or degrading treatment.

Interests of children

30. In deciding whether to deprive a person of their citizenship, the Secretary of State must have regard to the need to safeguard and promote the welfare of children who are in the United Kingdom: section 55 of the Borders, Citizenship and Immigration Act 2009. In that respect, the best interests of any children are a primary consideration, and there is a strong interest in the rights of a child to be brought up in the country of their citizenship: *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4; [2011] 2 AC 166.

Appeal right

31. Ordinarily, an appeal against such a decision lies to the First-tier Tribunal: s40A(1) BNA. Where the Secretary of State certifies that she relied on information which should not, on public interest grounds, be made public then that right of appeal is excluded: s40A(2) BNA. In such a case, a right of appeal lies to SIAC: s2B SIAC Act 1997.

32. The ambit of SIAC's jurisdiction under s2B of the 1997 Act has been considered by the Supreme Court in *Secretary of State for the Home Department v Rehman* [2003] 1 AC 153, *R (Begum) v Special Immigration Appeals Commission* [2021] UKSC 7; [2021] AC 765 and *U3 v Secretary of State of the Home Department* [2025] UKSC 19; [2025] 2 WLR 1041.

33. These authorities establish that:

    (1) In exercising the appeal jurisdiction under section 2B of the 1997 Act, SIAC applies public law *Wednesbury* ([1948] KB 223) principles.

    (2) All public law grounds are available, including procedural fairness (which can include a failure to provide the decision-maker with adequate information and a fair and balanced account of the case as a whole), irrationality, and illegality (for example under section 6 of the Human Rights Act 1998 by reason of incompatibility with a Convention right).

(3) SIAC must decide for itself whether the Secretary of State has acted compatibly with Convention rights.

(4) Evidence that post-dates the decision is admissible if and only if it relates to events that pre-date the decision.

(5) SIAC may take account of material that was not before the Secretary of State.

(6) The Secretary of State must keep the national security case under review in the light of material that comes to light during an appeal.

(7) SIAC's role is limited to allowing or dismissing an appeal.

Submissions

34. Mr Southey submits that on any sensible reading of the documentation, the European Arrest Warrant, and the suggestion that D10 had been involved in drugs trafficking, was a significant factor in the Secretary of State's decision. There was an obligation to ensure that the Secretary of State was properly and fairly briefed, and that the decision was kept under review by the Secretary of State personally. D10 had been acquitted of drug trafficking, and the Greek court had not found that there was anything sinister in the relationship between D10 and ABC. This was an important factor which should have been briefed to the Secretary of State and which should have resulted in the Secretary of State reviewing her decision. Further, the Secretary of State had not known about the full details of D10's family and, particularly, the significant difficulties facing his eldest son. The Secretary of State was required to treat the welfare of his children as a primary factor. It was necessary for the Secretary of State to review the decision in the light of the further information about the family, but no review had been undertaken. Moreover, the decision was flawed because it did not adequately address the impact of the acquittal and the impact on D10's family. D10 is entitled to rely on the European Convention on Human Rights. Although he was in Greece at the time of the decision, and therefore outside the territorial jurisdiction of the United Kingdom, he was within the jurisdiction of the Council of Europe and he was only outside the United Kingdom because of the actions of the United Kingdom in extraditing him to Greece. It was not his responsibility or fault that he was outside the United Kingdom. Even if the Convention does not apply, the Secretary of State's policy is not to deprive a person of citizenship if that would expose them to inhuman and degrading treatment. D10 was at such a risk because of a combination of his ethnicity, his having been in the United Kingdom for a protracted period of time, and his valid claim of asylum in the United Kingdom. Mr Southey recognised that to some extent (and especially so far as he claimed that the decision was not rational) the appeal would depend on the CLOSED evidence.

35. Lisa Giovannetti KC, for the Secretary of State, submits that on a proper understanding of the legal framework and the Secretary of State's decisions, D10's family life interests, and his acquittal in Greece, were not of significant relevance to the Secretary of State's decisions. She submits that the right to respect for family life under article 8 of the Convention is not engaged by a decision to deprive a person of their citizenship. D10 was not within the United Kingdom's jurisdiction at the relevant time and is not able to rely on articles 2 or 3 of the Convention. There is, anyway, no sustainable basis on the evidence to conclude that he was at risk of inhuman or degrading treatment. Although the OPEN evidence does not, in itself, provide a rational basis to conclude that D10 is an agent of the country's intelligence service, it is necessary also to take account of the CLOSED evidence.

Relevance of (a) D10's family life interests and (b) acquittal

36. The impact of the decision on D10's family, and the relevance to the decision of D10's acquittal of the drugs charges, cuts across different grounds of appeal. Thus, Mr Southey argues that the decision was unlawful because it was incompatible with the rights of D10's family under article 8 of the Convention; that it was unlawful because it failed to comply with section 55 of the 2009 Act and to treat the interests of the children as a primary consideration; that the briefing given to the Secretary of State was not sufficiently fair and balanced because it did not draw attention to evidence relating to the family (particularly the difficulties of the eldest child) and to the acquittal; and that the national security case was not sufficiently reviewed in the light of updated information about the family and the acquittal. Conversely, Ms Giovannetti submits that the decision does not have a significant impact on D10's family, and that the acquittal was not relevant to the decision.

37. It is therefore convenient to address these overarching issues before turning to the individual grounds of appeal.

Family life interests

38. Between 2005 and 2020, D10 lived with his family in the United Kingdom. That came to an end when he was extradited to Greece. From that point, he was outside the United Kingdom and separated from his family until they were reunited in the country.

39. The decision to deprive D10 of his citizenship does not prevent the family from living together: they continue to live together in the country. Nor does it prevent D10's wife and children from living in the United Kingdom – they may continue to do so if they wish. Nor does it, in itself, necessarily prevent D10 from living with his wife and children in the United Kingdom. It does, however, mean that if D10 wishes to return to the United Kingdom he will first need to secure entry clearance. The deprivation of citizenship does not, in itself, necessarily preclude a favourable grant of entry clearance. Any decision as to whether to grant entry clearance would need to be lawful. That means, in particular, that it would need to be compatible with the right to respect for family life of any relatives of D10 in the United Kingdom.

40. In *Delialissi* [2013] UKUT 439 (UT) the Upper Tribunal held that an appeal against an in-country deprivation decision must take account of the reasonably foreseeable consequences of deprivation on family life. Such reasonably foreseeable consequences might include the removal of the appellant from the United Kingdom and thus the separation of the family. This approach was disapproved by the Court of Appeal in *Aziz v Secretary of State for the Home Department* [2018] EWCA Civ 1884; [2019] 1 WLR 266 *per* Sales LJ at [26] – [31]. Sales LJ said that it was sufficient to consider the impact on family life of the deprivation decision itself, as opposed to making a forecast of whether it would lead to the removal or deportation of the appellant from the United Kingdom. The analogy in the present case is that it is necessary to consider only the direct impact of the deprivation decision on family life, as opposed to seeking to forecast the outcome of an application for entry clearance.

41. The approach in *Aziz* has been followed in cases, like the present case, where the deprivation decision has been made in respect of a person who is outside the United Kingdom: *E5 v Secretary of State for the Home Department* SC/184/2021 (judgment of SIAC, Chamberlain J, UTJ Gleeson and Philip Nelson dated 3 March 2023) at [59] – [60], *R3 v Secretary of State for the Home Department* [2023] EWCA Civ 169 *per* Elisabeth Laing LJ at [80] – [81], [96] and [106].

Acquittal

42. It is easy to understand why D10 might consider that his acquittal of very serious drug trafficking allegations is a significant matter which should cause the Secretary of State to reconsider the decision to deprive him of his citizenship. D10 may understandably have inferred that the Secretary of State was influenced to deprive D10 of his citizenship by the suggestion that he had been involved in importing a huge quantity of class A drugs into Greece. It would naturally follow that the Secretary of State should have re-assessed that suggestion in the light of the fact that D10 was subsequently acquitted.

43. This, however, is all based on a misunderstanding on D10's part. Nothing in the decision making of the Secretary of State indicates that the fact of the European Arrest Warrant was, in itself, a significant factor in the decision to deprive D10 of his citizenship. Far less is there any suggestion that the decision was made because it was thought that D10 had been involved in the importation of drugs. On the contrary, the Secretary of State has been clear throughout that the decision was made because it was assessed that D10 was an agent of the country's intelligence agency. That is quite different from any question of involvement in the importation of drugs.

44. It might therefore appear odd that there was ever any reference to the European Arrest Warrant in the Secretary of State's evidence. The answer to this lies in the chronology and in the evidence of D10. The initial decision to deprive D10 of his citizenship stated that the decision was made on the grounds that he is an agent of the country's intelligence service and that deprivation of citizenship is conducive to the public good. There was no mention whatsoever of drugs trafficking or any wider criminality or of the European Arrest Warrant. In his response to the decision, D10 denied working with the country's intelligence service but did say that he was a distant relative of someone (ABC) who may have worked with the country's intelligence service.

45. It was in response to that account, that the Secretary of State made reference to the European Arrest Warrant. This is set out in the first statement in these proceedings on behalf of the Secretary of State. That statement first sets out a summary to the effect that D10 is an agent of the country's intelligence service. It then sets out the decision, namely that the Secretary of State had decided to deprive D10 of his citizenship on the grounds that to do so would be conducive to the public good, for reasons of national security. At this point, there was no reference to drugs or criminality or ABC or the European Arrest Warrant. Reference was then made to the European Arrest Warrant in the course of setting out the background general chronology (which included that D10 had been extradited pursuant to the European Arrest Warrant). Reference was then made to D10's account that he had contact with a distant relative that he believed to be working for the country's intelligence service. It was in that context that the Secretary of State said that open source reporting indicated that ABC was a heroin trafficker and that the European Arrest Warrant indicated that ABC and D10 were co-defendants. In the light of this information, the Secretary of State indicated that D10's account that ABC was merely a distant relative was not accepted, and that it was assessed that he was a close associate of ABC and that he was involved in ABC's criminal activities. None of this remotely suggests that the European Arrest Warrant, or any suspicion of D10's involvement in criminality, provides support for the decision to deprive D10 of his citizenship. Its simple and limited relevance is that the Secretary of State was not prepared to accept D10's account of the extent of his relationship with ABC.

46. All of that is consistent with BW's evidence that the acquittal is of no, or at best marginal, relevance to the decision. Having considered the totality of the OPEN and CLOSED evidence we are satisfied that it has no, or at least no significant, relevance to the decision to deprive D10 of his citizenship. That decision had nothing to do with any suspicion of involvement in drug trafficking on the part of D10. It was entirely due to the assessment that D10 was an agent of the country's intelligence agency. He had admitted being a contact of a person who he believed to be such an agent, but denied that it went further than that. The Secretary of State justifiably rejected that account.

Ground 1: Whether the Secretary of State acted unreasonably/disproportionately in depriving the appellant of his British citizenship

47. On the OPEN evidence, D10 closely associated with ABC who D10 believes to have had some connection with the country's intelligence service. On D10's account, his association with ABC had nothing to do with that connection and was entirely due to them being friends and relatives. There are aspects of D10's account which appear implausible (for example the circumstances surrounding the purchase and delivery of the watch, in respect of which his oral account was inconsistent with his witness statement). However, we are in no position to find, on the OPEN evidence alone, that there was a basis to assess that D10 was himself an agent of the country's intelligence service. Mere association with someone who D10 believed to have connections with the country's intelligence service is not (nearly) sufficient.

48. Accordingly, the OPEN evidence does not provide any rational justification for the assessment that D10 is an agent of the country's intelligence service. Were it not for the CLOSED evidence, we would allow the appeal.

49. The CLOSED evidence is another matter. In the light of the evidence which we outline in our separate CLOSED judgment, the Secretary of State was entitled to conclude that D10 was an agent of the country's intelligence service. More than that, the assessment is highly likely to be correct (although we do not exclude the possibility that it is incorrect). We are also satisfied (taking account of the nature of the relationship between that country and the United Kingdom, and also the nature and extent of D10's role as an agent of the country's intelligence service) that the Secretary of State was justified in concluding that D10's presence in the United Kingdom would be prejudicial to the interests of national security, and that it is conducive to the public good to deprive D10 of his citizenship.

50. It follows that the decision was not flawed on the ground that it was not a decision which was reasonably open to the Secretary of State on the evidence.

51. For the reasons given above, D10 is not able to rely on article 8 of the Convention, as otherwise this requires a forecast of the outcome of an application for entry clearance, which has yet to be made. Even if he were able to so rely, we would unhesitatingly conclude that any impact on the family life of D10 and his family was justified as being necessary for, and proportionate to the legitimate aim of protecting the national security of the United Kingdom. We reach that conclusion giving full weight to the interests of D10's family, having particular regard to the difficulties of his eldest son, and the interests of the children in being brought up in their country of nationality. The interests of the United Kingdom's national security are sufficiently important to justify an interference with rights to respect for family life. There is a rational connection between the decision and the aim that is sought to be achieved. That is because the decision potentially enables the Secretary of State to

keep D10 outside the United Kingdom where his presence would be injurious to national security. There is no other way to achieve that aim which would be less impactful on the family life of D10 and his family. The decision strikes a fair balance between, on the one hand, the national security of the United Kingdom and, on the other hand, the family life of D10 and his family which can continue to be enjoyed outside the United Kingdom.

52. It follows that we do not accept the submission that there has been a disproportionate interference with the family life of D10 or his wife or children. Far less do we accept any suggestion that there has been an arbitrary interference with those rights, in the sense required by *Usmanov v Russia* (2021) 74 EHRR 12 at [53].

Ground 2: Whether the decision is incompatible with rights to family life under article 8 of the European Convention on Human Rights

53. For the reasons given above (by reference, principally, to the decision in *Aziz*), a decision to deprive a person of his citizenship (as opposed to a subsequent removal/deportation/entry clearance decision) does not engage the right to respect for family life. There is no separate claim that the decision is incompatible with private life rights (as opposed to family life rights) under article 8.

54. Even if the decision does engage rights under article 8 of the Convention, it was a necessary and proportionate interference with those rights, and was not arbitrary, for the reasons we explain above.

55. We therefore dismiss this ground of appeal.

Ground 3: Whether the decision is incompatible with the prohibition of inhuman and degrading treatment under articles 2 and 3 of the Convention

56. If D10 fell within the jurisdictional ambit of the Human Rights Act 1998 at the time of the decision, it would have been unlawful to deprive him of his citizenship if there were substantial grounds for believing there was a real risk that he would be subject to inhuman and degrading treatment (including by reason of refoulement by Greece to the country): *R (AAA (Syria)) v Secretary of State for the Home Department* [2023] UKSC 42; [2023] 1 WLR 4433 *per* Lord Reed and Lord Lloyd-Jones at [28].

57. There is an issue between the parties as to whether D10 was within the jurisdictional ambit of the 1998 Act.

58. Mr Southey submits that he was, because he was within the territory of Greece which is a member state of the Council of Europe, and he was therefore within the territorial reach of the European Convention of Human Rights, and also because the only reason he was outside the territory of the United Kingdom was because of his extradition to Greece by the United Kingdom. It was not his fault or responsibility that he was outside the United Kingdom. Rather, it was the fault or responsibility of the United Kingdom.

59. Although we accept the factual premiss on which this submission is based, we do not accept the submission as to the legal consequence. The jurisdictional ambit of the Human Rights Act 1998 is primarily territorial. Subject to limited exceptions, it applies only to those who are within the territory of the United Kingdom: *R (Al-Skeini) v Secretary of State for Defence* [2007] UKHL 26; [2008] 1 AC 153 *per* Lord Rodger at [47], [56], [59], *per* Lord Carswell at [96] and *per* Lord Brown at [150], *R3 v Secretary of State for the Home Department* [2023] EWCA Civ 169 *per* Elizabeth Laing LJ at [103] – [105], *C9 v Secretary*

of State of the Home Department SC/173/2020 *per* Chamberlain J at [41]. There is no support in any of the authorities for the proposition that an exception applies such that a claimant may rely on articles 2 and 3 of the Convention where the claimant is involuntarily outside the United Kingdom.

60. Mr Southey relies on references in some cases to a claimant being unable to rely on the Convention when they are voluntarily outside the United Kingdom: *P3 v Secretary of State for the Home Department* [2021] EWCA Civ 1642; [2022] 1 WLR 2869 *per* Elizabeth Laing LJ at [109], *R (Ali) v Upper Tribunal* [2024] EWCA Civ 372; [2024] 1 WLR 5097 *per* Andrews LJ at [42] and [49]. He says that the corollary is that a claimant may rely on the Convention when they are involuntarily outside the United Kingdom as a result of actions taken by a public authority. We disagree. The cases on which Mr Southey relies do not establish that a claimant who is involuntarily outside the United Kingdom may rely on articles 2 and 3 of the Convention. They are, moreover, concerned with rights to private and family life within the United Kingdom, rather than risks of inhuman and degrading treatment outside the United Kingdom.

61. Nor is there any exception where the claimant is within the territory of the state of another member of the Council of Europe. Mr Southey relies on the decision in *Andreo v Turkey* (application 45653/99, admissibility judgment 3 June 2008). In that case, the applicant was in the Greek controlled part of Cyprus but close to the border with the Turkish controlled northern part of Cyprus. Soldiers in the Turkish controlled area, under the control of the Turkish armed forces, fired their weapons, shooting and injuring the applicant. The European Court of Human Rights rejected an objection to the admissibility of a complaint of a breach of articles 2, 3 and 8 of the Convention. It held that the opening of fire on the applicant from close range, which was the direct and immediate cause of the applicant's injuries, was such that the applicant must be regarded as having been within the jurisdiction of Turkey. This is, therefore, a case where an applicant was able to rely on the Convention where they were within the territory of a member state of the Council of Europe, but were outside the territorial jurisdiction of the respondent state. It does not, however, stand for the general proposition that Mr Southey contends. The applicant was only treated as being within the jurisdiction of Turkey because of the very particular circumstances of the case. Specifically, Turkey was exercising control over the applicant by its armed forces targeting her across the border, thus engaging a recognised "State agent authority and control" exception to the territorial limitations of jurisdiction under the Convention: *Carter v Russia* (2022) 74 EHRR 12 at [125] – [128].

62. D10 was outside the United Kingdom at the time of the relevant decision. No recognised exception to the territorial limitation of the jurisdictional reach of the 1998 Act applies. In particular, the deprivation of citizenship does not amount to an act of control that is capable of founding jurisdiction under the 1998 Act. Rather, it is the "antithesis of the exercise of control necessary to found jurisdiction under [the Convention]": *SI, TI, UI and VI v Secretary of State for the Home Department* [2016] EWCA Civ 560 *per* Burnett LJ at [102].

63. D10 is not therefore able to rely on articles 2 or 3 of the Convention. That does not, however, prevent him from relying on the Secretary of State's policy not to deprive a person of their citizenship if that would expose them to a risk of inhuman or degrading treatment.

Risk of inhuman and degrading treatment

64. It is striking that D10 did not claim asylum in Greece. If he had genuinely believed that he would be at risk in the country there is no logical reason why he would not advance such a claim. If and insofar as he claims to have been advised that he could not make an asylum claim, we reject that evidence. Moreover, in the light of the CLOSED evidence we are satisfied that D10 did not believe that he would be at risk on return to the country.

65. Further, it is likely that D10 is an agent of the country's intelligence service. That provides a strong protective factor against mistreatment, albeit we acknowledge there is a possibility that he is not such an agent (in which case that protective factor would not be present).

66. We have considered the relevant country information evidence, and country guidance decision. That does not show that D10 is at risk of inhuman or degrading treatment in the country by reason of his ethnicity alone or the fact that he has previously made a valid claim for asylum from the country. There is no evidence that the factors that gave rise to D10's claim for asylum (which involved the possession of leaflets by D10) give rise to a risk to D10 on return to the country. That is not because there has been a durable change in the country, but because of D10's personal circumstances, as they are now known.

67. The evidence does show that certain drugs offences are punishable within the country by the death penalty. It does not, however, show that there is any real risk of the imposition of the death penalty (or inhuman or degrading treatment) on the grounds of suspicion of involvement in drugs trafficking in other jurisdictions.

68. We accept a submission that was advanced by Mr Southey to the effect that so far as D10 may have avoided difficulties since returning to the country, that does not in itself establish that there are no substantial grounds for believing that he is at real risk of inhuman and degrading treatment. However, the fact is that he has now been in the country for a significant period of time and, subject to the two events that he identifies, he has not encountered difficulty.

69. In relation to the suggestion that he was questioned about a failure to enlist for army service, that does not come close to an instance of inhuman or degrading treatment. He was not subjected to any detriment, and although he says he was told that he would be arrested, that has not come to pass (and, even if it did, that does not in itself amount to inhuman or degrading treatment).

70. In relation to the suggestion that he was mistreated when he drove his cousin to the country's intelligence agency, it appears surprising that D10 would do that in circumstances where he claims to be in hiding and in fear of the country's authorities. We are unable to exclude the possibility that it did happen, but if it did happen we are satisfied (partly in the light of the CLOSED evidence) that it would not have been due to any particular antipathy towards D10 by the country's authorities, as opposed to misconduct on the part of an individual officer. It is not something that could reasonably have been foreseen by the Secretary of State. Nor are there substantial grounds for believing that it will recur.

71. In all the circumstances, D10 has not established that there are, or were, substantial grounds to believe that he is at risk of inhuman or degrading treatment in the country. It follows that even if he were able to rely on the Human Rights Act 1998, he has not established that the decision was incompatible with articles 2 or 3 of the Convention.

72. It likewise follows that there was no breach of the Secretary of State's policy not to deprive an individual of their citizenship if that would be likely to result in them suffering inhuman or degrading treatment.

73. We therefore dismiss this ground of appeal.

Ground 4: The appellant has been unfairly deprived of safeguards under EU law.

74. We do not accept that there has been any significant or culpable delay in the decision to deprive D10 of his citizenship. Mr Southey points to reporting that drugs had been seized in 2014. Importantly, however, the decision had nothing to do with the suggestion that D10 had been involved in drug trafficking or with the European Arrest Warrant. The delay between seizure of the drugs and the issue of the European Arrest Warrant and the decision to deprive D10 of his citizenship is not particularly relevant. What matters is the period of time between the moment when the Secretary of State first became aware that D10 was a member of the country's intelligence service and the deprivation decision, and the reasons for that period of time. That is something that can only be addressed by reference to the CLOSED evidence. The Special Advocates did not advance any CLOSED ground that there was significant, unfair or otherwise unlawful delay. They were right not to do so.

75. There is therefore no question of the appellant having been unfairly deprived of safeguards under EU law.

76. We therefore dismiss this ground of appeal.

Grounds 5, 6 and 7: The briefing provided to the Secretary of State was not fair and balanced; There has been a failure to keep the national security case up to date; The decision failed to take proper account of the appellant's acquittal

77. Each of these grounds are different aspects of the same underlying complaint. Mr Southey does not suggest that the initial briefing was unfair or unbalanced. He says that there was a failure to keep the national security case up to date and to review the decision in the light of further information that became known to the Secretary of State. In particular, no account has been taken of D10's acquittal by the Greek courts, or of the difficult position of D10's children, or the risks posed to D10's wife and family by travelling to the country as dual nationals. Ms Giovannetti responds that the evidence shows that the national security case has been kept under review and that the complaints that are made do not impact on that national security case.

78. We do not consider that it has been shown that there was any failure to keep the national security case under review. The essential national security assessment is that D10 is an agent of the country's intelligence service. The evidential basis for that is set out in CLOSED. The first national security statement adopted by witness BW responded to D10's grounds of appeal and maintains that assessment. The second national security statement was adopted by BW in response to further material submitted by D10. Again, BW maintains the assessment notwithstanding that material.

79. We are thus satisfied that BW has taken account of all of the evidence in the case, including all the information relied on by D10. He has convincingly explained (including in CLOSED) why he maintains the national security assessment that D10 is a member of the country's intelligence services. We are satisfied that the national security case has, indeed, been kept under review.

80. In any event, for the reasons we have explained, the factors on which D10 relies (his acquittal and the position of his wife and children) do not directly impact on the national security case.

81. The acquittal was not of any real relevance to the national security case and it did not in any way undermine the national security case. It was incapable of making a difference to the national security case. Given that there was no reliance on the fact of the European Arrest Warrant when making the decision to deprive D10 of his citizenship, and given that the acquittal was incapable of undermining the decision, fairness did not require that decision to be reviewed in the light of the acquittal. Similarly, for the reasons given above, the impact on the family and the particular position of D10's eldest son was not of any significant relevance to the decision. There was no reason to require the Secretary of State to review the decision in the light of further information as to the family.

82. We therefore dismiss this ground of appeal.

Ground 8: There was a failure to provide reasons for the decision which engaged with the appellant's acquittal in Greece and with his family life

83. This was a new proposed ground of appeal that D10 seeks to pursue by way of re-re-re-re-amended grounds of appeal that were lodged in the course of the hearing. We refuse permission to amend. There is no good reason for the delay in adding the amended ground. In any event, the ground is without merit. For the reasons given above, neither the acquittal nor D10's family life was of any real significant relevance to the decision, and it was not necessary to engage with these factors when explaining the reasons for the decision to deprive D10 of his citizenship. That decision was made because D10 is (reasonably assessed to be) a member of the country's intelligence service and is (reasonably assessed to be) a threat to the United Kingdom's national security, such that it is conducive to the public good that he be deprived of his citizenship. Taking the OPEN and CLOSED evidence together, adequate reasons have been given for the decision. Insofar as those reasons can be communicated to D10 without damaging national security, that has been done.

84. We therefore dismiss this ground of appeal.

Outcome

85. The evidence disclosed by the Secretary of State in OPEN does not provide a sufficient basis to conclude that D10 is an agent of the country's intelligence service. However, for the reasons given in our CLOSED judgment, the Secretary of State was entitled to conclude (on the basis of the CLOSED evidence which cannot be disclosed to D10 without prejudicing the interests of national security) that D10 is an agent of the country's intelligence agency, that his presence in the United Kingdom is a threat to national security and that it is conducive to the public good to deprive him of his citizenship. The deprivation of his citizenship is not an arbitrary or disproportionate interference with the family life of D10 or his wife and children. There were and are no substantial grounds to believe that D10 is at real risk of inhuman or degrading treatment in the country.