

BETWEEN:

A.R. AND OTHERS

Applicant

v.

GREECE

Respondent

WRITTEN SUBMISSIONS ON BEHALF OF THE INTERVENORS

The AIRE Centre (Advice on Individual Rights in Europe), DCR (Dutch Council for Refugees),
ECRE (European Council on Refugees and Exiles)

*pursuant to the Registrar's notification dated 28 January 2021 on the Court's permission to intervene under Rule
44 § 3 of the Rules of the European Court of Human Rights*

25th June 2021

Executive Summary

- I. In order to fully comply with their obligations under the Convention, Contracting Parties must ensure that the reception standards respect human dignity, and are adapted to the specific needs of vulnerable migrants. These standards include adequate living conditions with access, *inter alia*, to shelter, food, water, basic amenities such as a safe place to sleep, and guaranteed access to medical, psychological and legal assistance. A lack of adequate reception conditions would result in a failure by Contracting Parties to respect their obligations under Art. 3 of the European Convention on Human Rights (ECHR) and would constitute a violation of human dignity. The intervenors submit that the Court should assess whether steps were taken by the authorities of the Contracting Parties to improve the material conditions of reception or whether the actions taken by the authorities indicate indifference towards the applicants, particularly in relation to their respective vulnerability and needs for access to medical assistance. The early identification of vulnerable individuals should be prioritised to enable access to the rights they are entitled to under international and EU law. The inherent vulnerability of asylum seekers further requires the special attention of public authorities to ensure their full and effective access to domestic remedies in order meet the intended purpose of Art. 13 ECHR. States must therefore provide guarantees based on the *sui generis* needs of an applicant, including medical or psychological assistance, which meet the standards of Art. 13 and applicable EU law.
- II. Pursuant to Article 34 ECHR, Contracting Parties must refrain from acts or omissions that hinder the exercise of an individual's rights. Where interim measures apply to vulnerable individuals, a Contracting Party has an enhanced duty to these individuals and must abide by the measure indicated with diligence and take the appropriate protective measures that the particular vulnerability of the applicant so requires. These interim measures are designed to prevent irreparable harm and should therefore be applied immediately and rigorously enforced by the Contracting Party.

I. The relevant obligations of Contracting Parties under Articles 3 and 13 of the ECHR

Positive and negative obligations of Contracting Parties in respect of Article 3 ECHR

1. This Court has consistently held that the obligation of the State Parties under Art. 1 of the European Convention of Human Rights (ECHR) to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Art. 3, requires States to take measures to ensure that no individuals within their jurisdiction are subjected to ill-treatment.¹
2. Treating all individuals compatibly with the ECHR includes the obligation to identify and pay special attention to the needs of people in a vulnerable situation. This includes asylum seekers;² unaccompanied children, as well as children travelling with their parents; older persons; persons with chronic illnesses or other medical needs; persons with disabilities,³ including acute mental health issues; and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence irrespective of whether authorisation to enter the territory has been granted or if the person has irregular migration status.⁴ States have an obligation to enable those who wish to seek asylum to do so⁵ and to permit them access to determination procedures with all the procedural safeguards required by national law,⁶ including access to information, legal aid, and access to effective remedies.⁷
3. This Court's case law does not permit states to evade their ECHR responsibilities regardless of whether the non-compliance with Convention standards is made with reference to other legal obligations. In *Bosphorus v. Ireland*, the Court stated that "*a Contracting Party is responsible under Art. 1 ... for all acts and omissions of its organs regardless of whether the act or omission... was a consequence of domestic law or of the necessity to comply with international legal obligations*".⁸
4. In accordance with Art. 53 ECHR, Contracting Parties have an obligation to construe the Convention compatibly with the provisions of other agreements to which they are party. EU asylum law provides that applicants for international protection shall be guaranteed access to material reception conditions which provide for an adequate standard of living and, *inter alia*, protect their physical and mental health and that these conditions should be

¹ *Hirsi Jamaa and Others v. Italy*, No. 27765/09 (23 February 2012), § 70, § 114.

² *M.S.S v. Belgium and Greece* [GC], No. 30696/09 (21 January 2011), § 251.

³ *Muskhadzhiyeva and Others v. Belgium*, No. 41442/07 (19 January 2010); *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, No. 13178/03 (12 October 2006).

⁴ *Mutatis mutandis, Saadi v. the United Kingdom* [GC], No. 13229/03 (29 January 2008), § 66; *Mohamad v. Greece*, No. 70586/11 (11 December 2014), § 44.

⁵ *Hirsi Jamaa and Others v. Italy*, Op. Cit.

⁶ *Kebe and Others v. Ukraine*, No. 12552/12, (12 January 2017), § 104.

⁷ *Ibid.*, §101-104; *M.K. and Others v. Poland*, Nos. 40503/17, 42902/17, 43643/17 (23 July 2020), § 220.

⁸ *United Communist Party of Turkey and Others v. Turkey*, (30 January 1998), Reports 1998-I, pp. 17-18, § 29 in *Bosphorus v. Ireland*, No. 45036/98 (30 June 2005), § 153.

guaranteed without interruption.⁹ In *R.R and Others v. Hungary*, this Court noted, in accordance with the EU recast Reception Conditions Directive (rRCD), that “the authorities were in principle required to ensure that material reception conditions are provided to asylum seekers”¹⁰ whilst also taking into account the specific situation of, for example, children and pregnant women.¹¹ In addition, this Court has recognised the relevance and application of jurisprudence of the Court of Justice of the European Union (CJEU), which refers to the “minimum standards laid down by the rRCD” in respect of material conditions of reception for applicants for international protection.¹²

5. In the asylum context, it has been held that unacceptable individual living conditions constituting a serious infringement of human dignity and attributable to Contracting Parties’ acts or omissions may give rise to a violation of Art. 3.¹³ In order to constitute a violation, the inadequacy of the living conditions “must attain a minimum level of severity [...] the assessment of [which] depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim”.¹⁴ This Court has held that a lack of respect for human dignity in living conditions can undoubtedly give rise to feelings of fear, anxiety or inferiority that leads to despair.¹⁵ This situation combined with the lack of prospects to see their situation improve can reach the threshold of gravity required by Art. 3 of the Convention and constitute degrading treatment.¹⁶
6. The Commissioner for Human Rights of the Council of Europe has also reiterated that “everyone has the right, on arrival at the border of a Member State, to be treated with respect for his or her human dignity”.¹⁷ The standards adopted by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) technically apply only to situations where people are deprived of their liberty and not to situations where they are subjected to restrictions on freedom of movement falling short of detention.¹⁸ While “asylum-seekers» are not «immigration detainees»”,¹⁹ due to the fact that the impact of the deprivation or restriction of liberty has an analogous impact on the exercise of their rights and freedoms under the ECHR, the intervenors consider that Parts 2, 4, 9 and 10 of the CPT factsheet cited should apply to the periods the applicants were in detention, and should also be considered useful guidance to vulnerable migrants whose liberty is restricted because they are confined to reception centres.²⁰ The intervenors also note that standards aiming to avoid unnecessary suffering and to ensure respect for basic needs are an inextricable element of the protection to be guaranteed by the CPT,²¹ and by various other instruments.²² **In accordance with this Court’s jurisprudence, the Contracting Party has a positive obligation to accommodate asylum seekers in dignified living conditions; to take steps to ensure that no individuals within their jurisdiction are subject to treatment prohibited by the Convention; and to ensure that the health of persons is adequately secured.**
7. The intervenors further recognize that the provision of adequate reception conditions to a large number of vulnerable migrants including asylum seekers,²³ particularly in the situation of restriction of liberty, can require significant financial and logistical resources. However, “the suffering and humiliation involved must not go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment”²⁴ and the circumvention of relevant safeguards under international law, including under the ECHR, cannot be justified by financial and logistical constraints.²⁵ This Court has ruled in *N.H and Others v. France* that a “gradual increase” in the number of asylum seekers is not comparable to an increase in the context of humanitarian emergencies caused by migratory pressure.²⁶ Even in such cases, the actions of a State to provide, *inter alia*, additional accommodation does not rule out the possibility that living conditions were such that they violated Art. 3 ECHR.²⁷ **The intervenors stress that this Court has made it clear that due to the absolute**

⁹ Article 3(1); Article 17(1),(2), Directive 2013/33/EU (recast) Reception Conditions Directive (rRCD) (29.6.2013). See also; Court of Justice of the European Union Judgement, *Haqbin v. Federaal Agentschap voor de opvang van asielzoekers*, C-233/18 (12 November 2019), § 50.

¹⁰ *R.R and Others v. Hungary*, No. 36037/17 (2 March 2021), § 54, § 58.

¹¹ *Ibid.*

¹² For example, See *B.G and Others v. France*, No. 63141/13 (10 September 2020), § 45. See also: Judgment of the CJEU, *Saciri and Others*, Case C-79/13 (27 February 2014), § 46-51.

¹³ *M.S.S v. Belgium and Greece* [GC], Op. Cit., § 338.

¹⁴ *Ibid.*, § 219; *Sufi and Elmi v. United Kingdom*, Nos. 8319/07 and 11449/07 (28 June 2011), § 213.

¹⁵ *V.M. and Others v. Belgium*, No. 60125/11 (7 July 2015), § 162-163.

¹⁶ *Ibid.*

¹⁷ Article I(1) of the Council of Europe Recommendation of the Commissioner for Human Rights concerning the rights of aliens wishing to enter a Council of Europe member State and the enforcement of expulsion orders, CommDH(2001)19, 19 September 2001.

¹⁸ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ‘Factsheet on Immigration Detention’, CPT/Inf(2017)3.

¹⁹ *Ibid.*, p. 1.

²⁰ *Ibid.*

²¹ *Ibid.*

²² See, by way of analogy, the European Convention for the Protection of Animals kept for Farming Purposes, signed in Strasbourg on 10 March 1976 and the Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes. Amongst other criteria, the places where animals are bred or kept for farming purposes must provide conditions that conform with its “physiological and ethological needs” and the freedom of movement of animals “shall not be restricted in such a manner as to cause it unnecessary suffering or injury”. Humans must be entitled as a bare minimum to no less.

²³ *N.H and Others v. France*, No. 28820/13 (2 July 2020), § 162.

²⁴ *Orchowski v. Poland*, No. 17885/04 (22 October 2009), §120.

²⁵ *Mutatis mutandis*, *Orchowski v. Poland*, No. 17885/04 (22 October 2009), § 120, § 153.

²⁶ *N.H and Others v. France*, Op. Cit., § 182.

²⁷ *Ibid.*

character of Art. 3 ECHR, a State cannot be absolved of its obligations under that provision²⁸ and that difficulties associated with migration flows cannot justify recourse to practices incompatible with the Contracting Parties' obligations under the Convention, in particular, the need to ensure everyone's human dignity at all stages of their reception procedure, including when their liberty is restricted.

Specific requirements for vulnerable individuals in respect of material reception conditions in compliance with Article 3 ECHR

8. This Court has recognised that asylum seekers are members of a “*particularly underprivileged and vulnerable population*”.²⁹ Asylum seekers have few resources and can only rely on the State for assistance. It is, therefore, crucial for the Contracting Parties “*to provide accommodation and decent material conditions*”³⁰ for asylum seekers in order not to render them more vulnerable.
9. Respect for the enhanced vulnerability of child asylum seekers,³¹ *qua* child and *qua* asylum seeker, must be a primary consideration, taking precedence over their irregular migration status.³² The Court has recognised the right of children to have their best interests assessed and taken as a primary, and in some contexts, paramount consideration.³³ In *Rahimi v. Greece*,³⁴ the Court confirmed that in all actions relating to children, a best interests assessment must be undertaken separately and prior to any decision that will affect that child's life.³⁵ There is a need to ensure reception facilities and conditions are adapted to the age of the child and to provide assurances that their family members will not be separated to prevent the conditions giving rise to feelings of stress and anxiety that may reach the threshold of Art. 3.³⁶ The intervenors note that, among others elements, a reduced number of medical professionals assisting migrant children would further compound the inadequacy of material reception conditions.³⁷
10. The Court has acknowledged that a Contracting Party's margin of appreciation is narrowed when “*a restriction on fundamental rights applies to a particularly vulnerable group in society*”.³⁸ This Court has recognised that vulnerability is not exclusively individual, but it is also the product of specific group-based experiences such as social, economic, political, and historical circumstances.³⁹ This Court has also emphasised that Contracting Parties must “*exercise particular care to avoid situations which may reproduce the plight that forced these persons to flee in the first place*”.⁴⁰ In addition to the fact that asylum seekers are already considered a vulnerable group *per se*, international law ascribes varying definitions of which individuals or groups of individuals classify as vulnerable.⁴¹
11. The Court has identified a number of particularly vulnerable groups that suffered a history of prejudice and social exclusion, in respect of which the Contracting Party has a narrower margin of appreciation.⁴² Accordingly, if a restriction on fundamental rights applies to such a vulnerable group, then the Contracting Party must have “*very weighty reasons*” for the restrictions.⁴³ The vulnerability of groups that suffered adverse treatment has been recognised on account of their sex,⁴⁴ race or ethnicity,⁴⁵ mental faculties,⁴⁶ disability⁴⁷ or health status, in particular for persons living with HIV.⁴⁸ The Court has emphasised the “*particularly vulnerable situation of victims of torture*”⁴⁹ and has set out several procedural obligations for the domestic authorities on the assessment of the risk of ill-treatment and the respect of Art. 3 ECHR.⁵⁰

²⁸ *M.S.S v. Belgium and Greece* [GC], Op. Cit., § 223.

²⁹ *Ibid.*, § 251.

³⁰ *Ibid.*, § 250-251.

³¹ *Ibid.*, § 232.

³² *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, Op. Cit., § 55.

³³ *Neulinger and Shuruk v. Switzerland*, No. 41615/07 (6 July 2010), § 135; *Yousef v. Netherlands*, No. 33711/96 (5 February 2003) § 73; *Wagner and J.M.W.L. v. Luxembourg*, No.76240/01 (28 September 2007) § 133.

For a commentary on this line of jurisprudence see C. Simmonds, *Paramountcy and the ECHR: A conflict resolved?*, Cambridge Law Journal, Volume 71, Issue 3, November 2012, pp. 498-501.

³⁴ *Rahimi v. Greece*, No. 8687/08 (5 April 2011), § 108.

³⁵ See EASO, 'Practical Guide on the Best Interests of the Child in Asylum Procedures', 2019, p.17, p.25.

³⁶ *Tarakhel v. Switzerland*, [GC], No. 29217/12 (4 November 2014), § 119, § 120.

³⁷ *The International Commission of Jurists and European Council on Refugees and Exiles v. Greece*, Complaint No. 173/2018 (23 May 2019) ECSR (Decision on Admissibility), § 14.

³⁸ *Alajos Kiss v. Hungary*, No. 38832/06 (25 May 2010), § 42. See also, *Kiyutin v. Russia*, No. 2700/10 (10 March 2011), § 74.

³⁹ *M.S.S. v. Belgium and Greece*, [GC], Op. Cit., § 232, § 251.

⁴⁰ *O.M. v. Hungary*, No. 9912/15 (5 July 2016), § 53.

⁴¹ See, e.g., United Nations Convention on the Rights of the Child (UNCRC), Assembly resolution 44/25 entry into force 2 September 1990; United Nations Convention on the Rights of Persons with Disabilities, 24 January 2007.

⁴² *Kiyutin v. Russia*, No. 2700/10 (15 September 2011), § 48.

⁴³ *Ibid.*, § 63.

⁴⁴ *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, Nos. 9214/80; 9473/81; 9474/81 (28 May 1985), § 78; *Burghartz v. Switzerland*, No. 16213/90, (22 February 1994), § 27.

⁴⁵ *D.H. and Others v. the Czech Republic* [GC], No. 57325/00, (13 November 2007), § 182; *Timishev v. Russia*, Nos. 55762/00 and 55974/00 (13 March 2006), § 56.

⁴⁶ *Alajos Kiss v. Hungary*, Op. Cit., § 42; *mutatis mutandis*, *Shtukaturov v. Russia*, No. 44009/05 (27 June 2008), § 95.

⁴⁷ *Glor v. Switzerland*, No. 13444/04 (6 November 2009), § 80.

⁴⁸ *Kiyutin v. Russia*, Op. Cit., § 64.

⁴⁹ *Bati and Others v. Turkey*, Nos. 33097/96 and 57834/00 (3 September 2004), § 133; *Gisayev v. Russia*, No. 14811/04 (20 June 2011), § 116; *Aydin v. Turkey*, No. 57/1996/676/866 (25 September 1997), § 103.

⁵⁰ *Paposhvili v. Belgium*, No. 41738/10 (17 April 2014), § 189.

12. This Court has previously found, in respect of the Contracting Party, that overcrowding and unsanitary reception conditions are incompatible with Art. 3⁵¹ and noted that insalubrious living conditions may have a profound effect on a person's dignity and cause a feeling of inferiority and anxiety amounting to degrading treatment contrary to Art. 3.⁵² Moreover, this Court has indicated that State responsibility under Art. 3 ECHR may be engaged in certain circumstances where an applicant "*who is totally dependent on public assistance is confronted with indifference on the part of the authorities*".⁵³ In *B.G v. France*, this Court has observed that when assessing whether material conditions of reception are of such a gravity as to reach the threshold required to find a violation of Art. 3 ECHR, it will take into account evidence of the specific material conditions as well as the measures taken by a Contracting Parties' authorities to improve said material conditions.⁵⁴ **As such, the intervenors submit that, when considering this evidence, the Court should consider whether the authorities of the Contracting Party acted with indifference or took measures to "rapidly and significantly" improve material conditions of reception, including through the provision of medical assistance.⁵⁵ When making this assessment, the Court should consider the evidence in light of an applicant's specific vulnerability.**
13. Pursuant to Art. 53 ECHR, vulnerable migrants are entitled to the enhanced guarantees required by international⁵⁶ and EU law.⁵⁷ Under EU law, the rRCD and the recast Asylum Procedures Directive (rAPD) stipulate the need for special guarantees and procedures for identified vulnerable persons.⁵⁸ For the protection in either Directive to be effective and adequate, there must be early identification of vulnerable persons when making an initial request for international protection and prompt action by the EU Member State following such identification measures.⁵⁹
14. Asylum seekers and refugees are particularly vulnerable to trafficking and their arrival in Europe is *one* early opportunity to identify them as potential victims of trafficking.⁶⁰ EU law calls for the early identification of victims of human trafficking⁶¹ and requires a timely assessment to identify the specific protection needs of persons in respect of their particular vulnerability.⁶² International law further requires States to take measures "*to provide for the physical, psychological, and social recovery of victims of human trafficking*".⁶³ The intervenors **therefore submit that the early identification of vulnerability is an essential prerequisite for protecting Convention rights, upholding human dignity, and effectuating the "special protection" of recognised vulnerable persons.**⁶⁴
15. Art. 21 of the rRCD specifically refers, *inter alia*, to minors, unaccompanied minors, disabled people, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence as vulnerable with special reception needs.⁶⁵ The EU legislated these matters within its shared competence leaving room for the Member States to adopt legally binding acts, and corresponding domestic policies and practices, only to the extent that those do not conflict with the Directive. **Hence, national laws, policies or practices that deny the recognition on the basis of a specific characteristic/situation expressly recognised by secondary EU law as rendering affected individuals vulnerable, will struggle to meet EU as well as Convention standards, by virtue of Art. 53 ECHR.**⁶⁶ The CJEU has made clear that the threshold⁶⁷ for finding a violation of Art. 4 of the Charter of Fundamental Rights of the EU (CFR), which corresponds to Art. 3 ECHR, could be met by particularly vulnerable applicants under circumstances that may not constitute a violation *vis-à-vis* all applicants.⁶⁸
16. This is also in line with the understanding of the concept of vulnerability by the UN Treaty Bodies. The Human Rights Committee (CCPR), found that "*individual circumstances ... include factors that increase the vulnerability of such persons and that could transform a situation that is tolerable for most into an intolerable one for others*".⁶⁹

⁵¹ *H.A v. Greece*, No. 58424/11 (21 January 2016), § 40.

⁵² *M.S.S. v. Belgium and Greece*, [GC], Op. Cit., § 233.

⁵³ *B.G and Others v. France*, Op. Cit., § 81.

⁵⁴ *Ibid.*, § 89.

⁵⁵ *Ibid.*, § 88.

⁵⁶ *M.S.S. v. Belgium and Greece*, [GC], Op. Cit., § 232, § 251.

⁵⁷ See for example, Article 23; Article 24; Article 25, Directive 2013/33/EU rRCD.

⁵⁸ Asylum Information Database (AIDA), 'The concept of vulnerability in European asylum procedures', August 2017, p.14

⁵⁹ See, for instance, Art. 11, § 4, Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, 5 April 2011.

⁶⁰ European Parliamentary Research Service: Detecting and protecting victims of trafficking in hotspots - Ex-post evaluation, July 2019, available at < <https://bit.ly/2SzEKWP> >.

⁶¹ Article 11 (4), Directive 2011/36/EU, Op. Cit.

⁶² Article 22 (1), EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, 25 October 2012.

⁶³ Article 6(3); Article 6(4), United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000.

⁶⁴ *Tarakhel v. Switzerland*, [GC], Op. Cit., § 118.

⁶⁵ Article 21, Directive 2013/33/EU rRCD.

⁶⁶ European Union, Charter of Fundamental Rights of the European Union (EU CFR), 26 October 2012, 2012/C 326/02; CJEU (Grand Chamber), Judgment of 15 October 2019, *Dorobantu*, C-128/18, EU:C:2019:857, § 49-52; CJEU Judgment of 19 March 2019, *Jawo*, C-163/17, EU:C:2019:218, § 88-95.

⁶⁷ CJEU Judgment of 19 March 2019, *Jawo*, C-163/17, EU:C:2019:218, § 89-91.

⁶⁸ *Ibid.*, § 93.

⁶⁹ [emphasis added] UN Human Rights Committee (CCPR), *Bayush Alemseged Araya v. Denmark*, Communication No. 2575/2015, 3 May 2019, § 9.7.

- The “*vulnerability-increasing factors*”, according to the CCPR, include age,⁷⁰ medical conditions,⁷¹ or being a victim of trafficking.⁷² It considers the “*cumulative effect*” of specific vulnerable circumstances and requires the same from national authorities to be in line with International Covenant on Civil and Political Rights (ICCPR) standards.⁷³
17. General Recommendation No. 32 of the Committee of the Elimination of all forms of Discrimination Against Women (CEDAW) states that “*gender sensitivity should be reflected in reception arrangements*” which may include, *inter alia*, the provision of “*separate facilities and materials... to meet the specific hygiene needs of women*”.⁷⁴ General Recommendation No. 32 also notes the particular need to identify victims of sexual abuse and exploitation, victims of torture and ill-treatment, and the need to preserve family unity in reception arrangements.⁷⁵ General Recommendation No. 24 CEDAW further states the obligation on States to “*refrain from obstructing action taken by women in pursuit of their health goals*”.⁷⁶
 18. The UN Committee on the Rights of the Child (UNCRC) puts the child’s inherent vulnerability at the centre of its decision-making and states that children “*shall be treated with humanity and respect for the inherent dignity of the human person*”.⁷⁷ In addition to the best interests of the child being a primary consideration in all actions involving the child,⁷⁸ Art. 24 Convention on the Rights of the Child (CRC) stipulates that Member States shall recognise “*the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health*”.⁷⁹ In addition, the EU CFR further finds that “*a high level of human health protection shall be ensured in the definition and implementation of all the Union’s policies and activities*”.⁸⁰
 19. **The intervenors submit that in order to fully comply with their obligations under the Convention, and in particular under Art. 53, Contracting Parties should identify the specific vulnerability of applicants at the earliest opportunity; ensure that both the material conditions and reception facilities are adapted to the specific needs of vulnerable migrants; and that procedural safeguards are both in place and observed in practice in view of their particular circumstances and enhanced vulnerability. To do otherwise, results in a failure by Contracting Parties to give full effect to their obligations under Art. 3.**
 20. Given the absolute nature of Art. 3 ECHR, the intervenors submit that Contracting Parties to the ECHR must protect the dignity of all persons under their jurisdiction taking due account of their particular vulnerabilities. As such, the intervenors submit that considerations of adequate living conditions justify reference, by analogy, to the Court’s jurisprudence on detention conditions, the standards of which, in respect of adequate living conditions, are applicable *mutatis mutandis*. It is the Contracting Party’s responsibility to “[...] ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and wellbeing are adequately secured by, among other things, providing him with the requisite medical assistance”.⁸¹ Aspects relevant for the assessment of compliance with Art. 3 include, *inter alia*, access to natural light or air, the availability of ventilation, and compliance with basic sanitary and hygiene requirements.⁸² In *Khlaifia v. Italy* this Court has found, when taking into account the *overall* living conditions of a facility, that a violation of Art. 3 arose when the personal space available to a detainee fell below 3m² in multi-occupancy accommodation.⁸³ This Court has further added that “*the cumulative effects of these [detention] conditions, as well as of specific allegations made by the applicant*”, must be taken into account.⁸⁴
 21. This Court has ruled on the threshold of Art.3 in the context of complaints relating to an applicant’s state of health. A “**failure to provide proper medical aid to a detainee would not fall under Art. 3 unless there was an actual detriment to his physical or mental condition, or avoidable suffering of a certain intensity, or an immediate risk of such detriment or suffering**”.⁸⁵ For example, this Court has previously ruled in relation to the detention of HIV-positive persons and found that a lack of adequate medical treatment resulted in “**very serious risks to the applicant’s health and must have caused [them] considerable mental suffering diminishing [their]**

⁷⁰ CCPR, *O.A. v. Denmark*, Communication No. 2770/2016, 11 December 2017, § 8.11.

⁷¹ CCPR, *R.A.A. and Z.N. v. Denmark*, Communication No. 2608/2015, 29 December 2016, § 7.8.

⁷² CCPR, *Osayi Omo-Amenaghawon v. Denmark*, Communication No. 2288/2013, 23 July 2015, § 7.5.

⁷³ CCPR, *A.A.S. v. Denmark*, Communication No. 2464/2014, 16 September 2016, § 7.7; CCPR, *X. v. Denmark*, Communication No. 2389/2014, 21 October 2015, § 7.7.

⁷⁴ UN CEDAW, General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014, § 34.

⁷⁵ *Ibid.*

⁷⁶ UN CEDAW, General Recommendation No. 24 Women and Health, A/54/38/Rev.1, 1999, § 14

⁷⁷ Article 37(b) and (c) UNCRC.

⁷⁸ Article 3(1) UNCRC. See also: Article 24, EU CFR, Op. Cit.

⁷⁹ Article 3; Article 24(1) UNCRC. See also: UNHCR, ‘2021 UNHCR Best Interests Guidelines: Assessing and Determining the Best Interests of the Child’, May 2021, available at < <https://bit.ly/3uH7s5k> >.

⁸⁰ Article 35, EU CFR, Op. Cit.

⁸¹ *Kudła v. Poland*, No. 30210/96 (26 October 2000), § 94. See also: *Yaroslav Belousov v. Russia*, Nos. 2653/13 and 60980/14 (4 October 2016), § 92; *Tabesh v. Greece*, No. 8256/07 (26 November 2009), § 36.

⁸² *Moxamed Ismaaciil and Abdirahman Warsame v. Malta*, Nos. 52160/13 and 52165/13 (12 January 2016), § 81.

⁸³ *Khlaifia and Others v. Italy*, No. 16483/12 (15 December 2016), § 167, 175.

⁸⁴ See *Aden Ahmed v. Malta*, No. 55352/12 (23 July 2013), § 86. See also *Moxamed Ismaaciil and Abdirahman Warsame V. Malta*, Op. Cit., (12 January 2016) § 98.

⁸⁵ *Moxamed Ismaaciil and Abdirahman Warsame v. Malta*, Op. Cit., § 83; § 94; § 96.

human dignity".⁸⁶ This Court has also found that complaints regarding a lack of medical assistance had not reached the threshold of treatment in breach of Art. 3 **where the treatment administered had resulted in an improvement to the person's health**.⁸⁷ This Court recently reiterated in the case of *Feilazoo v. Malta*, concerning detention conditions in the context of Covid-19 in respect of Art. 3, that "*medical treatment within detention facilities must be appropriate and comparable to the quality of treatment which the State authorities have committed themselves to providing for the population as a whole*".⁸⁸ This Court affirmed that when substantiating claims concerning allegations of inadequate detention conditions, there is a burden on the responding Government to collate convincing evidence on material detention conditions and failing to provide such evidence "*may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations*".⁸⁹ The rRCD also provides further detail as to the health and well-being of detained vulnerable individuals, highlighting in particular that the health and mental health of detained vulnerable individuals should be a primary concern with the need for adequate monitoring by Member State authorities.⁹⁰

22. **When assessing the threshold of severity to establish a violation under Art. 3 ECHR, the intervenors submit that this Court should take into consideration the cumulative effect of the detention conditions complained of. This includes considerations of an applicant's state of health on entry to a detention facility, the development of his/her health conditions while in detention, and whether a lack of medical assistance led to avoidable suffering or a risk of such suffering. In the context of the applicant's complaints under Art. 3, evidence to the contrary should not be of a general nature but should be substantiated with specific and convincing details.**⁹¹ In the absence of such evidence, the Court may draw inferences to conclude that an applicant's allegations that material reception conditions were incompatible with respect for human dignity are well-founded.

The obligations of the Contracting Party under Article 13 ECHR

23. Art. 13 guarantees (i) an effective remedy, (ii) before a "competent national authority", (iii) to everyone whose Convention rights have been violated.⁹²
24. To sustain a complaint under Art. 13, applicants must have an "arguable" claim that one of their Convention rights was violated and that no effective national remedy exists.⁹³ However, notwithstanding its wording, an Art. 13 claim may be advanced before the establishment of a violation of the other Convention provision.⁹⁴ For the claim advanced to be arguable, this Court has held that it must not be so weak that it would be deemed "manifestly ill-founded".⁹⁵ Whether a particular claim meets this threshold requires an *ad hoc* determination in light of the specific facts and legal issues raised.⁹⁶
25. The existence of this remedy must be "*sufficiently certain, not only in theory but also in practice, failing which it will lack the requisite accessibility and effectiveness*".⁹⁷ To be accessible in practice, a remedy must be capable of directly rectifying the impugned situation.⁹⁸ In well-established case law, this Court has made clear that rights are not guaranteed when they are theoretical or illusory.⁹⁹ Therefore, the Contracting Party must afford applicants a realistic possibility of accessing remedies and may not unjustifiably hinder, by their acts or omissions, the applicant's access to said remedy.¹⁰⁰
26. The effectiveness of a remedy for the purpose of Art. 13 does not depend on the certainty of a favourable outcome for the applicant.¹⁰¹ Rather, it must be sufficient and accessible to the person concerned, while fulfilling the obligation of promptness in light of any particular vulnerabilities of the applicant.¹⁰² A remedy that is considered ineffective in some circumstances may lack that quality in other factual situations. This Court's jurisprudence highlights a number of obstacles that may render the remedy against prohibited treatment under Art. 3 ineffective, including, *inter alia*, removing the individual before he or she had the practical possibility of accessing the remedy,¹⁰³ the lack of a remedy's automatic suspensive effect;¹⁰⁴ excessively short time limits in law for submitting the claim or an appeal;¹⁰⁵ insufficient information on how to gain effective access to the relevant procedures and

⁸⁶ *Kozhokar v. Russia*, No. 33099/08 (16 December 2010), § 115.

⁸⁷ *L.M. and Others v. Russia*, Nos. 40088/14 and 40127/14 (15 October 2015), § 135. See also: *B.G v. France*, Op. Cit., § 81, § 88, § 89.

⁸⁸ *Feilazoo v. Malta*, No. 6865/19 (11 March 2021), § 86. See also: *Wiater v. Poland*, No. 42290/08 15 May 2012 (inadmissibility decision), § 38-41.

⁸⁹ *Ibid.*, § 85.

⁹⁰ Article 11(1), Directive 2013/33/EU rRCD, Op. Cit.

⁹¹ *Feilazoo v. Malta*, Op. Cit., § 85.

⁹² See for instance: *Diallo v. Czech Republic*, No. 20493/07 (28 November 2011), § 59-71; and *Khlaifia and Others v. Italy*, Op. Cit., § 268.

⁹³ *Boyle and Rice v. the United Kingdom*, No. 16580/90 (24 March 1988), § 52.

⁹⁴ *Klass and Others v. Germany*, No. 5029/71 (6 September 1978), § 64.

⁹⁵ *Diallo v. Czech Republic*, Op. Cit., § 59-71.

⁹⁶ *Boyle and Rice v. the United Kingdom*, Op. Cit., § 52-55.

⁹⁷ *Khlaifia and Others v. Italy*, Op. Cit., § 130.

⁹⁸ *Pine Valley Developments Ltd and Others v. Ireland*, No. 12742/87 (29 November 1991), § 66.

⁹⁹ See for instance: *Čonka v. Belgium*, No. 51564/99 (5 February 2002), § 46, 75; *El-Masri v. The former Yugoslav Republic of Macedonia*, No. 39630/09 (13 December 2012), § 134.

¹⁰⁰ *G.R. v. Netherlands*, No. 22251/07 (10 January 2012), § 55; *Čonka v. Belgium*, Op. Cit., § 46, 75.

¹⁰¹ *Khlaifia and Others v. Italy*, Op. Cit., § 268.

¹⁰² *Kadikis v. Lettonie*, No. 62393/00 (04 August 2009), § 62; *Payet v. France*, No. 19606/08 (20 January 2011), § 131-134.

¹⁰³ *Shamayev and Others v. Georgia and Russia*, No. 36378/02 (12 April 2005), § 460; *Labsi v. Slovakia*, No. 33809/08 (15 May 2012), § 139.

¹⁰⁴ *Baysakov and Others v. Ukraine*, No. 54131/08 (18 February 2010), § 74; *M.A. v. Cyprus*, No. 41872/10 (23 July 2013), § 133.

¹⁰⁵ *I.M. v. France*, No. 9152/09 (14 December 2010), § 144; *M.S.S. v. Belgium and Greece*, [GC], Op. Cit., § 306.

remedies;¹⁰⁶ obstacles in physical access to and/or communication with the responsible authority;¹⁰⁷ lack of (free) legal assistance and access to a lawyer,¹⁰⁸ and lack of interpretation.¹⁰⁹ The “authority” referred to in Art. 13 does not necessarily need to be judicial; but if it is not, the powers and guarantees which it affords are relevant in determining whether the remedy before it is effective.¹¹⁰ For instance, over the last several years, in a number of cases¹¹¹ regarding conditions in Greek prison/detention centres, the Court has consistently held that remedies provided for in Greek domestic law, in particular under Art. 572 of the Code of Criminal Procedure, were ineffective and did not satisfy the requirements under Art. 13.¹¹²

27. **Under Art. 53, where Contracting Parties are also bound by EU law, the Court must ensure that Convention rights are interpreted and applied in a manner which does not diminish rights guaranteed by EU law, including the CFR¹¹³ and the rAPD¹¹⁴ which set out the importance of legal assistance in ensuring an accessible and effective remedy. Under Art. 47 CFR, the *guarantees* of Article 6 ECHR, including effective access to court, may apply in circumstances where Art. 6 would not apply under the Convention itself. Similarly, UN resolutions affirm that States should take appropriate legislative, administrative, and other measures to prevent violations and to investigate them effectively, promptly, thoroughly and impartially.¹¹⁵**
28. The intervenors reiterate, in the context of Art. 13 ECHR, that treating all individuals compatibly with the Convention includes the obligation to identify and pay special attention to the needs of people in a vulnerable situation. States have an obligation to enable those who wish to identify themselves as seeking asylum to do so¹¹⁶ and to permit them access to determination procedures with all the procedural safeguards required by national law,¹¹⁷ including access to information, legal aid and access to effective remedies.
29. The Contracting Parties are afforded a margin of appreciation concerning the specific form of a remedy.¹¹⁸ In certain instances, financial compensation¹¹⁹ and preventive remedies ensuring access to direct relief for a detainee suffering serious illness have been deemed appropriate form of redress.¹²⁰
30. **The intervenors submit that the inherent vulnerability of asylum seekers requires the special attention of public authorities to ensure their full and effective access to domestic remedies in order to meet the intended purpose of Art. 13.¹²¹ States must therefore provide guarantees based on the *sui generis* needs of an applicant, including medical or psychological assistance, which meet the standards of Art. 13 and applicable EU law.¹²²**

II. The Contracting Parties’ substantive and procedural obligations in the context of Rule 39 interim measures including the requirement of safeguarding the effectiveness of the Convention and the rights contained therein.

31. Pursuant to Art. 34 ECHR, Contracting Parties must refrain from acts or omissions that hinder the exercise of an individual’s rights.¹²³ The object and purpose of the Convention as an instrument for human rights protection require that its provisions be interpreted and applied so as to be both practical and effective.¹²⁴ In its interpretation of the Convention provisions, the Court should take into account the relevant rules of international law, and should, so far as possible, interpret the Convention in harmony with other rules of international law of which it forms part.¹²⁵
32. This Court has found interim measures to play a “*vital role*” in the Convention system and that compliance of States Parties is of “*the utmost importance*”.¹²⁶ Effective operation of the individual petition system requires that

¹⁰⁶ *Hirsi Jamaa and Others v. Italy*, Op. Cit., § 204.

¹⁰⁷ *Gebremedhin v. France*, No. 25389/05 (26 April 2007), § 54; *I.M. v. France*, Op. Cit., § 130; *M.S.S. v. Belgium and Greece*, Op. Cit., § 301 - 313.

¹⁰⁸ *M.S.S. v. Belgium and Greece*, [GC], Op. Cit., § 319; *mutatis mutandis, N.D. and N.T. v. Spain*, Nos. 8675/15 and 8697/15 (3 October 2017), § 118.

¹⁰⁹ *Hirsi Jamaa and Others v. Italy*, Op. Cit., § 202.

¹¹⁰ *Klass and Others v. Germany*, Op. Cit., § 67; *Kudla v. Poland*, No. 30210/96 (26 October 2000), § 162.

¹¹¹ See for instance: *Dikaïou v. Greece*, No. 77457/13 (16 July 2020) holding that Art. 572 of the Code of Criminal Procedure and Art. 6 of the Greek Penal Code were not effective remedies; *Zabelos and Others v. Greece*, No. 1167/15 (17 May 2018) holding that a Greek Ombudsman without bidding authority was not an effective remedy; and *Kalandia v. Greece*, No. 48684/15 (6 October 2016) holding that a remedy under Art. 110A of the Penal Code failed to deliver prompt redress.

¹¹² *Dikaïou v. Greece*, Op. Cit., § 68.

¹¹³ Article 47, European Union, CFR, Op. Cit.

¹¹⁴ See in particular, Article 20, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 29 June 2013, OJ L. 180/60 -180/95; 29.6.2013, 2013/32/EU.

¹¹⁵ UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: resolution/adopted by the General Assembly, 21 March 2006, A/RES/60/147, part II (3) A, B and C.

¹¹⁶ *Hirsi Jamaa and Others v. Italy*, Op Cit.

¹¹⁷ *Kebe and Others v. Ukraine*, No. 12552/12 (12 January 2017), § 104.

¹¹⁸ *Budayeva and Others v. Russia*, Nos. 15339/02, 12266/02, 20058/02 (29 September 2008), § 190.

¹¹⁹ *Ulemek v. Croatia*, No. 21613/16 (31 October 2019), § 74.

¹²⁰ *Cupravos v. Latvia*, No. 8543/04 (18 December 2012), § 50.

¹²¹ *M.S.S. v. Belgium and Greece*, [GC], Op. Cit., § 233.

¹²² *Ibid.*; *Thimothaeus v. Belgium*, No. 39061/11 (4 April 2017), § 73.

¹²³ *M.K and Others v. Poland*, Op. Cit., § 229.

¹²⁴ *Mamtkulov and Askarov v. Turkey* [GC], Nos. 46827/99 and 46951/99 (4 February 2005), § 101.

¹²⁵ *Al-Adsani v. the United Kingdom* [GC], No. 35763/97 (21 Nov.2001), § 55.

¹²⁶ *M.K and Others v. Poland*, Op. Cit., § 231.

there be no interference with or hindrance of the individual's right to present and pursue his or her complaint before the Court.¹²⁷ As such, interim measures facilitate the applicant's right under Art. 34 by preserving and protecting their interests and asserted Convention right(s), which could be irreparably damaged by an act or omission of a Contracting Party.¹²⁸ Therefore, their aim is both to safeguard the rights of the Parties in order to prevent irreparable damage¹²⁹ pending the decision of the Court and to permit the Court to give practical and effective protection to the Convention rights which the Contracting Parties have undertaken to secure.¹³⁰

33. In accordance with the Court's previous case law, the intervenors submit that in situations affecting vulnerable persons seeking asylum, States have a positive duty under Art. 34 to furnish all the necessary facilities to undertake a proper and effective examination of a vulnerable individual's complaint.¹³¹ In the cases of *Tehrani and Others v. Turkey*¹³² and *Charahili v. Turkey*¹³³ in which the Court issued interim measures, the Court found a violation following an examination of both cases on the basis that the living conditions in certain locations where the applicants were detained amounted to a violation of Art. 3. Where interim measures are imposed by the Court, especially where the beneficiaries are particularly vulnerable persons, States are required to take the appropriate steps to ensure they do not fall foul of the binding requirements of the measures.
34. This Court has indicated interim measures requiring the State to take positive action, specifically in respect of Art. 3 rights. In the pending case of *Darboe and Camara*,¹³⁴ the Court formulated the interim measure as obliging the national authorities to move the unaccompanied children who were asylum applicants to adequate and tailored accommodation appropriate to the requirements of ensuring a child's well-being, safety, and security.¹³⁵ Similarly, in the recent case of *A.N. and Others v. Greece*, the Court has ordered interim measures to ensure that the applicants, young vulnerable boys, are given access to appropriate accommodation by the Greek authorities.¹³⁶ In the pending case of *N.E. and Others v. Greece*, this Court granted Rule 39 measures in respect of the living conditions for the vulnerable applicants, pregnant women, and women with newborn babies who lived in tents in the forest outside the hotspot or in a container inside the hotspot.¹³⁷

Vulnerable persons subject to interim measures

35. As noted above, the Court shall grant interim measures in truly exceptional circumstances in which the applicants face a real risk of irreversible harm. The Court has frequently recognised the exposure to a risk of torture as an exceptional case in which to grant interim measures.¹³⁸
36. The risk of serious, irreversible harm to an applicant where interim measures are not respected is increased when the rights at stake are those of a particularly vulnerable category of subjects, such as seriously ill persons.¹³⁹ Indeed, this Court has held that when the petitioner who is the subject of interim measures is in a particularly vulnerable situation – such as a HIV-positive detainee requiring medical assistance - the State will be considered to have “*failed to honour its commitments under Article 34 of the Convention*” for non-compliance.¹⁴⁰ In these cases the Court has affirmed, pursuant to the application of Rule 39, that individuals of a particularly vulnerable category are to be respected in order to protect the parties' interests in the spirit of proper conduct of proceedings.
37. **The intervenors submit that interim measures are a vital mechanism indicated in urgent cases where there is an immediate risk of irreparable harm. Stemming from the nature of the rights which interim measures commonly protect, this Court has found them to be binding. Where interim measures relate to vulnerable individuals, irrespective of whether vulnerable individuals are asylum applicants or whether their asylum application will eventually be granted, the State has an enhanced duty to these individuals and must abide by the measure indicated with special diligence and take the appropriate protective measures which the particular vulnerability of the applicant requires. Such obligations must be immediately, strictly, and consistently adhered to, in all cases, and with all efforts of all institutions of the State, irrespective of the Contracting Party's view of the merits of the case.**

¹²⁷ *Andrey Lavrov v. Russia*, No. 66252/14 (1 March 2016), § 31; *Aoulmi v. France*, No. 50278/99 (17 January 2006); *Mamatkulov and Askarov v. Turkey*, Op. Cit.

¹²⁸ *Paladi v. Moldova*, No. 39806/05 [GC] (10 March 2009), § 89; *Aoulmi v. France*, Op. Cit., § 103; *Shamayev and Others v. Georgia and Russia*, Op. Cit., § 473.

¹²⁹ *Paladi v. Moldova*, Op. Cit., § 89; *Ben Khemais v. Italy*, No. 246/07 (24 February 2009), § 81.

¹³⁰ *Mamatkulov and Askarov v. Turkey*, Op. Cit., § 125; *Aoulmi v. France*, Op. Cit., § 103.

¹³¹ See: *M.K and Others v. Poland*, Op. Cit., § 229; *D.B. v. Turkey*, No. 33526/08, (13 July 2010), § 67.

¹³² *Tehrani and Others v. Turkey*, Nos. 32940/08 and 2 Others, (13 April 2010).

¹³³ *Charahili v. Turkey*, No. 46605/07 (13 April 2010).

¹³⁴ *Darboe and Camara*, No. 5797/17 (communicated on 14 February 2017).

¹³⁵ Similarly worded interim measures have been issued by the Court in *Abdilahi Abdulwahidi v. the Netherlands*, No. 21741/07 (12 November 2013) and *Yordanova and Others v. Bulgaria*, No. 25446/06 (24 April 2012).

¹³⁶ *A.N. v. Greece and 7 other applications*, No. 13892/20 (23 November 2020).

¹³⁷ *N.E. v. Greece and 8 other applications*, No. 8716/20 (25 May 2020).

¹³⁸ *Mannai v. Italy*, No. 9961/10 (27 March 2012), § 54-57; *Labsi v. Slovakia*, No. 33809/08, (15 May 2012), § 149-151; *A.A. v. Sweden*, No. 4677/20 (communicated on 30 March 2021).

¹³⁹ *Kotsaftis v. Greece*, No. 39780/06 (12 June 2008). In the context of return decisions, see: Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights, “Urgent need to deal with new failures to co-operate with the European Court of Human Rights”, 31 May 2013.

¹⁴⁰ *Aleksanyan v. Russia*, No. 46468/06 (22 December 2008), § 232. See also: *Salakhov and Islyamova v. Ukraine*, No. 28005/08 (14 March 2013), § 216-224.

The obligatory character of interim measures issued by the European Court of Human Rights and the nature of their protection

38. It is the very nature and function of interim measures - to prevent irreparable damage to the rights of the Parties and to ensure, *inter alia*, the effectiveness of an applicant's Convention rights and the protection system as a whole - that necessitates their binding effect.¹⁴¹ For this reason, the obligatory character of interim measures has now been repeatedly affirmed by this Court.¹⁴² The Grand Chamber in *Mamatkulov and Askarov v. Turkey* affirmed that the binding nature of an interim measure followed from a State's obligation to abide by the final judgment of the Court, which, by virtue of Art. 46, is legally binding.¹⁴³ In subsequent jurisprudence, this Court has consistently and explicitly held that interim measures have binding force on Contracting Parties to the Convention.¹⁴⁴ Indeed, in recent case law, this Court has stated that any laxity in compliance with an interim measure undermines the very protection, which the Convention rights are intended to provide.¹⁴⁵
39. In order to ensure that the obligation to respect interim measures is effectively discharged, this Court has held that the State and all of its institutions must fully comply with them.¹⁴⁶ Full compliance requires the State to rigorously apply and enforce the measure indicated.¹⁴⁷ The formulation of the interim measure by the Court is necessarily designed to prevent the risk of irreparable harm to the applicant from being realised and in that regard Contracting Parties are obliged to observe the formulation, the letter, the spirit and, indeed, the very purpose of the measure.¹⁴⁸
40. According to the case law of this Court, adherence to the measure requires both that the State refrain from conduct in violation of the interim measure, and that it should take all steps which could reasonably have been taken to comply with the order of interim measures.¹⁴⁹ The burden lies with the State to establish that all reasonable steps have been taken by all its institutions to ensure such compliance.¹⁵⁰ When in an exceptional case, an objective impediment exists which prevents compliance, the State is obliged to take all reasonable steps to remove the impediment and to keep the Court informed about the situation.¹⁵¹ Moreover, a Contracting Party cannot substitute its own judgment for that of the Court in deciding whether it agrees with the risk assessment of the Court, the time limit or to what extent to comply with interim measures.¹⁵² Indeed, it is for the Court alone to decide the content and duration of the interim measure.¹⁵³ This Court has held that interim measures stopping the removal of individual due to a real risk of ill-treatment or instructing the authorities to act to safeguard an individual's personal, physical or mental health, well-being, safety or security¹⁵⁴ leave little doubt as to their purpose or rationale¹⁵⁵ and that measures requiring preventative or positive action by the State cannot be circumvented by a re-appraisal of the soundness of the Court's measure or, indeed, a decision to override it.¹⁵⁶
41. The required diligence under Art. 34 ECHR further necessitates that the State comply with the interim measure "as a matter of urgency."¹⁵⁷ Delays in immediately complying with the interim measure have been held to either amount to an attempt to hinder the applicant from benefiting from his rights under Art. 34¹⁵⁸ or negligence attributable to the State since it is demonstrative of an absence to adequately facilitate compliance with the measure.¹⁵⁹ Given that interim measures are intended to preserve and protect the rights and interests of the Parties pending the Court's consideration of the case, orders for interim measures are not to be construed as a decision on the merits of the case.¹⁶⁰ **The obligation to comply with such measures applies irrespective of the merits of the case, and of whether "the damage which an interim measure was designed to prevent subsequently turns out not to have occurred despite a State's failure to act in full compliance with the interim**

¹⁴¹ *Savridin Dzhurayev v. Russia*, No. 71386/10 (25 April 2013), § 213; see also *Aoulmi v. France*, Op. Cit.

¹⁴² *Mamatkulov and Askarov v. Turkey*, Op. Cit.; *Shamayev and Others v. Georgia and Russia*, Op. Cit.; *Aoulmi v. France*, Op. Cit.; *Paladi v. Moldova*, Op. Cit.; *Aleksanyan v. Russia*, Op. Cit.; *Shtukaturv v. Russia*, Op. Cit.; *Ben Khemais v. Italy*, Op. Cit.; *Olaechea Cahuas v. Spain*, No. 24668/03 (10 August 2006), § 81.

¹⁴³ *Mamatkulov and Askarov v. Turkey*, Op. Cit., § 123-125.

¹⁴⁴ *Savridin Dzhurayev v. Russia*, Op. Cit.. See also, more recently, in: *Andrey Lavrov v. Russia*, Op. Cit.

¹⁴⁵ *M.K and Others v. Poland*, Op. Cit., § 231; *Savridin Dzhurayev v. Russia*, Op. Cit., § 213 referencing the Izmir Declaration and the Committee of Ministers Interim Resolution CM/ResDH(2010)83.

¹⁴⁶ *Kondrulin v. Russia*, No. 12987/15 (20 September 2016), § 47 and *Shtukaturv v. Russia*, Op. Cit., § 144.

¹⁴⁷ By analogy, *Andrey Lavrov v. Russia*, Op. Cit., and *Makharadze and Sikharulidze v. Georgia*, No. 35254/07, 22 November 2011, § 99 where the authorities were held to have circumvented the interim measure by substituting its own judgment for that of the Court.

¹⁴⁸ *Zokhidov v. Russia*, No. 67286/10 (4 October 2013); *Paladi v. Moldova*, Op. Cit., § 91; *Savridin Dzhurayev v. Russia*, Op. Cit., § 216;

Konovalechuk v. Ukraine, No. 31928/15 (13 October 2016), § 77; *M.K and Others v. Poland*, Op. Cit., § 234.

¹⁴⁹ *M.K and Others v. Poland*, Op. Cit., § 234; *Al-Saadoon and Mufdhi v. The United Kingdom*, No. 61498/08 (30 June 2009), and *Paladi v. Moldova*, Op. Cit., § 88.

¹⁵⁰ *Olaechea Cahuas v. Spain*, Op. Cit., § 70; *Paladi v. Moldova*, Op. Cit., § 90 and 91.

¹⁵¹ *M.K and Others v. Poland*, Op. Cit., § 234; *Al-Saadoon and Mufdhi v. The United Kingdom*, Op. Cit., § 162-163.

¹⁵² *Salakhov and Islyamova v. Ukraine*, Op. Cit.

¹⁵³ *Yordanova and Others v. Bulgaria*, No. 25446/06 (24 April 2012), § 49-53.

¹⁵⁴ See *Abdilahi Abdulwahidi v. The Netherlands*, Op. Cit.; *Darboe and Camara*, Op. Cit.; *Salakhov and Islyamova v. Ukraine*, Op. Cit.; *R.R. and Others v. Hungary*, No. 19400/11 (4 December 2012), § 4; *Andrey Lavrov v. Russia*, Op. Cit.; *Khloyev v. Russia*, No. 46404/13 (5 February 2015), § 67.

¹⁵⁵ *Savridin Dzhurayev v. Russia*, Op. Cit., § 216.

¹⁵⁶ *Salakhov and Islyamova v. Ukraine*, Op. Cit.; *Trabelsi v. Belgium*, No. 140/10 (4 September 2014), § 151.

¹⁵⁷ *Paladi v. Moldova*, Op. Cit., § 98; *Grori v. Albania*, No. 25336/04 (7 July 2009), § 194.

¹⁵⁸ *Aleksanyan v. Russia*, Op. Cit., § 231.

¹⁵⁹ *Paladi v. Moldova*, Op. Cit., § 96-98.

¹⁶⁰ *Olaechea Cahuas v. Spain*, Op. Cit., § 81.

measure”.¹⁶¹ **A fortiori, the Contracting Party’s belief as to the merits of the case is irrelevant to the obligation to comply with interim measures.**

42. Jurisprudence of this Court requires that compliance by a State is to be assessed by reference to the formulation of the interim measure and a State’s compliance with the letter and the spirit of the measure indicated to it.¹⁶² Failure to comply with the letter or spirit of an interim measure has been found by this Court where the State has removed or extradited the applicant to a country where the applicant faced a real risk of ill-treatment, regardless of whether or not the specific third country had been mentioned in the interim measure;¹⁶³ where the State had not immediately placed individuals in certain structures, environments or facilities;¹⁶⁴ or where it had failed to provide them with certain treatment,¹⁶⁵ or access to lawyers¹⁶⁶ or medical attention.¹⁶⁷ Anything less than strict compliance with the interim measure has been found by this Court to render a violation of the Convention otiose and to irreversibly lower the level of protection of the rights on which the applicant had been relying.¹⁶⁸ This is the case regardless of whether the applicant had actually experienced any difficulties in presenting and pursuing his application with the Court after expulsion in breach of the measure.¹⁶⁹
43. Other international courts and tribunals have held that the non-respect of interim measures can render a communication or petition procedure futile and may strike at the very heart of cooperation with the relevant body and its function to consider the merits of the case. The Human Rights Committee has considered that a Contracting Party commits grave breaches of its obligations under the Optional Protocol if it acts to prevent or frustrate consideration of communications by the Committee, or to render examination by the Committee moot and “*the expression of its views nugatory and futile*”.¹⁷⁰ The CCPR further considered that disregard of such measures, especially by acts of an irreversible nature such as execution or deportation, undermined the substance of the Covenant rights. Similarly, the Committee against Torture (UNCAT) has emphasised that a failure to respect interim measure would render the individual communications procedure futile in many cases. The UNCAT has found that compliance with a request for interim measures is essential to protect against irreparable harm to the individual, pending the decision of the UNCAT, and to ensure that any eventual finding by the UNCAT is not “*nullified*” or rendered purely academic because of action taken whilst the process is ongoing.¹⁷¹
44. **The intervenors submit that interim measures are intended and designed to prevent irreparable harm to the applicant and that the Contracting Party is obliged to follow and respect the measures. The intervenors add that respect for interim measures requires that they are applied rigorously and enforced by the Contracting Party.**

¹⁶¹ *Paladi v. Moldova*, Op. Cit., § 89.

¹⁶² *Ibid.*, § 91.

¹⁶³ *Trabelsi v. Italy*, Op. Cit., § 67; *Abdulkhakov v. Russia*, No. 14743/11, 2 October 2012, § 231; *Zokhidov v. Russia*, No. 67286/10, 4 October 2013, § 205; *Savridin Dzhurayev v. Russia*, Op. Cit., § 215-217.

¹⁶⁴ *Aleksanyan v. Russia*, Op. Cit., § 230.

¹⁶⁵ *Andrey Lavrov v. Russia*, Op. Cit., § 19.

¹⁶⁶ *Shtukurov v. Russia*, Op. Cit., § 33.

¹⁶⁷ *Kondrulin v. Russia*, No. 12987/15 (20 September 2016), § 43.

¹⁶⁸ This has been reiterated in several resolutions by the Committee of Ministers, *inter alia*, Resolution CM/Res(2010)25, which highlights the duty to respect and protect Article 34 of the Convention and thus promptly and effectively take action in order to fulfil the requirements of the interim measure as specified by the Court. See also; *Savridin Dzhurayev v. Russia*, no. 71386/10, 25 April 2013, § 118; *Trabelsi v. Belgium*, App no 140/10, 4 September 2014, § 150.

¹⁶⁹ *Olaechea Cahuas v. Spain*, No. 24668/03, 10 August 2006, § 75-83.

¹⁷⁰ Human Rights Committee, *Piandiong v. the Philippines*, CCPR/C/70/D/869/1999, 19 October 2000, § 5.1 – 5.3. These points were reiterated by the Committee in *Validzhon Khalilov v. Tajikistan*, CCPR/C/83/D/973/2001, 13 April 2005, § 4.1.

¹⁷¹ Committee Against Torture, *TPS v. Canada*, CAT/C/24/D/99/1997, 4 September 2000, § 15.6; *Cecilia Rosana Nunez Chipana v. Venezuela*, CAT/C/21/D/110/1998, 16 December 1998, § 8; *Mafhoud Brada v. France*, CAT/C/34/D/195/2002, 24 May 2005, § 13.4.