

BETWEEN:

AL H. 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)*

26 July 2019

Summary

- I. The intervenors submit that respect for human dignity constitutes the core of human rights protection, including the European Convention on Human Rights (ECHR) as interpreted by this Court as well as under international and EU law. A Contracting Party's treatment of the vulnerable migrants under its jurisdiction in a manner inconsistent with human dignity is incompatible with the values of a democratic society that the Convention is designed to maintain and promote, regardless of whether treatment was inflicted intentionally or due to external factors, including difficulties associated with migration flows.
- II. In order to fully comply with their obligations under the Convention, Contracting Parties must ensure that the reception standards and procedures in reception facilities respect human dignity, and as a consequence are adapted to the specific needs of vulnerable migrants. A lack of adequate reception standards and facilities would result in a failure by Contracting Parties to respect their obligations under Art. 3 ECHR and would constitute a violation of human dignity. These standards include adequate reception/living conditions with access, *inter alia*, to shelter, food, water, clothing, basic amenities as a safe place to sleep, guaranteed access to medical, psychological and legal assistance as well as identification of vulnerable individuals to enable access to the rights they are entitled to under international and EU law.
- III. Finally, the intervenors advance that systematic delays in the registration and assessment of applications for international protection fall short of the international and EU legal standards and exacerbate the harmful impact of an already lengthy procedure. This results in the serious impairment of the right to family unity due to excessively long family separation.

A. The international and European standards relating to human dignity as applicable to persons subjected to restrictions on freedom of movement in the context of migration

1. This intervention focuses on the pre-eminence of the concept of human dignity, which runs like a golden thread throughout the ECHR although not expressly articulated in it.¹ Its incorporation in the Charter of the United Nations (UN Charter) and the Universal Declaration of Human Rights (UDHR) provides a universal basis for its use in human rights law as "*the foundation of freedom, justice and peace in the world*".² The concept plays an important role as "*a value that informs the interpretation of many, possibly all, other rights*".³ It follows from a combined reading of various international and regional human rights instruments that, although human dignity serves as a justification for all human rights, certain rights are directly linked to the concept of human dignity i.e. freedom from torture, right to liberty and freedom from slavery and servitude.⁴ Whenever the infringement of a human right leaves a person powerless, humiliated, or dehumanized, or subjects the person to treatment inconsistent with the core values of this concept, human dignity is attacked.⁵ Human dignity is thus essential in judicial interpretation and in courts' examination of human rights violations.⁶

Human Dignity under the ECHR

2. This Court has long declared that "*the very essence of the Convention is respect for human dignity and human freedom*".⁷ It has continuously reaffirmed the inherent importance of human dignity in the examination of violations of the Convention rights

¹ The first reference to dignity in the text of the ECHR appeared in Protocol 13 of the ECHR, concerning the abolition of the death penalty.

² All major regional human rights instruments are based on the concept of human dignity, e.g. Preamble of the American Declaration of the Rights and Duties of Man 1948; Art. 5(2) of the American Convention on Human Rights 1969/78; Preamble and Art. 5 of the African Charter on Human and Peoples' Rights 1981/86; Preamble and Arts. 2(3), 17, 20(1), 33(3) and 40(1) of the Revised Arab Charter on Human Rights 2004/08; Preamble and Chapter I (Arts. 1 to 5) of the Charter of Fundamental Rights of the European Union 2005; Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine 1997/99 with two Additional Protocols on the Prohibition of Cloning and on Transplantation of Organs and Tissues of Human Beings.

³ Christopher McCrudden, 'Human Dignity and Judicial Interpretation of Human Rights' (2008), European Journal of International Law, Vol. 19 No. 4, 655 – 724 <<http://ejil.org/pdfs/19/4/1658.pdf>>, p. 681.

⁴ Manfred Nowak, *Protecting dignity: An Agenda for Human Rights*, <http://www.nhrc-qa.org/wp-content/uploads/2013/07/Protecting_Dignity_English_Report.pdf> section 2, sub-section 10 >.

⁵ Manfred Nowak, *Protecting dignity: An Agenda for Human Rights*, <http://www.nhrc-qa.org/wp-content/uploads/2013/07/Protecting_Dignity_English_Report.pdf> section 2, sub-section 10 and Oscar Schacter, 'Human Dignity as Normative Concept' (1983) The American Journal of International Law, Vol. 77, No. 4, 848 – 854 <https://www.jstor.org/stable/2202536?seq=1#page_scan_tab_contents>.

⁶ The German Constitutional Court has held that human dignity is the foundation of every other fundamental right. See FCC Order of 10 October 1995 – 1 BvR 1476, 1980/91 and 102, 221/92 = BVerfGE 93, 266 (293); FCC Judgment of 11 March 2003 – 1 BvR 426/02 = BVerfGE 107, 275 (284).

⁷ *Christine Goodwin v. the United Kingdom*, no. 28957/95, 11 July 2002, § 90. See also *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, 17 July 2014, § 118 and *Pretty v. the United Kingdom*, no. 2346/02, 29 April 2002, § 65.

under Arts. 3⁸, 4⁹, 5¹⁰, 8¹¹, and Art. 4 of Protocol no. 4¹². When examining Art. 3 violations this Court often invokes human dignity as a subjective notion that requires individual assessment. This could be illustrated by this Court's interpretation of "degrading treatment": "*Even if there is no evidence of actual bodily injury or intense physical or mental suffering, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity (...) it may be characterised as degrading and thus fall within Article 3*".¹³

3. In the asylum context, it has been held that inadequate individual living conditions constituting an affront to human dignity and attributable to Contracting Parties' acts or omissions may give rise to a violation of Art. 3 ECHR. 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 lack of respect for 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 perspective to see their situation improve can reach the threshold of gravity required by Art. 3 of the Convention and constitute degrading treatment.¹⁶ The quality of the environment in which individuals are required to live by in a Contracting Party has also been found to raise issues under Art. 2 and Art. 8.¹⁷
4. The intervenors further note that provision of adequate reception/living conditions to a large number of vulnerable migrants including asylum seekers, particularly in the situation of restriction of liberty, can require significant financial and logistical resources. However, the avoidable absence of dignified living conditions and circumvention of relevant safeguards under international law, including under the ECHR, cannot be justified because of this.¹⁸
5. While this intervention primarily considers dignity within the framework of reception conditions in conjunction with the freedom of movement of asylum seekers, it is noted that respect for dignity must be ensured regardless of whether vulnerable migrants (including asylum seekers) are subjected to a deprivation or restriction of liberty. The natural closeness of the two situations, namely the deprivation and restriction of liberty, has previously led this Court to rule that the difference between those two "*is merely one of degree and intensity and not one of nature or substance*".¹⁹ The difference is rather determined by "*a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question*" assessed in light of the individual circumstances.²⁰ **The intervenors submit that severe restrictions on freedom of movement (see below at Section C) coupled with inhuman and degrading living/reception conditions justify reference, by analogy, to the Court's jurisprudence on detention conditions.**
6. This Court has found insalubrious detention conditions to 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 of the ECHR.²¹ 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 well-being are adequately secured by, among other things, providing him with the requisite medical assistance*".²² For instance, the Court has concluded that holding defendants in a cage was an inherent affront to human dignity contrary to Art. 3 regardless of the concrete circumstances of the case.²³
7. The Contracting Party has a positive obligation to take care of the essential needs of detained persons and provide dignified detention conditions.²⁴ When the Contracting Party has deprived individuals of their liberty, this Court has found that the

⁸ *Tyrer v. UK*, no. 5856/72, 25 April 1978, § 33; *Selmouni v. France*, no. 25803/94, 29 July 1999, § 99; *East African Asians v. United Kingdom*, nos. 4403/70 and others, 14 December 1973, § 207.

⁹ *Siliadin v. France*, no. 73316/01, 26 October 2005, § 142.

¹⁰ *Rahimi v. Greece*, no. 8687/08, 5 April 2011, §§ 59, 86, 110.

¹¹ *Haas v. Switzerland*, no. 31322/07, 20 January 2011, § 52; *Chapman v. The United Kingdom*, no. 27238/95, 18 January 2001, § 99; *Khadija Ismayilova v. Azerbaijan*, nos. 65286/13 and 57270/14, 10 January 2019, § 116 (regarding Art. 8).

¹² *Khalafiah and Others v. Italy*, no. 16483/12, 15 December 2016, Partly Dissenting Opinion of Judge Serghides, § 52.

¹³ See, e.g., *Khalafiah and Others v. Italy*, no. 16483/12, 15 December 2016, § 169; *Valašinas v. Lithuania*, no. 44558/98, 24 July 2001, § 117.

¹⁴ *M.S.S. v. Belgium and Greece [GC]*, no. 30696/09, 21 January 2011, § 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 *Fadeyeva v. Russia*, no. 55723/00, 16 October 2003, §§ 116-134; *di Sarno and Others v. Italy*, no. 30765/08, 10 January 2012, §§ 108-113; *A.-M.V. v. Finland*, no. 53251/13, 23 March 2017, §§ 82-84, 90.

¹⁸ *Mutatis mutandis, Orchowski v. Poland*, no. 17885/04, 22 October 2009, §§ 120, 153.

¹⁹ *Guzzardi v. Italy*, no. 7367/76, 6 November 1980, § 93.

²⁰ *Ibid.*, § 92.

²¹ *M.S.S. v. Belgium and Greece*, § 233.

²² *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.

²³ *Svinarenko and Slyadnev v. Russia [GC]*, nos. 32541/08 and 43441/08, 17 July 2014, § 139. (In applicants' submission: § 112. "Such treatment, comparable to the treatment of wild animals kept in metal cages in a circus or zoo, had intimidated the applicants and humiliated them in their own eyes and in those of the public and aroused in them a sense of fear, anguish and inferiority; it had also undermined the principle of the presumption of innocence.")

²⁴ *Riad and Idriab v. Belgium*, no. 29787/03, 24 January 2008, § 87. See also *Khan v. France*, no. 12267/16, 28 February 2019, § 44.

Contracting Party is under a “duty to ensure that they were detained in conditions compatible with respect for human dignity”.²⁵ Even in the absence of an intention to humiliate or debase the detainees, the Court has found that the conditions in which persons were detained in the transit zone of an airport caused them considerable mental suffering, undermined their dignity and made them feel humiliated and debased.²⁶

8. Furthermore, this Court has stated that where the personal space of a detainee is less than 3 sq.m. there is a weighty presumption of a violation of Art. 3.²⁷ The Court has taken into account the lack of ventilation, access to natural air, light and outdoor exercise, quality of heating and compliance with basic hygiene requirements within its assessment of Art. 3.²⁸ In *Khlaifia v. Italy* this Court has found that a violation of Art. 3 arose when the personal space available to a detainee fell below 3 sq.m. in multi-occupancy accommodation, taking into account the overall living conditions – the latter remaining relevant even for cases where overcrowding itself does not raise questions under that Article.²⁹
9. The responsibility of the Contracting Party towards detained persons with regard to Art. 3 and human dignity is further noted in several cases in which the focus is on Art. 5. In *Rahimi*, this Court found a violation of Art. 5(1)(f) when the conditions of detention undermining the very meaning of human dignity were already found to be contrary to Art. 3.³⁰ The findings of *Rahimi* were also considered *mutandis mutatis* applicable in *H.A. and Others* concerning a violation of Art. 5(1).³¹ Similarly, in *Budina v. Russia*, the Court stated that it could not be excluded that “[...] State responsibility could arise for ‘treatment’ where an applicant, in circumstances wholly dependent on State support, found herself faced with official indifference when in a situation of serious deprivation or want incompatible with human dignity”.³²
10. **The intervenors submit that, given the absolute nature of Art. 3 and consistent with this Court’s jurisprudence, difficulties associated with migration flows cannot justify recourse to practices incompatible with the Contracting Parties’ obligations under the Convention, in particular to ensure everyone’s human dignity at all stages of their reception procedure, even when their liberty is restricted.**³³
11. **The Contracting Parties to the ECHR must protect the human dignity of all persons under their jurisdiction taking due account of the particular vulnerabilities of the persons concerned, regardless of the numbers of arrivals or the emergency situations declared by Member States.**

Standards on Human Dignity under the other CoE instruments

12. While dignity is not explicitly referred to as a separate notion in the European Social Charter (ESC), the ESC’s monitoring body, the European Committee of Social Rights (ECSR), invokes the concept of dignity as an underlying principle and links it with certain ESC rights³⁴ as well as identifies it as a fundamental right in itself.³⁵ The ECSR observed that entitlement to medical assistance, even concerning persons irregularly staying within the territory of a Contracting Party,³⁶ further, access to shelter, food, water and clothing as well as to basic amenities as a safe place to sleep are prerequisites of safeguarding human dignity.³⁷ The ECSR regards the notion of dignity as a minimum standard to be maintained when it comes to the living conditions of a shelter, referring in this context to the ‘Recommendation of the Commissioner for Human Rights of the Council of Europe on the implementation of the right to housing’ stating that if a shelter does not provide persons with “safety, health and hygiene, including basic amenities, i.e. clean water, sufficient lighting and heating” then a shelter does “not satisfy the standards of human dignity”, particularly in relation to reception camps and temporary shelters.³⁸ Even regarding children unlawfully present in the territory of a state, the ECSR asserted that the Contracting Party is obliged to provide adequate shelter as “any other solution would run counter to the respect for their human dignity and would not take due account of the particularly vulnerable situation of children”.³⁹ The failure to provide migrant children with proper accommodation, holds the ECSR, may cause “a serious threat to their enjoyment of the most basic rights, such as the right [...] to respect for human dignity”.⁴⁰
13. A number of other Council of Europe instruments have included the human dignity principle following the developments in the

²⁵ *Riad and Idiab v. Belgium*, no. 29787/03, 24 January 2008, § 103. See also *Khan v. France*, no. 12267/16, 28 February 2019, §§ 81, 90.

²⁶ *Riad and Idiab v. Belgium*, no. 29787/03, 24 January 2008, §§ 103, 106-107.

²⁷ *Ananyev and others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2012, § 145; *Aarabi v. Greece*, no. 39766/09, 2 April 2015, § 50.

²⁸ *Abdullahi Elmi and Aweys Abubakar v. Malta*, nos. 25794/13 and 28151/13, 22 November 2016, § 102 and *Khlaifia and Others v. Italy*, no. 16483/12, 15 December 2016, §§ 166-167.

²⁹ *Khlaifia and Others v. Italy*, no. 16483/12, 15 December 2016, §§ 166-167.

³⁰ *Rahimi v. Greece*, no. 8687/08, 5 July 2011, § 110.

³¹ *H.A. and Others v. Greece*, no. 19951/16, 28 May 2019, § 207.

³² *Antonina Dmitriyevna Budina v. Russia*, no. 45603/05, 12 February 2008. See also *M.S.S. v. Belgium and Greece*, § 263.

³³ See also Section C of this intervention regarding the unlawful practices of hotspots in Greece.

³⁴ E.g. in *International Federation of Human Rights Leagues (FIDH) v. France* (decision on merits), Complaint No. 14/2003, § 31. See also *Conference of European Churches (CEC) v. the Netherlands* (decisions on merits), Complaint No. 90/2013, § 115.

³⁵ *EUROCEF v. France* (decision on merits), Complaint No. 114/2015, §§ 51, 53.

³⁶ *International Federation of Human Rights Leagues (FIDH) v. France* (decision on merits), Complaint No. 14/2003, §§ 31–32.

³⁷ *Conference of European Churches (CEC) v. the Netherlands* (decisions on merits), Complaint No. 90/2013, § 122.

³⁸ *Defence for Children International (DCI) v. the Netherlands* (decision on merits), Complaint No. 47/2008, § 62.

³⁹ *Ibid*, § 64.

⁴⁰ *EUROCEF v. France* (decision on merits), Complaint No. 114/2015, § 138.

interpretation of this concept by the Court's case-law.⁴¹ The Commissioner for Human Rights 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*”.⁴² Particular concerns as to respect for human dignity arise when individuals have been deprived of their liberty or restrictions on their movement have been imposed, including upon arrival at the border of a Contracting Party. The detailed standards adopted by the European Committee for the Prevention of Torture (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.⁴³ Furthermore, the CPT highlighted that “*«asylum-seekers» are not «immigration detainees»*”.⁴⁴ Notwithstanding, for the reasons given above (see § 5), the intervenors consider that Parts 4, 9 and 10 of the CPT factsheet cited above should be considered useful guidance to vulnerable migrants whose liberty is restricted because they are constrained to reception centres.⁴⁵ The intervenors also note that standards aiming to avoid unnecessary suffering and ensure respect for basic needs are an inextricable element of the protection to be guaranteed by the CPT,⁴⁶ and by various other instruments.⁴⁷

Human Dignity in International, Regional, and EU Law

14. Under Art. 53 ECHR, the ECHR must not be applied in such a way as to limit the human rights protection “*which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party*”. The Contracting Parties to the ECHR must therefore respect all other international and regional human rights standards applicable to them. It follows that the Court must ensure that the ECHR rights are interpreted and applied in a manner, which does not diminish the rights guaranteed under the applicable EU law.⁴⁸ Dignity is a foundation of most international human rights instruments,⁴⁹ such as Art. 7 and Art. 10 of the International Covenant for Civil and Political Rights (ICCPR),⁵⁰ the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and guidelines provided by the UN General Assembly (UNGA).⁵¹
15. The Inter-American Court of Human Rights considers the right to life as inseparably linked to human dignity, stating that the former does not only prohibit arbitrary deprivation of life but also ensures the “*right that he [the individual] will not be prevented from having access to the conditions that guarantee a dignified existence*”.⁵² With specific regard to human dignity in detention, the Inter-American Court has noted the States’ right to guarantee security but has repeatedly emphasised the limits to this right and stated that “*disrespect for human dignity cannot serve as the basis for any State action*”.⁵³ The Human Rights Committee follows a similar approach, having found that the right to life includes the entitlement of individuals “*to enjoy a life with dignity*”.⁵⁴ UNHCR’s Executive Committee has also underlined that human dignity cannot be compromised by the States’ freedom in designing reception mechanisms.⁵⁵
16. This Court has applied international standards in cases concerning children, where it referred to Art. 3 § 3 CRC to support the finding that standards that are compatible with human dignity must be determined “*according to recognised medical standards*”

⁴¹ See, e.g., European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes, Council of Europe Convention on Action against Trafficking in Human Beings, Revised European Social Charter and Convention on Human Rights and Biomedicine.

⁴² Art. 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.

⁴³ CPT, *Factsheet on Immigration Detention* CPT/Inf(2017)3, <<https://rm.coe.int/16806fbf12>>.

⁴⁴ CPT, *Factsheet on Immigration Detention* CPT/Inf(2017)3, <<https://rm.coe.int/16806fbf12>>, p. 1.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ 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.

⁴⁸ The Court will recall that in *M.S.S. v. Belgium and Greece*, the Grand Chamber took into account Greece’s obligations under the Reception Conditions Directive, as part of its national law, to ensure adequate material reception conditions, finding that the situation of extreme poverty brought about by the inaction of the State was treatment contrary to Art. ECHR.

⁴⁹ See, e.g., the Preambles and Arts. 22 and 23 UDHR, Common Art. 3 of the 1949 Geneva Conventions, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC).

⁵⁰ Art. 7 ICCPR must be interpreted in light of the General Comment no. 20 (forty-fourth session, 1992), which clarifies that the aim of Art. 7 is “*to protect both the dignity and the physical and mental integrity of the individual*”, and is complemented by Art. 10, which specifically provides that “*all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person*”.

⁵¹ United Nations General Assembly, 97th plenary meeting, A/RES/41/120, 4 December 1986, stating that international instruments in the field of human rights instruments should derive from the “*inherent dignity and worth of the human person*”. The UNGA also found that the dignity of the human person was the central principle of World Conference on Human Rights in Vienna in 1993.

⁵² Case “*Street Children*” (*Villagran-Morales et al.*) v. *Guatemala*, Judgment of 19 November 1999, Inter-Am. Ct. H.R., §144.

⁵³ Case “*Godínez Cruz*”, Judgment of 20 January 1989, Inter-Am. Ct. H.R., § 162. The intervenors note that this is not directly relevant under Art. 53 ECHR.

⁵⁴ *Neil Toussaint v. Canada*, Communication No. 2348/2014, 7 August 2018, CCPR/C/123/D/2348/2014, § 11.3

⁵⁵ Executive Committee of the High Commissioner’s Programme, Conclusion on reception of asylum-seekers in the context of individual asylum systems No. 93 (LIII) - 2002, 8 October 2002, No. 93 (LIII).

applicable to juveniles in the wider community”.⁵⁶ Finding that an applicant’s rights had been violated under international human rights standards, including, e.g., CEDAW, the Court held that “*the very essence of the Convention is respect for human dignity and human freedom*”.⁵⁷

17. At the EU level, dignity has been adopted as an inviolable fundamental right in itself and also the foundation for other fundamental rights. Art. 2 of the Treaty on European Union makes a specific reference to human dignity as one of the values that the Union is founded on.⁵⁸ The right to dignity is enshrined in Art. 1 of the Charter of Fundamental Rights of the European Union (Charter), which provides that “[h]uman dignity is inviolable. It must be respected and protected”. The Explanation Relating to the Charter, under Art. 1, further suggests that human dignity “*is not only a fundamental right in itself but constitutes the real basis of fundamental rights*”.⁵⁹ In the context of people seeking asylum, particular attention must be drawn to the recast Asylum Procedures Directive (rAPD)⁶⁰ and the recast Reception Conditions Directive (rRCD)⁶¹, as both state in their preambles that they seek to ensure full respect for human dignity. It should also be noted that the EASO guidance on operational standards and indicators for reception conditions may be considered as the minimum yardstick against which reception conditions are to be measured.⁶² In his report on the impact of EU border management on the human rights of migrants, the UN Special Rapporteur stated that the European Union’s founding values and respect for human dignity should form part of “*the normative basis for more positive, realistic views of migrants*”.⁶³
18. The Court of Justice of the EU (CJEU) has consistently based its reasoning on the concept of human dignity, reiterating that its role is to ensure that the fundamental right to human dignity and integrity is observed.⁶⁴ The CJEU has held that human dignity is a general principle of law, deriving from the constitutional traditions of the Member States, including in Greece.⁶⁵ The CJEU has found that the rights guaranteed by Art. 4 of the Charter are absolute, and furthermore “*closely linked*” to the prohibition of inhuman and degrading treatment, which is confirmed by Art. 3 ECHR, to which Art. 4 of the Charter corresponds.⁶⁶ In the context of asylum, the CJEU has given particular consideration to human dignity when reaffirming the Member States’ obligations to provide minimum standards of reception at all times through the asylum procedure.⁶⁷ It also stressed the need to provide protection for more vulnerable groups such as Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI+) persons in line with human dignity, for example by pointing to the consequences of a Member State’s indifference to such dependency on the State for protection.⁶⁸
19. **The intervenors submit that in line with international and EU legal standards, asylum seekers should be treated in a manner which respects human dignity including with regard to their reception conditions. Dignified reception standards in the migration context include adequate living conditions, guaranteed access to medical, psychological and legal assistance as well as identification of vulnerable individuals to enable them to access rights they are entitled to under international and EU law.**

B. The particular requirements set by the standards applicable to vulnerable persons

20. This Court has recognised that asylum seekers are members of a “*particularly underprivileged and vulnerable population*”.⁶⁹ Asylum seekers have few other resources and therefore can only rely on the State for assistance. Therefore, it is crucial for the Contracting Parties “*to provide accommodation and decent material conditions*” for asylum seekers in order not to render them more vulnerable.⁷⁰ Moreover, 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*”.⁷¹ 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.⁷² This Court has also emphasised that Contracting Parties must “*exercise particular care*

⁵⁶ *Blokhin v. Russia*, no. 47152/06, 23 March 2016, § 138.

⁵⁷ *V.C. v. Slovakia*, no. 18968/07, 8 November 2011, § 105.

⁵⁸ Art. 2 of the Treaty on European Union.

⁵⁹ Explanations Relating to the Charter of Fundamental Rights, Title 1 - Human Dignity, Explanation on Art. 1 (2007/C 303/02).

⁶⁰ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013.

⁶¹ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013, Recitals 11, 25, and 35.

⁶² See European Asylum Support Office, Guidance on reception conditions: operational standards and indicators, September 2016.

⁶³ 29th session HRC, A/HRC/29/36, Report of the Special Rapporteur on the human rights of migrants, François Crépeau (2015), §75

⁶⁴ *C-377/98, Netherlands v. Parliament and Council*, 9 October 2001, § 70. See also *C-36/02, Omega*, 14 October 2004, § 34.

⁶⁵ In the Constitution of Greece, this is reflected in Art. 2(1), which states that “*respect and protection of the value of the human being constitute the primary obligations of the State*”, and Art. 7(2), which prohibits and punishes any offence against human dignity.

⁶⁶ Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*, 5 April 2016, § 86.

⁶⁷ Joined Cases C148/13 to C150/13, *A, B and C*, 2 December 2014, § 65. See also *C-473/16, F*, 25 January 2018.

⁶⁸ *C-79/13, Saciri and Others*, 27 February 2014, § 35; *C-163/17, Jawo*, 19 March 2019, § 92; *C-179/11, Cimade and Gisti*, 27 September 2012, § 56; Joined Cases C-148/13, C-149/13, C-150/13, *A, B, C, v. Netherlands*, 2 December 2014; *C-353/16, MP v. Secretary of State for the Home Department*, 24 April 2018, § 36; and *C-473/16, F v. Hungary*, 25 January 2018, § 36.

⁶⁹ *M.S.S. v. Belgium and Greece*, § 251.

⁷⁰ *Ibid.*, §§ 250-251.

⁷¹ *Alajos Kiss v. Hungary*, no. 38832/06, 25 May 2010, § 42. See also *Kiyutin v. Russia*, no. 2700/10, 10 March 2011, § 74.

⁷² *M.S.S. v. Belgium and Greece*, §§ 232, 251.

to avoid situations which may reproduce the plight that forced these persons to flee in the first place”.⁷³ 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.⁷⁴ Examples of vulnerable individuals or groups of individuals common across international law include, among others, children, members of the LGBTI+ community, and victims of torture.⁷⁵

21. This Court has recognised that children are vulnerable individuals and thus particular attention must be given to their vulnerability. The best interest of the child must be determined in order to respect the right to human dignity.⁷⁶ Under this Court’s case law relating to children, the latter’s “*extreme vulnerability*” is recognised as the “*decisive factor*” in the broader migration context.⁷⁷ This is due to their specific needs arising not only from their age, lack of independence and maturity⁷⁸ but also from their asylum seeker status.⁷⁹ Such vulnerability implies an enhanced positive obligation on Contracting Parties to take adequate measures in order to comply with requirements under Art. 3 ECHR with respect to children in the circumstances of migration. Since the particular needs of children should be met *en route* or as soon as they arrive to their transit or destination country, early identification is of high importance.⁸⁰ The Court has specifically considered this extreme vulnerability when examining living conditions in reception and detention centres. It has found a violation of Art. 3 based on the following factors whether in isolation or in combination: accommodating children with unrelated adults;⁸¹ overpopulated facilities;⁸² unsanitary, insalubrious, violent or dangerous environments; lack of privacy;⁸³ lack of adapted facilities providing legal advice; “*proper counselling and educational assistance from qualified personnel specifically mandated for that purpose*”;⁸⁴ and organised activities and entertainment facilities.⁸⁵ As concerns reception conditions for children seeking asylum, this Court has stated that such conditions must not create “*a situation of stress and anxiety, with particularly traumatic consequences*’ [...] *Otherwise, the conditions in question would attain the threshold of severity required to come within the scope of the prohibition under Article 3 of the Convention*”.⁸⁶
22. Other vulnerable individuals are members of the LGBTI+ community, who often flee persecution and criminalisation in their country of origin,⁸⁷ and yet continue to face serious discrimination and violations of human rights based on their sexual orientation, gender identity, or sex characteristics in Europe.⁸⁸ As recognised by this Court, authorities must avoid the reproduction of “*the plight that forced these persons to flee in the first place*”,⁸⁹ i.e. by avoiding humiliating, stereotyping and degrading methods of assessing the sexual orientation of asylum seekers.
23. Last but not least, the Court has also emphasised the “*particularly vulnerable situation of victims of torture*”.⁹⁰ In particular, the Court has set out several procedural obligations for the domestic authorities regarding the assessment of the risk of ill-treatment and the respect of Art. 3 ECHR.⁹¹ Authorities should have the responsibility to verify whether the care in the receiving State would be “*sufficient and appropriate in practice for the treatment of the applicant’s illness*” and “*the extent to which the individual in question will actually have access to this care ... in the receiving State*”.⁹²

⁷³ *O.M. v. Hungary*, no. 9912/15, 5 July 2016, § 53.

⁷⁴ See, e.g., United Nations Convention on the Rights of the Child, United Nations Convention on the Rights of Persons with Disabilities. See also UNHCR EXCOM Conclusion No. 105 (LVII) – 2006, which states that while forcibly displaced men and boys also face protection problems, women and girls can be exposed to particular protection problems related to their gender, their cultural and socio-economic position, and their legal status, which mean they may be less likely than men and boys to be able to exercise their rights and therefore that specific action in favour of women and girls may be necessary to ensure they can enjoy protection and assistance on an equal basis with men and boys; and ECtHR, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, 21 January 2011 (noting that scholars see the decision as recognition by the ECtHR of “*the particular vulnerability of asylum seekers ... ‘as though it were an inherent attribute of an entire class*” (citation omitted)).

⁷⁵ Asylum Information Database (AIDA), The concept of vulnerability in European asylum procedures, August 2017, pp 12-18.

⁷⁶ *C.A.S. and C.S. v. Romania*, no. 26692/05, 20 March 2012, § 82.

⁷⁷ *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, 12 October 2006, § 55; *Popov v. France*, nos. 39472/07 and 39474/07, 19 January 2012, § 91.

⁷⁸ *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, 12 October 2006, § 51.

⁷⁹ *Popov v. France*, nos. 39472/07 and 39474/07, 19 January 2012, §91; *Abdullahi Elmi and Aweys Abubakar v. Malta*, no. 25794/13 and 28151/13, 22 November 2016, § 103.

⁸⁰ Asylum Information Database (AIDA), The concept of vulnerability in European asylum procedures, August 2017, p. 12.

⁸¹ *Çoşelav v. Turkey*, no. 1413/07, 9 October 2012, § 60; *Güveç v. Turkey*, no. 70337/01, 20 January 2009, § 98.

⁸² *Tarakhel v. Switzerland* [GC], no. 29217/12, 4 November 2014, § 120.

⁸³ *Rahimi v. Greece*, no. 8687/080, 5 July 2011, §§ 81–87.

⁸⁴ *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, 12 October 2006, §§ 50, 58.

⁸⁵ *Popov v. France*, nos. 39472/07 and 39474/07, 19 January 2012, § 62.

⁸⁶ *Tarakhel v. Switzerland* [GC], no. 29217/12, 4 November 2014, §§ 104 and 119.

⁸⁷ UNHCR, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity [...], § 1.

⁸⁸ In *Zontul v. Greece*, no. 12294/07, 17 January 2012, the Court found that a gay applicant was tortured by the State authorities due to his sexual orientation while in a reception facility in Crète. See Joined cases C-148/13 to C-150/13 A, B and C. See also European Agency for Fundamental Rights, Current migration situation in the EU: Lesbian, gay, bisexual, transgender and intersex asylum seekers, 2017, pp. 5-7.

⁸⁹ *O.M. v. Hungary*, no. 9912/15, 5 July 2016, § 53.

⁹⁰ *Bati and Others v. Turkey*, nos. 33097/96 et 57834/00, 3 June 2004, § 133; *Gisayev v. Russia*, no. 14811/04, 20 January 2011, § 116; *Aydın v. Turkey*, no. 57/1996/676/866, 25 September 1997, § 103.

⁹¹ *Paposhvili v. Belgium*, no. 41738/10, 17 April 2014, § 189.

⁹² *Ibid*, §§ 189-190.

24. Under Art. 53 ECHR, vulnerable migrants are entitled to enhanced guarantees as required by international⁹³ and EU law. For example, EU legislation requires the Member States to “take into account the specific situation of vulnerable persons” and to assess appropriate medical and psychological treatment or care.⁹⁴ Under EU asylum law, the rAPD and the rRCD stipulate the need for special guarantees and procedures for identified vulnerable persons.⁹⁵ For the protection in either Directive to be effective and adequate, there must be early identification of vulnerable persons during asylum or pre-asylum proceedings and prompt action by the EU Member State following such identification.⁹⁶ Asylum seekers and refugees are, for example, particularly vulnerable to trafficking and the first opportunity to detect victims and provide adequate protection is upon their arrival in Europe.⁹⁷ Therefore, early vulnerability identification is an essential prerequisite for protecting Convention rights, upholding human dignity and effectuating the “special protection” of recognised vulnerable persons.⁹⁸
25. Looking at specific groups, in relation to children, the EU asylum *acquis* envisages specific identification and tailored procedural and reception guarantees in accordance with their special needs,⁹⁹ since children have been recognised as particularly vulnerable persons by the CJEU too.¹⁰⁰ Children’s special protection and reception needs must be promptly recognised and adequately addressed by Member States. The CJEU has also observed that the Convention on the Rights of the Child (CRC) encourages Contracting Parties to take the appropriate measures to ensure that a child who is seeking to obtain refugee status enjoys protection and humanitarian assistance, whether the child is alone or accompanied by their parents.¹⁰¹ As to members of the LGBTI+ community, persecution based on sexual orientation and gender identity is a ground to seek asylum under the 1951 UN Convention relating to the Status of Refugees, as amended by its 1967 Protocol.¹⁰² Specific protection is also provided by the EU legislation.¹⁰³ Sexual orientation is recognised as a fundamental part of a person’s life and identity.¹⁰⁴ EU Member States must look to EU standards regarding the implementation of reception conditions¹⁰⁵ in order to protect the physical and sexual integrity of the applicants.¹⁰⁶ The need for practical guidance and training of the authorities on early identification of LGBTI+ asylum seekers in reception procedures is urgent.¹⁰⁷ The training must address inclusive and sensitive interviewing methods, recognising the multitude of terms used to describe sexual orientation and self-identification and should lead to concrete reception guarantees for each group.¹⁰⁸ Last but not least, under international law victims of torture have the right to rehabilitation¹⁰⁹ and the receiving countries have the obligation of granting this right to those asylum seekers and migrants who are unable to exercise this in the territory where the torture took place.¹¹⁰
26. **The intervenors submit that in order to fully comply with their obligations under the Convention, Contracting Parties must ensure that both the material conditions and reception facilities are adapted to the specific needs of vulnerable migrants and that procedural safeguards are in place, 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.**

⁹³ See footnote 72.

⁹⁴ Arts. 21 and 25 of the Reception Conditions Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection OJ L 180, 29.6.2013, p. 96–11.

⁹⁵ Asylum Information Database (AIDA), The concept of vulnerability in European asylum procedures, August 2017, p. 14.

⁹⁶ See, for instance, Art. 11, § 4 of Directive 2011/36/EU, emphasising the importance of early identification of victims of human trafficking.

⁹⁷ European Parliamentary Research Service: *Detecting and protecting victims of trafficking in hotspots - Ex-post evaluation*, July 2019, available at <[http://www.europarl.europa.eu/RegData/etudes/STUD/2019/631757/EPRS_STU\(2019\)631757_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2019/631757/EPRS_STU(2019)631757_EN.pdf)>. The report concludes that the extremely precarious living conditions found in the Greek hotspots increase the risk of exploitation for vulnerable groups and that there is a high probability that victims of trafficking remain undetected. The report further adds that “as most of the hotspots are not designed in a protection-sensitive manner, stays in hotspots can lead to dangerous situations for all the people staying in these facilities, but especially for women and children”, p. 23.

⁹⁸ *Tarakhel v. Switzerland*, § 118.

⁹⁹ Arts. 11, 17, 18, 21-24 Recast Reception Conditions Directive; Arts. 7, 15, 25 and 31(7)(b) Recast Asylum Procedures Directive.

¹⁰⁰ C-648/11, *MA and Others*, 6 June 2013, § 55.

¹⁰¹ *Ibid.* See also CRC, General Comment 6; CRC and Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, joint General Comments 3 & 4.

¹⁰² Guidelines on International Protection No. 9, § 12; UNHCR’s Guidelines on Gender-Related Persecution, § 16.

¹⁰³ The EU Charter of Fundamental Rights (Art. 21) prohibits discrimination based on sexual orientation; the Recast EU Qualification Directive (2011/95/EU) and the Recast Reception Conditions Directive (2013/33/EU) recognise persecutions on the grounds of sexual orientation and gender identity as legitimate grounds for claiming asylum in the EU.

¹⁰⁴ CJEU, *Joined Cases Minister voor Immigratie en Asiel v X (C-199/12) Y (C-200/12) and Z*, §46; *I.K. v Switzerland (Appl. No 21417/17)*, §24.

¹⁰⁵ *Joined Cases C-199/12 to C-201/12, X, Y and Z*, 7 November 2013, § 46; *I.K. v. Switzerland*, no. 21417/17, 19 December 2017, § 24.

¹⁰⁶ Resources, ILGA Europe <<https://www.ilga-europe.org/resources/guide-european-institutions/EU/lgbti-rights>>.

¹⁰⁷ Guidelines on International Protection No. 9, § 14.

¹⁰⁸ N. Ferreira *et. al.*, “*The reform of the Common European Asylum System: fifteen recommendations from a sexual orientation and gender identity perspective*” SOGICA (2018), 11-12.

¹⁰⁹ UNGA, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, Art. 14; see also OHCHR, “Torture victims in the context of migration: identification, redress and rehabilitation. Report on the Third Annual Expert Workshop Organized by the United Nations Voluntary Fund for Victims of Torture” (2017), <https://www.ohchr.org/Documents/Issues/Torture/UNVFVT/UNVFVT_ExpertWorkshop2017.pdf>, p. 8.

¹¹⁰ UN Committee Against Torture (CAT), *General comment no. 3*, § 22.

C. Background information on the situation in the Eastern Aegean¹¹¹

Reception conditions in the context of geographical restriction

27. The reception standards provided by the Greek State in the Eastern Aegean must be assessed in the context of the restriction of freedom of movement of newly-arrived refugees and migrants that confined them to the islands of Lesbos, Chios, Samos, Kos, Leros and Rhodes. Such confinement measures have been taken in the context of the EU-Turkey Joint Statement,¹¹² on the basis of Law 4375/2016.¹¹³ Reception conditions reports have since revealed systemic flaws in site management, in the protection of vulnerable migrants, private and family life, and basic needs.¹¹⁴
28. All refugees and migrants arriving to Greece through any of the islands after 20 March 2016 were confined to the territory of the island of arrival.¹¹⁵ The measure also entailed an initial mandatory short-term detention of applicants in the islands' Reception and Identification Centres (the "hotspots") for registration purposes.¹¹⁶ The "Moria hotspot" of Lesbos was designed to be the largest hotspot with a capacity of 3,500 people.¹¹⁷ Notwithstanding the introduction of an exceptionally expedited procedure to manage extraordinary numbers of arrivals,¹¹⁸ Moria hosted approximately 14,000 individuals in early 2019, which increased to 16,400 by mid-June 2019 – four times over its official capacity.¹¹⁹
29. The sole exceptions¹²⁰ to the restriction of freedom of movement and the expedited procedure are vulnerable asylum seekers falling under the Dublin III Regulation.¹²¹ Despite the need for a proportional nature and duration of the measure¹²² there have not been adequate improvements in the management of new arrivals,¹²³ and the possibility of legal measures against the act is low due to the lack of a clear administrative act.¹²⁴ The vulnerability assessment system, described as "particularly shocking",¹²⁵ was seriously impacted by the extraordinarily short time limits set by the fast-track procedure¹²⁶ with vulnerabilities being routinely overlooked.¹²⁷ The situation is aggravated by the delays in the procedures and the negative effects of the prolonged detention of migrants¹²⁸ as well as by inadequate and overcrowded facilities, insufficient health services, lengthy procedures and lack of information and legal aid.¹²⁹ An example of this structural deficiency is that due to a change in the administrative practice of mainland transfers, vulnerable non-Syrian asylum seekers would no longer be exempt from the geographical restriction and had to remain on the islands at least until their personal interview took place.¹³⁰
30. The geographical restriction described above, has exacerbated already difficult living conditions on the islands and does not fulfil its purported aim under Art. 7 of the Reception Conditions Directive to ensure public safety and order. It is also hindering the swift processing of asylum applications. Rather, the situation on the islands precludes asylum seekers from enjoying the

¹¹¹ See Annex A for further information of legal measures and conditions on the Greek islands: ECRE, ECRE/ELENA Information Note - Living Conditions for Migrants and Refugees on the Eastern Aegean islands, 1 July 2019, < <https://www.asylumlawdatabase.eu/en/content/ecreelena-information-note-living-conditions-migrants-and-refugees-eastern-aegean-islands> >.

¹¹² Council of the European Union, EU-Turkey Joint Statement, Press Release, 18 March 2016.

¹¹³ Law No. 4375 of 2016 on the organization and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EC, Gazette 51/A/3-4-2016, Article 41 (1) (d) (iii).

¹¹⁴ E.g. Greek National Commission for Human Rights, Report on the Conditions of Reception and Asylum System in Greece, 22 December 2017, pp. 2-3., Amnesty International, Annual Report 2017/2018: Greece, 22 February 2018.

¹¹⁵ European Council on Refugees and Exiles (ECRE), The implementation of the hotspots in Italy and Greece: A study, 5 December 2016, p. 38.

¹¹⁶ *Ibid.*, p. 38.

¹¹⁷ ECRE, AIDA Country Report: Greece 2016 Update, pp. 100-101.

¹¹⁸ *Ibid.*, pp. 58-65, Article 60 (4) L. 4375/2016,

¹¹⁹ See UNHCR Weekly Snapshots: Aegean Islands: 14-20 Jan 2019; 11-17 Feb 2019; 25-31 Mar 2019; 15-21 Apr 2019; 6-12 May 2019; 10-16 Jun 2019.

¹²⁰ See Article 2 of the October 2018 (Decision 18984/05.10.2018 of the Director of the Asylum Service (Gazette B" – 4427 – 05.10.2018)) and June 2019 (Decision 13411/19.06.2019 of the Minister for Migration Policy (Gazette B" 2399 – 19.06.2019)) decisions.

¹²¹ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

¹²² See recitals 13, 10 and 11 in the April 2018 (Decision 8269/20.04.2018 of the Director of the Asylum Service (Gazette B" - 1366 – 20.04.2018)), October 2018 (Decision 18984/05.10.2018 of the Director of the Asylum Service (Gazette B" – 4427 – 05.10.2018)) and June 2019 (Decision 13411/19.06.2019 of the Minister for Migration Policy (Gazette B" 2399 – 19.06.2019)) decisions respectively

¹²³ European Commission, Progress report on the Implementation of the European Agenda on Migration, 6 March 2019, p. 7.

¹²⁴ ECRE, AIDA Country Report: Greece 2018 Update, p. 121.

¹²⁵ OHCHR, Report of the Special Rapporteur on the human rights of migrants on his mission to Greece, 24 April 2017, A/HRC/35/25/Add.2, 24 April 2017, paras. 54-58.

¹²⁶ AIDA, The concept of vulnerability in European asylum procedures, September 2017, p. 25.

¹²⁷ Human Rights Watch, Greece: Refugees with Disabilities Overlooked, Underserved, 18 January 2017.

¹²⁸ OHCHR, Report of the Special Rapporteur on the human rights of migrants on his mission to Greece, 24 April 2017, A/HRC/35/25/Add.2, 24 April 2017, paras. 54-58

¹²⁹ Report to the Greek Government on the visits to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 18 April and 19 to 25 July 2016, 26 September 2017, p. 19.

¹³⁰ ECRE, AIDA Country Report: Greece 2017 Update, p. 130.

guarantees of the Directive to the extent that it affects their unalienable sphere of private life.¹³¹ While Greece is not a party to Protocol 4 ECHR and is thus not bound by the provisions of Art. 2(1) of that Protocol guaranteeing freedom of movement within the territory of the State,¹³² it is however a party to the ICCPR, and with no reservation to Art. 12 that provides for freedom of movement in similar terms.¹³³ Under Art. 53 ECHR, any restrictions on freedom of movement falling within the ambit of Art. 8 ECHR must therefore be interpreted in conformity with Greece's obligations under Art. 12 ICCPR. The intervenors invite the Court to recall that measures preventing migrants from leaving the Aegean islands fall within the ambit of the private life rubric of Art. 8 and, as in *Nada v. Switzerland mutatis mutandis*, may constitute interference with their private life which the Contracting Party is required to justify.¹³⁴ This accords with the approach taken by the Court in *Demir and Baykara v Turkey* with regard to Art. 11 ECHR and the Revised ESC, which had not been ratified by Turkey.¹³⁵

D. Information regarding the enhanced supervision of relevant Greek cases in the context of the execution of judgments by the Committee of Ministers

31. The challenges in the asylum and reception system in Greece that led this Court to find violations of the Convention in *M.S.S. v. Belgium and Greece*¹³⁶ have not been resolved eight years after the Grand Chamber judgment and the *M.S.S./Rahimi* group of cases is still under the enhanced supervision of the Committee of Ministers of the Council of Europe. In 2015, the Committee recommended that the Greek authorities intensify efforts to increase accommodation capacity and provide a “sustainable and uninterrupted operation of open reception facilities and provision of services” to asylum seekers.¹³⁷ It further encouraged the authorities to ensure adequate standards for all reception infrastructure “in line with the requirements of the European Convention and of European Union law, as set out in the *M.S.S. judgment*”.¹³⁸ During its June 2017 meeting, the Committee noted the emergency situation and domestic measures taken with regard to the processing of new arrivals but called on the Greek government to ensure that registrations are completed within a reasonable time.¹³⁹ In the latest meeting of June 2019, the Ministers' Deputies expressed their “grave concern” regarding the high number of arrivals and the resulting “significant increase in the average time to register and process asylum applications”.¹⁴⁰ In this context, the Greek government was called to provide information on planned or adopted measures aiming to improve the effectiveness of administrative procedures.¹⁴¹ Moreover, the Deputies noted reports by the Council of Europe Commissioner for Human Rights and NGOs that the living conditions of asylum seekers remain critical and called for enhanced action by the Greek authorities in this respect. In both meetings, Greece emphasised that delays in procedures and in the provision of services are inevitable due to an increase in asylum applications, further noting that the reported challenges are “constantly changing randomly and make the magnitude of needs unpredictable”.¹⁴² The Committee will resume examination of these cases during its September 2020 meeting.

E. The European and international standards applying to delays in family reunification which occur as a consequence of delays in processing applications for international protection

32. There is universal consensus that, as the fundamental unit of society, the family is entitled to respect and protection.¹⁴³ The 1951 Refugee Convention recognised that “the unity of the family, the natural and fundamental group unit of society, is an essential right of the refugee...” and urged governments to “take the necessary measures for the protection of the refugee's family”.¹⁴⁴ Given the declaratory nature of refugee status, “any person is a refugee within the framework of a given instrument if he meets the criteria of the refugee definition in that instrument, whether he is formally recognized as a refugee or not”.¹⁴⁵ This Court reiterated that “family unity is an essential right of the refugee and that family reunification is a fundamental element in allowing persons who have fled persecution to return to normal life”.¹⁴⁶

¹³¹ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013, Recitals 11, 25, and 35.

¹³² For further information, please see: <<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/046>>.

¹³³ Greece is also party to the Refugee Convention, Art. 26.

¹³⁴ *Nada v. Switzerland*, no. 10593/08, 12 September 2012, §§ 150-152, 165-166. It is noted that Switzerland has not ratified Protocol 4 ECHR.

¹³⁵ *Demir and Baykara v. Turkey* [GC], no. 34503/97, 12 November 2008, §§ 85-86.

¹³⁶ *M.S.S. v. Belgium and Greece*.

¹³⁷ Decision on Execution of *M.S.S. & Rahimi* cases against Greece (CM/Del/Dec(2015)1243/H46-8), 1243rd meeting, 8-9 December 2015.

¹³⁸ *Ibid.*

¹³⁹ Decision on Execution of *M.S.S. & Rahimi* cases against Greece (CM/Del/Dec(2017)1288/H46-15), 1288th meeting, 6-7 June 2017.

¹⁴⁰ Decision on Execution of *M.S.S. & Rahimi* cases against Greece (CM/Del/Dec(2019)1348/H46-9), 1348th meeting, 4-6 June 2019.

¹⁴¹ *Ibid.* para. 4.

¹⁴² For further information on submissions, see Notes on the Agenda of the 1348th meeting of the Ministers' Deputies, 4-6 June 2019, CM/Notes/1348/H46-9 and Notes on the Agenda of the 1288th meeting, 6-7 June 2017, CM/Notes/1288/H46-15.

¹⁴³ See the Art. 16(3) UDHR, Art. 23(1) ICCPR, and Art. 17(1) American Convention on Human Rights, 1969; Art. 16 European Social Charter, 1961; and Art. 18(1) African Charter on Human and Peoples' Rights, 1981.

¹⁴⁴ Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 1951, UN doc. A/CONF.2/108/Rev.1, 26 Nov. 1952, Recommendation B.

¹⁴⁵ UN High Commissioner for Refugees (UNHCR), Note on Determination of Refugee Status under International Instruments, EC/SCP/524 August 1977, § 5.

¹⁴⁶ *Mugenzi v. France*, no. 52701/09, 10 October 2014, § 54; *Tanda-Muzinga v. France*, no. 2260/10, 10 July 2014, § 75.

33. The importance of family unity is also reflected in the legal standards of the Common European Asylum System (CEAS). The Dublin III Regulation not only refers to but prioritises the respect for family life under the ECHR and the Charter by acknowledging the “full respect for the principle of family unity and for the best interests of the child”.¹⁴⁷ It stipulates the hierarchy of criteria for determining the EU Member State responsible and puts family unity (minors – Art. 8, family relations – Art. 9) on top.¹⁴⁸ Derogation from other responsibility criteria is allowed “in order to bring together family members, relatives or any other family relations”.¹⁴⁹ Yet in practice the Member States often do not comply with the requirement to prioritise family unity, and the proposal for Dublin IV does not sufficiently reform the process.¹⁵⁰ Ensuring that the existent legal protections of family unity are enforced has thus become critical.
34. The need for family unity is even more urgent when children are affected.¹⁵¹ In relation to Art. 8 ECHR, this Court has held that “[w]here children are concerned, the national authorities must, in their review of proportionality for the purposes of the Convention give precedence to their best interests.”¹⁵² In addition to the protection measures discussed in Section B above, the Convention on the Rights of the Child also requires that applications involving family reunification “be dealt with by States Parties in a positive, humane and expeditious manner”.¹⁵³ Furthermore, the Committee on the Rights of the Child specified that “[w]hen the child’s relations with his or her parents are interrupted by migration (...), preservation of the family unit should be taken into account”.¹⁵⁴ The UNHCR ExCom Conclusions similarly stressed the consideration of family unity for “all action taken on behalf of refugee children.”¹⁵⁵
35. This requirement of prompt and effective review of applications is also extended to the broader context of safeguarding the right to respect for family life under Art. 8 of the Convention.¹⁵⁶ The Court also confirmed that “whilst Article 8 contains no explicit procedural requirements, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8”.¹⁵⁷ In this regard, the quality of the decision-making process depends on the swiftness with which the Contracting Party takes action.¹⁵⁸
36. The Court has also stressed the “positive obligation” of Contracting Parties under Art. 8 “to establish an effective and accessible procedure to protect the right to private life (...) to ensure that his situation of insecurity is as short-lived as possible”.¹⁵⁹ Measures to reunite parent and child must be put in place promptly since the passage of time can cause irremediable damage to the relationship of separated children with their parents,¹⁶⁰ and the declaratory nature of refugee status mentioned above is particularly relevant when considering this promptness.¹⁶¹ Other European legal instruments also refer to the need for prompt reunification.¹⁶²
- 37. The intervenors submit that systematic delays in the registration and assessment of applications for international protection fall short of the above standards and exacerbate the harmful impacts of an already lengthy procedure. This results in an unnecessarily and excessively long family separation of vulnerable migrants, including children. Such a practice renders the exercise of the right to family life illusory.**

¹⁴⁷ Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 (recast), Recitals 14 & 16.

¹⁴⁸ Arts. 7-9 Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 (recast), and Opinion of AG Sharpston in Case C-63/15 *Mehrdad Ghezelbash v. Staatssecretaris van Veiligheid en Justitie*, § 17.

¹⁴⁹ Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 (recast), Recital 17.

¹⁵⁰ European Parliament, Directorate General for Internal Policies, Policy Department for Citizen’s Rights and Constitutional Affairs, *The Reform of the Dublin III Regulation: Assessment of Commission’s “Dublin IV” Proposal*, 2016.

¹⁵¹ See the African Charter on the Rights and Welfare of the Child (1990) art. XIX(1) or the Vienna Declaration and Programme of Action (1993).

¹⁵² *Tanda-Muzinga v. France*, no. 2260/10, 10 July 2014, § 67 (citing *Popov v. France*, no. 39472/07 and 39474/07, 19 January 2012, § 139; *Berisha v. Switzerland*, no. 948/12, 30 July 2013, § 51; *A.B. and Others v. France* (No. 11593/12), 12 July 2016, § 152. See also The EU Charter of Fundamental Rights (Art. 24, § 2).

¹⁵³ UN Convention on The Rights of the Child (1989) Art. 9(1), 10 (1) and 22.

¹⁵⁴ UN CRC, General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, § 66.

¹⁵⁵ UNHCR Executive Committee Conclusions No. 47 (XXXVIII) – 1987 (d).

¹⁵⁶ *Tanda-Muzinga v. France*, no. 2260/10, 10 July 2014, § 82.

¹⁵⁷ *Ciliz v. the Netherlands*, no. 29192/95, ECHR 2000-VIII, § 66, and *Saleck Bardi v. Spain*, no. 66167/09, 24 May 2011, § 30.

¹⁵⁸ See *Ciliz v. the Netherlands*, cited above, § 71; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, ECHR 2006-XI, § 82; *Saleck Bardi v. Spain*, cited above, § 65; and *Nunez v. Norway*, no. 55597/09, 28 June 2011, § 84.

¹⁵⁹ *B.A.C. v. Greece*, no. 11981/15, 13 October 2016, § 46.

¹⁶⁰ *Saleck Bardi v. Spain*, no. 66167/09, 2011, § 52.

¹⁶¹ See *Mugenzi v. France*, no. 52701/09, 10 July 2014, § 52, and *Tanda-Muzinga v. France*, no. 2260/10, 10 July 2014, § 73, in Summary Conclusion: UNHCR Expert Roundtable on the Right to Family Life and Family Unity in the Context of Family Reunification of Refugees and Other Persons In Need Of International Protection 4 December 2017, Brussels, Belgium, p. 4. See also Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Arts 1, 7; Council Regulation (EC) No. 2201/2003 of 27 November 2003, Art. 11.

¹⁶² See, e.g., Dublin III Regulation (*Vis-à-vis unaccompanied minors*, in C-648/11, *MA and others*, 6 June 2013, §§ 55 and 61); UNHCR ExCom, Conclusion No. 24 Family Reunification, § 2.; UNHCR, Summary Conclusions, Family Unity, § 11. The CJEU has also made clear that making the right to family reunification dependent upon the processing time of applications for international protection would call into question the effectiveness of family unity provisions and suggested granting a specific protection to refugees, Compare CJEU C-550/16, A and S, 12 April 2018, § 55.