EUROPEAN COURT OF HUMAN RIGHTS

Application No. 13250/23

BETWEEN:

Suji

Applicant

v.

Greece

Respondent

WRITTEN SUBMISSIONS ON BEHALF OF THE INTERVENORS

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

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pursuant to the Registrar's notification dated 2nd February 2024 on the Court's permission to intervene under Rule 44 § 3 of the Rules of the European Court of Human Rights

23rd February 2024

The specific vulnerabilities of stateless persons and stateless refugees

1. As per Article 1(1) of the 1954 UN Convention relating to the Status of Stateless Persons (1954 Convention), a stateless person is someone "*who is not considered a national by any State under the operation of its law*",[1] a definition which forms part of customary international law.[2] This Court has previously recognised that statelessness is an "*important element*" of a case and noted the adverse consequences of statelessness.[3] The Court emphasised in *Kurić and others v. Slovenia* that the applicants' "*erasure*" from the Slovenian registration system left the stateless applicants in a state of legal limbo, and therefore in a situation of vulnerability and insecurity.[4]
2. The absence of documents can be both a cause and a consequence of statelessness. Stateless individuals frequently encounter difficulties in obtaining essential documentation, which significantly hinders their ability to exercise fundamental rights, engage in legal procedures, navigate bureaucratic processes, and access services.[5] Their lack of a nationality often deprives them of the basic paperwork to prove their identities, such as birth certificates and residency documents, meaning they also cannot obtain official identification such as passports or ID cards.[6] Discrimination is an additional barrier to acquiring documentation.[7] The Human Rights Council has further noted that stateless individuals are more vulnerable to human rights violations as a result of their marginalised status and inability to access effective remedies.[8] Specifically, stateless persons "*may be affected by poverty, social exclusion and limited legal capacity, which have an adverse impact on their enjoyment of relevant civil, political, economic, social and cultural rights, in particular in the areas of education, housing, employment, health and social security*".[9] The practical consequences of lacking documentation render stateless persons more susceptible to abuse, arbitrary detention, discriminatory treatment, and trafficking.[10]
3. The inability of stateless individuals to access documentation often has a significant impact in the refugee context by limiting access to certain rights and procedures.[11] This includes family reunification, where evidencing family ties becomes especially complicated without the assistance of a home State.[12] Similarly, where an applicant's family members are also stateless, obtaining necessary travel documents is often impossible.[13] Within legal procedures, a disproportionate distribution of the burden of proof between the State and the applicant can create a unique administrative barrier for

[1] UN Convention Relating to the Status of Stateless Persons, September 28, 1954, 360 U.N.T.S. 117.
[2] International Law Commission, *Draft Articles on Diplomatic Protection with commentaries*, Yearbook of the International Law Commission, 2006 Vol. II (Part Two), available at: refworld.org.
[3] Sudita Keita v. Hungary, no. 42321/15, § 35, 12 May 2020; *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 356, 26 June 2012.
[4] *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 302, 26 June 2012.
[5] Ibid., § 356. See also European Network on Statelessness (ENS), 'Thematic Briefing: Statelessness determination and protection in Europe' (September 2021), available at: statelessness.eu.
[6] ENS, 'Thematic Briefing: Statelessness determination and protection in Europe' (n 5).
[7] UNHCR, 'Handbook on Protection of Stateless Persons Under the 1954 Convention Relating to the Status of Stateless Persons' (2014) § 121, available at: refworld.org.
[8] UNGA, Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities A/73/205 (20 July 2018), available at: digitallibrary.un.org.
[9] Human Rights Council, Human rights and arbitrary deprivation of nationality A/HRC/20/L.9 (28 June 2012), 6, available at: ohchr.org; UNHCR, 'Handbook on Protection of Stateless Persons' (n 7).
[10] UNHCR, 'Stateless Determination in the UK' (2020), p. 16, available at: refworld.org.
[11] *See* ENS and Institute on Statelessness & Inclusion (ISI), 'Addressing statelessness in Europe's refugee response: gaps and opportunities' (2019), available at: statelessness.eu.
[12] UNHCR, 'Families Together: Family Reunification for Refugees in the European Union' (February 2019), p. 24, available at: unhcr.org.
[13] ENS, 'Stateless Journeys: Family Reunification', (2023) available at: statelessness.eu.

stateless people and exacerbate the difficulties faced by stateless individuals, perpetuating their marginalised status within bureaucratic systems.[14]

4. In Bangladesh, the situation of stateless people and people at risk of statelessness is precarious. For the Rohingya, the largest stateless population in the country, [15] the denial of nationality by the government of Myanmar and the lack of access to documents which were confiscated or destroyed by Myanmar's military, coupled with restrictions imposed by Bangladesh on birth registration, education access, and freedom of movement, contributes to the alienation, exclusion, and marginalisation of the group.[16] This, along with the denial of Bangladeshi nationality to Rohingya children born in Bangladesh, perpetuates an intergenerational cycle of statelessness.[17] The Biharis are another community that has historically been affected by statelessness, which is still impacted in their ability to integrate in society, and access rights and documentation.[18]

Obligations under Article 8 ECHR

5. It is well established that spouses, parents, and their children are entitled to lead a normal family life.[19] Ties between parent and child are a "*fundamental element*" of family life and measures which prevent the development of this relationship may constitute an interference with rights under Article 8(1).[20] Moreover, for persons granted refugee status, family unity has been explicitly recognised as an essential element in resuming a 'normal' family life.[21]
6. The Grand Chamber has set out examples of the positive obligation to grant family reunification.[22] For example where a) children are involved in the application and b) where there are "*insurmountable obstacles in the way of the family living in the country of origin of the person requesting family reunification*".[23]
7. Case law reflects that refugees **are not responsible for the separation of their family or the discontinuation of family**.[24] This Court has clearly indicated that family unity and the right to family life is "*an essential right of refugees and that family reunion is an essential element in enabling persons who had fled persecution to resume a normal life*".[25] This standard **applies to all refugees regardless of their nationality status**, including stateless refugees,[26] who should benefit from the same right to family reunification as refugees who have a nationality. Stateless refugees should not be discriminated against on the basis of their nationality status.

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[14] UNHCR, 'Handbook on Protection of Stateless Persons' (n 7), §§ 83-107; ENS and ISI, 'Addressing statelessness in Europe's refugee response: gaps and opportunities' (n 11), pp. 7-8.
[15] Institute of Statelessness and Inclusion, 'The Worlds' Stateless, Deprivation of nationality' (2020), p. 145, available at: institutesi.org.
[16] Natalie Brinham, 'Looking Beyond Invisibility: Rohingyas' Dangerous Encounters with Papers and Cards' (2019) 24(2) Tilburg Law Review pp. 156–169, available at: networkmyanmar.org.
[17] Andrea Marilyn Pragashini Immanuel, "The Customary Obligation to Avoid, Reduce, or Prevent Statelessness in South Asia" *Asian Journal of International Law* 13.2 (2023): 244–272, p. 252; Ridwanul Hoque, 'Report on Citizenship Law: Bangladesh', (December 2016), available at: cadmus.eui.eu.
[18] Lee-Winter, Fiza and Kirabira, Tonny (2021) "Dossier: The Stateless Rohingya—Practical Consequences of Expulsion", Genocide Studies and Prevention: An International Journal: Vol. 15: Iss. 2: 3–9.
[19] *M.A. v. Denmark* [GC], no. 6697/18, 9 July 2021; *El Ghatet v. Switzerland*, no. 56971/10, 8 November 2016; *Marckx v. Belgium*, 13 June 1979, § 31, Series A no. 31.
[20] *Santos Nunes v. Portugal*, no. 61173/08, § 66, 22 May 2012.
[21] *Tanda-Muzinga v. France*, no. 2260/10, § 75, 10 July 2014; *M.A. v. Denmark* [GC], no. 6697/18, 9 July 2021.
[22] *M.A. v. Denmark* [GC], no. 6697/18, §135 (i)-(v), 9 July 2021.
[23] See various other examples in *M.A. v. Denmark* [GC], no. 6697/18, §135 (iv) and (v), 9 July 2021.
[24] *Tanda-Muzinga v. France*, no. 2260/10, §75, 10 July 2014.
[25] Ibid., § 75. See also: *M.A. v. Denmark* [GC], no. 6697/18, §138, 9 July 2021.
[26] Throughout this intervention, we refer to ECtHR case law on the protection of refugees. However, the intervenors will refer to 'stateless refugees' or 'stateless persons' throughout.

8. This Court has stated that an interference by a public authority with a person's right to respect for family life must be **in accordance with the law** and must also be "*necessary in a democratic society*", and therefore respond to a pressing social need and be proportionate to the legitimate aim pursued.[27]
9. For the interference to be "*in accordance with the law*", it must have "*some basis in domestic law*", be "*compatible with the rule of law*", and include "*adequate safeguards*" to ensure that the person's Article 8 rights are respected. As such, a decision that rejects family reunification solely based on the fact that the applicant could not provide documentary evidence must be considered unjustified under Article 8(2) due to the lack of a legal basis.[28] A finding that an interference is not "*in accordance with the law*" is sufficient for this Court to find a violation of Article 8.[29]
10. The Court will also want to consider whether it **strikes a fair balance between an individual's right to protection under the European Convention on Human Rights (ECHR) and the interests of the Contracting State**.[30] This should consist of an "*individualised assessment of the interest of family unity in the light of the concrete situation of the persons concerned*" and "*the situation in the country of origin*".[31] **The margin** of appreciation afforded to States "*will vary in the light of the nature of the issues and the seriousness of the interests at stake*"[32] and **is narrower in cases concerning vulnerable persons, such as stateless persons and refugees**.[33] The intervenors note the international and European consensus that refugees need to have the benefit of a reunification procedure that is more favourable than other aliens and should not be required to meet unattainable criteria in order to be granted family reunification.[34] The intervenors further note the broad consensus that a child's best interest must be considered in such a balancing exercise.[35] If a solution chosen is not in the best interests of the child, grounds must show that their best interests were in practice treated as a primary consideration.
11. Regarding the procedural requirements for processing applications for family reunification, the Court has held that the "*national decision-making process [must] offer the guarantees of flexibility, promptness and effectiveness required in order to secure the right to respect for family life under Article 8*",[36] attentiveness and "*particular diligence*",[37] and "*give due consideration to the applicant's specific*

[27] *Vavřička and Others v. the Czech Republic* [GC], no. 47621/13, §266, 8 April 2021; *Piechowicz v Poland*, no. 2007/07, §212, 17 April 2012.
[28] See Council of the European Union, Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification (EU Family Reunification Directive) Article 11(2).
[29] *M.M. v. the Netherlands*, no. 39339/98, § 46, 8 April 2003; *Solska and Rybicka v. Poland*, nos. 30491/17 and 31083/17, § 129, 20 September 2018.
[30] *Vavřička and Others v. the Czech Republic* [GC], no. 47621/13, §§ 273-275, 8 April 2021.
[31] *M.A. v. Denmark* [GC], no. 6697/18, §192-193, 9 July 2021.
[32] *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 211, 10 September 2019.
[33] *Hoti v. Croatia*, no. 63311/14, § 122, 26 April 2018. See also: *Konstatinov v. The Netherlands*, no.16351/03, 26 April 2017.
[34] *B.F. and others v. Switzerland*, no. 13258/18, § 97, 4 July 2023; *M.A. v. Denmark* [GC], no. 6697/18, § 153, 9 July 2021.
[35] *El Ghatet v Switzerland*, no. 56971/10, § 46, 8 November 2016; *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 135, 6 July 2010; *Tarakhel v. Switzerland* [GC], no. 29217/12, § 99, ECHR 2014; *Tuquabo-Tekle and Others v. the Netherlands*, no. 60665/00, § 44, 1 December 2005.
[36] *M.A. v. Denmark* [GC], no. 6697/18, §137-139 and 163, 9 July 2021; *Tanda-Muzinga v. France*, no. 2260/10, 10 July 2014; *Senigo Longue and Others v. France*, no. 19113/09, 10 July 2014.
[37] *Tanda-Muzinga v. France*, no. 2260/10, § 73, 10 July 2014.

situation."[38] These considerations apply to both refugees and beneficiaries of subsidiary protection.[39]

12. In *Tanga-Muzinga*, this Court noted the need to show greater flexibility in respect of evidence gathering to attest for family ties.[40] Such flexibility helps to reduce the length of proceedings and decision-making time. In this respect, the Court will also take into consideration the **length of time** where parent and child are separated. Delays and excessive lengths of time in reunification contexts were addressed by the Grand Chamber in *M.A. v. Denmark*.[41] The longer the length of separation, the more likely it is to lead to "***irreparable consequences for the relationship***" and, where children are concerned, to the "*deterioration in the child's relationship with his or her parent*".[42]
13. In *Senigo Longue and Others,* visas enabling family members to be reunited were issued almost four years after an application for family reunification.[43] The Court held that the "*prolongation of the difficulties [the applicant] encountered in the course of the proceedings prevented her from asserting her right to live with her children*"[44] (and the more important right for the children to live with their mother/parent). It held that the "*decision making process did not offer the guarantees of flexibility, speed and effectiveness required to ensure respect for the applicants' right*" under Article 8.[45]
14. **The intervenors submit that the undue length of proceedings resulting in the prolonged separation of family members is particularly harmful for parent and child relationships and the prospect of establishing a normal family life.[46] In addition to this, the particular vulnerability of stateless refugee applicants and their family members must be taken fully into consideration.**
15. The Court will wish to consider the opinion of Judge Ktistakis in *M.T. and Others v. Sweden*, which addresses the requirement for a guarantee of an individualised assessment of family unity in light of the concrete situation of the persons concerned.[47]
16. The Grand Chamber has held that applicants must **be afforded a real possibility** of having an individualised assessment of the interests of family unity.[48] In respect of evidence or other supporting documents, the intervenors observe that the evidential burden of proof is lower for persons with refugee status, due to the special situation in which they find themselves, and that it is often appropriate that they are given the benefit of the doubt regarding their statements and the credibility of their evidence.[49] The relevant authorities should also make clear that applicants have had the opportunity to provide an explanation for any objections to their documents.[50]
17. In *Hoti v Croatia*, the Court found that in order to apply for a permanent residence permit in Croatia stateless individuals are "***required to fulfil requirements which by***

[38] *Tanda-Muzinga v. France*, no. 2260/10, § 79 and 82, 10 July 2014.
[39] *M.A. v. Denmark* [GC], no. 6697/18, §146, 9 July 2021.
[40] *Tanda-Muzinga v. France,* no. 2260/10, § 76, 10 July 2014. With reference to the EU Family Reunification Directive (n 28). See also § 30 of this intervention on relevant European Union law.
[41] *M.A. v. Denmark* [GC], no. 6697/18, § 139, 9 July 2021.
[42] *Santos Nunes v. Portugal,* no. 61173/08, § 69, 22 May 2012; *T.C. v. Italy*, no. 54032/18, § 58, 19 May 2022.
[43] *Senigo Longue and Others v. France*, no. 19113/09, § 52, 10 July 2014.
[44] Ibid., § 74.
[45] Ibid., § 74 and 75.
[46] See *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 135, 6 July 2010.
[47] *M.T. and Others v. Sweden*, no. 22105/18, 20 October 2022, dissenting opinion of Judge Ktistakis § 3 and 4.
[48] *M.A. v. Denmark* [GC], no. 6697/18, § 193, 9 July 2021. See also: § 3 of the dissenting opinion of Judge Ktistakis in *M.T. and Others v. Sweden*, no. 22105/18, 20 October 2022.
[49] *J.K. and Others v. Sweden* [GC], no.59166/12, § 93, 23 August 2016.
[50] *Tanda-Muzinga v. France*, no. 2260/10, § 69, 10 July 2014.

the virtue of their [statelessness] status they are unable to fulfil",[51] and in *Sudita Keita v Hungary* that it was "***practically impossible***" for the applicant to be recognised as stateless as he did not meet a lawful stay requirement.[52] This led the Court to find that both States had failed to comply with their **positive obligation to provide an effective and accessible procedure** enabling the applicants to have the issue of their status determined, resulting in a violation of Article 8.

18. The Court should also consider the difficulties in evidencing statelessness, and that stateless persons often lack documentation to demonstrate their family links by nature of their status. Denying stateless persons and refugees the right to family reunification, in law or in practice, solely on the basis that they are not able to provide the documentation required of others, would be an interference with the right to respect for private and family life, which may be disproportionate and not justified under Article 8(2), and thus a violation.
19. The role of the Court is to verify whether the guarantees of Article 8, with appropriate consideration of refugee status, were protected. It is invited to evaluate the quality of the available procedures for family reunification, i.e., the guarantees of flexibility, promptness, and effectiveness - in light of the applicant's specific circumstances – including the events that led to the interruption in family life.[53]

Article 13 in conjunction with Article 8 ECHR

20. Remedies must be "*effective*" in practice, not just in law. Effectiveness is determined by three factors: firstly, whether it can directly rectify the impugned situation.[54] Secondly, its speediness,[55] for a remedy which cannot succeed in due time is neither adequate nor effective.[56] Thirdly an individual's ability to access the remedy must not be unjustifiably obstructed by the acts or omissions of the authorities,[57] including the absence of a challengeable decision. Additionally, a remedy must be accessible for the person concerned, and is only effective where the applicant can initiate the procedure directly.[58]
21. **The intervenors submit that for Article 13, in conjunction with Article 8, to be meaningful, individuals must have access to a decision which they can challenge. Where no such decision is issued, its absence equates to the absence of an effective remedy.** The intervenors also invite the Court to consider that the absence of effective legal mechanisms creates a legal vacuum and denies stateless refugees the right to a legal personality (see § 1 of this intervention), something which "*is a fundamental precondition for the enjoyment not only of the basic human rights and freedoms, but also of the whole range of different substantive and procedural rights*".[59]

Article 14 in conjunction with Article 8 ECHR

22. For discrimination in conjunction with Article 8(1) to be found, this Court must be satisfied that the different treatment **places individuals at a disadvantage** or has a

[51] *Hoti v. Croatia*, no. 63311/14, §§ 126, 136-137, 26 April 2018; *Sudita Keita v. Hungary*, no. 42321/15, § 39, 12 May 2020.
[52] *Sudita Keita v. Hungary*, no. 42321/15, § 39, 12 May 2020.
[53] *Tanda-Muzinga v. France*, no. 2260/10, § 73, 10 July 2014.
[54] *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR 2000-XI.
[55] *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 292, ECHR 2011.
[56] *Payet v. France,* no. 19606/08, § 133, 20 January 2011.
[57] *De Souza Ribeiro v. France* [GC], no. 22689/07, § 80, ECHR 2012.
[58] *Petkov and Others v. Bulgaria*, nos. 77568/01 and 2 others, § 82, 11 June 2009.
[59] *Kurić and Others v. Slovenia* [GC], no. 26828/06, 26 June 2012, partly Concurring, partly dissenting opinion of Judge Vučinić.

disproportionately prejudicial effect on their private and family life.[60] This Court has previously ruled that a difference in treatment between stateless individuals and other non-national residents might amount to discrimination.[61] This Court has found that a violation may also occur where **Contracting States, without an objective and reasonable justification, fail to treat differently persons whose situations are significantly different**.[62]

23. The Court has found that "*very weighty reasons would have to be put forward before the Court could regard a difference of treatment based exclusively **on the ground of nationality** as compatible with the Convention*."[63] For example, in cases concerning discrimination on the ground of nationality or its mode of acquisition, the Court has found a violation of Article 14 read in conjunction with Article 8 in cases regarding regularisation of residence status[64] and family reunification.[65]
24. Where stateless refugees are denied the opportunity to benefit from family reunification by being imposed requirements they are unable to fulfil, thereby rendering the procedure impossible for them to access while it is accessible for refugees with a nationality, this constitutes a failure to treat differently persons whose situations are significantly different, within the meaning of Article 14 in conjunction with Article 8.[66]
25. **The intervenors submit that for stateless refugees to have the possibility of accessing the procedure for family reunification and benefitting from that right, in the same manner as other refugees, there must not be any requirements in law or in practice that stateless persons are unable to fulfil by virtue of their statelessness. Imposing such requirements does not pursue a legitimate aim within the spirit of the ECHR. Should this Court be satisfied that such a difference in treatment does pursue a legitimate aim, it must also be satisfied that the difference is proportionate. Considering the vulnerability and legal insecurity of stateless persons and the disproportionate interference with stateless refugees' right to respect for family life, failing to treat differently stateless refugees and refugees who have a nationality is unjustified.**
26. The intervenors also submit that strict documentation requirements may not be set and invite the Court to consider whether the aim pursued could be achieved by measures that are less disadvantageous[67] to vulnerable groups, such as the acceptance of non-documentary evidence, including oral testimony. This is in line with UNHCR's recommendation to establish a shared evidentiary burden that incorporates flexible document requirements for all refugees,[68] and the UN Committee on the Rights of the Child's recommendation to make "*administrative requirements for family unification*

[60] *Biao v. Denmark*, no. 38590/10, § 130, 24 May 2016.
[61] *K2 v. the United Kingdom*, no. 42387/13, § 71, 7 February 2017.
[62] *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV.
[63] *Gaygusuz v. Austria*, 16 September 1996, § 42, Reports of Judgments and Decisions 1996-IV; *Koua Poirrez v. France*, no. 40892/98, § 46, 30 September 2003; *Andrejeva v. Latvia* [GC], no. 55707/00, § 87, ECHR 2009; *Bah v. The United Kingdom*, no. 56328/07, § 37, 27 September 2011.
[64] *Kurić and Others v. Slovenia* [GC], no. 26828/06, 26 June 2012.
[65] *Biao v. Denmark* [GC], no. 38590/10, 24 May 2016.
[66] See also Rohan, Mark (2014) "Refugee Family Reunification Rights: A Basis in the European Court of Human Rights' Family Reunification Jurisprudence," *Chicago Journal of International Law,* 15(1), pp. 347-375, (p. 369); Pobjoy, Jason (2010) "Treating like alike: The principle of non-discrimination as a tool to mandate the equal treatment of refugees and beneficiaries of complementary protection," *Melbourne University Law Review*, 34(1), pp. 181-229. See also § 17 of this intervention.
[67] See e.g. CJEU, *Kalliri*, C-409/16, judgment of 18 October 2017, § 42; ECtHR, *Fernandez Martinez v. Spain*, no. 56030/07, 12 June 2014, § 132; *Moraru v Romania*, no. 64480/19, 8 November 2022.
[68] UNHCR, Recommendations on flexible approaches to family reunification procedures in Europe, February 2023, available at: refworld.org.

more flexible and affordable"[69] to safeguard the principle of family unity for refugees and their children. Positive State practice is identifiable in Bulgaria, where family ties can be proven through a notarised declaration when official documents are unavailable.[70]

27. A lack of flexibility on the evidentiary requirements to access family reunification discriminates against stateless refugees, whose nationality and documentation status places them in a different situation compared to refugees with a nationality and documentation. By imposing the same evidentiary and documentation requirements to refugees with or without a nationality, Contracting States would fail to treat individuals differently when they are in a "*significantly different*"[71] situation and would overlook the particular circumstances in which many stateless persons find themselves.
28. **The intervenors consider that the cumulative impact of such interference as a result of a failure to treat differently persons in significantly different situations without an objective and reasonable justification, is disproportionate and contravenes Article 14 taken together with Article 8 ECHR.**

Article 53 ECHR

29. **Article 53 prohibits *inter alia* a construction of Convention rights which would limit the human rights and fundamental freedoms ensured under any other agreement to which the respondent State is a party.** To ensure compliance with this article when construing the rights and freedoms which are defined in the Convention, this Court must guarantee at least the level of protection of those human rights and fundamental freedoms already guaranteed by other international agreements to which the relevant Contracting State is a party. Some relevant examples are given below.

Relevant European Union Law

30. The EU Charter of Fundamental Rights ('CFR')[72] applies in principle to any situation which falls within the scope of EU Law.[73] Article 7 CFR protects the right to respect for family life and Article 24 CFR integrates the principles and standards of the UN Convention on the Rights of the Child (UNCRC)[74] into the CFR and thus brings it within the scope of EU Law. This means that all policies and actions impacting children must have their best interests as a primary consideration.[75]
31. The two key EU legal instruments governing family reunification for refugees are the Family Reunification Directive (FRD)[76] and the Qualification Directive (QD).[77] Article 23(1) of the QD requires EU Member States to ensure that family unity can be maintained. The FRD states that measures concerning family reunification must be

[69] UN Committee on the Rights of the Child (CRC), Concluding observations on the combined third and fourth periodic reports of Poland, 30 October 2015, UN Doc CRC/C/POL/CO/3-4 (2015), § 45(d), available at: undocs.org.
[70] ECRE, 'Not there yet: Family reunification for beneficiaries of international protection' (February 2023), p. 23, available at: asylumineurope.org.
[71] *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV.
[72] Charter of Fundamental Rights of the EU (CFR), 2012/C 326/02, available: eur-lex.europa.eu.
[73] CJEU, *Åklagaren v. Hands Åkerberg Fransson*, Case C-671/10, 26 February 2013.
[74] UN Convention on the Rights of the Child (UNCRC) (20 November 1989) Treaty Series, vol. 1577, p.3.
[75] Explanations relating to the EU CFR, OJ C 303, 14.12.2007, p. 17–35, Explanation on Article 24.
[76] Family Reunification Directive (n 28). The Court will wish to note the imperfections of Greece's transposition: asylumlawdatabase.eu.
[77] EU Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

adopted in order for Contracting States to meet their obligation to protect family life enshrined in both international law and the corresponding legal provisions on the right to family life under Article 8 ECHR and Article 7 CFR.[78]

32. Article 5(2) FRD provides that applications are to be accompanied by documentary evidence of the family relationship. It also states that Contracting States may obtain **alternative evidence** as appropriate such as interviews and other investigations.[79] Moreover, Article 11(2) provides that **an application cannot be rejected solely due to lack of documentary evidence** and that States shall take other evidence into account where needed. **The intervenors draw particular attention to these provisions of the FRD dealing with evidence and the rejection of applications on grounds of lack of evidence.**
33. The FRD re-affirms that the rights of the children must be a primary consideration, with Article 5 emphasising that when Contracting States examine an application they must have due regard to the best interests of any minor children involved.[80] It also provides for derogations from procedural requirements for refugees,[81] emphasising that they require special assistance in family reunification given their circumstances.[82]
34. The Court of Justice of the European Union (CJEU) case of *X, Y, A and B v État Belge* concerned the mandatory requirement in Belgian law for an application for family reunification by the family members of a person recognised as a refugee in Belgium to be made in person at a Belgian diplomatic post notwithstanding any practical obstacles. In this case the CJEU emphasised that procedural requirements of national law which were impossible or excessively difficult to meet have "*the effect of rendering the exercise of the right to family reunification impossible in practice*"[83] and thus deprive the FRD of its effectiveness.[84] The intervenors further note that a failure to implement EU law will give rise to an action in damages. EU law requires Member States to make good damage to individuals caused by a breach of EU law for which that Member State is responsible.[85]

Relevant International Law:

1951 Convention Relating to the Status of Refugees

35. While the 1951 Convention Relating to the Status of Refugees (1951 Convention) lacks explicit provisions on family reunification it firmly upholds family unity as a fundamental principle for all, including refugees and stateless persons. The UNHCR's Executive Committee has stated that Contracting States should exert "*every effort"* to facilitate family reunification.[86] Contracting States must apply the provisions of the Convention to stateless refugees without discrimination as to race, religion, or country

[78] Family Reunification Directive (n 28), Recital 2.
[79] See *Tanda-Muzinga v. France*, No. 2260/10, § 76, 10 July 2014.
[80] Family Reunification Directive (n 28), Article 5(5); see also: *E. v Staatssecretaris van Veiligheid en Justitie*, C-635/17, 13 March 2019, § 56; *O and S v Maahanmuuttovirasto and Maahanmuuttovirasto v L*, Case C-356/11 and C-357/11, 6 December 2012, § 80.
[81] Family Reunification Directive (n 28), Article 12.
[82] *Tanda-Muzinga v. France*, No. 2260/10, § 75, 10 July 2014.
[83] *X, Y, A, and B v État Belge*, Case C-123 PPU, 18 April 2023, § 54 and 59; the interveners note that in this case the Greek government did not exercise its right to make submissions to the CJEU therefore its views are unknown.
[84] See also *E. v Staatssecretaris van Veiligheid en Justitie*, C-635/17, 13 March 2019, § 81; and *Landeshauptmann von Wien*, C-560/20, 30 January 2024, § 58.
[85] CJEU, Joined cases *Francovich and Bonifaci* v Italy, C-6/90 and C09/90, 19 November 1991, § 36.
[86] As maintained by Recommendation B within the Convention. The Executive Committee of the High Commissioner's Programme, Conclusion No. 24 (XXXII) on Family Reunification (21 October 1981) available at: unhcr.org.

of origin.[87] The 1951 Convention and its provisions are without prejudice to rights and benefits afforded to refugees by other legal instruments and do not impair on these in any way.[88] Furthermore, refugees' access to domestic remedies, including the right to judicial recourse, must be safeguarded.[89] In this context, refugees should receive equal treatment as nationals of the respective Contracting State.

1954 UN Convention relating to the Status of Stateless Persons

36. Although there is no express engagement with family reunification in the 1954 Convention, similarly to the 1951 Convention, the right to family unity can be inferred from the inclusion of other rights relating to family life that are expressly provided for in the Convention.[90] Additionally, the obligation in Article 32 for Contracting States to facilitate "*as far as possible […] the assimilation and naturalization of stateless persons*" implies an obligation to provide for family reunification, given the importance of the family unit. Stateless persons must also be treated equally to persons with a nationality in the same circumstances, with the exception of requirements which by their nature a stateless person is incapable of fulfilling.[91]
37. In support of the right to family reunification for stateless refugees, the *travaux préparatoires* of both the 1951 and 1954 Conventions state that "*the unity of the family […] is an essential right of the refugee*".[92] UNHCR has recommended that all Contracting States to the 1954 Convention facilitate family reunification for stateless people on their territory, which has been implemented in various countries.[93]
38. Although 43 Council of Europe Member States are party to the 1954 Convention,[94] implementation of these obligations in domestic law and practice is inconsistent.[95] While Greece is a party to the 1954 Convention, routes to protection for stateless persons are very limited, there is no formal mechanism for identifying stateless individuals, and a general lack of awareness and training on addressing statelessness.[96] Statelessness may not be adequately identified in administrative procedures, such as asylum, which may have a significant impact on the assessment of the claim and access to rights deriving from refugee protection, such as family reunification.

The role of the UN Convention on the Rights of the Child (UNCRC)[97]

39. All Council of Europe members are party to the UNCRC which has been integrated within the scope of EU law (see from § 30 of this intervention on relevant EU law).
40. Article 2(2) relates to discrimination of all kinds - both direct and indirect - based on the situation or status of the child's parents. Without specifically mentioning

[87] UN General Assembly, Convention Relating to the Status of Refugees (28 July 1951), Article 3.
[88] Ibid., Article 5.
[89] Ibid., Article 16.
[90] *See* the 1954 Convention (n 1), Article 4.
[91] Ibid., Article 6.
[92] Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 25 July 1951, A/CONF.2/108/Rev.1, p 309.
[93] UNHCR, 'Handbook on Protection of Stateless Persons' (n 7), § 151; UNHCR, Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons (2016), p. 29, available at: refworld.org.
[94] Three Council of Europe Members States are not party to the 1954 Convention: Cyprus, Estonia, and Poland.
[95] ENS, 'Thematic Briefing: Statelessness determination and protection in Europe' (n 5).
[96] *See* ENS, Statelessness Index on Greece, available at: index.statelessness.eu.
[97] This is in addition to the role of the UNCRC under Art 24 of the CFR.

statelessness, Article 2 UNCRC prohibits discrimination on all the usual international law grounds including "*other status*".[98]

41. Article 3 UNCRC enshrines the best interests of the child as a primary consideration in all actions concerning them.[99] General Comment (GC) No. 14 elaborates on the content of Article 3 noting that this is "*a substantive right, an interpretative legal principle and a rule of procedure*". [100] GC No. 14 also makes clear that "*inaction or failure to take action and omissions are also 'actions*'" for the purposes of Article 3.[101] It also clarifies that the decision making process must include an evaluation of the impact of the decision (or the lack thereof) on the children concerned that assessing and determining their best interests requires explicit procedural guarantees.[102] If the solution chosen is not in the best interest of the child the grounds for this must be set out in order to show that **the child's best interests were in practice treated as a primary consideration**.[103]
42. Joint GC No. 3 and No.22 emphasises the need to conduct best-interest assessments and determinations before migrant related decisions affecting children are made. These include balancing all the necessary elements specific to the child and taking into account the child's individual circumstances.[104]
43. The procedure for dealing with requests for family reunification for minor children with one or both parents **must include** some process which enables **the views of the affected children to be ascertained. All these matters should be recorded in the decision – or where no decision has been taken, in any justification put forward for the absence of a decision.**[105]
44. **Article 10 UNCRC** enshrines the right to **family reunification** and is the *lex specialis* of the right to family life.[106] Article 10(1) expressly requires that family reunification applications should be dealt with "*in a **positive, humane and expeditious** manner*".[107] The word "positive" requires applications to be dealt with in a consistent approach within the bounds of the UNCRC.[108] The process should take into account the difference in the perception of time between children and adults, as delays in decision making can have significant adverse effects on children as they evolve.[109]
45. The Committee on the Rights of the Child has also criticised the procedures on family reunification for imposing excessively demanding requirements for documentation and stressed the need of making administrative requirements for family unification more flexible and affordable.[110]

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[98] See also: Human Rights Committee, General Comment No. 18 (1989) on Non- Discrimination § 8. See also the Inter-American Court of Human Rights, Advisory Opinion OC-18/03, "Juridical Condition and Rights of Undocumented Migrants" (17 September 2003), §§ 97-101.
[99] UNCRC (n 74), Article 3.
[100] CRC, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, (CRC GC No. 14), § 6.
[101] Ibid., § 18.
[102] Ibid., § 99.
[103] Ibid., § 97; Joint General Comment No.4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No.23 (2017) of the CRC on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, § 36.
[104] Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the CRC on the general principles regarding the human rights of children in the context of international migration, § 31.
[105] UNCRC, Article 12. See also CRC General Comment No. 12 on the views of the child (2009).
[106] UNCRC, Article 10. Article 9 (the right not to be separated from parents) is closely related to Article 10.
[107] UNCRC, Article 10(1).
[108] UNCRC, Articles 2, 3, 7, 9(1), 12, 16.
[109] UNCRC, General comment No. 14 (2013), § 93.
[110] CRC Concluding observations on Poland (n 69), §44 -45.