BEFORE THE FIFTH SECTION

OF THE EUROPEAN COURT OF HUMAN RIGHTS

Application No. 11013/24

L.B.

v.

France

WRITTEN SUBMISSIONS ON BEHALF OF THE INTERVENERS:

ADVICE ON INDIVIDUAL RIGHTS IN EUROPE (AIRE CENTRE)
EUROPEAN COUNCIL ON REFUGEES AND EXILES (ECRE)
DUTCH COUNCIL FOR REFUGEES (DCR)
INTERNATIONAL COMMISSION OF JURISTS (ICJ)
ILGA-EUROPE
OII EUROPE

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pursuant to the Registrar's notification dated 25 September 2025 on the Court's permission to intervene
under Rule 44 § 3 of the Rules of the European Court of Human Rights

6 November 2025

I. Assessment in removal decisions under Article 3 of the Convention, *non-refoulement* and human dignity under international and EU law.

1. The *non-refoulement* principle is essential in order to protect 'the fundamental values of democratic societies',[1] and is 'closely bound up with respect for human dignity, part of the very essence of the Convention'.[2] This principle entails an obligation not to transfer (*refouler*) people where there are substantial grounds for believing that they would face a real risk of serious human rights violations - including of Article 3[3] - in the event of their removal, in any manner whatsoever, from the State's jurisdiction. It bars removal "where substantial grounds show a real risk" of torture or inhuman or degrading treatment in the receiving State under the classic *Soering* test.[4] It is **absolute**: once a real risk under Article 3 is established, there is **no balancing** against public interests, such as national security or the gravity of any offence.[5] Protection from *refoulement* pursuant to Article 3 extends to harm by **non-State actors**,[6] where the State is **unable or unwilling** to protect,[7] and to removal to **living conditions** amounting to serious ill-treatment.[8]
2. This Court ruled that treatment prohibited by Article 3 must attain a minimum level of severity, the assessment of which is 'relative, depending on all the circumstances of the case', including its physical or mental effects, and the age, sex, vulnerability and state of health of the individual concerned.[9]
3. In order for the *non-refoulement* prohibition to be practical and effective and not theoretical and illusory,[10] this Court has found a close and rigorous scrutiny of arguable[11] claims in expulsion cases to be an integral part of protecting an individual's rights under Article 3.[12] This requires Contracting Parties, *inter alia*, to assess all evidence at the core of a *non-refoulement* claim,[13] including, where necessary, by: a) obtaining such evidence *proprio motu*;[14] b) not imposing an

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[1] *Chahal v. the United Kingdom* [GC], no. 22414/93, 15 November 1996, § 96; V*ilvarajah and Others v. the United Kingdom*, nos. 13163/87, 13164/87, 13165/87, 13447/87 and 13448/87, 30 October 1991, § 108.

[2] *Khlaifia and Others v. Italy* [GC], no. 16483/12, 15 December 2016, § 158

[3] *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, 17 January 2012, § 233, 258 -261; *N.A. v. the United Kingdom*, no. 25904/07, 17 July 2008; *Soering v. the United Kingdom*, App. No. 14038/88, 7 July 1989.

[4] *Soering v. the United Kingdom*, no. 14038/88, 7 July 1989, § 90-91, Series A no. 161; *Vilvarajah and Others v. the United Kingdom*, nos. 13163/87 13164/87 13165/87 13447/87 13448/87, 30 October 1991, § 103, Series A no. 125; *H.L.R. v. France*, no. 24573/94, 29 April 1997, § 34, Reports 1997-III; *Jabari v Turkey*, no. 40035/98, 11 July 2000, § 38; *Salah Sheekh v. the Netherlands*, no. 1948/04, 11 January 2007, § 135; and *Saadi v Italy*, no. 37201/06, 28 February 2008, § 152; *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, 21 January 2011, § 365.

[5] *Saadi v Italy*, op. cit, § 127; UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984; *Adel Trebourski v. France*, UNCAT, CAT/C/38/D/300/2006, 11 May 2007, § 8.2 – 8.3. UN Human Rights Committee, General comment no. 31 [80]. The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, § 12. This is unlike in refugee law, where the principle is not absolute.

[6] *J.K and others v Sweden* [GC], no.59166/12, 23 August 2016.

[7] *H.L.R. v. France*, no. 24573/94, 29 Apr. 1997.

[8] *Sufi and Elmi v. United Kingdom*, nos. 8319/07 and 11449/07, 28 June 2011, § 279.

[9] *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, 21 January 2011, § 219; *Sufi and Elmi v. United Kingdom*, op.cit., § 213.

[10] *Arctico v. Italy*, App. No 6694/74, 13 May 1980, § 33.

[11] *Diallo v. Czech Republic*, no 20493/07, 28 November 2011, § 59 -71.

[12] *Jabari v. Turkey*, no. 40035/98, 11 July 2000, § 39, 50.

[13] *Ibid*, § 39-40; *Singh and Others v. Belgium*, no. 33210/11, 2 October 2012, § 104

[14] In *F.G v Sweden* [GC] this Court reiterated that the obligations incumbent on the States under Articles 2 and 3 ECHR entail that the authorities carry out an assessment of that risk of their own motion, in particular, where the national authorities have been made aware of the fact that the asylum-seeker may plausibly be a member of a group systematically exposed to practice of ill-treatment and there are serious reasons to believe in the existence of the practice in question and in their membership of the group concerned (§ 127).

unrealistic burden of proof on applicants or requiring them to bear the entire burden of proof;[15] c) taking into account all relevant country of origin information originating from reliable and objective sources;[16] and d) applying the principle of the benefit of the doubt in light of specific vulnerabilities of the persons concerned.[17] Moreover, such assessment must focus on the foreseeable consequences of the latter's removal to the country of destination, which must be considered in light of both the general situation and their personal circumstances.[18]

4. **The interveners submit that, where there is an arguable claim that an individual's removal would engage Article 3, either as a consequence of the termination of essential support in the expelling country which is not accessible in the country of removal or of the intolerable situation to which the person concerned would be exposed in the country of destination, removal is absolutely prohibited.[19] This absolute prohibition requires that the *primary focus* of the State's assessment procedures must be on those circumstances and whether Article 3 is engaged, irrespective of the reasons for expulsion or exclusion. This is because if the Article 3 threshold is met the reasons advanced for exclusion from refugee status cannot justify removal.[20] Once a real risk is established, expulsion is barred, irrespective of the person's conduct or any public-interest considerations.**
5. The interveners note that the fundamental concept of human dignity is essential when assessing the risk of Article 3 prohibited treatment. The Court has long declared that 'the very essence of the Convention is respect for human dignity and human freedom'.[21] When examining Article 3 violations and assessing a risk of them, this Court often invokes human dignity as a notion that requires individual assessment. This is illustrated by the 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'.[22]
6. In the case of refugees who are seriously ill – or where there is an indication of a serious condition - in order to comply with their Convention obligations, Contracting Parties should investigate the potential implications of such condition. In doing so, the test established by this Court in *Paposhvili v Belgium*,[23] involving comparing the state of health prior to removal and how it is likely to evolve after removal, should be applied in combination with the *Soering* test. Therefore, the assessment should be made analysing, *inter alia*, (a) 'on a case-by-case basis whether the care generally available in the receiving State is sufficient and appropriate in practice for the treatment of the applicant's illness so as to prevent him or her being exposed to treatment contrary to Article 3', and (b) the extent to which the individual in question will actually have access to this care and these facilities in the receiving State.[24]
7. **The interveners submit that, in order to guarantee the diligent, case-by-case, Convention-compatible risk assessment of human rights violations following removal, the *Soering* and *Paposhvili* tests should be applied in combination in expulsion cases relating to refugees or**

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[15] *M.S.S. v. Belgium and Greece*, GC, § 344-359; *Hirsi Jamaa and Others v. Italy*, no. 27765/09, 23 February 2012, § 122-158.
[16] *Salah Sheekh v. the Netherlands*, no. 1948/04, 11 January 2007, § 136.
[17] *Mutatis mutandis M.A. v. Switzerland*, no. 52589/13, 18 November 2014, § 55.
[18] *Sufi and Elmi v UK*, op. cit., § 216; *Vilvarajah v UK*, op. cit., § 108.
[19] *Saadi v. Italy*, § 127, 138 and 139.
[20] CJEU, Joined cases C-391/16, C-77/17 and C-78/17, ECLI:EU:C:2019:403. The adoption of a decision to exclude an individual from the refugee status under Directive 2011/95 cannot alter the fact of their being refugees where they satisfy the material conditions necessary to be regarded as being refugees for the purposes of Article 2(d) of that directive, and Article 1(A) of the Geneva Convention; *K.I v France*, no. 5560/19, 15 April 2021, § 122 – 123.
[21] *Christine Goodwin v. the United Kingdom*, no. 28957/95, 11 July 2002, § 90; *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.
[22] *Khlaifia and Others v. Italy*, no. 16483/12, 15 December 2016, § 169; *Valašinas v. Lithuania*, no. 44558/98, 24 July 2001, § 117.
[23] *Paposhvili v Belgium*, § 188 – 193.
[24] *Ibid*, § 190.

persons otherwise in need of international protection with a serious or suspected serious condition. Grand Chamber case-law confirms that, even where the Article 3 threshold is not met in a health case, removal may still breach Article 8 where the authorities fail to ensure continuity of essential treatment or duly to weigh the individual's health situation.[25]

8. This Court has held that the ECHR does not exist in a vacuum and States remain bound by their obligations under international law when implementing the Convention; Article 53 ECHR makes this expressly clear.[26] Where Contracting Parties to the ECHR are also bound by EU law, the Court must ensure that the Convention rights are interpreted and applied in a manner which does not diminish the rights guaranteed under EU law.[27]
9. Under EU primary law, the Charter of Fundamental Rights of the EU (hereafter 'The Charter')[28] safeguards human dignity (Article 1), the prohibition of torture and inhuman and degrading treatment (Article 4), and protection against removal, expulsion or extradition (Article 19). The Court of Justice of the EU (CJEU) has held that Article 4 of the Charter is absolute, and corresponds to Article 3 ECHR.[29] The CJEU has confirmed that Member States may not remove individuals where there are substantial grounds for believing that they will face a genuine risk of treatment prohibited by Article 4 and Article 19(2) of the Charter.[30] It has consistently based its reasoning on the concept of human dignity.[31]
10. Similarly, the Human Rights Committee (HRC) has held that State parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return;[32] and requires assessment of the real, personal and foreseeable risk.[33] The UN Committee against Torture (CAT) requires an individualised assessment that factors in vulnerability (including health).[34] The Committee on the Rights of Persons with Disabilities (CRPD), echoing *Paposhvili,* requires an assessment of whether 'sufficient and appropriate' treatment exists and is actually accessible in the receiving State.[35]
11. **The interveners submit that the Court ought to be satisfied that the Contracting Party's authorities conducted an assessment[36] of *all* the relevant facts and circumstances in removal cases that was sufficiently rigorous and adequate to prevent an expulsion prohibited by the Convention. Disregarding or failing to acknowledge certain elements during assessment of the risk of treatment contrary to Article 3, in particular, whether the consequences of the transfer would constitute a serious affront to human dignity, would entail a violation of the Contracting Party's procedural obligations under that provision.**

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[25] *Savran v. Denmark* [GC], no. 57467/15, 7 Dec. 2021

[26] *Pini and Ors v. Romania*, no. 78028/01, 22 June 2004, § 138.

[27] As regards EU Member States, the ECHR must not be applied in such a way as to diminish 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 Court will recall that in *M.S.S.* 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 Article 3 ECHR.

[28] Charter of Fundamental Rights of the European Union, 2012/C 326/02, OJ C 326, 26.10.2012.

[29] Joined Cases C-404/15 and C-659/15, *Aranyosi and Căldăraru*, ECLI:EU:C:2016:198, 5 April 2016, § 86.

[30] Joined Cases C-391/16, C-77/17 and C-78/17, *M and Others*; ECLI:EU:C:2019:403, 14 May 2019, § 94.

[31] C-377/98, *Netherlands v. Parliament and Council*, ECLI:EU:C:2001:523, 9 October 2001, § 70; C-36/02, Omega, ECLI:EU:C:2004:614, 14 October 2004, § 34.

[32] UN Human Rights Committee, CCPR, General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, § 9, UN Human Rights Committee, General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, § 12.

[33] CCPR, *A.G. & others v Angola* (CCPR/C/129/D/3106/2018-3122/2018), 21 Jul 2020, §7.4, 7.6.

[34] CAT, *Adam Harun v. Switzerland*, (CAT/C/65/D/758/2016), § 9.7-9.11.

[35] CRPD, *N.L v Sweden*, CRPD/C/21/DR/42/2017, § 7.5

[36] *N.A. v the United Kingdom*, no. 25904/07, 17 July 2008, § 119; *F.G. v. Sweden* [GC], no. 43611/11, 23 March 2016, § 117 and, *M.S. v. Slovakia and Ukraine*, no.17189/11, 11 June 2020, § 114.

II. Vulnerability assessment in removal cases under international law including ECHR and EU law

12. Contracting Parties must identify and give **special consideration** to vulnerability when assessing Article 3 risk. The Court has identified several particularly vulnerable groups that have suffered prejudice, social exclusion and discriminatory treatment on account of their sex,[37] sexual orientation,[38] gender identity,[39] race or ethnicity,[40] mental faculties,[41] disability[42] or health status.[43] In asylum contexts, this Court has repeatedly stressed the heightened vulnerability of applicants and the need for careful, individualized scrutiny.[44]
13. Similarly, the CJEU has clarified that the absolute right under Article 4 of the Charter may be engaged for particularly vulnerable applicants in circumstances that might not reach the threshold vis-à-vis others,[45] and that Member States must prevent transfers or removals where there is a real risk of inhuman or degrading treatment – whether arising from reception conditions, individual health, or post-transfer living conditions, including risks of extreme material poverty.[46] Recent CJEU case-law confirms the requirement of objective, reliable, specific and up-to-date information and a realistic appraisal of the individual's situation notwithstanding presumptions of mutual trust between States.[47]
14. UN treaty bodies take the same approach. The HRC has explained that '*individual circumstances … include factors that increase the vulnerability of such persons and that could transform a situation that is tolerable for most into an intolerable one for others*.'[48] The '*vulnerability-increasing factors'* include, *inter alia*, medical conditions,[49] and the HRC considers the cumulative effect of vulnerabilities.[50] The CAT has found violations in cases where the authorities neglected particular vulnerability factors, such as: mental health,[51] low level of education, lack of family networks,[52] and (gender-based) violence in the country of return.[53] The CRPD has similarly faulted removals where authorities did not assess whether adequate and accessible treatment would be available in the receiving State for a person with severe mental illness.[54]

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[37] *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, no. 9214/80; 9473/81; 9474/81 (28 May 1985) § 78, and *Burghartz v. Switzerland*, no. 16213/90 (22 February 1994) § 27.
[38] *Schalk and Kopf v. Austria*, no. 30141/04 (22 November 2010) § 97. *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96 (27 December 1999) § 90.
[39] *P.V. v. Spain*, no. 35159/09, 30 November 2010, para. 30; *Identoba and Others v. Georgia,* no. 73235/12, 12 May 2015, para. 96; *A.M. v. Russia*, no. 47220/19, 6 July 2021, para. 73.
[40] *D.H. and Others v. the Czech Republic* [GC], no. 57325/00 (13 November 2007) §182.
Timishev v. Russia, nos. 55762/00 and 55974/00 (13 March 2006) § 56.
[41] *Alajos Kiss v. Hungary*, no. 38832/06 (20 August 2010) § 42, and, *mutatis mutandis*, *Shtukaturov v. Russia*, no. 44009/05 (27 June 2008) § 95.
[42] *Glor v. Switzerland*, no. 13444/04 (6 November 2009) § 80.
[43] *Kiyutin v. Russia*, No. 2700/10, (15 September 2011) § 64.
[44] *M.S.S. v. Belgium and Greece* [GC], no. 30696/09
[45] CJEU, Judgment of 19 March 2019, *Ibrahim*, C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, § 93.
[46] CJEU, *Abdida*, C-562/13 (Grand Chamber), 18 Dec. 2014; *Jawo*, 19 March 2019, § 92; C-179/11, *Cimade and Gisti*, 27 September 2012, § 56; CJEU, *C.K. and Others*, C-578/16 PPU, 16 Feb. 2017.
[47] CJEU, *Staatssecretaris van Justitie en Veiligheid*, C-392/22, 29 Feb. 2024
[48] [emphasis added] UN Human Rights Committee, *Bayush Alemseged Araya v. Denmark*, § 9.7.
[49] CCPR, *R.A.A. and Z.N. v. Denmark*, Communication No. 2608/2015, 29 December 2016, 7.8.
[50] CCPR, *A.A.S. v. Denmark*, Communication No. 2464/2014, 16 September 2016, 7.7; HRC, *X. v. Denmark*, Communication no. 2389/2014, 21 October 2015, 7.7.
[51] CAT, *Adam Harun v. Switzerland*, Communication No. 758/2016, 8 February 2019, 9.9 and 9.10;
CAT, *Khademi v. Switzerland*, 20 January 2015, 7.6.
[52] CAT, *N.A.A. v. Switzerland*, Communication No. 639/2014, 16 June 2017, 7.5.
[53] CAT, *F.B. the Netherlands*, Communication No. 613/2014, 15 December 2015, 8.8.
[54] CRPD, *N.L. v. Sweden*, CRPD/C/23/D/60/2019

15. In 2024 the UN Human Rights Council adopted its first-ever resolution on intersex persons, calling on States to combat discrimination, violence and harmful practices and mandating a report by the High Commissioner.[55] In 2025, the High Commissioner presented that report documenting discriminatory laws and policies, acts of violence and harmful practices against intersex persons and recommending concrete State action.[56]
16. The Council of Europe has now issued a dedicated standard: Recommendation CM/Rec(2025)7 on Equal Rights for Intersex Persons, adopted on 7 October 2025. It explicitly recognises intersex persons' specific vulnerabilities – stigma, social exclusion, violence and discrimination – and calls for cross-sectoral measures (including in asylum procedures) with the meaningful participation of intersex organisations. These vulnerabilities must therefore be weighed cumulatively in Article 3 assessments.[57]
17. Corroborating these findings, the EU Fundamental Rights Agency (FRA) 2025 report 'Being intersex in the EU' documents pervasive victimisation and barriers to healthcare and justice, as well as a marked increase in violence and harassment against intersex people across 30 countries since 2019, with substantial mental-health impacts[58]– evidence that intersex applicants constitute a particularly vulnerable group requiring enhanced protection in removal decisions.[59]
18. **The interveners submit that, in order to treat all individuals compatibly with the Convention, vulnerability must be given special attention, particularly with respect to an assessment of the risk of ill-treatment under Article 3. Any assessment must include consideration of the specific circumstances of the individual as well as group-specific vulnerabilities. In the removal context, besides the consideration of individual vulnerabilities, the Contracting Party must also recognise and address the vulnerable condition of particular groups facing social exclusion, discrimination, and persecution in the countries of transfer, including based on their sex characteristics. The assessment should consider the cumulative effect of the specific vulnerabilities of an individual, including, *inter alia*, physical or intellectual disabilities, mental health, social exclusion and low educational attainment.**

III. Article 3 risk assessment in the removal context as relating to intersex persons.

19. The term 'intersex' refers to "persons who have innate variations of sex characteristic(s), including chromosomal, gonadal, anatomical or hormonal, that vary from the societal and/or medical understanding of typical female and male bodies." [60] Traits may be apparent at birth, in childhood/puberty, or later in life;[61] intersex people may have any gender identity or sexual

[55] UN Human Rights Council, Res. 55/14 (Combating discrimination, violence and harmful practices against intersex persons), adopted 4 Apr. 2024
[56] OHCHR, A/HRC/60/50 (2025), Discriminatory laws and policies, acts of violence and harmful practices against intersex persons
[57] Recommendation CM/Rec(2025)7 of the Council of Europe's Committee of Ministers on Equal Rights for Intersex Persons, 7 October 2025.
[58] FRA news, "Rising violence and harassment against intersex people in the EU" (17 Sep 2025)
[59] EU Agency for Fundamental Rights (FRA), Being intersex in the EU (17 Sep 2025).
[60] Recommendation CM/Rec(2025)7 of the Council of Europe's Committee of Ministers on Equal Rights for Intersex Persons, 7 October 2025. *See also* Dan Christian Ghattas (2019): Protecting Intersex people in Europe. A toolkit for law and policy makers. Ed. by ILGA Europe and OII Europe. Brussels/Berlin, p.9.
[61] Explanatory Memorandum to the Recommendation CM/Rec(2025)7 of the Council of Europe's Committee of Ministers on Equal Rights for Intersex Persons, 7 October 2025, § 2; (Parliamentary Assembly of the Council of Europe (PACE), Resolution 2191 (2017), Promoting the human rights of and eliminating discrimination against intersex people, § 1. *See also* EU Fundamental Rights Agency (FRA), The fundamental rights situation of intersex people, p. 2. https://bit.ly/3CkORRK

orientation.[62] Estimates range up to 1.7% of the population; most are healthy, a small subset have conditions requiring timely care.[63]

20. Intersex persons face stigma, discrimination and violence, including non-consensual medical interventions, barriers to medical records, under-trained providers, and lack of rights-based standards of care[64] Recent EU data show high levels of violence and harassment against intersex people, along with discrimination that is sometimes triggered by how others perceive their bodies or identities;[65] these experiences have cumulative mental-health impacts.[66]
21. Stigma, social exclusion, severe discrimination and ill-treatment – as well as impunity and reluctance to provide remedies – are widespread in jurisdictions with discriminatory practices against intersex people and other vulnerable groups. These conditions can have a **seriously detrimental effect on mental health**, which must be factored into the forward-looking risk assessment under Article 3.[67] Further, lack of access to intersex-specific healthcare may give rise to serious and life-threatening consequences.[68]
22. As far as the interveners are aware, this Court has not yet had a chance to address the expulsion of intersex applicants to their countries of origin, where access to intersex-specific healthcare and intersex-sensitive health professionals are not available, and where this group of people faces social exclusion, discrimination and persecution. However, the Court has found that inability or unwillingness of the State authorities to provide protection against ill-treatment on grounds of sexual orientation emanating from non-State actors may give rise to a violation of Article 3.[69] **The interveners submit that, this reasoning applies *mutatis mutandis* where prejudice and violence are triggered by a person's sex characteristics.** This is also confirmed by the Recommendation of the Committee of Ministers to member States on equal rights for intersex persons, according to which: "Member States should ensure that intersex asylum seekers are not sent to a country where they would face a real risk of torture, inhuman or degrading treatment or punishment because of their sex characteristics or where their life, bodily integrity or freedom would be threatened."[70]
23. **The interveners further submit that, in the context of expulsion of vulnerable intersex persons, to prevent treatment contrary to Article 3, Authorities must conduct a case-by-case analysis, consistent with *Paposhvili*: (i) whether intersex-specific healthcare exists and is actually accessible to the person (not just in theory); (ii) the foreseeable health impact (physical and mental) if care is interrupted, including risk of serious, rapid and irreversible decline, intense suffering or reduced life expectancy; (iii) whether discrimination/social exclusion will in practice block access to care; (iv) whether removal would lead to undignified living conditions that impede care; and (v) whether effective State protection exists against non-State harm.**
24. In making such an assessment Contracting Parties must consider, *inter alia*, the person's mental and physical health prior to removal and the likely post-removal evolution (including risk of

[62] UNHCR, Guidance, Working with LGBTIQ+ people in forced displacement, 2021, p. 10: https://bit.ly/3fBJWC2
[63] FRA, The fundamental rights situation of intersex people, p. 2. https://bit.ly/3CkORRK
[64] See, OII Europe, ILGA-Europe, C.I.A., Joint comments in *M. v France*, no. 42821/18, section 1, for more information.
[65] EU Agency for Fundamental Rights (FRA), "Being intersex in the EU" (17 Sept. 2025); and FRA, "Rising violence and harassment against intersex people in the EU" (17 Sept. 2025).
[66] OHCHR, Background Note on Human Rights Violations against Intersex People, p.3.
[67] OHCHR, A/HRC/60/50 (8 Aug. 2025), Discriminatory laws and policies, acts of violence and harmful practices against intersex persons; and EU Agency for Fundamental Rights (FRA), "Being intersex in the EU" (17 Sept. 2025).
[68] Explanatory Memorandum to the Recommendation CM/Rec(2025)7 of the Council of Europe's Committee of Ministers on Equal Rights for Intersex Persons, 7 October 2025, § 2; (Parliamentary Assembly of the Council of Europe (PACE), Resolution 2191 (2017), Promoting the human rights of and eliminating discrimination against intersex people, § 85.
[69] *B and C v Switzerland*, nos. 889/19 and 43987/16), 17 November 2020, § 62 - 63
[70] Recommendation CM/Rec(2025)7 of the Council of Europe's Committee of Ministers on Equal Rights for Intersex Persons, 7 October 2025, § 17.

suicide or self-harm),[71] particularly where relevant care is unavailable or inaccessible in the receiving State.

IV. Imputed sexual orientation and criminalisation in the country of destination

25. Intersex persons who have not been able to complete their desired gender-affirming treatment may present sex characteristics or a gender expression that others perceive as that of a specific gender. Where, in those circumstances, an intersex person is (or is perceived to be) in a relationship with a person read as the same gender as themselves, they can be imputed a same-sex sexual orientation and exposed to criminal laws targeting consensual same-sex conduct in the country of removal.[72] Laws criminalising consensual same-sex conduct are discriminatory and incompatible with human rights law and standards.[73]
26. Even where authorities rarely prosecute, intersex persons perceived to be in same-sex relationships often **lack effective State protection** and avoid reporting abuse for fear of self-incrimination or exposure under criminal laws, which also impedes access to essential services, including healthcare.
27. The Court has held that the very existence of such criminal laws unjustifiably interferes with private life under Article 8, even absent recent enforcement (e.g., *Dudgeon; Norris; Modinos*).[74] It has further underlined that **predisposed bias** of a heterosexual majority against a homosexual minority cannot justify interferences with Convention rights,[75] and that **discriminatory treatment** may amount to **degrading treatment** under Article 3 when sufficiently severe.[76] More recently, in *Hanovs v. Latvia*, the Court reiterated that the authorities' failure to prevent or investigate hate-motivated attacks against LGBTI persons and their indifference toward homophobic motives breached Articles 3 and 8, taken in conjunction with Article 14, reaffirming that such official tolerance of violence fosters a sense of impunity for hate-motivated offences, constitutes degrading treatment and perpetuates a climate of fear and social exclusion.[77]
28. In the removal context, the Court has further held that, the mere existence of criminalising laws can generate a real risk of persecution and ill-treatment – both because those laws may be enforced unpredictably in the future,[78] and because they legitimise private and institutional

[71] *Paposhvili v Belgium*, no. 41738/10, 13 December 2016.

[72] To illustrate, there is official confirmation by the CCPR that Morocco is enforcing its laws criminalizing homosexuality. 'The Committee is concerned at the criminalization of homosexuality, the fact that it is punishable by a term of imprisonment of up to 3 years and the arrests that have been made on that basis. It is also concerned by reports of the advocacy of hatred, discrimination and violence against people because of their sexual orientation or gender identity (arts. 2, 9 and 26). (CCPR/C/MAR/CO/6, § 11)"

[73] UNHCR SOGI Guidelines, § 27.

[74] *Dudgeon v. the United Kingdom*, § 40 to 46; Norris v. Ireland, § 38, 46, 47; *Modinos v. Cyprus*, §§ 23, 24, 26; *A.D.T. v. the UK*, no. 35765/97, judgment, 31 July 2000, §§ 26 and 39; *Bayev and Others v. Russia*, nos. 67667/, 20 June 2017, § 68.

[75] *Smith and Grady*, nos. 33985/96 33986/96, (27 September 1999), § 121.

[76] *Identoba and Others v. Georgia*, (no. 73235/12), (12 May 2015), § 65.

[77] *Romanov and Others v. Russia*, 12 September 2023, no. 58358/14.

[78] In *Dudgeon v. the United Kingdom*, this Court observed that, notwithstanding the then apparent paucity or even absence of a record of prosecutions in these types of cases, it could not be said that the legislation in question was a dead letter, because there was no stated policy on the part of the authorities not to enforce the law (§41). In *Modinos v. Cyprus*, this Court reiterated this point by noting that, notwithstanding the fact that the Attorney-General had followed a consistent policy of not bringing criminal proceedings in respect of private homosexual conduct, the said policy provided "no guarantee that action will not be taken by a future Attorney-General to enforce the law, particularly when […] the relevant provisions of the Criminal Code are still in force", *Modinos*, judgment of the Court, § 23.

violence[79] – and a State's **inability or unwillingness to protect** against non-State harm on SOGI grounds can engage Article 3 (e.g., *B. and C. v. Switzerland*).[80]

29. UN bodies and special procedures repeatedly called for the repeal of laws criminalising same-sex relations[81], noting that such laws fuel stigma, legitimise prejudice, and expose people to violence, police abuse and torture or other ill-treatment.[82] The UN Independent Expert on SOGI has further stated that criminalising same-sex relations and certain gender identities is *per se* contrary to international human rights law.[83] UN human rights experts also highlighted systematic under-reporting of SOGI-based violence due to fear and criminalisation,[84] meaning that the absence of official data cannot be taken to show the absence of risk.[85]
30. In Morocco's most recent Universal Periodic Review, States urged decriminalisation of consensual same-sex relations and adoption of measures to prevent SOGI-based violence and discrimination, underscoring ongoing concern about Article 489 of the Penal Code, which criminalises consensual same-sex relations, sanctioning them with six months to three years' imprisonment and a fine).[86]
31. **Accordingly, the existence of criminalising laws against consensual same-sex sexual conduct discloses dispositive evidence of a real risk for intersex persons of treatment, based on their real or imputed sexual orientation, contrary to Article 3,[87] triggering the absolute *non-refoulement* obligation under Article 3.**

V. Article 8 assessment in removal decisions

32. Even if the Article 3 'threshold of severity' is not met, an expulsion may nevertheless violate Article 8.[88] **An interference with rights protected under Article 8 *may be so severe* that it will require exceptionally weighty justification under Article 8(2).** In such circumstances, States should examine such an interference *proprio motu*, as this Court has emphasised that Article 8 does not merely compel a Contracting State to abstain from interferences with an individual's right to private and family life, but may also impose **positive obligations** on a State, including the adoption of measures designed to secure effective respect for private and family life. This Court has recognised, in particular, that removal can engage Article 8 as a result of its impacts on a person's **moral and physical integrity** (e.g., mental health), and has found a **violation of Article 8 despite no breach of Article 3** in health-removal contexts.[89]
33. Once a serious interference is being considered, the criteria that must guide national courts in assessing the proportionality of that interference under Article 8 include consideration of: (i) the

[79] *Modinos v. Cyprus* and *Dudgeon v. the United Kingdom*. As long as statutes are not repealed, there continues to be a real risk of their enforcement and therefore a real risk that individuals would face criminal investigations […] because of their real or perceived sexual orientation or gender identity; UNHCR SOGI Guidelines, §§ 27, 29.
[80] *B and C v Switzerland*, op. cit. §. 62 – 63.
[81] Human Rights Committee, *Toonen v Australia* (Communication 488/1992, 4 April 1994), UN Doc. CCPR/C/50/D/488/1992.
[82] Report of the UN Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, UN Doc.: A/56/156, 3 July 2001, § 20 and, generally, §§ 18-25. See also OHCHR, "Decriminalization of LGBTQ+ people saves lives" (19 July 2024).
[83] UNHRC 2018 Report on protection against violence and discrimination based on SOGI, UN Doc. A/HCR/38/43, § 20. See also Interim report of the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary Executions, UN Doc. A/57/138, § 37.
[84] UN HRC 2018 Report on protection against violence and discrimination based on SOGI, UN Doc. A/HCR/38/43, § 64.
[85] OHCHR, Data collection and management call (A/HRC/41/45 background)—prejudice and criminalisation result in non-/under-reporting of SOGI-based violence.
[86] UN Human Rights Council, Report of the Working Group on the UPR – Morocco, A/HRC/52/7 (6 Jan. 2023)
[87] *Ülke v. Turkey*, no. 39437/98, 24 January 2006.
[88] *Bensaid v the United Kingdom*, no. 44599/98, 6 February 2001, § 46; and *Savran v. Denmark* [GC], no. 57467/15, 7 Dec. 2021.
[89] *Bédat v. Switzerland* [GC], no. 56925/08, 29 March 2016, § 73.

nature and seriousness of the offence committed by the applicant, if any;[90] (ii) the length of the applicant's stay in the host country from which they are to be expelled; (iii) the nationalities of the various persons concerned; (iv) the applicant's family situation; and (v) the strength of social, cultural and family ties with the host country and the country of destination.[91] **The interveners invite the Court to recall that all relevant factors must be taken into account in cases concerning the removal of non-nationals following a criminal conviction[92] in light of the particular circumstances of the case.[93]**

34. In cases concerning the removal of **settled migrants**, the Grand Chamber has held that the State 'must strike a fair balance between the competing interests of the individual and of society as a whole', and that, 'the extent of the State's obligations will vary according to the particular circumstances of the persons involved'.[94] **Very serious reasons** are required to justify expulsion where a person has lawfully spent most of their childhood and youth in the host State.[95] The Court has also stressed that assessing the relevant elements in a removal case **constitutes a procedural obligation** necessary to ensure the effectiveness of Article 8.[96] Even where Contracting Parties may find no violation of Article 3 because its threshold is not met, they are nevertheless required to examine whether, under Article 8, the individual's specific situation at the time of removal warrants refraining from removal and granting leave to remain.[97]
35. The Court must be satisfied that Contracting Parties conducted 'a **sufficient and convincing examination** of the relevant facts and considerations and a detailed balancing of the interests involved'.[98] In reviewing such decisions, the Court assesses whether the authorities' conclusions were **arbitrary or manifestly unreasonable.[99]** Where domestic authorities fail to engage with the individualised factors – or rely on automatic rules – the Court has found **violations of Article 8.**[100]

VI. Article 8 considerations in light of the impossibility to continue access to intersex-specific healthcare

36. 'Private life' under Article 8 includes a person's physical and psychological integrity.[101] Measures that seriously affect moral or physical integrity – even if they do not reach Article 3 severity – can still breach Article 8.[102] A person's mental health is a crucial element of private life and moral integrity that requires consideration under Article 8.[103]
37. Article 8 further protects personal autonomy and identity,[104] covering gender identity and gender-affirming care.[105] The Court has held that obstacles to legal gender recognition can harm dignity and daily life, and has condemned burdensome preconditions (e.g., sterilisation).[106] **The interveners submit that Contracting Parties should consider whether quick, transparent**

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[90] *K.A v Switzerland*, no. 62130/15, 7 July 2020), § 40; *Üner v. The Netherlands*, no. 46410/99, 18 October 2006, § 57.
[91] *Ibid.*
[92] *Üner v. The Netherlands*, no. 46410/99, 18 October 2006, § 74.
[93] *K.A v Switzerland*, no. 62130/15, 7 July 2020, § 41.
[94] *Paposhvili v Belgium* [GC]., § 221.
[95] *Maslov v. Austria* [GC], no. 1638/03, 23 June 2008.
[96] *Paposhvili v Belgium* [GC]., § 224.
[97] *Paposhvili v Belgium* [GC], op.cit., § 225. *Bensaid v the United Kingdom*,§ 46.
[98] *K.A v Switzerland*, No. 62130/15, § 52.
[99] *K.A v Switzerland*, No. 62130/15, op.cit., § 52.
[100] *Unuane v. the United Kingdom*, no. 80343/17, 24 Nov. 2020
[101] *Beizaras and Levickas v. Lithuania*, no. 41288/15, 14 January 2020, § 109; *Goodwin v the United Kingdom*, § 90.
[102] *Bensaid v the United Kingdom*, op.cit., § 47.
[103] *Ibid.* § 47-48.
[104] *Ibid*, § 47
[105] *Hämäläinen v Finland* [GC], No. 37359/09, 16 July 2014, § 59; *L. v Lithuania*, No. 27527/03,11 September 2007, §§ 56-58; 60-66.
[106] *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, 11 July 2002; *A.P., Garçon and Nicot v. France*, nos. 79885/12, 52471/13, 52596/13, 6 Apr. 2017

and accessible procedures exist for the recognition of a person's gender identity,[107] and whether the inability to express one's gender identity would adversely affect their physical and moral integrity, including long-term mental health.[108]

38. Where necessary medical facilities are unavailable or realistically inaccessible, a person may face 'a situation of distressing uncertainty vis-à-vis [their] private life and the recognition of [their] true identity'.[109] **The interveners submit that the possibility to continue clinically indicated care (including intersex-specific healthcare) and the impact of denying such care should therefore be examined as part of the Article 8 assessment in removal cases.** Where reasons for interference are not both relevant and sufficient, the interference cannot be regarded as 'necessary in a democratic society'.[110]
39. This Court has emphasised that issues touching on gender identity and related care concern **'one of the most intimate aspects of private life.'**[111] That particular importance should be given weight when balancing competing interests under Article 8;[112] in such contexts, the State's margin of appreciation is correspondingly reduced.[113]
40. This Court has explicitly recognised the importance and relevance of family ties or support networks in removal cases.[114] Relevant considerations include: the length of time the applicant had resided in the host country; the ability to speak the language of the country of origin; the existence of close ties with their country of origin; and the strength of social, cultural and family ties with the host country and the country of destination.[115] Article 8 protects the right to establish and develop relationships; '*the totality of social ties'* between non-nationals and the community in which they live falls within its scope.[116]
41. **The interveners submit that these factors assume a more significant role where removal would interfere with an individual's ability to express their gender identity or to continue necessary care, given the intimate character of the interests at stake under Article 8.**
42. Where an applicant arrived at a young age and has grown up in the host State, very serious reasons are required to justify expulsion.[117] The special situation of such settled migrants, whose identity and social and family ties have been formed mainly in the host country, must be duly considered.[118]
43. **The interveners submit that, where there is a lack of proven links with the applicant's country of origin, and in conjunction with the considerations above, removal will often be disproportionate to any legitimate aim pursued.**[119]

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[107] *Sousa Goucha v. Portugal*, No. 70434/12, 22 March 2016, § 27.
[108] *X v. The Former Yugoslav Republic of Macedonia*, No. 29683/16, 17 January 2019, § 70; *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, 11 July 2002; Council of Europe, Recommendation CM/Rec(2025)7 on equal rights for intersex persons (adopted 7 Oct. 2025).
[109] *L. v Lithuania*, No. 27527/03, § 59. *X v. The Former Yugoslav Republic of Macedonia*, No. 29683/16, 17 January 2019, § 70.
[110] *Y.Y v Turkey*, No. 14793/08, 10 March 2015, § 121.
[111] *Van Kück v Germany*, No. 35968/97, 12 September 2013, § 82.
[112] *Van Kück v Germany*, op.cit., § 72. In the concurring opinion of Judge Ress it was further noted that prolonging the time where gender reassignment surgery is not made available is "not in keeping with 'respect' for private life" as guaranteed under Article 8 ECHR.
[113] *Y.Y v Turkey*, No. 14793/08, 10 March 2015, § 101; *Hämäläinen v Finland* [GC], No. 37359/09, 16 July 2014, § 67; *Söderman v Sweden* [GC], No. 5786/08, 12 November 2013, § 78-79.
[114] *Unuane v. The United Kingdom*, No. 80343/17, 24 November 2020, § 89; *Emre v. Switzerland*, No. 5056/10, October 2011, § 72.
[115] *Maslov v Austria*, No. 1638/03, 23 June 2008, § 97.
[116] *Ibid*, § 63.
[117] *Ibid*, § 74.
[118] *Ibid*, § 73 and 74.
[119] *Maslov v Austria*, No. 1638/03 (23 June 2008), § 100.