BEFORE THE FIRST SECTION,
EUROPEAN COURT OF HUMAN RIGHTS

Application No. 6559/25

Between

M.A.

Applicant

v.

Sweden

Respondent

WRITTEN SUBMISSIONS ON BEHALF OF THE INTERVENERS

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

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pursuant to the Registrar's notification dated 9 September 2025, on the Court's permission to intervene under Rule 44 § 3 of the Rules of the European Court of Human Rights

26 September 2025

The Contracting Parties' procedural obligations under Article 2 and 3 ECHR in the context of forced returns

Risk assessments under Article 2 and 3 ECHR

1. The European Court of Human Rights ('ECtHR' or 'Court') has firmly established that Article 2 and 3 of the European Convention on Human Rights ('ECHR') prohibit removing a person when there are substantial grounds to believe that, if expelled, they would face a real risk of torture, inhuman or degrading treatment or (capital) punishment in the destination country.[1]
2. This applies to risks arising in the event of forced return of asylum seekers[2] for which the expelling authorities must examine the alleged risks in the country of origin.[3] In that context, Article 3 ECHR applies not only to danger emanating from State authorities but also from persons who are not public officials.[4]
3. It is firmly established in the case law of this Court that the assessment of whether there are substantial grounds for believing that the applicant faces a real risk must necessarily be a rigorous one[5] and involves close scrutiny by the competent national authorities as well as by the domestic courts when a decision is appealed.[6]
4. As to the burden of proof, this Court has established that it is in principle for the applicant to adduce evidence in that regard,[7] for which asylum seekers, owing to their special situation, must regularly be given the benefit of the doubt.[8] The Court has acknowledged that adducing evidence may sometimes be difficult, if not impossible, for which documentary evidence cannot be decisive *per se*.[9] Where evidence capable of proving such risk is adduced, it is for the Government to dispel any doubts raised by it.[10] However, if a Contracting State is made aware of relevant facts, or when claims are based on a well-known general risk, for which information is freely ascertainable from a wide range of sources, the obligations under Articles 2 and 3 ECHR entail that the authorities carry out a rigorous assessment of that risk *of their own motion*.[11]
5. Assessments must be adequate and sufficiently supported by information from reliable and objective sources, both domestic and international, such as other Contracting or third States, UN agencies and reputable non-governmental organisations.[12] National authorities must focus on the foreseeable consequences of expulsion, bearing in mind the general situation in the country of origin as well as the applicant's personal circumstances.[13]

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[1] ECtHR, *Saadi v. Italy* [GC], No. 37201/06, 28 February 2008, para. 125; ECtHR, *F.G. v. Sweden* [GC], No. 43611/11, 23 March 2016, para. 110; ECtHR, *J.K. and Others v. Sweden* [GC], No. 59166/12, 23 August 2016, para. 79; ECtHR, *Khasanov and Rakhmanov v. Russia* [GC], No. 28492/15 and 49975/15, 29 April 2022, para. 93.
[2] See ECtHR, *Hirsi Jamaa and Others v. Italy* [GC], No. 27765/09, 23 February 2012, para. 146.
[3] ECtHR, *Ilias and Ahmed v. Hungary* [GC], No. 47287/15, 21 November 2019, para. 131.
[4] ECtHR, *J.K. and Others v. Sweden* [GC], op. cit., para. 80.
[5] ECtHR, *Ilias and Ahmed v. Hungary* [GC], op. cit., para. 127; ECtHR, *Saadi v. Italy* [GC], op. cit., para. 128; ECtHR, *F.G. v. Sweden* [GC], op. cit., para. 113.
[6] ECtHR, *Hirsi Jamaa and Others v. Italy* [GC], op. cit., para. 198.
[7] ECtHR, *Saadi v. Italy* [GC], op. cit., para. 129; ECtHR, *F.G. v. Sweden* [GC], op. cit., para. 125.
[8] ECtHR, *F.G. v. Sweden* [GC], op. cit., para. 113; ECtHR, *S.H. v. Malta*, No. 37241/21, 20 December 2022, para. 85; ECtHR, *J.K. and Others v. Sweden* [GC], op. cit., para. 93.
[9] ECtHR, *J.K. and Others v. Sweden* [GC], op. cit., para. 92.
[10] ECtHR, *F.G. v. Sweden* [GC], op. cit., para. 120.
[11] ECtHR, *F.G. v. Sweden* [GC], op. cit., para. 126-127.
[12] ECtHR, *F.G. v. Sweden* [GC], op. cit., para. 117.
[13] ECtHR, *F.G. v. Sweden* [GC], op. cit., para. 114.

6. While a number of individual factors and circumstances may not, when considered separately, constitute a real risk, the same factors may give rise to a real risk when taken cumulatively and when considered in a situation of general violence and heightened security.[14]
7. In cases where objective country information is limited or unavailable, the mere absence of evidence cannot, in itself, dispel grounds for believing an applicant faces a real risk of treatment contrary to Articles 2 or 3 ECHR. In *S.H. v. the United Kingdom*, there was a lack of information about the risk emanating from the return due to Bhutan being a closed country and UNHCR not being able to monitor returns. The Court balanced available material and expert reports as well as general patterns of discrimination or persecution against the impossibility to precisely predict what would happen and found substantial grounds for believing that the applicant would face a real risk of being subjected to ill-treatment upon removal. Where the Government fails to provide evidence capable of dispelling such concerns, the Court will, in light of the absolute nature of Article 3 ECHR, accept that such real risk exists despite limited country information.[15] The Court has on several occasions acknowledged the difficulties faced by Governments and NGO's in accessing evidence in dangerous or volatile contexts,[16] as well as those faced by the applicants themselves (see § 4 of this intervention).

The assessment and safeguards under the non-refoulement principle concerning specifically targeted groups

Risk assessments in the context of specifically targeted groups

8. The Grand Chamber of this Court has held on numerous occasions that where an applicant claims to be part of a group systematically exposed to ill-treatment, Article 3 is engaged once the applicant shows there are serious reasons to believe **(a)** that the practice of systematically exposing a group to ill-treatment exists and **(b)** that the applicant belongs to the group concerned.[17]
9. Once the existence of a real risk of being subjected to ill-treatment is established, removal would necessarily breach Article 3, regardless of whether the risk emanates from a general situation of violence, a personal characteristic of the applicant, or a combination of the two.[18] Where an applicant establishes the existence of practice systematically exposing a group to ill-treatment, as well as their membership to that group, the Grand Chamber of this Court has decided not to require that the applicant demonstrate further distinguishing

[14] ECtHR, *Khasanov and Rakhmanov v. Russia* [GC], op. cit., para. 110; see further ECtHR, *NA. v. The United Kingdom*, No. 25904/07, 17 July 2008, para. 130.
[15] ECtHR, *S.H. v. The United Kingdom*, No. 19956/06, 15 September 2010, paras. 69-72.
[16] "The Court appreciates the many difficulties faced by governments and NGOs gathering information in dangerous and volatile situations: it accepts that it will not always be possible for investigations to be carried out in the immediate vicinity of a conflict and that, in such cases, information provided by sources with first-hand knowledge of the situation may have to be relied on". See ECtHR, *Khasanov and Rakhmanov v. Russia* [GC], op. cit., para. 115; ECtHR, *J.K. and Others v. Sweden* [GC], op. cit., para. 89; ECtHR, *Sufi and Elmi v. The United Kingdom*, Nos. 8319/07 and 11449/07, 28 June 2011, para. 232.
[17] ECtHR, *Saadi v. Italy* [GC], op. cit., para. 132; ECtHR, *F.G. v. Sweden* [GC], op. cit., para. 120; ECtHR, *Khasanov and Rakhmanov v. Russia* [GC], op. cit., para. 97.
[18] ECtHR, *Sufi and Elmi v. The United Kingdom*, op. cit., para. 218; further citing ECtHR, *N.A. v. The United Kingdom*, op. cit.

features, if to do so would render illusory the protection offered by Article 3.[19] However, where an applicant failed to establish the existence of such practice, the Court has also considered in its assessment further distinguishing or risk-increasing features.[20]

10. The Contracting States' obligation under Article 2 and 3 ECHR to conduct a rigorous *ex officio* assessment (§4 of this intervention) of risks upon return applies in particular where national authorities have been made aware that an asylum-seeker may plausibly belong to a group systematically subjected to ill-treatment.[21]

Existence of a group systematically exposed to ill-treatment

11. The *first step* of examining whether an applicant may not be expelled, as a member of a specifically targeted group in the receiving country, concerns the existence of a group systematically exposed to ill-treatment. This is "in its very essence a factual *ex nunc* assessment"[22] for which the principles concerning the burden of proof as stated above apply (§§4-8 of this intervention).[23]
12. Examples within the Court's jurisprudence of groups systematically exposed to ill-treatment in the respective receiving countries are, *inter alia*, members of religious groups,[24] members of ethnic groups,[25] members of political parties,[26] persons accused of terrorism and extremism-related offences,[27] persons affiliated with foreign forces,[28] persons that have been outspoken about the human rights situation in their country of origin before return,[29] persons whose sexual orientations vary from proclaimed norms,[30] or persons with no recent experience living under a repressive regime in place as well as those that have been outside the receiving country so long that they may likely be identified as 'westernised' by authorities in the receiving country (as certain attributes, such as a foreign accent, would be impossible to disguise).[31]
13. In *Sufi and Elmi*, the Court held that, in cases where the applicants have spent a considerable period of time abroad, it may be simply impossible to conceal

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[19] see ECtHR, *T.K. and Others v. Lithuania*, No. 55978/20, 22 March 2022, para. 75; compare also ECtHR, *J.K. and Others v. Sweden* [GC], op. cit., paras. 103-105; ECtHR, *Khasanov and Rakhmanov v. Russia* [GC], op. cit., para. 99.
[20] ECtHR, *Khasanov and Rakhmanov v. Russia* [GC], op. cit., para. 100.
[21] ECtHR, *F.G. v. Sweden* [GC], op. cit., para. 127; ECtHR, *Amerkhanov v. Turkey*, No. 16026/12, 5 June 2018, paras. 52-58; ECtHR, *Batyrkhairov v. Turkey*, No. 69929/12, 5 June 2018, paras. 46-52; ECtHR, *M.D. and Others v. Russia*, No. 71321/17 and Others, 14 September 2021.
[22] ECtHR, *Khasanov and Rakhmanov v. Russia* [GC], op. cit., para. 107.
[23] ECtHR, *Khasanov and Rakhmanov v. Russia* [GC], op. cit., paras. 109-112.
[24] e.g. ECtHR, *F.G. v. Sweden* [GC], op. cit; ECtHR, *A. v. Switzerland*, No. 60342/16, 19 December 2017; ECtHR, *A.A. v. Switzerland*, No. 58802/12, 7 January 2014; ECtHR, *J.A. and A.A. v. Turkey*, No. 80206/17, 6 February 2024.
[25] e.g. ECtHR, *S.H. v. The United Kingdom*, op. cit.; ECtHR, *Makhmudzhan Ergashev v. Russia*, No. 49747/11, 16 October 2012; ECtHR, *R. v. Russia*, No. 11916/15, 26 January 2016; also ECtHR, *A.A. v Switzerland*, op. cit.
[26] ECtHR, *T.K. and Others v. Lithuania*, op. cit.
[27] e.g. ECtHR, *Iskandarov v. Russia*, No. 17185/05, 23 September 2010; ECtHR, *Kunshugarov v. Türkiye*, No. 60811/15 and 54512/17, 14 January 2025; ECtHR, *Mamazhonov v. Russia*, No. 17239/13, 23 October 2014; ECtHR, *Saadi v. Italy* [GC], op. cit.
[28] ECtHR, *J.K. and Others v. Sweden* [GC], op. cit.
[29] ECtHR, *S.H. v. The United Kingdom*, op. cit.
[30] ECtHR, *I.K. v. Switzerland* (dec.), No. 21417/17, 19 December 2017; ECtHR, *B and C v. Switzerland*, No. 889/19 and 43987/16, 17 November 2020; ECtHR, *M.I. v. Switzerland*, No. 56390/21, 12 November 2024.
[31] ECtHR, *Sufi and Elmi v. The United Kingdom*, op. cit., para. 275.

characteristics resulting from that period which, if known, would give rise to a real risk of ill-treatment in the receiving country.[32]

14. Even if returnees do not draw attention to themselves on the basis of overt attributes, removals that would require a person to conceal a fundamental part of their identity in order to avoid ill-treatment upon return constitute a violation of Article 3 of the ECHR. This applies, among others, to a person's sexual orientation, which this Court acknowledged to be a fundamental part of one's identity and consciousness that one cannot be required to conceal.[33] In that regard, the interveners point to the fact that psychological suffering from fear of exposure to physical harm or from feelings of inferiority due to hostile behaviour and discriminatory treatment has been found by this Court to constitute cruel, inhuman and degrading treatment.[34] The case law of the Court has since developed to the effect that, against the background that no one may be obliged to conceal a fundamental aspect of their identity, the risk assessment must include an evaluation of the probability that this identity will be discovered by perpetrators of ill-treatment in the receiving country.[35] In the case of *M.I. v. Switzerland*, the Court referred to UNHCR guidelines stating that secrecy may not be an option for their entire lives. Importantly, the risk of discovery is not dependent on the person's conduct: There is almost always a possibility of discovery against the person's will, for example by chance, rumours or growing suspicion.[36]
15. In any case, the Court has not denied that freedom of thought and conscience may be central elements in the assessment of refoulement risks. Similar findings may indeed arise in respect of a person's religious beliefs.[37] In *A.A. v. Switzerland*, this Court highlights the implications of returning a genuine Christian convert to Afghanistan, forcing him to change his social behaviour in such a way as to confine his faith to the strictly private, to live in lies and be forced to give up all contact with other people for fear of being discovered.[38] The interveners submit that, in this context as well, there remains the possibility of discovery.
16. **The interveners invite the Court to consider the identification with the fundamental value of equality between women and men as a fundamental aspect of a person's identity and conscience, which a person cannot be expected to conceal in order to avoid treatment contrary to Articles 2 or 3 ECHR.** In this regard, the interveners point to their elaborations (§§29-32 of this intervention) on recent jurisprudence of the Court of Justice of the European Union ('CJEU'), which may serve to inform the Court's interpretation under Article 53 ECHR. The CJEU held that genuine identification with the fundamental value of equality between women and men may constitute "a characteristic or belief that is so fundamental to identity or conscience that a

[32] ECtHR, *Sufi and Elmi v. The United Kingdom*, op. cit., para. 276-277.
[33] ECtHR, *I.K. v. Switzerland* (dec.), op. cit., para 24.
[34] ECtHR, *Identoba and Others v. Georgia*, No. 73235/12, 12 May 2015, paras. 65, 70-71.
[35] ECtHR, *B & C v. Switzerland*, op. cit., para. 57; ECtHR, *M.I. v. Switzerland*, op. cit., para. 49-50.
[36] ECtHR, *M.I. v. Switzerland*, op. cit., para. 50; further citing UNHCR, "Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees" (HCR/GIP/12/09), para. 32.
[37] ECtHR, *A. v. Switzerland*, op. cit., para. 44; ECtHR, *A.A. v. Switzerland*, op. cit., para. 55.
[38] ECtHR, *A.A. v. Switzerland*, op. cit., para. 55.

person should not be forced to renounce it".[39] Against that background, in assessing the risks of being subjected to treatment contrary to Article 2 or 3 ECHR upon return, Contracting States' should consider the genuine identification with the fundamental value of equality between women and men to be discoverable by the perpetrators of ill-treatment in the receiving country.

17. **In addition to the groups that the Court has already identified (§12 of this intervention), the interveners submit that a group systematically exposed to ill-treatment may also be constituted by persons who are 'perceived as influenced by foreign values' The interveners respectfully invite the Court to consider identification with the fundamental value of equality between women and men to constitute a characteristic or belief so fundamental to identity that a person cannot be forced to renounce it – and which a Contracting Party must assume will be discovered by perpetrators of ill-treatment in the receiving country.**

Individual membership of the group concerned

18. As a *second step*, an applicant should establish their individual membership of the group concerned, without having to demonstrate any further individual circumstances or distinguishing features.[40]
19. In this regard, the interveners would like to highlight that a person need not necessarily be a member of the group concerned, but the perception of them being a member suffices to create a real risk of being subjected to ill-treatment: This Court has found that Afghans that were suspected of having converted to Christianity were exposed to a risk of persecution from various groups that national authorities must consider in their assessment.[41] It has further found an applicant to be at increased risk of ill-treatment because of being perceived as either a draft evader or deserter.[42] Lastly, the Court found an increased risk for people that were perceived as opposing the regime in place in A.F. v France.[43]
20. Whether an individual can claim to belong to a group systematically exposed to ill-treatment also raises the question of how to assess the genuineness of *sur place* activities that may increase the risk of ill-treatment upon return. While acknowledging the difficulties in assessing the genuineness of *sur place* activities, the Court has focussed its assessment on the activities effectively carried out by the person, and assessed the risks emanating from such activities upon return.[44] Referring to the UNHCR Guidelines, the Court has further found that such activities will not give rise to a fear of persecution only where their opportunistic nature is apparent to all, including the authorities of the receiving State, and where therefore no serious adverse consequences would result if the person were returned.[45]
21. **The interveners submit, in line with the Court's case law, that the mere perception in the receiving country that a person belongs to a particular group – which faces systematic exposure to ill-treatment in that country – may trigger the prohibition of expulsion under Articles 2 and 3 ECHR.**

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[39] Court of Justice of the European Union (CJEU) [GC], *C-646/21 (K and L)*, ECLI:EU:C:2024:487, 11 June 2024.
[40] ECtHR, *Khasanov and Rakhmanov v. Russia* [GC], op. cit., para. 97-99.
[41] ECtHR, *A.A. v. Switzerland*, op. cit., para. 50.
[42] ECtHR, *M.O. v. Switzerland,* No. 41282/16, 20 June 2017, para. 72.
[43] ECtHR, *A.F. v. France*, No. 80086/13, 15 January 2015, para. 49.
[44] ECtHR, *A.A. v. Switzerland*, op. cit., para. 41.
[45] ECtHR, *F.G. v. Sweden* [GC], op. cit., para. 124.

Further risk-enhancing factors

22. The Court has consistently held that where an applicant is able to demonstrate membership of a group that is systematically subjected to ill-treatment, there is no requirement for the existence of further distinguishing features or risk enhancing factors to establish a real risk of treatment contrary to Article 3 ECHR.[46] (see §8 of this intervention).
23. The Court has furthermore recognised that the existence of additional individual circumstances may further aggravate a person's circumstances and heighten the risk of ill-treatment, particularly where a combination of factors is present. In this regard, intersecting factors such as age, gender, time spent in the host country, prior asylum claims, and other personal circumstances may cumulatively increase the level of risk faced by the applicant.[47] Such cumulative assessment reflects the Court's requirement to conduct a rigorous scrutiny of all relevant elements when assessing an alleged risk under Articles 2 and 3 ECHR (see §6 of this intervention).
24. The Court has also found that an applicant's membership of more than one systematically targeted group can compound the risk of ill-treatment, for example where a person's ethnic origin is combined with political or religious beliefs or activities perceived as opposing societal norms and values. In the cases of *A.F. v. France*[48] and *A.A. v. Switzerland*[49], the Court accepted that such intersecting memberships can reinforce the exposure to treatment contrary to Article 3 ECHR.
25. **In summary, the interveners submit that the Contracting Parties' procedural obligations under Articles 2 and 3 ECHR require that, prior to a forced return, national authorities carry out a rigorous, *ex officio* assessment of any real risk of treatment contrary to these provisions, whether arising from the general situation in the receiving country, individual circumstances, or an applicant's (actual or perceived) membership of a group systematically exposed to ill-treatment. The Court's established approach confirms that where such group treatment is shown and individual membership to that group is established, the applicant need not demonstrate further distinguishing features. Additional individual circumstances or intersecting memberships to groups exposed to ill-treatment may further heighten the risk and must be duly considered as part of the State's obligations to prevent refoulement in violation of Articles 2 and 3 ECHR.**

The Contracting Parties' obligations under EU law concerning the forced return to a third state of specifically targeted groups

26. 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 Article 53 ECHR, when construing the rights and freedoms which are enshrined in the ECHR, this Court must guarantee at least the level of protection of those human rights and fundamental freedoms already guaranteed by other

[46] ECtHR, *J.K. and Others v. Sweden* [GC], op. cit., para. 105.
[47] ECtHR, *J.K. and Others v. Sweden* [GC], op. cit., para. 95; ECtHR, *N.A. v. The United Kingdom*, op. cit., para. 130.
[48] ECtHR, *A.F. v. France*, op. cit., para. 51.
[49] ECtHR, *A.A. v. Switzerland*, op. cit., para. 58.

international agreements to which the relevant Contracting State is a party. In relation to asylum, in countries where it is applicable, the EU *acquis* and jurisprudence of the CJEU is of particular relevance as it is binding as a matter of both domestic and EU law, as well as under Article 53 ECHR.

The EU asylum acquis

27. EU Directive 2011/95/EU establishes the applicable standards in assessing the international protection needs of applicants within the EU.[50] Article 2(d) defines a 'refugee' as meaning a third-country national who seeks international protection owing to a fear of being persecuted for reasons of, *inter alia*, membership of a particular social group…". Article 10(1)d of Directive 2011/95/EU stipulates thar such group must "share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it" and have "a distinct identity in the relevant country, because it is perceived as being different by the surrounding society". Article 10(2) continues that "…it is immaterial whether the applicant actually possesses the […] characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution".[51]
28. Article 10(3)(b) of Directive 2013/32 requires Member States to ensure **(i)** that decisions on applications for international protection are taken after an appropriate examination, during which precise and up-to-date information is obtained from various sources, such as EASO and UNHCR and relevant international human rights organisations, as to the general situation prevailing in the countries of origin of applicants, and **(ii)** that such information is made available to the personnel responsible for examining applications and taking decisions.[52]
29. The interveners submit that the methodology of assessing membership to a particular social group under the EU *acquis* and this Court's approach in the context of specifically targeted groups under Article 2 and 3 ECHR shows similarities in that **(i)** persecution or ill-treatment must originate from the membership to a group perceived as distinct by the surrounding society or authorities, **(ii)** the external attribution of membership to such group may serve to establish a risk of persecution or ill-treatment and **(iii)** assessments in that regard must include an appropriate examination of precise and up-to-date country information from various sources.

The K, L Grand Chamber judgement of the CJEU on beliefs that are so fundamental to identity that a person should not be forced to renounce them

30. The Grand Chamber of the CJEU issued a judgement (K, L), on 11 June 2024, interpreting the above articles of the asylum *acquis*, and relating to claims for international protection of third-country nationals (including minors) who have come to identify with the fundamental value of equality between women and men. The interveners submit that considerations relating to risks upon return for

[50] European Union (EU) Directive 2012/95/EU of the European Parliament and of the Council 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 Qualification Directive'), 13 December 2011.
[51] Recast Qualification Directive, cit. op., Articles 2(d), 10(1, 2).
[52] European Union (EU) Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection ('recast Procedures Directive'), 26 June 2013, Article 10(3)(b).

members of groups systematically exposed to ill-treatment in the receiving country may be made in light of that judgement – as general principles developed by the CJEU have previously been considered by this Court as source of comparative regional and international law.[53]

31. In that context, the interveners highlight that the CJEU focused its legal analysis on women, but submit that the isolated question of whether having come to identify with the fundamental value of equality between women and men constitutes 'a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it' should apply to all persons without differentiation on the basis of gender.
32. In *K and L*, the CJEU Grand Chamber identified two groups that could be in need of international protection due to unalterable characteristics. It held that the fact that a third-country national genuinely comes to identify with the fundamental value of equality between women and men may be considered 'a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it'. With regard to young third-country nationals who have stayed in a host Member State during a phase of their lives when a person's identity is being formed, the Court has held that, if during that stay they have genuinely come to identify with the fundamental value of equality between women and men, that must be regarded as a common background that cannot be changed.[54] The Court highlighted that it is not necessary for such group membership to be politically or religiously motivated to be grounds for persecution,[55] nor must an applicant consider themselves to form a distinct group with other people sharing their identification.[56]
33. As to the question what constitutes "genuine" identification within the meaning of the *K and L* judgement, the interveners submit that the term is translated in other official EU languages as 'tatsächlich' (GE), 'daadwerkelijk' (NE), or 'effective' (FR), and therefore relates to the credibility of the conviction rather than its quality or degree. Hence, according to the CJEU Grand Chamber judgement K, L from 11 June 2024, where it is credible that a person has come to identify with the fundamental value of equality between women and men, this identification must be seen as constituting a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it. The CJEU further held that such genuine identification cannot be regarded as circumstances which a third-country national has created by their own decision since leaving their country of origin to create the necessary conditions for applying for international protection.[57]
34. **The interveners submit that, in view of the CJEU's Grand Chamber judgement in *K and L*, which may be relevant for interpretation by this Court pursuant to Article 53 ECHR, genuine identification with the fundamental value of equality between women and men should be regarded as a characteristic or belief so fundamental to a person's identity or conscience that they must not be forced to renounce it in order to evade ill-treatment contrary to Article 3 ECHR. Such identification should be duly taken into account by the Contracting Parties when assessing the risks**

[53] See for example ECtHR, *Xhoxhaj v. Albania*, No. 15227/19, 9 February 2021, in particular paras. 298, 313; and ECtHR, *Sergey Zolotukhin v. Russia* (GC), No. 14939/03, 10 February 2009.
[54] CJEU [GC], *C-646/21 (K and L)*, op. cit., para. 44, 45.
[55] CJEU [GC], *C-646/21 (K and L)*, op. cit., para. 52.
[56] CJEU [GC], *C-646/21 (K and L)*, op. cit., para. 44.
[57] CJEU [GC], *C-646/21 (K and L)*, op. cit., para. 62.

of forced return under Articles 2 and 3 ECHR as a relevant element for determining membership of a systematically persecuted group, where country of origin information indicates the existence of such a group.

The Contracting Parties' obligations under applicable international law concerning forced returns of asylum seekers claiming to be minors

Convention on the Rights of the Child (CRC)

35. As stated before, Article 53 ECHR requires the Court to 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. Accordingly, the interveners submit that rights under the Convention on the Rights of the Child (CRC), ratified by Sweden in 1990[58] and incorporated into national law in 2020,[59] may not be derogated from by this Court (see §25 of this intervention). Moreover, where the application of EU law is concerned, Article 24 of the EU Charter of Fundamental Rights, which incorporates the CRC standards into EU law, is equally applicable along with the CJEU's respective jurisprudence.[60]
36. If a child turns 18 years old, the CRC Committee encourages Contracting States to take protective and support measures beyond that age.[61] The CJEU decided in the judgement of *A and S* that, for the purpose of family reunification, third-country nationals who enter an EU member state when they are under the age of 18, but attained majority during their asylum procedure, should still be regarded as children.[62] Therefore, the interveners submit that persons who turn 18 years pending their asylum procedure, but who entered the state concerned as children, should be regarded as such at least throughout their procedure.
37. Article 3 CRC, read together with General Comment No. 14, establishes that the child's best interests are a primary consideration. Article 12 CRC, together with General Comments No. 12 and No. 14, stipulates that the best interests of the child cannot be assessed or determined unless the child has been both heard and listened to. Article 22 is the *lex specialis* relating to refugee children and must be read with General Comment No. 6 (see § 40 below).
38. The CRC Committee examined over 14 cases against Spain on the issue of age determination between February 2019 and February 2022, and has found violations of the right to identity, the right to be heard, the right to special protection for children deprived of their family environment, and the right to healthcare.[63] In *N.B.F. v. Spain*, the Committee underlined that the best interests of the child must be a primary consideration during the age assessment process.

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[58] United Nations Treaty Collection, Ratification Status by Country, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4.

[59] European Commission, 'Sweden officially incorporated UN Convention on the Rights of the Child into the Swedish legal system', News, 1 January 2020, available at: https://ec.europa.eu/newsroom/just/items/672546.

[60] Charter of Fundamental Rights of the European Union ('the Fundamental Rights Charter'), 2000/C364/01, 18 December 2000, Article 24.

[61] Committee on the Protection of the Rights of All Migrant Workers and Members of Their Family (CMW) and Committee on the Rights of the Child, Joint General Comment No. 4 CMW and No. 23 CRC on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, para. 3.

[62] CJEU, *C-550/16 (A and S)*, 12 April 2018, ECLI:EU:C:2018:248.

[63] Quan, G. M., & Skelton, A. (2025). Age determination of unaccompanied migrant children: An appraisal of the jurisprudence of the Committee on the Rights of the Child. Nordic Journal of Human Rights, 43(1), pages 59–81. https://doi.org/10.1080/18918131.2025.2458401.

Such procedures are particularly important because their outcome determines whether a person is entitled to national protection as a child and to protection under the CRC.[64] The Committee considers that X-ray evidence for age assessments lacks precision and has a wide margin of error, for which it cannot on its own be used to determine a person's age.[65] It also found the failure to assign a person claiming to be a child a qualified legal representative as soon as possible and free of charge to violate the child's right to be heard under article 12 CRC, and to have their best interests taken as a primary consideration under article 3 CRC.[66]

39. Joint General Comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) and No. 23 CRC on children's rights in the context of international migration sets out that States should undertake a comprehensive assessment of the child's physical and psychological development by a specialist paediatrician or other skilled professionals, in a "prompt, child-friendly, gender-sensitive and culturally appropriate manner". It further emphasises that medical methods which may be inaccurate and traumatic, or lead to unnecessary legal processes, such as bone and dental analysis, should not be used. Most importantly, the assessed person should be given the benefit of the doubt, and available documents should be considered genuine unless proof to the contrary.[67] As stated in General Comment No. 6 CRC, supporting this Court's findings in *Darboe and Camara*, "if there is a possibility that the individual is a child, she or he should be treated as such".[68] In *R.Y.S. v. Spain*, the Committee clarifies that this means that the person should be "presumed to be and treated as a minor" during the age-assessment and appeals process.[69] From this, the CRC Committee found in *M.T. v. Spain*, *R.K. v. Spain* and *R.Y.S. v. Spain* that failure to appoint the child a guardian so that the child could apply for asylum was in violation of Articles 20(1) and 22 of the CRC as it deprived the child of their right to special protection and placed them at risk of irreparable harm in the event of return to their country of origin.[70]
40. In its latest Concluding Observations to Sweden, the CRC Committee urged the State Party to conduct age-assessment procedures through multidisciplinary methods, only in cases of serious doubt and respecting the legal principle of the benefit of the doubt. Children must also be able to challenge the outcome of these assessments. It also urged Sweden to ensure that unaccompanied children are promptly assigned to a qualified guardian and receive regular and tailored support.[71]

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[64] CRC, Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 11/2017, *N.B.F. v. Spain*, CRC/C/79/D/11/2017, 18 February 2019, para. 12.3.
[65] CRC, *N.B.F. v. Spain*, op. cit., para. 12.6.
[66] CRC, *N.B.F. v. Spain*, op. cit., para. 12. 8.
[67] CMW and CRC, Joint General Comment No. 4 and No. 23, op. cit., para. 4; See also CRC, General Comment No. 6 on Treatment of Unaccompanied and Separated Children outside their Country of Origin, 1 September 2005, para. 31 (i).
[68] CRC, General Comment No. 6, op. cit., para. 31(i).
[69] CRC, Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 76/2019, *R.Y.S. v. Spain*, CRC/C/86/D/76/2019, 4 February 2021, para. 8.3; ECtHR, *Darboe and Camara v. Italy*, No. 5797/17, 21 July 2022, para. 153, on the principle of 'presumption of minority'.
[70] CRC, *R.Y.S. v. Spain*, op. cit., para. 8.14.
[71] CRC, Concluding observations on the combined sixth and seventh periodic reports of Sweden, CRC/C/SWE/CO/6-7, 7 March 2023, para. 43.