

EUROPEAN COURT OF HUMAN RIGHTS

Application No. 36538/25

BETWEEN:

Regvar

Applicant

v.

Slovenia

Respondent

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WRITTEN SUBMISSIONS ON BEHALF OF THE INTERVENERS

The AIRE Centre (Advice on Individual Rights in Europe), the European Council on Refugees and Exiles (ECRE), the International Commission of Jurists, the Dutch Council for Refugees (DCR) and the Hungarian Helsinki Committee

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*pursuant to the Registrar's notification dated 9th April 2026 on the Court's permission to intervene under Rule 44 § 3 of the Rules of the European Court of Human Rights*

May 2026

## I. Contracting Parties' obligations under Article 8 ECHR in relation to providers of legal assistance, advice, and representation to appellants in asylum cases and refugees.<sup>1</sup>

### a. *The meaning and scope of legal professional privilege.*

1. Communication between an individual and their lawyer falls within the meaning of private life and is protected under Article 8 of the European Convention on Human Rights (ECHR, the Convention).<sup>2</sup> This protection (“legal professional privilege” or “professional secrecy”) ensures that lawyer-client communication may take place “[...] *under conditions which favour full and uninhibited discussion* [...]”,<sup>3</sup> and entails a reasonable expectation that their communication is private and confidential.<sup>4</sup>
2. Legal professional privilege under Article 8 is broadly conceived in this Court’s caselaw, covering both communication relating to assistance and representation during ongoing legal procedures and communication with the aim of seeking and receiving general legal advice.<sup>5</sup> Both written and oral communication is protected.<sup>6</sup> Measures that interfere with legal professional privilege under Article 8 in this Court’s caselaw may vary,<sup>7</sup> and have previously included the imposition of reporting duties on lawyers,<sup>8</sup> which can create a continuous interference in the form of a dilemma for the lawyer between the obligation of professional confidentiality and the consequences of non-compliance.<sup>9</sup>
3. While legal professional privilege is often associated with lawyers, this Court has recognised that it equally applies to “[...] *other legal professions that involve the processing of client information.*”<sup>10</sup> In *Kruglov v. Russia*, this Court noted that domestic law only protected the legal professional privilege for members of the Bar but held that “[...] *it would be incompatible with the rule of law to leave without any particular safeguards at all the entirety of relations between clients and legal advisers who, with few limitations, practise, professionally and often independently, in most areas of law, including representation of litigants before the courts.*”<sup>11</sup> In *Xavier da Silveira*

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<sup>1</sup> For the purposes of this text, the terms ‘legal assistance’, ‘legal advice and representation’, ‘legal services’, and ‘legal aid’ are used interchangeably.

<sup>2</sup> ECtHR, *Altay v Turkey*, Application no. 11236/09, 9 April 2019, para. 49.

<sup>3</sup> ECtHR, *Campbell v. The United Kingdom*, Application no. 13590/88, 25 March 1992 para. 46.

<sup>4</sup> ECtHR, *Altay v. Turkey*, para. 49.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Idem*, para. 51. See also, ECtHR, *Michaud v. France*, Application no. 12323/11, 6 December 2012, para. 90.

<sup>7</sup> For example, surveillance in *Kopp v. Switzerland*, Application no. 23224/94, 25 March 1998; interception of communications in *Altay v. Turkey* and *Campbell v. The United Kingdom*; search of lawyers’ offices in *Niemietz v. Germany*, Application no. 13710/88, 16 December 1992.

<sup>8</sup> ECtHR, *Michaud v. France*, Application no. 12323/11, 6 December 2012.

<sup>9</sup> *Michaud v. France*, *op. cit.*, paras. 91-92.

<sup>10</sup> ECtHR, *Kavečanský v. Slovakia*, Application no. 49617/22, 29 April 2025, para. 61.

<sup>11</sup> ECtHR, *Kruglov and Others v. Russia*, Applications nos. 11264/04 and 15 others, 4 February 2020, para. 137.

- v. France*, the Court found that Article 8 protects legal professional privilege regardless of whether a lawyer practices their profession as a bar-registered lawyer or on an occasional basis in another EU Member State.<sup>12</sup>
4. It follows that this Court adopts a protective approach when examining this type of interference under Article 8 ECHR. Accordingly, the applicability of this principle should not be affected by the route through which the legal professional has acquired the professional qualification (e.g. the “traditional” route through bar certification or alternative forms of qualification involving specialised training and ministry-approved examinations), provided that they provide legal services in the domestic context.
  5. Similarly, the applicability of this principle should not depend on whether the legal professional is operating in a private capacity or in the context of a national legal aid scheme. A different interpretation would undermine the purpose and effectiveness of legal aid and jeopardize equal access to justice. These principles are reflected in Council of Europe standards which protect the confidentiality of lawyer-client communications without distinction based on the form of practice or the source of remuneration.<sup>13</sup>
  6. **The interveners submit that an interference with Article 8 rights occurs where measures restrict the confidentiality of lawyer-client relationship through reporting duties imposed on lawyers. All legal professionals providing legal services to refugees and appellants in asylum cases are entitled to claim legal professional privilege, whether they operate as practising lawyers or in other roles designed to fulfil the same duties, including through legal aid schemes.**

b. *Lawfulness, necessity and proportionality of interference with legal professional privilege.*

7. The enhanced protection afforded to the communication between lawyers and their clients is justified by the fundamental role of lawyers in a democratic society, the need to secure a relationship of trust based on confidentiality and the role of lawyers in defending their client’s right to a fair trial.<sup>14</sup> When a Contracting Party’s authorities interfere with legal professional privilege, they must ensure that such interference is not arbitrary and invasive: such measures must pursue at least one of the legitimate aims enumerated in Article 8(2), their need “*must be convincingly established*,”<sup>15</sup> and they must be based on a “*strict framework*” with sufficient safeguards.<sup>16</sup> A crucial consideration for this Court is whether the lawyer’s assistance “[...] *would lose much of its*

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<sup>12</sup> See also, ECtHR, *Xavier da Silveira v. France*, Application no. 43757/05, 21 October 2010, para. 41.

<sup>13</sup> Council of Europe Convention for the Protection of the Profession of Lawyer, CETS No. 226, opened for signature on 13 May 2025, Article 6.3; Committee of Ministers, Recommendation Rec(2000)21 to member states on the freedom of exercise of the profession of lawyer, adopted on 25 October 2000, Principle III.2 (professional secrecy).

<sup>14</sup> *Michaud v. France*, op. cit., para. 118.

<sup>15</sup> ECtHR, *Crémieux v. France*, Application no. 11471/85, 25 February 1993, para. 38.

<sup>16</sup> ECtHR, *André and Another v. France*, Application no. 18603/03, 24 July 2008, para. 42.

- usefulness, whereas the Convention is intended to guarantee rights that are practical and effective.*”<sup>17</sup> In addition, such interference must be subject to clear and precise rules, independent ex ante review, and effective ex post procedural safeguards.<sup>18</sup>
8. In *Altay v. Turkey*, this Court clarified that potential derogations from legal professional privilege may be allowed “*only in exceptional circumstances*”, such as those involving serious crime, major security situations and violence.<sup>19</sup> Where this is the case, the measure’s proportionality is assessed by considering a series of elements, including the relevant offence’s severity and the existence of reasonable suspicion, the existence of additional safeguards, the measure’s scope, and the potential implications for the work and reputation of the individual concerned.<sup>20</sup> In *André and Another v. France*, which concerned a search and seizure at the applicants’ law offices to obtain documents relating to a suspected fraud by their client company, this Court held that subjecting lawyers to such measures solely to overcome investigative difficulties in a tax inspection was disproportionate to the aim pursued.<sup>21</sup>
  9. In *Michaud v. France*, this Court accepted that a reporting duty imposed on lawyers could be reconciled with Article 8 providing that three cumulative features were present. First, the reporting duty did not extend to the lawyer’s defence function or to matters relating to judicial proceedings, but applied only to transactional activities.<sup>22</sup> Second, an independent professional filter, namely, the Chairperson of the Bar Council, was interposed between the lawyer and the executive authority to guarantee the protection of professional secrecy before any onward transmission.<sup>23</sup> Third, the State interest was to prevent money laundering and financing of terrorism, an objective long recognised under Article 8(2) and pursued through a comprehensive international and European legal framework.<sup>24</sup> The cumulative fulfilment of these factors, not any one of them in isolation, led this Court to conclude that the interference was proportionate; conversely, the absence of any one of them would evidence a lack of proportionality under Article 8.
  10. **Given this Court’s strict interpretation and strong safeguards protecting legal professional privilege even in exceptional cases involving serious crime and risks of violence, the interveners submit that, in the absence of such serious and specific considerations, the suspension of legal privilege cannot be justified under Article 8. This is even clearer where the aim is**

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<sup>17</sup> *Campbell v. The United Kingdom*, op. cit., para. 46.

<sup>18</sup> ECtHR, *Kulák v. Slovakia*, Application no. 57748/21, 3 April 2025, paras. 80–87; ECtHR, *Reznik v. Ukraine*, Application no. 31175/14, 23 January 2025, paras. 79–89; ECtHR, *Särgava v. Estonia*, Application no. 698/19, 16 November 2021, paras. 86–88.

<sup>19</sup> *Altay v. Turkey*, op. cit., para. 52.

<sup>20</sup> ECtHR, *Kolesnichenko v. Russia*, Application no. 19856/04, 9 April 2009, para. 31.

<sup>21</sup> *André and Another v. France*, op. cit., paras. 46 – 49.

<sup>22</sup> *Michaud v. France*, op. cit., paras. 127-128.

<sup>23</sup> *Idem*, paras. 129-131.

<sup>24</sup> *Idem*, paras. 92 and 123-125. The legitimate aim of preventing disorder or crime under Article 8(2) of the Convention has been recognised in a series of judgments concerning measures imposed in support of the international fight against money laundering and terrorist financing.

**administrative convenience or where the measure is overly broad, such as when it purports to support the management of an asylum system and covers any information received from the client. Where no specific safeguards are in place and a legal professional may be disqualified in circumstances unrelated to serious crime, the measure falls short of the Article 8 proportionality standard developed by this Court. In particular, a reporting obligation that (i) extends to the lawyer’s defence function in judicial proceedings, (ii) lacks an independent professional filter between lawyer and executive authority, and (iii) is justified by administrative efficiency rather than the prevention of serious crime does not satisfy the cumulative structural safeguards identified in *Michaud*.**

## **II. The role of legal advice, assistance and representation in the context of asylum**

11. Where interference with legal professional privilege concerns legal advice, assistance, and representation in asylum appeals, and requires identifying and reporting any information that might lead to refusal of refugee status, the assessment of the measure’s lawfulness, necessity, and proportionality must take into consideration the nature of these legal services and the role of legal professionals in the asylum context.
12. First, given the declaratory nature of refugee status<sup>25</sup> an individual who meets the criteria for protection is to be regarded as a refugee as soon as the relevant conditions are fulfilled, irrespective of any formal recognition by the competent authorities. Asylum-seekers are presumptively entitled to protection, unless and until it is demonstrated through fair proceedings that they are not so entitled. This entitlement is incompatible with any pre-emptive conclusion on the merits of a protection claim by actors other than the competent authority, including by legal counsellors.
13. Second, the asylum authorities and, on appeal, the judicial authorities, are well-placed and competent to assess and rule on the evidence and statements submitted by an appellant in asylum proceedings. In this role, the authorities benefit from a well-developed international, regional and national legal framework, specialised training, privileged access to country-of-origin information and expert analysis, tools to compare biometric data and verify documents, procedures to assess the age of a person, and dedicated funding.
14. Third, legal professionals have a different role: they advise, assist and represent appellants in asylum cases, receiving and analysing all the information submitted by the individual with the aim of supporting them to present important facts relevant to the examination of their asylum claim. Essentially, legal professionals assist appellants in asylum cases in exercising their rights and complying with their obligations under applicable law, while adhering to professional ethical standards that prohibit the submission of

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<sup>25</sup> UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, HCR/1P/4/Eng/REV.2, 1 February 2019, para. 28.

fabricated information. This Court has recognised the specific vulnerability of asylum seekers, as a group in particular need of protection, and the consequent importance of access to qualified legal assistance for the effective enjoyment of their rights under the Convention.<sup>26</sup> The ability of displaced persons to recall important events with clarity and detail is hampered by factors unique to the context of displacement, such as the impact of traumatic events before or during flight and cultural differences in memory processing,<sup>27</sup> legal professionals advise and assist appellants in asylum cases to overcome these barriers. In the context of this Court's recognition of the special situation of asylum-seekers, which may result in statements that appear implausible to a certain extent, legal professionals help applicants provide "[...] a *satisfactory explanation for the alleged inaccuracies in those submissions* [...]"<sup>28</sup> Reporting obligations that require legal professionals to identify and disclose to the authority whose decision is under appeal any information that may support that contested decision fundamentally distort their role and are incompatible with the nature of legal assistance, advice, and representation in the asylum context. This structural distinction is reflected in this Court's recognition of lawyers as essential agents in the administration of justice.<sup>29</sup>

15. Fourth, such reporting obligations rest on an overly simplistic view of information that may support a claim to refugee status, failing to reflect the inherent complexity of asylum procedures and the need for a nuanced approach in the assessment of information. Determining refugee status requires a thorough, individualised assessment of all elements submitted by the applicant, considered within the context of their circumstances. No two asylum claims are identical: information that may be insufficient to establish refugeehood in one case may be decisive in another, given the complex interplay of factors such as the applicant's personal history, profile, vulnerabilities, family situation, and country of origin conditions. Treating discrete pieces of information as inherently capable of establishing or disproving refugee status is inconsistent with the way in which refugee determination, and any related contentious proceedings, operate in practice. These complexities have been recognised by this Court as well, which has confirmed that, "[...] *although a number of individual factors 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.*"<sup>30</sup> This Court has found that an

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<sup>26</sup> ECtHR, *M.S.S. v. Belgium and Greece* [GC], Application no. 30696/09, 21 January 2011, para. 251 and paras. 301-309. See also ECtHR, *Hirsi Jamaa and Others v. Italy* [GC], Application no. 27765/09, 23 February 2012, para. 204.

<sup>27</sup> European Union Agency for Asylum, *Evidence and credibility assessment in the context of the Common European Asylum System, Judicial analysis*, Second edition, Sections 6.1 and 6.2, available at: <https://www.euaa.europa.eu/publications/judicial-analysis-evidence-and-credibility-context-common-european-asylum-system>

<sup>28</sup> ECtHR, *J.K. and others v. Sweden*, Application no. 59166/12, 23 August 2016, para.

<sup>29</sup> ECtHR, *Morice v. France* [GC], Application no. 29369/10, 23 April 2015, paragraphs 132-139 (lawyers as 'essential agents in the administration of justice').

<sup>30</sup> *Idem*, para. 95.

asylum applicant's account may be credible on the whole even if they have tried to rely on false identities in the past,<sup>31</sup> an approach that the Court of Justice of the EU has also adopted.<sup>32</sup> Moreover, where reporting obligations do not sufficiently specify the types of information falling within their scope, it is impossible for clients and their legal advisers to determine what must be disclosed in a given situation, thereby giving rise to serious concerns regarding legal certainty.

16. **The interveners submit that any assessment of measures interfering with legal professional privilege must take account of the nature of legal services and the role of legal professionals within the relevant framework. In asylum proceedings, legal professionals guide applicants through a complex process and support the presentation of their claim through a nuanced and contextual assessment of all relevant information, including factors affecting memory and coherence. A reporting obligation requiring them to assess the validity of such information is incompatible with the characteristics of asylum procedures.**

### III. **The importance of confidential legal advice, assistance and representation in securing equal access to Convention rights and effective remedies for appellants in asylum cases and refugees.**

17. Asylum law presents certain characteristics making confidential legal advice, assistance and representation essential to ensure that appellants in asylum cases enjoy equal access to Convention rights and effective remedies. When examining cases involving the availability and quality of legal aid, this Court has established that the necessity of such assistance in judicial procedures must be determined on the basis of what is at stake for the individual, the complexity of the applicable law and the capacity of the individual concerned to represent themselves,<sup>33</sup> especially when they do not understand the language of the proceedings<sup>34</sup> or where the subject matter of the case entails a certain emotional involvement.<sup>35</sup>
18. The interveners emphasise that asylum is a specialised and complex area of law that directly engages Convention rights, including the right to life under Article 2 and the prohibition of torture and inhuman or degrading treatment under Article 3, and is often shaped by experiences of trauma and ill-treatment linked to displacement. The confidentiality of exchanges between appellants in asylum cases and their lawyers must therefore be assessed in a manner

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<sup>31</sup> ECtHR, *N. v Finland* Application no. 38885/02, 26 July 2005, paras. 154 and 155; *Mo.M v France*, Application no. 8372/10, 18 April 2013, para. 41.

<sup>32</sup> CJEU, *C-756/21, International Protection Appeals Tribunal and Others (Attentat au Pakistan)*, ECLI:EU:C:2023:523, paragraph 93.

<sup>33</sup> ECtHR, *Steel and Morris v United Kingdom*, 68416.01, 15 February 2005, para. 61; ECtHR, *Czekalla v. Portugal*, 38830/97, 10 October 2002, para. 65.

<sup>34</sup> ECtHR, *Czekalla v. Portugal*, 38830/97, 10 October 2002, para. 65.

<sup>35</sup> ECtHR, *Airey v. Ireland*, 6289/73, 9 October 1979, para. 24. See the similar reasoning in ECtHR, *Anakomba Yula v. Belgium*, 45413/07, 10 March 2009, para. 37 and ECtHR, *Nenov v. Bulgaria*, 33738/02, 16 July 2009, para. 52.

consistent with this Court's caselaw which requires confidentiality in exchanges between a client and their lawyer because they often involve intimate personal information and sensitive issues.<sup>36</sup> Further, appellants in asylum cases are often unfamiliar with the host country's legal system. Administrative practices may further hinder their understanding of key concepts, procedures, rights, and obligations applicable to their circumstances, while their position outside established social and professional networks reduces opportunities to seek guidance elsewhere. In such circumstances, the lawyer assumes a central and often indispensable role in enabling the applicant to make informed decisions and exercise their rights. Where undue interference detrimentally affects legal assistance, including through measures suspending confidentiality, the ability of appellants in asylum cases and refugees to exercise these rights is curtailed. They may not be able to build a relationship with their lawyer to meaningfully discuss and be advised on their rights and obligations, and they may be deterred from reporting and seeking redress for past violations.

19. The latter is especially important in the area of asylum where asylum seekers and refugees are often under the direct control of the authorities: *e.g.*, where the individual is in immigration detention, the effect of the carceral environment and the knowledge that one's exchanges with their lawyer are not confidential may entirely deprive legal assistance of its effectiveness. Similarly, where the individual wishes to raise complaints against the authorities, the lack of confidentiality will deter them from submitting information to their lawyer. This Court has underlined the importance of confidentiality in such situations, both where the detained individual's only link with the outside world is their lawyer, and where its absence would deter the reporting of complaints against the relevant authorities.<sup>37</sup>
20. **The interveners submit that confidential legal advice and assistance are essential to ensuring effective and equal access to Convention rights for appellants in asylum cases and refugees. Given the importance of the rights at stake, the complexity of the legal framework, and the role of traumatic events in such cases, individuals often rely almost entirely on legal assistance to navigate the relevant procedures. Legal professional privilege therefore warrants enhanced protection in this context: any interference requires particularly strict justification under Article 8 and cannot be based on administrative convenience or procedural efficiency.**

#### IV. Guarantees, principles and obligations under international and EU law.

21. Article 53 of the Convention prohibits, *inter alia*, a construction of Convention rights that would limit human rights and fundamental freedoms

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<sup>36</sup> *Altay v. Turkey (No 2)*, *op. cit.*, para. 49.

<sup>37</sup> *Campbell v. The United Kingdom*, *op. cit.*, paras. 45 and 47; See also *Altay v. Turkey (No. 2)*, , paras. 49-51; ECtHR, *S. v. Switzerland*, Application nos. 12629/87 and 13965/88, 28 November 1991, para. 48

guaranteed under any other agreement to which the respondent State is a party. In relation to asylum, the EU asylum *acquis* is relevant as it is binding as a matter of both domestic and EU law.

a) Relevant guarantees under European Union (EU) law

22. For EU Member States, legal aid for asylum applicants must comply with the relevant EU law<sup>38</sup> and Article 47 of the Charter of Fundamental Rights<sup>39</sup> (CFREU) guaranteeing effective judicial protection, including the right to legal aid for those lacking sufficient resources. Like this Court, the Court of Justice of the EU (CJEU) assesses interference with this right by taking into account, *inter alia*, what is at stake for the applicant, their capacity to represent themselves effectively, the complexity of the procedure, and their prospect of success.<sup>40</sup> Except for the likelihood of success, applicants for asylum would as a rule satisfy all the criteria listed.<sup>41</sup> Thus, effective access to legal aid is deemed necessary to ensure respect for the rights under the Charter, including Articles 4, 18, 19 and 47, and any interference with the principles essential to the effectiveness of legal aid must be assessed in light of the importance of these rights.
23. When assessing the operation of the judicial system or the asylum system of an EU Member State, the CJEU has carefully examined whether certain domestic arrangements render the work of legal aid providers difficult or dangerous. The CJEU has held that the lawyer must “[...] *actually be able to carry out satisfactorily his or her task of advising, defending and representing his or her client* [...].”<sup>42</sup> Specifically on legal professional privilege, the CJEU has held that the confidentiality of communication between lawyers and clients is protected under Article 7 and 47 CFREU and entails an obligation to ensure the secrecy of legal consultation covering “[...] *not only the activity of defence but also legal advice* [...].”<sup>43</sup> The CJEU has subsequently confirmed and expanded this approach.<sup>44</sup>

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<sup>38</sup> By virtue of Article 51 (1) CFREU.

<sup>39</sup> See, by analogy, CJEU, Case C-63/01, *Evans and the Secretary of State for the Environment, Transport and the Regions, and The Motor Insurers' Bureau*, judgment of 4 December 2003, para. 77; Case C-279/09, *DEB*, judgment of 22 December 2010, para. 42.

<sup>40</sup> Case C-279/09, *DEB*, judgment of 22 December 2010, para. 61.

<sup>41</sup> Elspeth Guid, *The Asylum Seeker's Right to Free Legal Assistance and/or Representation in EU Law*, pp. 20-23, available at: <http://bit.ly/2upPjNO>.

<sup>42</sup> CJEU, Judgment of 15 July 2021, *Commission v Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraph 206. See also, Judgment of 16 November 2021, *European Commission v Hungary*, C-821/19, ECLI:EU:C:2021:930, paragraphs 122-124, where the CJEU confirmed that domestic law that criminalises the provision of legal aid in certain cases can prevent lawyers from defending the interests of asylum applicants and violates Article 47 CFREU

<sup>43</sup> CJEU, Judgment of 8 December 2022, *Orde van Vlaamse Balies*, C-694/20, ECLI:EU:C:2022:963, paragraphs 27 and 60.

<sup>44</sup> The CJEU has extended this protection to fully qualified tax lawyers in *Belgian Association of Tax Lawyers and Others*, and affirmed in *Ordre des avocats du barreau de Luxembourg* that legal advice by a lawyer is protected under Article 7 of the Charter regardless of the area of law. See, CJEU, *Belgian Association of Tax Lawyers and Others*, Case C-623/22, Judgment of 29 July 2024,

24. The CJEU has further attached importance to the position of Article 47 in Title VI of the Charter, which relates to justice.<sup>45</sup> This position indicates that legal aid forms part of EU law’s protected procedural principles and “[...] *is not conceived primarily as social assistance*,” even where the national system has conceived it as such.<sup>46</sup> Consequently, Member States must organise legal aid services in a manner that is consistent with its character as a right and with procedural obligations attaching to it under EU law. Accordingly, EU law does not permit the reduction or removal of professional standards and procedural guarantees for state-provided legal aid solely because it relies on public funds.
25. Finally, the interveners consider that the effectiveness and efficiency of asylum systems in EU Member States is already ensured through action at EU level. Administrative efficiency is already defined as a clear objective of the Common European Asylum System (CEAS)<sup>47</sup> and its legal instruments foresee specific cooperation obligations, consequences for non-compliance and digital tools to verify the identity of third country nationals.<sup>48</sup>
26. **The interveners submit that reporting obligations imposed on lawyers in respect of client information must be assessed considering the CJEU’s strict protection of legal professional privilege and its emphasis on effective, confidential legal aid. Given the extensive legal and operational tools under the CEAS to ensure procedural effectiveness, such reporting obligations are not necessary. They amount to a disproportionate interference with legal professional privilege, especially when justified by administrative convenience or procedural efficiency.**

*b) Relevant guarantees under international law*

27. Under international law, the *non-refoulement* principle and the right of effective access to justice requires that certain procedural safeguards be adhered to within the refugee status determination procedure, including the right to legal advice, assistance and representation for asylum applicants, and the obligation to ensure confidential asylum procedures.<sup>49</sup> UNHCR considers

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EU:C:2024:639 and CJEU, *Ordre des avocats du barreau de Luxembourg*, Case C-432/23, Judgment of 26 September 2024, EU:C:2024:791, paragraph 53 et seq.

<sup>45</sup> CJEU, Judgment of 22 December 2010, *DEB*, C-279/09, ECLI:EU:C:2010:811, paragraph 40.

<sup>46</sup> *Ibid*, paragraphs 41-42.

<sup>47</sup> European Commission, Pact on Migration and Asylum: A common EU system to manage migration, Press Release, 21 May 2024, available at: [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum\\_en#the-four-pillars-of-the-new-migration-and-asylum-policy](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en#the-four-pillars-of-the-new-migration-and-asylum-policy).

<sup>48</sup> The new Asylum Procedures Regulation (APR) significantly expands these obligations and enhances the available tools to ensure more effective asylum and migration management: see, for example, Article 9 (1), (2) and (5), the concept of implicit withdrawal under Article 41, consequences foreseen under Article 23 and Recital 47 of Directive 2024/1346 (Reception Conditions Directive), and the expanded possibilities to collect, access and compare biometric data to support the management of the asylum system under Regulation (EU) 2024/1358 (Eurodac).

<sup>49</sup> UNHCR, Procedural Standards for Refugee Status Determination under UNHCR’s Mandate, UNHCR, Unit 2, 2.1.1, available at: <https://emergency.unhcr.org/sites/default/files/UNHCR%2C%20Procedural%20Standards%20for>

that the vulnerable situation in which refugees often find themselves further underlines the importance of adhering to this principle.<sup>50</sup> The United Nations' Basic Principles on the Role of Lawyers require governments to respect confidentiality in consultations between lawyers and clients and provide that lawyers shall not be identified with their clients or their clients' causes.<sup>51</sup>

28. Article 11 of the American Convention on Human Rights protects the right to privacy while the Inter-American Court of Human Rights (IACtHR) has confirmed that, where the right to privacy concerns communications between lawyers and clients, greater protection must be afforded.<sup>52</sup> In "*José Alvear Restrepo*" *Lawyers Collective v. Colombia*, which concerned surveillance of human rights defenders, the IACtHR held that any interference with the professional secrecy of lawyers and journalists must receive prior judicial permission based on evidence suggesting illegal actions and following a proportionality assessment.<sup>53</sup> In his Concurring Separate Opinion in this case, Judge Rodrigo Mudrovitsch further contextualised the adopted reasoning, observing that the guarantees identified are rooted in [...] *the time-honored rule that lawyers must never be confused with their clients or their clients' cases as a consequence of their professional practice.*"<sup>54</sup>
29. **The interveners submit that international law safeguards the confidentiality of lawyer–client communication as integral to the right to legal advice, assistance, and representation, and that this protection must be applied with particular rigor in the context of asylum and human rights defence.**

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[%20Refugee%20Status%20Determination%20under%20UNHCR%E2%80%99s%20Mandate\\_0\\_0\\_0\\_0.pdf](#).

<sup>50</sup> UN High Commissioner for Refugees (UNHCR), UNHCR Advisory Opinion on the Rules of Confidentiality Regarding Asylum Information, 31 March 2005, available at: <https://www.refworld.org/jurisprudence/amicus/unhcr/2005/93151>.

<sup>51</sup> UN Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 7 September 1990, Principles 18, and 22. See also Principle 15 (lawyers shall always loyally respect the interests of their clients).

<sup>52</sup> IACtHR. Case of Tristán Donoso v. Panama. Preliminary Objection, Merits, Reparations, and Costs. Judgment of January 27, 2009. Series C No. 193, para. 75.

<sup>53</sup> I/A Court H.R., Case of Members of the "José Alvear Restrepo" Lawyers Collective v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 18, 2023. Series C No. 506, para. 561.

<sup>54</sup> Inter-American Court of Human Rights, Case of Members of the "José Alvear Restrepo" Lawyers' Collective v. Colombia, Judgment of 18 October 2023 (Preliminary Objections, Merits, Reparations and Costs), Concurring Separate Opinion of Judge Rodrigo Mudrovitsch, para. 221.