THE HIGH COURT

JUDICIAL REVIEW

IN THE MATTER OF DIRECTIVE 2013/33/EU AND

THE EU (RECEPTION CONDITIONS) REGULATIONS 2018

Between:

2023 No. 175 JR

[redacted]

Applicant

-and-

THE MINISTER FOR CHILDREN, EQUALITY, DISABILITY, INTEGRATION AND YOUTH, IRELAND AND THE ATTORNEY GENERAL

Respondents

-and-

THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Notice Party

-and-

THE IRISH HUMAN RIGHTS AND EQUALITY COMMISSION

Amicus curiae

OUTLINE LEGAL SUBMISSIONS OF THE *AMICUS CURIAE*

Introduction

1. By order of Mr Justice Meenan dated 15 March 2023, the Irish Human Rights and Equality Commission ("the Commission") was given liberty to intervene as *amicus curiae* in these proceedings.

2. To the extent that there may be factual matters in dispute between the applicant and respondents or notice parties, it is not the role of the Commission as *amicus* to express views on those matters and it does not propose to do so.

Human dignity

3. Article 2 of the consolidated version of the TEU enshrines human dignity as the *first* foundational value of the EU. Article 2 states:

> The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

4. In its preamble, the Charter of Fundamental Rights of the European Union ("the Charter"), which by Article 6 TEU has the same legal value as the Treaties, affirms the importance, in the Union, of the value of human dignity, stating:

> Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; … It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

5. Article 1 of the Charter provides:

> Human dignity is inviolable. It must be respected and protected.

6. Although the term *right* is not used in Article 1, the dignity of the human person is "not only a fundamental right in itself but constitutes the real basis of fundamental rights" according to the explanation on Article 1 appended to the Charter (OJ C 303/17 - 14.12.2007).[1] As the explanation points out, in Case C-377/98 *Netherlands v. Parliament and Council* [2001] ECR I-7149, at grounds 70 — 77, the ECJ "confirmed that a fundamental right to human dignity is part of Union law". The explanations relating to the Charter were prepared '*under the authority of the Praesidium of the*

[1] At C 303/17

Convention which drafted the Charter' and have been updated from time to time. As both the explanations appended to the Charter *and* the EU Agency for Fundamental Rights point out[2], while they do not as such have the status of law, these explanations are "a valuable tool of interpretation intended to clarify the provisions of the Charter".

7. Under Article 51 of the Charter, human-dignity protection becomes relevant to Member States' actions "with due regard to the principle of subsidiarity …only when they are implementing Union law" (as is the case here).

8. Taking a closer look at the text of Article 1, Catherine Dupré states in *The EU Charter of Fundamental Rights - A Commentary* (Bloomsbury, 2nd Ed. Peers & Others) at [1.30], when considering the meaning of the reference to *inviolability*:

> …, the reference to inviolability places human beings at the top of the EU normative pyramid (if this can be visualised in this way) and prescribes that the power balance between human beings and the EU is tipped in favour of the former, so that none of the EU (economic and financial) activities may ever deprive human beings of their humanity.
>
> Therefore, considering human dignity to be the ultimate benchmark and compass for the EU and its legal developments means that human dignity operates as a principle of interpretation as well as a substantive good that deserves the highest degree of protection. As such, it involves a rethinking of the ultimate purpose (and nature) of the EU and brings into sharp relief the transformative role of the EU Charter. Some of this reordering of EU priorities could be seen in the so-called *Omega* ruling[3] (delivered before the Charter came into force), in which the CJEU held that the fundamental freedoms had to be interpreted in compliance with the principle of human dignity. For all these reasons, human dignity is a crucial tool of European constitutionalism in times of crisis, namely when the foundations of democracy and human rights are being systematically challenged. [Emphasis and footnote added, and

[2] Article 1 - Human dignity | European Union Agency for Fundamental Rights (europa.eu)
[3] Case C-36/02

original footnotes omitted.]

9. The Commission also agrees with the views expressed by Tobias Lock in Kellerbauer & Others *The EU Treaties and the Charter of Fundamental Rights A Commentary* (OUP 2020) to the effect that:

> By stipulating that human dignity is inviolable, Article 1 CFR shows that it is an absolute right. The wording of Article 1 CFR contains both a negative obligation to refrain from interfering with the right ('respected') and a positive obligation to safeguard the right ('protected').

10. Lock also says that the General Court's 'suggestion' in Case T-406/13 *Gossio*[4] (an action to annul a Council decision imposing financial restrictions) at [117]-[18] that Article 1 of the Charter is subject to limitations in accordance with Article 52(1) CFR "is therefore untenable". The Commission submits that the General Court's 'suggestion' must be questioned, for the following reasons.

(i) At [116] the General Court referred to three Charter Rights, namely, Articles 1, 4, and 7. It then went on to state that these rights are not absolute. But it is beyond doubt that Article 4 (which corresponds to Article 3 ECHR) is absolute.

(ii) The 'precedent' cited by the General Court in support of its observation was paragraph [65] of Joined Cases C-92/09 et C-93/09 *Volker und Schecke*[5]. However, in *that* paragraph, the Grand Chamber observes that Article 52(1) of the Charter accepts that limitations may be imposed on the exercise of "rights such as those set forth in Articles 7 and 8 of the Charter". As those rights essentially correspond to those guaranteed by Article 8 of the ECHR it is entirely unsurprising that the ECJ would hold that *they* are not absolute and may be restricted; that does not mean it would take the same view of Articles 1 and 4 of the Charter.

(iii) The General Court ultimately rejected Mr Gossio's argument in relation to

[4] Case T-406/13. The judgment is only available in French so the extracts quoted herein are subject to that caveat.
[5] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62009CJ0092&from=en

those articles, saying at [120] that it could not be considered that the restrictive measures applicable to him "constitute inhuman or degrading treatment or would infringe his dignity". Its views on whether those rights could be restricted therefore did not, strictly speaking, arise.

(iv) Finally, and in any event, no "limitation on the exercise of the rights and freedoms" recognised by the Charter, including Article 1, has been provided for by law in the Directive, as required by Article 52(1), with the result that Article 52(1) of the Charter cannot and does not arise.

11. In the circumstances, it is submitted that this honourable Court should treat Article 1 as an absolute right from which Member States may not derogate.

National transposing legislation to be interpreted consistently with EU law, including the Charter

12. This case concerns a claim that the first respondent ("the Minister") breached the duty to provide material reception conditions under the European Communities (Reception Conditions) Regulations 2018 (S.I. No. 230 of 2018) ("the 2018 Regulations"). This statutory instrument transposes Directive 2013/33/EU ("the Directive") into national law.

13. Having notified the Commission of its wish to "accept and be bound by" the Directive, Ireland became so bound from 24 May 2018.[6] On 29 June 2018 the Minister made the 2018 Regulations; they placed reception conditions in Ireland on a statutory footing for the first time.

14. Although the Directive, having been transposed, does not generally have direct effect in Irish law, it is appropriate to refer to its provisions because the 2018 Regulations are to be interpreted in a manner consistent with it.

15. Recitals (11) and (35) of the preamble to the Directive state:

[6] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018D0753&from=PT

(11) Standards for the reception of applicants that will suffice to ensure them a dignified standard of living and comparable living conditions in all Member States should be laid down.

…

(35) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 6, 7, 18, 21, 24 and 47 of the Charter and has to be implemented accordingly. [Emphasis added.]

16. In the circumstances, according to settled case law of the ECJ, the "authorities and courts" of a Member State must not only interpret its national law (transposing the Directive) in a manner consistent with EU law but also make sure it does not rely on an interpretation of the Directive that would be in conflict with the fundamental rights protected by the EU legal order or with the other general principles of EU law (see, to that effect, Case C-101/01 *Lindqvist*, at [87], Case C-305/05 *Ordre des barreaux francophones et germanophones* at [28], and Joined Cases C-411/10 and C-493/10 *N.S. and Others* at [77]).

17. Because the Directive and the 2018 Regulations are to be interpreted in a manner consistent with Charter rights, it is open to the Commission to make submissions on the meaning of their respective provisions.

The Directive and the 2018 Regulations

18. Article 2(g) of the Directive defines *material reception conditions* as meaning "the reception conditions that include housing, food and clothing provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance."

19. Regulation 2 of the 2018 Regulations provides that those conditions mean:

(a) the housing, food and associated benefits provided in kind,

(b) the daily expenses allowance, and

(c) clothing provided by way of financial allowance under section 201 of the Social Welfare Consolidation Act 2005;…

20. Article 17(1) of the Directive requires Ireland to "ensure that material reception conditions are available to applicants". Paragraph (2) requires it to "ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health." The Commission observes that the use by the Union legislature of the words 'ensure' and 'guarantees' respectively, emphasises the clear and unambiguous nature of the duty placed on the Member States in these two paragraphs.

21. Article 18, which deals with the situation where a Member State has opted to provide housing *in kind* (the method adopted by Ireland), sets out in some detail how this housing should be provided. It also provides for a partial derogation from the obligations imposed by the Article at paragraph (9), where it states:

> In duly justified cases, Member States may exceptionally set modalities for material reception conditions different from those provided for in this Article, for a reasonable period which shall be as short as possible, when:
>
> (a) an assessment of the specific needs of the applicant is required, in accordance with Article 22;
> (b) housing capacities normally available are temporarily exhausted.
>
> Such different conditions shall in any event cover basic needs. [Emphasis added.]

(As will be seen, this provision has been transposed by Regulation 4(5) and (6) of the 2018 Regulations.)

22. The Commission makes two observations on Article 18(9). First, it is notable that the *only* one of the material reception conditions from which a derogation is permitted when *housing capacities normally available are temporarily exhausted* is that of

housing (when a Member State has opted to provide housing in kind); no derogation is permitted – when those circumstances arise - from the obligation to provide food and clothing (in kind or otherwise) along with a daily expenses allowance.

23. It is also noteworthy that any derogation from the requirement to provide "normal" accommodation cannot fall below a 'floor' providing for an applicant's "basic needs".

24. It is submitted that this interpretation is supported by a consideration of judgments of the ECJ.

25. At paragraphs 39, 42 and 56 of its judgment in Case C-179/11 *Cimade and GISTI v. Ministre de l'Intérieur* of 27 September 2012, the ECJ (dealing with the predecessor to the Directive in the context of the operation of the relevant Dublin Regulation) held:

> 39. ... Regarding the period during which the material reception conditions, that is to say, housing, food and clothing plus a daily expenses allowance, must be granted to the applicants, Article 13(1) of Directive 2003/9 provides that that period is to begin when the asylum seeker applies for asylum.
>
> …
>
> 42 The provisions of Directive 2003/9 must also be interpreted in the light of the general scheme and purpose of the directive and, in accordance with recital 5 in the preamble to that directive, while respecting the fundamental rights and observing the principles recognised in particular by the Charter. According to that recital, the directive aims in particular to ensure full respect for human dignity and to promote the application of Articles 1 and 18 of the Charter.
>
> …
>
> 56. In addition, further to the general scheme and purpose of Directive 2003/9 and the observance of fundamental rights, in particular the requirements of Article 1 of the Charter, under which human dignity must be respected and protected, the asylum seeker may not, as stated in paragraphs 41 to 44 above, be deprived – even for a temporary period of time after the making of the application for asylum and before being actually transferred to

the responsible Member State – of the protection of the minimum standards laid down by that directive. [Emphasis added.]

26. Article 1 of the Charter was also expressly cited by the ECJ in its Judgment of 27 February 2014, *Saciri and Others* (C-79/13), in which the Court (again considering the Directive's predecessor) stated at para. 35:

> . . . the general scheme and purpose of Directive 2003/9 and the observance of fundamental rights, in particular the requirements of Article 1 of the Charter of Fundamental Rights of the European Union, under which human dignity must be respected and protected, preclude the asylum seeker from being deprived – even for a temporary period of time after the making of the application for asylum and before being actually transferred to the responsible Member State – of the protection of the minimum standards laid down by that directive (see *Cimade and GISTI*, paragraph 56). [Emphasis added.]

27. *Saciri* concerned a situation where Belgium's '*reception network for asylum seekers [was] saturated*' (at [28]) but the ECJ held that saturation *per se* did not justify any derogation from meeting the minimum reception standards (at [50]).

28. In Case C-233/18 *Hacqbin*, the ECJ, when considering the sanctions that may be imposed on an applicant for serious breaches of the rules of an accommodation centre as well as seriously violent behaviour, referred to a person's most basic needs "*such as a place to live, food, clothing and personal hygiene*" (at [46]), emphasising that even such an applicant could not be deprived "*of the possibility of meeting his or her most basic needs*" (at [57]).

29. In its judgment of 1 August 2022 in Case C-422/21 *Ministero dell'Interno v TO* (another case dealing with sanctions for misconduct) the Court held:

> 39. However, the Court has ruled that a sanction that is imposed exclusively on the basis of one of the reasons mentioned in Article 20(4) of Directive 2013/33 and consists in the withdrawal, even if only a temporary one, of the full set of material reception conditions or of material reception

conditions relating to housing, food or clothing would be irreconcilable with the requirement, arising from the third sentence of Article 20(5) of the directive, to ensure a dignified standard of living for the applicant, since it would preclude the applicant from being allowed to meet his or her most basic needs such as a place to live, food, clothing and personal hygiene (… *Haqbin* …, paragraph 47)).

…

41. In the light of those considerations, the fact, mentioned by the referring court, that the conduct to be sanctioned may be particularly serious and reprehensible cannot lead to a different conclusion. [Emphasis added.]

30. Article 18(9) of the Directive has been transposed by Regulation 4(5) and (6) of the 2018 Regulations, which state:

> (5) The Minister may, exceptionally and subject to paragraph (6), provide the material reception conditions in a manner that is different to that provided for in these Regulations where—
>
> (a) an assessment of a recipient's specific needs is required to be carried out, or
>
> (b) the accommodation capacity normally available is temporarily exhausted.
>
> (6) The provision of the material reception conditions authorised by paragraph (5) shall—
>
> (a) be for as short a period as possible, and
>
> (b) meet the recipient's basic needs. [Emphasis added.]

31. Ireland has correctly transposed the restriction imposed on it by the Directive, namely that even when it cannot temporarily provide accommodation in the normal way, it must still ensure that an applicant's "basic needs" are met. Nor can there be any doubt that those basic needs include shelter, hygiene, food and water.

Prohibition of inhuman or degrading treatment under Article 4 of the Charter

32. Insofar as the Charter contains rights that correspond to ECHR rights, Article 52(3) of

the Charter provides that "the meaning and scope of those rights shall be the same as those laid down by the [ECHR]." Article 4 of the Charter corresponds to Article 3 ECHR. As a result, the prohibition of inhuman or degrading treatment is absolute and non-derogable.

33. In *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, ECHR 2011, the European Court of Human Rights considered whether a situation of extreme material poverty could raise an Article-3 issue. The Court assessed the situation in which an asylum seeker had found himself in Greece. It identified the applicant's *most basic needs*, at [254], as being "food, hygiene and a place to live." A lack of food, hygiene, and shelter meant that the applicant was living in "extreme material poverty". However, the Court also observed that the situation in which the applicant had found himself was "particularly serious". He had "allegedly spent months" living in the state of extreme poverty. Added to that was the "ever-present fear of being attacked and robbed" and "the total lack of any likelihood of his situation improving". See also what the Court says at [258] and [262]. The Court took into account Greece's obligations towards the applicant under the Directive's predecessor and held that Greece had violated Article 3 ECHR, concluding at [263] that it considered that "such living conditions, combined with the prolonged uncertainty in which he has remained and the total lack of any prospects of his situation improving, have attained the level of severity required to fall within the scope of art.3 of the Convention".

34. Similarly, in *NH v France*, App No 28820/13, 2 July 2020 the ECtHR appeared to regard the length of time during which an international protection applicant was without access to basic needs as relevant to whether Article 3 had been engaged; at [187] and [188], it appeared to regard a delay of "sixty-three days" after which applicant S.G. had "means to provide for his essential needs" as resulting in a situation where "his living conditions did not attain the level of severity required for the purposes of Article 3 of the Convention".

35. Turning to Union caselaw, in Case C-163/17 *Jawo*, the ECJ noted, at [80], the presumption or 'premiss' that the Member States' national legal systems can provide "effective protection of the fundamental rights recognised by the Charter, particularly Articles 1 and 4 thereof". However, it also noted at [83] that it was not inconceivable

that the international protection system "may, in practice, experience major operational problems in a given Member State". At [91] it held that "in order to fall within the scope of Article 4 of the Charter, …, the deficiencies …must attain a particularly high level of severity, which depends on all the circumstances of the case" and it went on, at [92] (and citing *M.S.S. v. Belgium and Greece*), to observe that there is a breach of Article 4 of the Charter (and Article 3 ECHR) "where the indifference of the authorities of a Member State would result in a person wholly dependent on State support finding himself, irrespective of his wishes and personal choices, in a situation of extreme material poverty that does not allow him to meet his most basic needs, such as, inter alia, food, personal hygiene and a place to live, and that undermines his physical or mental health or puts him in a state of degradation incompatible with human dignity". At [93] the Court explained that that threshold "cannot therefore cover situations characterised even by a high degree of insecurity or a significant degradation of the living conditions of the person concerned, where they do not entail extreme material poverty". See also the ECJ's earlier judgment in Joined Cases C-411/10 and C-493/10 *N.S. and ME* where it held, at [86] that "systemic flaws" in the asylum procedure and reception conditions, resulting in inhuman or degrading treatment, could result in a breach of Article 4 of the Charter.

36. While the index of duration of deprivation of basic needs may not meet the threshold set out in this case, the indices of 'extreme material poverty' and 'degradation incompatible with human dignity' are apparent.

37. The Commission respectfully submits that it is not necessary, in this case, for the Court to consider whether there has been a breach of Article 4 as it is quite clear that on a reading of the 2018 Regulations, interpreted in the light of the Directive and Article 1 of the Charter, the respondents have clearly breached the obligations imposed on them by those Regulations.

The proceedings are not moot

38. Although the applicant has now been provided with material reception conditions, he is maintaining his claim for declaratory relief. While the respondents' carefully drafted Statements of Opposition plead that the claims for *mandatory injunctive relief* are now moot, they do not plead that the *declaratory-relief* claims are moot.

Presumably this is because they view those claims as live.

39. The issue of whether a declaratory-relief claim is moot is governed by the Supreme Court judgment in *M.C. v. Clinical Director of Central Mental Hospital* [2021] 2 IR 166, where the Court of Appeal had determined that the case was moot because the applicant had been discharged from the Central Mental Hospital. However, the Supreme Court, (Clarke C.J., McKechnie, MacMenamin, Charleton, and Baker JJ.) held that the case was not moot in circumstances where the applicant was maintaining a claim for declaratory relief and damages. Baker J., speaking for the court, stated at para. 49:

> Whilst I would be reluctant to say that every claim which seeks a declaration that there has been a violation of constitutional and/or ECHR rights would pass a threshold test if an argument of mootness was raised, the present case is one where the applicant seeks to assert a breach of established and fundamental rights.

40. She held that an important question remained to be determined; a subsisting issue regarding the administration and interpretation of procedures was not only subjectively important to the applicant, because of embarrassment and humiliation which she had suffered, but also because of the central importance of the rights invoked in the constitutional and Convention legal order (at [52]). Baker J. referred to *Biržietis v. Lithuania, Application No. 49304/09* (2016). In that case, the ECtHR held that although the applicant had been released from prison, absent an acknowledgement either express or in substance that there had been a breach of the Convention, and an offer of redress, he had not lost his status as a "victim" for the purposes of *admissibility*. Baker J. observed that, while the Strasbourg Court was applying a test for admission of a complaint, a test that has regard both to an applicant's subjective perceptions and to what was objectively at stake, it was nonetheless a "useful approach" to the argument that a claim for declaratory relief was moot (at [49]).

41. In this case, the maintained declaratory relief must be subjectively important from the applicant's perspective, because of the embarrassment and humiliation he suffered

while being forced to live on the streets. Further, objectively, the Charter rights to which the pleaded declarations relate are fundamental rights. In determining whether they were breached in this case is and, having regard to the position adopted by the first respondent, is likely to continue to be of relevance to a significant number of *other* single male international-protection applicants. In the circumstances, these proceedings are not moot. (See also, where relevant, the Supreme Court's recent judgment in *Odum v MJE* [2023] IESC 3.)

Resource implications arising from exceptional circumstances cannot excuse breaches of EU law

42. Several key factual matters seem not to be in dispute. Prior to the grant of leave to apply for judicial review in this case, the only step taken by the State to provide material reception conditions was that the applicant was given a €28 *Dunnes Stores* voucher.

43. At all times, the State respondents have indicated to the High Court that they accepted that the applicant was not provided with the material reception conditions to which he was entitled as a matter of national law. However, an examination of the Statements of Opposition shows that the respondents don't accept that the applicant is entitled to any declaratory relief, notwithstanding that the material reception conditions were not provided.

44. It would seem from the Statements of Opposition that the respondents are seeking to oppose this case by making an argument that exceptional circumstances have arisen involving the outbreak of war in Ukraine resulting in an enormous displacement of persons across Europe coupled with the sudden unexpected increase in the number of applications for international protection being made in Ireland. These factors have created unprecedented pressures for the first respondent in meeting his acknowledged obligations under the 2018 Regulations. The first respondent is dependent on the resources available at any given time. There has been no unlawful failure to allocate necessary resources to address the problem. The first respondent operates a 'protocol' of 'first come first served' in respect of its accommodation centres.

45. It might be noted that the matters advanced by the respondents in opposing the case based on exceptional circumstances relate only to difficulties securing suitable accommodation. However, and as outlined above, the concept of *material reception conditions* is not limited to housing. It also includes "food and clothing provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance". The evidence in this case would tend to suggest that, other than by way of the initial €28 voucher, no effort was made to provide the applicant with these elements of the material reception conditions while he was waiting to be housed. It is clear from the analysis of the 2018 Regulations, the Directive and the ECJ case law that any difficulties securing accommodation in kind would not provide a defence to that failure.

46. The respondents' position that exceptional circumstances justify a delay in providing material reception conditions also deprives Article 17(1) and (2) and Article 18 of the Directive of their effectiveness. Any interpretation that renders a provision of the Directive ineffective is an incorrect interpretation.

47. Nor, as the applicant argues, can the Minister escape the duty to provide material reception conditions by relying on what he describes as an "established protocol governed by objective criteria" to allocate accommodation in kind to some applicants but leave some single males without any shelter on the streets. The legality of such an approach is not supported by any interpretation of the Directive or the 2018 Regulations.

48. The Commission also observes that while the Minister has referred to providing "tented accommodation" in the past, and while he has put forward reasons of time and expense to justify not sourcing private sector accommodation on a temporary basis for persons such as the applicant, he has made no reference whatsoever to the possibility of providing well heated and properly supervised secure temporary tented accommodation, with associated sanitary facilities, "for a reasonable period which shall be as short as possible" while the difficulties described in his affidavits are being experienced. Without prejudice to the duty on the State to provide a more dignified form of accommodation on a medium and long-term basis, tented accommodation is the very *minimum* that could be expected - on a temporary basis and *only* in a crisis -

to avoid a situation where asylum applicants are forced to sleep on the streets.

49. It is well settled that, as a matter of EU law, lack of resources—even where the reason for the lack of resources is genuinely an innocent thing for which the Member State bears no responsibility—cannot form a basis for non-compliance with EU obligations. See Case C-144/97 *European Commission v. France* at [7] and [8] and Case C-39/88 *Commission v. Ireland* at [10] and [11].

50. In addition, and in any event, the floor provided for in Reg 4(5) and (6) of the 2018 Regulations (transposing Art 18(9)) may not be breached by a Member State. The uncontroverted evidence of the applicant establishes both that Article 1 of the Charter is engaged *and* that that floor has been breached by the respondents. In the circumstances the Commission submits that appropriate declarations should be made by this honourable Court.

David Leonard
Rosario Boyle SC

20 March 2023
(Word count: 5031)