

EXAMINING REFUGEES' PERSONAL IDENTITY RIGHTS IN LIGHT OF ECHR ARTICLES 3 AND 8 AND RELEVANT ECTHR DECISIONS

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Abstract: This article explores the concept of personal identity concerning refugees. The right to the individual identity of a refugee, as a person and as a refugee, is explained by considering the European Convention on Human Rights (ECHR) under articles 3 and 8. To illustrate this, it uses real-life examples from cases in the European Court of Human Rights (ECtHR) that focus on refugees. The first aim is to show how States may block refugees' entrance or misuse their identities in asylum policies, often through illegal practices or inaction. Second, the goal is to lay out the complex relationship between a refugee's identity and status within their destination country's legal and societal systems.

Keywords: Personal Identity, Identity Rights, ECHR, ECtHR, Refugees, Categorisations, Identification.

Summary: 1. INTRODUCTION. 2. ON PERSONAL IDENTITY AND THE REFUGEES' RIGHT TO PERSONAL IDENTITY. 2.1. The Scope of Personal Identity. 2.2. Refugees' Right to Personal Identity with Links to ECHR Articles 3 and 8. 3. PUSHBACKS AND DETENTION INFRINGING ON REFUGEES' IDENTITY RIGHTS. 4. SOCIAL COHESION *VIS-À-VIS* THE RIGHT TO PERSONAL IDENTITY. 5. HOW CAN THE ECtHR MITIGATE THE TENSIONS ARISING FROM THE MISALIGNMENT BETWEEN LAW AND PRACTICE THAT VIOLATES REFUGEES' IDENTITY RIGHTS? 6. CONCLUSION.

1. INTRODUCTION

Scholars have extensively studied the legal definition of refugees under international law (Storey, 2023), the rights of refugees (Hathaway, 2021), and the illegal practices of States (Fiddian-Qasmiyeh et al., 2014). Goodwin-Gill examined the conflict between law and State policies (Goodwin-Gill, 1999). Itamar Mann explored illegal State responses, particularly pushback against refugees from specific regions (Mann, 2020), while Thomas Gammeltoft-Hansen and James C. Hathaway discussed the deterrence measures used against refugees (Gammeltoft-Hansen & Hathaway, 2015). David Miller identified illegal State practices as part of the “*refugee selection*” processes (Miller, 2018). Tendayi Achiume linked the mentioned practices to “*racial borders*” (Tendayi Achiume, 2022). Gerasimos Tsourapas formulated how some States act as “*refugee-rentier states*” (Tsourapas, 2019, p. 469). Delphine Rodrik examined pushback policies and how they deny refugees the right to be recognised as persons before the law, as outlined in Article 16 of the United Nations (UN) International Covenant on Civil and Political Rights (Rodrik, 2022).

The aspect often overlooked in the scholarly analyses mentioned above is the refugee as an individual, precisely, their *identity* and *right to personal identity*. As shown

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in the article's selected European Court of Human Rights (ECtHR) cases, the conditions refugees face—such as being left without clothing or shelter or being pushed back to the place they fled from—result in the infringement of refugees' identity.

The geographical scope of the subject under analysis pertains to State parties to the European Convention on Human Rights (ECHR). This article discusses the relevant asylum policies of refugee-receiving State parties to the Convention and their personnels' illegal actions that infringe upon refugees' right to personal identity through the case law of the ECtHR. This article also discusses the asylum policies of the United States of America (USA) and Australia, which serve as striking examples of how an illegal State practice can contradict refugees' rights and their right to personal identity. The analysis highlighted the USA and Australia's practices because these countries shape and influence current State trends globally regarding asylum and categorising individuals as deserving or undeserving.

The people arriving in the State Parties to the ECHR, the USA, and Australia include those who have escaped impoverished, underdeveloped, or disadvantaged developing countries experiencing economic hardship, armed conflict, and political instability. They are the ones who are efficiently categorised as the others because they do not look like, talk like, think like, or walk like the individuals holding the majority in the host society. It should be acceptable to be different, provided that society acknowledges that being different does not imply danger or inferiority. Yet, individuals forming the host society tend to perceive refugees as the ones who are "*rightless*" - the "*scum of the earth*" (Arendt, 1968). Against this background, since this article aims to highlight both refugees' rights and their rights as rights holders, readers may perceive the ongoing analysis as conflating refugee rights with the general legal problems of foreigners. Most examples demonstrated in the article are about refugees whose identity rights are infringed.

On the other hand, the analysis reveals a few incidents involving non-refugee foreign persons to highlight the actual approach towards the 'others'. This way of evaluation aims to demonstrate that some States subject refugees to violent treatment who happen to be in the category of others among foreigners possessing qualities that make them outsiders. At some point, on some levels, individuals experience hardship not just because they are refugees but because they are 'identified' as undeserving. The unspoken traits of undeserving individuals are, in a way, described through the examples given about foreigners in general.

Regarding the methodological analysis employed, this article uses relevant ECtHR case law to resolve the scope of refugees' right to personal identity with links to Articles 3 and 8. The selected cases describe the actions and inactions of certain State parties to the ECHR that violate refugees' right to personal identity. The article examines the right to personal identity, referencing relevant international legal principles, regulations, and philosophical perspectives. It explains the rationale for including analyses from other social science disciplines, focusing on legal regulations and pertinent ECtHR cases by applying Eric R. Wolf's perspective. According to Wolf, the World is a complex whole comprised of mutually interdependent processes, and research that breaks this down

into parts risks failing to capture the whole reality (Wolf, 2013). The article also adopts Wolf's other approach as a method of analysis. Wolf, in his book, talks about an *imaginary* traveller. The traveller lives in the 1400s. Through the traveller's eyes, Wolf describes the World to his readers (Wolf, 2013, p. 34). Similarly, the article reveals the challenges faced by real-life refugees in today's contemporary world, focusing on identity and its associated rights. Further, as the readers can notice, the ECtHR case law and scholarly analysis form the foundation of this article. This article charts relevant cases and scholars' views to set forth the current trend in understanding refugees' identity rights in the context of European Human Rights Law. For this reason, the article cites scholars who have written on refugees' rights, particularly identity rights, from various social science disciplines.

Additionally, it has nourished its analysis from the views of leading scholars who have contributed to this field of law since the emergence of the new era of human rights law following WWII. In that respect, this article considers refugees' identity rights in a context when the drive towards European integration was interrupted by Hitler's ideology of uniting Europe by force. Therefore, it reads rights enshrined under the Convention by embracing the importance of 'individual freedom' (Weil, 1963), which highlights 'what it takes to be a human' and the significance of our existence through our identities. Considering that the fundamentals of individual freedom were born in Europe, this article also considers several works that have studied the concepts of Europe and being a European. For example, this article employs Étienne Balibar's approach regarding Europe as a concept that is connected to cosmopolitan projects, imperial hegemony, resistance movements, colonial claims of civilisation, territorial disputes among rival blocs, and the formation of a zone of prosperity in the north Mediterranean as a great power in the twenty-first century (Balibar, 2004, p. 10).

Regarding refugees' rights in human rights law (Chetail, 2021), this article approaches refugees as rights holders as persons and as refugees. However, some States have disregarded this fact due to their asylum politics (Hamlin, 2021), including employing deterrence practices (Gammeltoft-Hansen and Hathaway, 2015). For example, Hannah Arendt acknowledged the illicit State practices. She described the refugees' rightlessness by emphasising that they became stateless in a philosophical sense upon crossing the borders of the departure State (Arendt, 2010). As this article explains, the refugees' journey of escaping from persecution starts with crossing international borders and continues in the destination State. Therefore, it aims to dispel the prejudice that surrounds refugees, regarding them as "*homo sacer*" (Agamben, 1998) to emphasise their identity as human beings and holders of rights (Benhabib, 2004). It seeks to "*speak of the unspeakable*" to reveal the humane and rational truth (Steiner 2013, p. 123), as incidents show that some States subject refugees to inhuman and irrational treatments through unjustified detentions, pushbacks and discriminatory practices preventing their integration based on 'presumed identifications'. In that respect, this article considers an uneasy tension between acknowledging the State's rights to set the terms of admission and recognising the moral significance of refugees' enduring presence (Costello, 2016, p. 157).

This article emphasises that States' violent treatments contradict what international human rights law, particularly European Human Rights law, offers. European Human

Rights Law helps us to understand which State practices are illicit and how they breach refugees' identity rights, regulated under the ECHR. The article explains the claim mentioned in six parts.

The Article's first part is an introduction, which outlines its central inquiry and structure.

The second part explains the concept of identity and the right to possess a personal identity, linking it to the European Convention on Human Rights (ECHR/ the Convention). It first examines the concept of personal identity without involving refugeehood. It clarifies that various social science fields have examined the idea of identity. Each field focuses on an individual's journey of self-discovery or self-identity. Self-identity is shaped by multiple layers developed through one's perspective on life and societal influences that affect all these layers. This article adopts the definition of identity provided by Tadeusz Paleczny and Bogdan Zieliński, who define identity as a "*synthesis of the relations between [people] and the world*". Identity emerges as the result of "*a process of the conscious adaptation of [people] to the changing conditions that surround [them]*". The conditions are shaped by biological and social factors, including "*appearance, gender, race, ethnicity, age, experience and social position*" (Paleczny and Zieliński, 2008). The article couples identity and personal, as scholars do in the book *Personal Identity and the European Court of Human Rights* (Marshall, 2022c). Because the word personal highlights the individual. Personal identity represents the process of forming one's identity. Once the individual understands and embraces their identity, it becomes an integral part of the person. Identity formation requires a biological space for thought production. The right to personal identity affords people the space and security to exist authentically. However, as entities, persons need the ability to fulfil their capacities. Such fulfilment requires legal safeguards and security. Only legal protection can help individuals be their own person (Marshall, 2022c).

The article's second part emphasises the importance of domestic legal regulations creating a framework for refugees and their identification and protection, which allows them to function within society and secure their rights under the law when needed. However, we must also consider international human rights law with links to the legal aspects of refugees' identity and its protection, establishing personal identity as a fundamental right. Democratic States treat international human rights as the foundation for safeguarding fundamental rights and freedoms. As a result, relevant regulations and principles of international law play a key role in shaping the right to personal identity. Since this article focuses explicitly on the ECHR, it will further examine the rights that safeguard refugees' identity as refugees and rights holders within the context of the Convention, which is rooted in the Universal Declaration on Human Rights.

As is detailed in part two of this article, the rights that shape the personal identity within the context of the ECHR are outlined concerning Article 3 (prohibition on inhumane, degrading treatment and torture) and Article 8 (right to respect for private and family life). The mentioned rights apply to anyone, irrespective of their status, including refugees. The article also acknowledges the importance of Article 9 (freedom of thought, conscience and

religion) and Article 10 (freedom of expression), which safeguard individuals to maintain their identity in society. The article narrows its analysis to Articles 3 and 8 because it divides the journey of refugees claiming their right to personal identity into two parts: upon arrival and social cohesion, which highlights the refugee as an individual and their right to privacy in Part Three.

Part three of the article examines real-life incidents that show how the destination State violates refugees' right to personal identity. This section discusses issues such as refugee pushback, illicit activities of State authorities in detention centres, and problems related to family reunification and the protection of children. Relevant ECtHR cases illustrate these incidents, which are then analysed from a legal perspective, focusing on the rights that shape personal identity under the ECHR—specifically, Articles 3 and 8.

Part four examines the right to personal identity vis-à-vis social cohesion. The refugee can only function effectively in the host State's society if the chosen methods or means align with their right to individual identity. The assertion is supported by scholarly analysis, with examples from relevant ECtHR cases. The analysis instrumentalises categorisations and the “*stranger danger*” phenomenon to define the perception towards refugees, which can hinder their ability to integrate into society. For example, family life and culture also constitute the identity of each person (Mertens, 2020). Culture-based perceptions may result in social exclusion and prevent refugees' integration.

The fifth section discusses the reasons for the misalignment between law and State practices. It further examines the ECtHR's role in alleviating the tension between refugees' rights, States' obligations to protect them, and States' sovereignty.

In conclusion, the article highlights the States' responsibilities to refugees (Doyle, 2018). It asserts that refugees should be able to preserve their identity and assert their rights to personal identity as people deemed deserving of protection.

2. ON PERSONAL IDENTITY AND THE REFUGEES' RIGHT TO PERSONAL IDENTITY

2.1. The Scope of Personal Identity

How do we identify or describe ourselves? To what extent is it crucial to ensure that we belong “*to a particular category or group of people*”? Do we “*assign a particular characteristic or categorisation to*” ourselves? (‘Self-Identify’, 2016) Self-identification involves belonging to a specific category or group of people and requires self-knowledge. The school of self-knowledge - *gnothi seauton*- from Thales to Socrates was about the search for finding and understanding oneself (Arıboğan and Yılmaz Odabaşı, 2024). Human beings need the environment to know what they are, who they are like and who they differ from. Identity is thus a combination of material and immaterial elements. At its centre is the human being in its pure form (Arıboğan and Yılmaz Odabaşı, 2024).

Erik H Erikson established a theory of development that spans one's entire life in the ‘Eight Ages of Man’ (Erikson, 1993). Erikson described identity as a process at

the core of individuals and their communal culture. Therefore, there are two identities (Erikson, 1968, p. 22). The two identities refer to the internal development of a person and the growth of selfhood that emerges through participation in society (Gleason, 1983, p. 914): *"The self is always acting in a social context in which other-selves exist"* (Stets and Burke, 2013, 158). On one hand, a person identifies 'what I am'. On the other hand, 'what I am' *"is bound up in an account that originates in a notion of 'what I am said to be'"* (Trotter, 2022). Psychologists explain this as *"one's beliefs about the sort of person one is and how one differs from others"* (Olson, 2023).

Cultural and racial identities sit at the centre of one's identity. Humans are born out of other human beings. Everyone is raised within a cultural and linguistic community and thus belongs to a particular culture (Mertens, 2020, p. 201). Religion and its accompanying institutional structures—such as the family, law, politics, art, and the economy—form a significant part of a cultural identity. Racial identity is about human beings' physical and genetic characteristics, whereas national identity is a political design that can be reproduced over time (Aşkın, 2007, p. 214).

There is also a legal aspect to a person's identity: *"records, issued by a state-sanctioned authority, that confer legal identity through some type of individual registration or documentation that defines personal characteristics, such as birth details"* (Sosnowski and Klem, 2023). The legal relationship is initially formed between the State and the individual who holds the citizenship. People who are not citizens would obtain legal identity if they were temporary residents or refugees. Apart from varying degrees of citizenship, including quasi-citizenship, semi-citizenship, and 'ethnizenship', such legal identities embrace *"nationality, race, genealogy, gender, sexuality, or other categories of identification"* (Sosnowski and Klem, 2023).

Legal identity recognises a person before the law and preserves their dignity. As James D. Fearon notes, *"[s]ocial categories are bound up with the bases of an individual's self-respect"* (Fearon, 1999, p. 2). States recognise individuals as persons before the law, allowing them to attach themselves to a social category and identification. This legal recognition will enable individuals to identify themselves legally and socially in ways that help them express their chosen identity—how they exist in the World.

Against this backdrop, Vigil and Abidi explain that *"being a refugee is being part of a minority group within another minority group—that of immigrants"* (Navarro Vigil and Baillie Abidi, 2018). In the departure State, refugees' persecution typically arises because they constitute a vulnerable group in comparison to the larger population, such as in terms of race, religion, or gender. (Lippert-Rasmussen and Lægaard, 2020, p. 82). Then, in the destination States, people as refugees bring their vulnerabilities, which also identify them as part of a particular group.

A person becomes a refugee once they cross the borders of the State from which they have faced persecution, placing their well-being and life at risk (UNHCR, 1992). They should now be recognised as a right-holder crossing international borders, thus gaining refugee status and rights. Upon crossing international borders, they become a

refugee entitled to rights that are recognised not only under the Convention relating to the Status of Refugees (1951 Refugee Convention) but also in other prominent United Nations (UN) documents, including the Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; UN Declaration on the Protection of All Persons from Enforced Disappearance; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; Convention on the Elimination of All Forms of Discrimination against Women. As rights holders, refugees will likely remain citizens of two or more worlds (Volkan, 2017, p. 31).

Regarding refugees' arrival in the asylum country, the case of *Üner v. The Netherlands* in the ECtHR establishes that a State is entitled to control the entry of foreigners into its territory. The ECHR does not guarantee the right to enter or reside in a particular country. The Contracting States also have the power to expel foreign convicted criminals (*Üner v. the Netherlands*, 2006). Yet, upon departure and border crossing from where they have already faced *persecution*, refugees become *de facto* refugees, according to the United Nations High Commissioner for Refugees (UNHCR) (UNHCR, 1992). Although there is no universally accepted definition of persecution, drawing from literature, Hathaway and Foster explain that “*the sustained or systemic denial of basic human rights demonstrative of a failure of state protection amounts to persecution*” (Feith Tan and Ineli-Ciger, 2023, p. 801). Destination States must evaluate refugees' demand for asylum, as the non-refoulement principle obliges States to do so. Any mistreatment of States to prevent refugees' arrival or dismissal of their asylum application without running relevant procedures disregards their right to be recognised as a person before the law and their right to personal identity, as explained in the following section of this article. For example, as the Court highlights in the *Jabari v. Turkey* case, the automatic and mechanical application of the five-day registration requirement for refugees disregards fundamental values enshrined under Article 3 of the ECHR (*Jabari v. Turkey*, 2000). Therefore, the asylum State's procedures are of vital importance to refugees.

After they arrive at the destination State, refugees' social cohesion becomes evident through their recognition as persons before the law and the acquired identities they would adopt in the host State over time. In other words, the legal recognition/identification of refugee status by the destination country is crucial as refugees obtain rights based on the legal ties with the State of the asylum (Hathaway, 2021). Jeff Crisp describes social cohesion as local integration comprising three layers (Crisp, 2004). Firstly, it is a legal process. Refugees acquire rights progressively. The 1951 Refugee Convention recognised various rights, including the right to seek employment, engage in other income-generating activities, own and dispose of property, enjoy freedom of movement, and access public services such as education. Over time, refugees may acquire permanent residence rights and have the opportunity to become citizens in the country of asylum. Secondly, local integration can occur through an economic process. Refugees must seek ways to enhance their potential through self-reliance and independence. Thirdly, regional integration is a social process. Refugees can only forge healthy ties with the community they inhabit if there is no fear of systematic discrimination, intimidation, or exploitation by the authorities or citizens of the host country (Crisp, 2004). Consequently, this process involves both refugees and the host population.

As demonstrated, all three layers of social cohesion concerning refugees are interconnected with their recognition as individuals and their acceptance, regardless of their cultural and racial identities. Any treatment that contradicts this process of social cohesion and fails to consider refugees' asylum applications undermines their identity rights. In this respect, the article discusses the concept of personal identity rights concerning refugees, focusing on the legal and moral frameworks that safeguard a person's characteristics, which define their identity. Such rights serve as a guide for refugees, host States, and their respective societies. Personal identity rights for refugees serve as reminders of the unique challenges they face regarding protection, integration, and maintaining a dignified life. These rights illustrate the journeys of refugees, from persecution to their struggles in the host country.

This article asserts that personal identity rights encompass the principle of non-criminalisation in instances where a refugee flees their home country without identification documents. States should not automatically reject a refugee's asylum application simply because they come from an underprivileged third-world country or due to terrorism prevalent in their region. State personnel at reception centres must treat refugees with dignity, as personal identity rights empower refugees as agents of rights who can reach basic services such as healthcare, education, and legal aid. States must recognise refugees as individuals and as refugees since Article 6 of the Universal Declaration of Human Rights mandates that States acknowledge everyone as a person before the law. What defines a refugee as a person—their unique characteristics—should not be weaponised against them as a justification for denying their asylum application. States must treat refugees with dignity, irrespective of their religion, skin colour, or language, simply because they are human beings. Therefore, States should not misuse or politicise refugees' identities for rhetorical purposes that may seek votes in upcoming elections. Personal identity rights afford protection to refugees against the abuses mentioned here. Ultimately, such rights ensure the unification and reunification of families, as protecting children fundamentally begins with respecting family unity.

Against this backdrop, this article examines the personal identity rights of refugees under European Human Rights Law, which are vital in safeguarding refugees, including Articles 3 and 8. The articles mentioned do not specifically regulate refugee matters or identity rights. However, for example, Article 3 protects refugees (and anyone else, for that matter) from inhumane and degrading treatment and torture. This regulation thus shields refugees from such treatment that may arise due to their identity, which includes political beliefs, ethnicity, or religion. As a result of Article 8, refugees can express their identity without regard to gender, religion, or name. These aspects allow refugees to maintain their lives in the host country with dignity, provided that the host State respects these qualities of the refugee.

The assertion presented here is further elaborated below under European Human Rights Law, with links to Articles 3 and 8 of the ECHR. The analysis also briefly examines ECHR Articles 9 and 10 concerning refugees' identity rights.

2.2. Refugees' Right to Personal Identity with Links to ECHR Articles 3 and 8

Under European Human Rights Law, fundamental rights and freedoms safeguard the right to personal identity. The rights and guarantees under the ECHR promote harmony,

pluralism and living together in tolerance. However, the receiving State can overlook or disregard the fundamental rights underpinning the right to personal identity. The following paragraphs will examine key rights that shape the right to individual identity, particularly those of refugees.

Despite our differences, we are all entitled to the rights the ECHR protects (Marshall, 2022a). In *European Human Rights Law*, Jill Marshall explores the development of identity rights (Marshall, 2022b). Based on Marshall's analysis, this article asserts that refugees' right to personal identity can be understood by positioning them as human beings, rights holders, and refugees with recognised rights under international law.

The close connection between Article 3 and the right to personal identity lies in the essence of the regulation itself. Article 3 of the Convention enshrines one of the most fundamental values of democratic societies: civilisation. Civilisation requires individuals and society to respect one another's human dignity (Council of Europe/European Court of Human Rights 2024a, para 2). Human dignity is not about an elevated status (Mertens, 2020, p. 59). It is an absolute inner value that all persons possess. Everyone has it, irrespective of what they do and who they are. Human dignity is why a person would demand respect from others and the State. Torture, degrading and inhumane treatment are a direct assault on human dignity. Such treatments disregard persons' inner cores and identity, which makes them who they are.

The prohibition of torture and degrading and inhumane treatment, therefore, is absolute. It means derogation from such a prohibition is not permissible even if a public emergency threatens the nation's life, there is a fight against terrorism and organised crime, or there is an influx of migrants and refugees (Council of Europe/European Court of Human Rights, 2024a). For instance, the Court highlighted the *jus cogens* aspect of the prohibition on the regulation in its well-known cases of *Gäfgen v. Germany* [GC], 2010, § 87 and *Chahal v. United Kingdom* [GC], 1996, § 87. In the latter case, an Indian-born individual who sought asylum in the UK feared being subjected to torture if he returned to India. Although he posed a 'danger' to British society as he was involved with political groups conducting demonstrations that had a terror effect, the Court ruled that due to the risk that the applicant faced in his home country – the risk of torture- he could not be sent back.

The relationship between ECHR Article 3 and refugees' right to identity has distinctive characteristics. A refugee's identity is a crucial factor in their vulnerability. This vulnerability stems from the unique traits that define refugees and expose them to either persecution in their home State or violence in the host State. Identity can lead to persecution; for instance, one may become a refugee due to their ethnicity, religion, gender identity, or membership in a specific social group, including those with political affiliations. These attributes also serve to identify a refugee in the receiving State. They may lead to incidents that expose refugees to inhumane or degrading treatment or torture at the hands of the receiving State's officials. Such incidents tell how the States' mistreatment towards them doubles refugees' vulnerability. This article notes that the Court has not instrumentalised vulnerability as an effective instrument for deriving an obligation for

the State Parties with links to socioeconomic rights under Article 3. But still, the ECtHR acknowledges refugees' vulnerability (Zimmermann, 2015) as a concept under Article 3 (Morris, 2023).

Because the vulnerability emerges as a result of age, gender, religion and social ties, such personal identity traits may be the reason for State officials to increase the severity of ill-treatment. For example, the Court considers vulnerability in the context of Article 3 as being an asylum seeker (*M.S.S. v. Belgium and Greece*, 2011).

The right to the personal identity of a refugee is closely tied to and protected by Article 3 of the ECHR, which regulates the prohibition of torture and inhumane and degrading treatment. Article 3 particularly comes into play in situations in which refugees are pushed back, subjected to summary returns or put in detention centres while receiving inhumane or degrading treatment during their stay.

As discussed in the following section, pushbacks can be considered torturous, having the potential to reach the limits of crimes against humanity (Kalpouzos, 2015). Not only do the methods employed by the pushbacks breach Article 3 in this regard, but they also contradict the State's responsibility to protect. "*The respondent State is obliged to allow the applicants to remain within its jurisdiction*"; it must adequately review the refugee's presence and "*cannot deny access to its territory to persons presenting at a border checkpoint who allege that they may be subjected to ill-treatment if they remain on the territory of the neighbouring state*" (European Court of Human Rights, 2025, p. 3).

Nevertheless, some States continue to employ tactics that reach the level of torture to control migration and their borders, which are detailed in the following section. Such methods aim to send a loud and clear message to future refugees already *identified* as unwanted others. However, the Universal Declaration on Human Rights in Article 14 affirms that everyone has the right to seek and enjoy asylum. Everyone includes anyone irrespective of their race, gender and nationality, and anyone who becomes a refugee should be 'identified' and treated as one. Any treatment falling outside the protection granted by refugee status directly contradicts an individual's right to personal identity.

There is a link between ECHR Articles 3 and 5. In some cases, State authorities may put refugees in confinement or detain them in airport transit zones and reception centres for their identification and registration. In relevant incidents, the Court looks at the situation to understand whether the restriction on movement is severe enough to fall within the ambit of a deprivation of liberty by considering the following factors: The applicants' situation, the applicable legal regime of the respective country and its purpose; the relevant duration of procedural protection enjoyed by applicants; the nature and degree of the restrictions (Council of Europe/European Court of Human Rights 2024b,p. 9). In short, the deprivation of liberty must have a legal basis; it must be for a decent amount of time, and the detention conditions must be humane. For example, in *Orchowski v Poland*, the Court held that a detainee should be given a personal space of at least three to four square metres or more (*Orchowski v. Poland*, 2009). As the ECtHR *Muršić v Croatia* case established, dignified treatment at the detention centre includes outdoor exercise, ventilation availability, private

toilet use, and access to basic sanitary requirements (*Muršić v Croatia*, 2016, para. 19). State officials' treatment of refugees in detention must align with their rights to identity as persons, which has two dimensions. First, State officials must treat persons respectfully, not based on their perceived identification with the person. International legal regulations establish that everyone deserves dignified treatment, no matter who they are and what they have done. Second, once identified as such, the State must release refugees from custody. Therefore, identifying their refugee status is crucial. Yet, as is detailed in the following part, although State authorities recognise them as refugees, they may remain in detention centres because of their identity. What makes them who they are also leaves them vulnerable to harm.

Regarding the part where the article discusses social cohesion, it considers ECHR Article 8 and other related rights under the Convention. Identity rights are deeply embedded in the rights related to one's private life, protected under Article 8 of the ECHR. As Article 8(1) explicitly states, “[e]veryone has the right to respect for his private and family life, his home and his correspondence”. Article 8 protects the right to personal development and establishes relationships with others and the outside World. Article 8 “secures to individuals a sphere”. The sphere provides a platform for individuals to freely “pursue the development and fulfilment of their personality” (Council of Europe, 2024).

Article 8 is about tolerance and living together. Tolerance and harmony are the foundation of a democratic society and the self-fulfilment of each (Marshall, 2022a). Refugees, like others, are entitled to these rights. We are all different in a society, and refugees bring their unique differences to the host society. Refugees should be allowed to “have varying views of how [they] want to live”, just like the rest of the people in the society (Marshall, 2022a).

Social ties between settled refugees and the community in which they live constitute private life within the meaning of Article 8. Article 8 recognises that a person's social ties, belonging and citizenship form the core of a person's identity and private life. A refugee's right to personal identity necessitates a recognition of a right to remain and a right to a legal status (Rütte, 2019). Private life encompasses personal identity, including name, photo, and physical and moral integrity (Council of Europe, 2024, p. 54). The notion of private life is not susceptible to exhaustive definition (*Kiraly and Dömötör v. Hungary*, 2017).

A person's private life and family life refer to the aspects of life within the confines of one's home. As explained earlier, personal identity is shaped in two spheres: one aspect concerns inner development, while the other is moulded through social interaction. A person develops an inner identity shaped by family values, which applies to everyone, regardless of social status. This process necessitates privacy and protection from State interference. In the meantime, the ECtHR has stated that the Contracting States are under a positive obligation to adopt measures to guarantee respect for family life (*Marckx v. Belgium*, 1979).

Family separation violates Article 8 of the ECHR. Article 8 protects “one's own personal inner space/inner mind, as well as a communal, arguably intersubjective, understanding of identity formation” (Marshall, 2024)—the provision under Article 8

safeguards against unwanted intrusions for the person and family. For example, *M.A. v. Denmark* in paras 137-139 stressed that the decision-making process for family reunification must sufficiently safeguard flexibility, speed, and efficiency to uphold the applicant's right to respect family life (*M.A. v. Denmark*, 2021).

The *Burlya and Others v. Ukraine* case links Article 8 to Article 14 (prohibition on discrimination) if the authorities fail to protect the applicants from an attack on their homes and do not investigate the incidents effectively (*Burlya and Others v. Ukraine*, 2019). For example, in the UK, in the summer of 2024, racist riots erupted as a 'response' to the killings of three young girls in Southport. Far-right mobs clashed with riot police because of claims that had spread online that the suspect, Axel Muganwa Rudakubana, was a Muslim refugee who had arrived in the UK by boat. Later, however, it was revealed that the suspect was born in Cardiff, Wales. His parents were Rwandans. His likelihood of being Muslim was not certain (White, 2024). Still, rioters vandalised Mosques and threw bricks into homes belonging to ethnic minorities. They surrounded hotels housing refugees, making deadly threats (Safdar, 2024). On the one hand, the UK Government took action to stop such violent attacks.

On the other hand, one should not forget that violence against refugees, migrants and ethnic minorities found its place in the Conservative Government's The Safety of Rwanda (Asylum and Immigration) Bill. The proposed Government Bill aimed to permit the Government to determine that Rwanda was a safe country and a destination for refugees - such an addition would bypass judicial review. In this scene, authorities in the UK must make sure that intolerance does not impede the peaceful enjoyment of ethnic minorities and Muslim refugees' homes (*Paketova and others v. Bulgaria*, 2022).

Similarly, by the end of 1992, Germany had accepted refugees from Serbia, Croatia, and Bosnia. German society developed aggression towards these refugees. At the time, Germany had more than one million guest workers, too. German society showed signs of *neo-racism* that describes "*hatred toward perceived cultural, rather than genetically determined characteristics*" (Volkan, 2017, p. 15). Neo-racism was in action through "*bombings, beatings, murders, and discrimination in employment and housing were taking place*" (Volkan, 2017, 15). Any form of racism infringes on cultural rights tied to the right to personal identity, as Article 22 of the Universal Declaration on Human Rights calls them indispensable "*for the dignity and free development of everyone's personality*" (Mertens, 2020, p. 208). Such incidents may also happen due to a State's inaction, where the State should have intervened but chose not to. For example, a fire destroyed the Moria camp on the Greek island of Lesbos in 2020. Until this incident happened, international human rights organisations referred to the Moria camp as a living hell. State personnel did not treat refugees in the Moria camp with the dignity and respect that anyone deserves as a person. The inhumane and degrading treatment became a norm in the camp. Greece did not intervene and stop the ongoing inhumane treatment towards refugees. Greece's inaction led to an infringement of refugees' rights (Gordon and Kjellmo Larsen, 2021).

Another level of protection for the right to personal identity is freedom of expression and religion, as regulated in Articles 9 and 10 of the ECHR. These provisions

were designed to safeguard individual autonomy, identity, and integrity (Marshall, 2022a, p. 11). Note that there is no straightforward answer if one asks about the difference between belief and religion. Similar to persecution, international law does not define religion as a term of art. UN Human Rights Committee confirms this by stating that “*the terms ‘belief’ and ‘religion’ are to be broadly construed*” (Office of the High Commissioner for Human Rights 1993, para 2).

The drafters of the ECHR designed Article 9 based on a distinction between a *forum internum* and a *forum externum*. Consequently, Article 9 requires individuals to differentiate between their internal beliefs and external manifestations. Based on those beliefs, Article 9 permits restrictions when necessary for a democratic society or public order.

On the other hand, Article 9 protects freedom of thought, conscience and religion as the foundations of a democratic society within the meaning of the Convention. In its spiritual aspect, it represents a crucial component that shapes the believers’ identity and worldviews. Nevertheless, it also acts as a beneficial resource for atheists, agnostics, and sceptics (Council of Europe, 2019). The right is about whether or not to hold a religious belief.

This article explores the conflict between law and State practice concerning protecting and respecting refugees’ identity rights. It would, therefore, like to draw readers’ attention to more problematic areas where such conflicts often arise. Under Article 9, the issue often arises regarding religious beliefs when there are differences between the general religious beliefs of the host society and those of the refugee.

We can specifically focus on Muslim refugees in Europe to exemplify relevant incidents regarding Article 9 and the scope of personal identity within this right. The presence of Muslims in Europe advocating for their religious rights has sparked a nuanced and intricate dialogue in both legal and political realms. Terrorist attacks have caused fear and increased Islamophobia, making it difficult for Muslim minorities to integrate into Europe’s secular society. Many refugees from Muslim-majority countries come from regions where Islam plays a vital role in social and national identities. The privatisation of religious practices and the decline in religious observance create challenges for refugees, as they must adapt their religious behaviours to fit an idealised secular environment that restricts public expressions of faith. Tensions surface when individuals confront this norm through attire, dietary restrictions, or other significant religious commitments (Cesari, 2023). In recent years, this situation has sparked discussions about religious differences in society (Baldi, 2024, p. 1288). Such discussions in the host State’s political agenda have also arisen because the nation-State solidifies the “*triadic relationship*” between citizen, nation, and territory by distinguishing the refugee, thereby clarifying and reinforcing normative concepts of belonging (Zaman, n.d., p. 75). Religious categorisations create a separation between refugees and the local host community, establishing an unbridgeable social distance. While refugees may be ‘invited in’, they are kept in restricted areas (Zaman, n.d, p. 76). In this context, States may leverage religion, if it is part of an individual’s identity, as a means to others and categorise refugees they consider undesirable. Article 9

safeguards persons' identity rights and guides States in a direction where governments lead a tolerant, vibrant and religiously prosperous society in which persons' identities are of concern and respect. Therefore, the applicants often invoke Article 9 with Article 14 of the Convention, which prohibits discrimination on various grounds, including religion and opinion. *İzzettin Doğan and Others v. Turkey* [GC] is an example of such an overlap. That said, individuals -refugees- cannot be compelled to adopt behaviours that might suggest they hold—or do not hold—such beliefs (Council of Europe, 2019, p. 22).

Otherwise, this may also negatively impact people's psychological well-being, diminishing their sense of worth. Research indicates that a greater emphasis on religion in an individual's life is linked to elevated depression levels and reduced self-esteem among stigmatised Muslims and other religious minorities in Belgium. The latter happens because intense religiosity intensifies the majority population's intolerance and hostility (Bender et al., 2022, p. 446). Further, politicians can instrumentalise the bigotry and hatred for their election campaign by othering refugees and their religious beliefs. The latter incidents starkly contrast with what the ECHR Article 9 advocates for – living in harmony by respecting personal differences, which makes us who we are, culturally and religiously. Article 9 operates on preventing racial stereotyping and stigmatising individuals based on their names and religious beliefs.

Article 9 guides States to ensure that just because there is a vulnerability in refugees and the destination State offers them a haven, this does not necessarily mean that the dominant culture and religion would rule their lives. Take, for example, *Abdi Ibrahim v. Norway* (*Abdi Ibrahim v. Norway*, 2021). In this case, the applicant, a Somali refugee woman, applied to the ECtHR against Norway. Norwegian authorities permitted a Norwegian Christian foster family to adopt this refugee woman's child, disregarding the wishes of his mother as a Muslim. The applicant contended that by initiating the adoption process, the child welfare services had taken a decision that infringed upon the child's rights, as they allowed the child to be indoctrinated away from his religion, in violation of Article 9 and Article 2 of Protocol No. 1 to the Convention. Moreover, Norwegian authorities did not adequately inform the foster family regarding how to respect and accommodate the foster child's religious identity and their obligation not to convert the child to their faith (para 92). The Chamber found that there had been a violation of Article 8 ECHR. The Court regarded Article 9 as an essential component of Article 8 concerning her son's placement in a non-Muslim family.

Like Article 9, Article 10 protects another right as the essential foundation of a democratic society - freedom of expression, albeit not unlimited. Suppose a society highlights the identity traits of refugees in a way that incites fear, such as their religion taking over the city or they are invading the country. In that case, that may lead to hate speech and further hate crimes disrespecting refugees by justifying illegal actions based on presumed identities. The State should not protect such speech and should revoke the protections afforded by Article 10 for refugees by imposing limits on the right to ensure their safety. This article, therefore, would like to address the need to safeguard refugees' identities and prevent them from being targeted in attacks. Protecting them from harassment is not only necessary but also essential for their safety and dignity.

We should consider the protection provided by Article 10 concerning Article 17 of the ECHR. Article 17 prohibits abuse of rights regulated under the Convention. The State should approach both hate and xenophobic speeches in the context of Articles 10 and 17. The mentioned articles determine the State's role in protecting freedom of speech and whether people misuse such freedom to attack human rights. Article 10 protects the right to freedom of expression, to hold opinions and to receive and impart information. However, like the other rights that have found a place in the ECHR text, there is a limitation to the freedom that Article 10 brings out. The State can interfere with exercising this freedom if necessary, considering the interests of national security, territorial integrity or public safety. The ECtHR affirmed this in the *Handyside Case* (7 December 1976, Series A, no 24, para 491). In alignment with this approach, Article 17 allows State interference if there is an attack on human rights. For example, in *Glimmerveen and Hagenbeek v. the Netherlands* case, the ECtHR stressed that persons cannot instrumentalise Article 10 for activities “*aimed at the destruction of any of the rights and freedoms*” as highlighted under Article 17 (App No. 8348/ 78, Commission 11 October 1979, p. 195).

The Court delivered its judgement in 1979 in *Glimmerveen and Hagenbeek v. the Netherlands* case. Yet, its decision is still relevant and applicable to this day – specifically when refugees' identity rights are at stake. In this case, the applicants, as members of a Dutch political party, promoted their political ideology built upon racism and xenophobia. The Dutch political party held a vision that, according to them, offered a ‘world conception’. Such a conception would grant “*each nation a proper state, as well as the belief that an ethnically homogeneous population best serves the general interest of a state and not by racial mixing*” (p. 188). The members of the Dutch party distributed leaflets that possessed such disturbing and manipulative views about ‘the others’.

Similar incidents can also happen targeting refugees. Based on the precedence of the Court's approach, this should be considered not only as an attack on refugees' rights to demand protection from persecution but also on their right to personal identity. Such organised, politically motivated activities would target a ‘certain group of refugees’ based on their race, nationality or religion – which makes them who they are. For example, in Romania in 2015, a local businessman organised a protest in response to rumours about refugees who were going to arrive. During the protests, the participants distributed leaflets saying the following: “*Dear refugees, here is a toxic waste town, the economy is poor, no future, and no hope. Choose your destination responsibly!*” The organiser claimed that he wanted to draw attention to the local problems, which would make the place an undesirable destination for refugees. But he also ‘admitted’ that “*he was concerned for the safety of the locals if refugees also lived in the town*” (Albu and Romania, 2017). Who were the refugees the businessman talked about? Why should there even be a concern regarding the safety of the locals? By seizing the purpose of such activities, States should act with care against incidents that potentially target refugees through speech that can turn into hate crimes.

The rights that frame personal identity also enable individuals to exist as living beings. The mentioned rights allow refugees to pursue a life in the host society, as is justified by the living together principle. The living together principle emerged due to

the French Government's submission in the *S.A.S. v. France* case (App No. 43835/11, ECtHR Grand Chamber 1 July 2014). The ECtHR Grand Chamber concluded that "*the respondent State perceives the barrier raised against others by a veil concealing the face as breaching the right of others to live in a space of socialisation which makes living together easier*" (para 122). Applying this notion to refugees and their existence in the host society, respecting their identities and rights that protect them, would make living together much easier.

However, the problem arises with categorisations. Categorisations often fail refugees, as do society and State policies (Eleanor Berry and Taban, 2021, p. 198). This is about the position ascribed to the refugee person in which "*the individual is read through the lens of some social role or status and is accordingly presented in terms of a persona*" (Trotter, 2022). As a result, States' actions or inactions can impact, obstruct or hinder refugees' sense of identity (Trotter, 2022), such as in cases of lack of recognition. The refugee, for example, may not be recognised as a person before the law or a refugee due to pre-ascribed identities. A typical example of a lack of recognition is in pushback cases, where refugees cannot submit asylum claims. As a result, their identification as refugees is blocked, resulting in their loss of rights.

The following section explains and illustrates the rights mentioned, applying them to specific scenarios where refugees are affected by States' illegal actions or inactions.

3. PUSHBACKS AND DETENTION INFRINGING ON REFUGEES' IDENTITY RIGHTS

Once the refugee enters the control of the State in question (Paz, 2022), Baranowska explains that "[a]ll states engage in border enforcement practices to regulate entrance into their territory and prevent irregular crossings of their borders", for example, employing "*covert border enforcement*" (Baranowska, 2023). Covert border enforcement often occurs through pushbacks involving secret and unacknowledged detention facilities (Baranowska, 2023). State practices, such as pushbacks and indefinite detention, occur when asylum policies are influenced by the perception of whether the individual is considered a legitimate refugee within that specific region and country. This aspect raises questions about the identities of newly arrived refugees and the rising doubts about their arrival in the country (Betts et al., 2024).

In the *M.A. and Z.R. v. Cyprus* case, the applicants fled Syria in 2016 because of the war in Lebanon (*M.A. and Z.R. v. Cyprus*, 2024, para 5). In Lebanon, the applicants stayed in camps run by the UNHCR, and as they narrated, the living conditions were unsatisfactory. Additionally, they lacked documentation, which prevented them from accessing healthcare and obtaining employment (para 6). Lebanon started removing Syrians in the face of societal pressure after the explosion in Beirut in 2020 (para 6). The applicants each paid \$ 2,500 to a smuggler to take them to Cyprus (para 7). On arrival in the territorial waters of the Republic of Cyprus, their boat was intercepted by the Cypriot coastguard (para 9). The applicants declared their intention to apply for asylum orally via an interpreter. They tried to explain that they had no place to return to in Lebanon and had a family to care for (para 9).

Nobody further asked them why they wanted to remain in Cyprus or could not return to Lebanon (para 9). Later, the applicants were “*tricked into thinking that they would be led ashore. Instead, they were forced to board another boat ... and were also being returned to Lebanon*” (para 10). The Court considered that the Cypriot authorities were aware of, or ought to have been aware of, the shortcomings and loopholes in the Lebanese asylum system. “*The Government were also aware of the constantly deteriorating living conditions of asylum-seekers in Lebanon*”, which must be a clear indicator for the Government that the applicants would not have access to an adequate asylum process in Lebanon or that they would be exposed to treatment contrary to Article 3 considering the living conditions there (para 93). Yet still, “*the domestic authorities did not conduct or claim to have conducted any assessment of the risk of lack of access to an effective asylum process in Lebanon*”. Cyprus authorities did not ensure whether “*the Lebanese authorities fulfilled their international obligations and undertakings concerning the protection of refugees*” (para 94). In short, domestic authorities in Cyprus ignored the claims of asylum seekers. They looked the other way regarding their responsibilities to protect people seeking asylum – a responsibility rooted in the *non-refoulement* principle, which has a *jus cogens* character (Allain, 2001). Authorities in Cyprus, based on their presumption of the ‘identity’ of Syrian asylum seekers, categorised them as undeserving refugees, having ulterior motives and, without even considering whether they would be returned to life-threatening circumstances, pushed them back to Lebanon. During the ‘identity battle’ of Syrian refugees coming from Lebanon -trying to prove that they were indeed refugees- the Court considered that, albeit they could not submit any substantial evidence other than their oral statements, they provided *prima facie* evidence, which shifted the burden of proof to the Government (para 86). As established in its relevant cases, *F.G. v. Sweden* (*F.G. v. Sweden*, 2016) and *J.K. and Others v. Sweden* (*J.K. and Others v. Sweden*, 2016), the Court placed great importance on assessing credibility and burden of proof. While submitting their asylum claim, the individual must lay out the reasons and evidence supporting that claim.

Although the refugee and the immigration authorities have the shared duty regarding relevant facts of the case in the asylum proceedings (Ravarani, 2017), as is established primarily in *N.D. and N.T. v. Spain* (*N.D. and N.T. v. Spain*, 2020, para 85) and emphasised in *M.H. and Others v. Croatia* (*M.H. and Others v. Croatia*, 2022, para. 268), in the context of expulsion of migrants and refugees if the applicant equips “*prima facie evidence in support of his or her version of events ... the burden of proof should shift to the Government*” (*A.A. and Others v. North Macedonia*, 2022; *N.D. and N.T. v. Spain*, 2020)

The struggle of M.A. and Z.R. in the case above illustrates their efforts to prove their genuine intentions and combat the prevailing perceptions (based on their identification) of refugees as opportunity seekers, mere numbers, and job stealers. This struggle infringes upon their right to personal identity, as they were not treated with respect and were seen as less than human, with their words dismissed as unreliable. The ECtHR, in paragraph 137, states that the applicants were under the control of the authorities, and the conditions they endured caused “*considerable distress and feelings of humiliation of such a degree as to amount to degrading treatment prohibited by Article 3 of the Convention.*” The applicants were not only unrecognised as persons before the law

(Rodrik, 2022), but their sense of self and need for a refuge were also ignored to such an extent that it undermined their essential requirement for safety to maintain a dignified life. Note that the Court does not explain the context of human dignity in its case law concerning the pushback of refugees by state authorities. In this case – *M.A. and Z.R. v. Cyprus* – the Court does not explain the right infringement under Article 3 of the ECHR, nor does it link to human dignity. However, particularly in instances of torture, the Court's approach is to steer States towards recognising that individuals possess inherent value as human beings and, consequently, their dignity must be upheld by respecting their mental and physical integrity (Costa, 2013) to protect their right to personal identity as a person and as a refugee.

In the *M.A. and Z.R. v. Cyprus* case, the Court discusses the State's control of refugees. The concept of being under control has ties with covert enforcement procedures that result in the detention of refugees, which can infringe on their right to personal identity. In the following paragraphs, the first point about the detention of refugees will be explained. Furthermore, the analysis clarifies how detention can infringe upon relevant ECHR rights that protect personal identity.

In the *Saadi v. Italy* case, the ECtHR in para 65 states that “until a State has “authorised” entry to the country, any entry is “unauthorised” (*Saadi v. Italy*, 2008). The Court makes it clear in the *Saadi v. Italy* case that “as soon as an asylum-seeker has surrendered himself to the immigration authorities, [it does not mean that] he is seeking to affect an “authorised” entry”. Yet this does not mean that States have a wide margin of appreciation regarding the detention of refugees.

International law ties refugee detention to strict rules. Relevant international law regulations see detention as an exception. The ECtHR, in consideration of Conclusion No. 44 of the Executive Committee of the United Nations High Commissioner for Refugees Programme, the UNHCR's Guidelines and the Committee of Ministers' Recommendation, clarifies that detention of asylum seekers is possible only in restricted circumstances. For example, “identity checks are taking place or when elements on which the asylum claim is based have to be determined” (*Saadi v. Italy*, 2008, para 65). To consider whether there is arbitrariness in the applicant's detention, we must examine whether the applicant is “genuinely conformed with the restrictions permitted by the relevant sub-paragraph of Article 5 § 1” (*Saadi v. Italy*, 2008, para. 74). Further, treating asylum seekers with dignity at the detention centres is equally vital (Costello, 2012). For example, the ECtHR found a violation of Article 3 ECHR in its joint cases of *M.A. v. Greece* (App no 15192/20); *C.K. v. Greece* (App. No. 15728/20), *A.G.D., D.M. v. Greece* (Appl. No. 16094/20) and *F.J. and others v. Greece* (Appl. No. 16511/20). All applicants complained about their living conditions (which were described as shocking, disgusting, and shameful) in the Greek Reception and Identification Centres during their stay between 2019 and 2020 (Baumgärtel, 2024).

State authorities may subject refugees to undignified conditions in detention centres because they may identify them as deserving of such treatment and as not worthy of sharing the country's political, economic, and moral resources (Şöyemî, 2024).

For example, Australian offshore detention centres (currently in Nauru) have been in place for people who aimed to arrive in Australia by boat – for that reason, refugees have been referred to in a derogatory way as boat people or queue jumpers. Daniel Ghezelbash and Constantin Hruschka explain that the ‘onshore’ protection system only applies to people who arrive in Australia on a valid visa. For example, someone who comes to Australia with a tourist or student visa may apply for asylum. The downside of this procedure is that if an applicant’s initial claim has been refused, they can seek review at the Administrative Appeals Tribunal and in the Federal Circuit and Family Court. Still, they risk waiting more than ten years to finalise their cases. Delays in processing are considered encouraging factors for individuals with ulterior motives, as they can take advantage of lengthy asylum procedures, even if they do not have genuine reasons for their asylum applications. In other words, although some individuals may not have legitimate claims to lodge asylum applications, as they know they will remain in Australia until their case is processed through the system, they take advantage of the lengthy asylum procedures. This note emphasises that in some cases, those without a genuine asylum claim may seek to exploit dysfunctional State systems or gaps in the law. However, the existence of such persons does not mean that those with genuine asylum and protection claims/needs should be lumped in with those who engage in system fraud. This reality –another reason for confusion around the identification of refugees– should not allow States to consider every asylum applicant or asylum seeker from certain parts of the World a ‘fraudster’ (Ghezelbash and Hruschka, 2024). International Refugee Assistance Project (IRAP) reports that for decades, the USA has detained refugees whom they encountered at sea in the Migrant Operations Centre in Guantánamo Bay, Cuba. IRAP reveals the journey of these refugees and how they have been detained in prison-like conditions without access to the outside world and trapped in a punitive system with little to no transparency or accountability (International Refugee Assistance Project 2024). Therefore, the State’s approach towards processing asylum claims leads to an identity battle for refugees in an era of iron borders (Houtum and Bueno Lac, 2020) and the notion of “*hostipitality*” embraced by some states. Derrida formulates *hostipitality by combining hostility and hospitality*—this policy exceptionalities refugees in space and its political significance (Derrida, 2010).

Furthermore, regarding the detention of refugees and the violation of refugees’ right to personal identity, we will examine the case of *M.H. and S.B. v. Hungary* (*M.H. and S.B. v. Hungary*, 2024). Mr M.H., an Afghan national, lodged an application against Hungary along with a Pakistani national, Mr S.B. The case concerns the asylum detention of the mentioned applicants. Even though the applicants were minors during the events, their requests for release from detention were initially refused (*M.H. and S.B. v. Hungary*, 2024, para 1). International law requires States not to detain unaccompanied refugee minors. Yet the applicants initially “*provided the authorities with information indicating that they were adults*”, leading to their detention. Only a few days later, they claimed to be minors. For that reason, domestic authorities were concerned about the reliability of the applicant’s statements, but they did not take appropriate steps to evaluate such a claim. The Court, therefore, states that the applicants’ inconsistent initial and further statements regarding their age “*could not justify dismissing those claims without taking appropriate measures to verify the applicant’s age*”. In that, as the Court stresses, the

extreme vulnerability of a child motivates them “*not to reveal his or her real age, such as not being sure of it or a fear of being separated from a group or an adult relative*”. As the Court states, the country must run its assessment procedure for truth-seeking in case of doubt over the applicant’s statement. Rather than ‘assuming’ one’s identity, including one’s age, the State must ensure that refugees’ statements are taken seriously by considering that they are already probably double victimised due to not only persecution but also ongoing doubts about their intentions on leaving their home State and entering a new country.

The Court, in paragraph 71, highlights that States must cease or eradicate the immigration detention of children (see, for example, “*G.B. and Others v. Turkey*, no. 4633/15, §§ 67-79 and 151, 17 October 2019, and *M.H. and Others v. Croatia*, cited above, § 236”). The State must give primary importance to the best interests of the child, along with the principle of presumption of minority for unaccompanied children reaching Europe. According to the Detention Guidelines, paragraph 51, States must refrain from detaining children (UNHCR, 2017). Article 3 of the Convention on the Rights of the Child also emphasises the child’s best interests. Unaccompanied or separated children should not be detained just because they have no one who would care for them (Convention on the Rights of the Child, 1989).

In the case of *M.H. and S.B. v. Hungary*, the State in question did not consider the best interest of the children principle. State personnel did not put enough effort into dispelling existing doubts about applicants’ ages. State authorities acted upon possible assumptions, categorising them as persons who can readily take advantage of principles protecting the most vulnerable. Such treatment blocks refugees from proving their identity.

If there is a second guess about refugees’ intentions, to what extent can social cohesion be possible in a scenario in which a refugee has overcome the hurdles of border controls and the potential challenges of detention? The following part resolves the given enquiry posed here.

4. SOCIAL COHESION *VIS-À-VIS* THE RIGHT TO PERSONAL IDENTITY

The rights of refugees include the *right to look*. The right to look is about people forming relationships by looking into each other’s *eyes to express friendship, solidarity, or love* (Mirzoeff, 2011). The right to look coexists with “*the right to existence*” (Mirzoeff, 2011, p. 477) and belonging (Mertens, 2020).

The rights mentioned above find meaning in Article 8 of the ECHR. Article 8 allows individuals to “*establish and maintain relations with other human beings for the fulfilment of one’s personality*” and identity (*X and Y v. Belgium*, para 112). States should not “*unfairly discriminate as to who is entitled to rights to adopt*” (Marshall, 2022a). States should promote harmony and tolerance for people to maintain relations and help them flourish, which is affirmed by the ECtHR in the *Üner v. The Netherlands* case: “*Article 8 protects the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual’s social identity*” (*Üner v. the Netherlands*, 2006).

Social cohesion can only occur if refugees cultivate relationships with others. Viewing refugees as dangerous others and the tendency to categorise them based on specific labels rooted in psychological borders obstruct their cohesion with society.

The psychological borders prevent refugees from forming cohesive groups, thus hindering their ability to establish relationships with others. Vamik Volkan explains psychological borders with links to stranger anxiety. Such anxiety in psychoanalysis defines “*infants’ recognition that not all the faces around them belong to their caregivers*” (Volkan, 2017, p. 111). Humans classify mobile subjects by considering “*which is ‘safe, harmless, trustworthy’ and which is ‘bad, dangerous and hostile’*”, resulting in collective definitions (Ahmed, 2000, p. 33). Collective definitions eventually provide the subject of “*psychological borders*” (Volkan, 2017, p. 111) and “*the ability to move safely in a world of strangers and dangers*” (Ahmed, 2000, p. 33).

The problem with psychological borders is that when refugees are deemed outsiders in the national space, society sees them as unpredictable ones beyond control - thus, the source of fear (Ahmed, 2000, 36). However, this perception can result in rights violations for refugees. They can be discriminated against easily, and their right to personal identity can be ignored. For example, refugees may be perceived as belonging to one type of dangerous strangers category, including adrenaline addicts, psychopaths, sex offenders or criminals in general (Bonsignore, 2023, p. 26). If a person commits one of these public offences and simultaneously is a refugee, the conclusion is that a refugee has committed a crime to the detriment of society. However, this does not mean that all refugees will eventually commit crimes detrimental to society. For example, there has been a wave of anti-Syrian movements in Türkiye. At the beginning of July 2024, Turkish authorities arrested a Syrian man based on an allegation that he sexually abused a seven-year-old Syrian girl in the city of Kayseri. This allegation triggered a public response, and riots erupted in the city centre against Syrian refugees, escalating to a violent manner (*Al Jazeera and News Agencies*, 2024). Indeed, any form of sexual abuse is horrific. Understandably, there was a reaction towards the abusive incident. Yet, the reaction should not reach a level where refugees are targeted for humiliation. For one person’s deviant act, there should not be a generalisation resulting in one group of individuals being “*teased, bullied, scorned, excluded, laughed at, put down, ridiculed, harassed, embarrassed, cruelly criticised, treated as invisible, discounted as a person, made to feel small or insignificant*” (Fangen, 2010). When refugees are reflected as criminals, it adds another dimension to the refugees’ identities: the ones who shall be afraid of and excluded from all social settings, including recruitment and social life. The concept of criminal dangerousness influences the language of naming and labelling, leading to dangerisation and endangerment.

Such categorisations may lead to racial profiling, infringing on the protection that Article 8 provides. For example, in the case of *Wa Baile v. Switzerland*, the ECtHR considered the applicant’s claim regarding racial profiling during an identity check at the Zurich railway station. The applicant was not a refugee but a Swiss national. Yet he was subjected to an identity check and search. He refused to submit to an identity check—a fine was imposed on him. The applicant claimed that State officials put him through this treatment because of his skin colour. The Court found a procedural violation of Article 14,

which prohibits discrimination in conjunction with Article 8 of the Convention (*Wa Baile v. Switzerland*, 2024). The Court found that discriminatory grounds might have played a part in the identity check the applicant was subjected to.

However, the fact is that “*people do notice race when perceiving others*” (Apfelbaum et al., 2012, p. 205), and so do the State officials. Isabel Wilkerson’s analysis of the caste system prevailing in the USA, India and existed during Nazi Germany explains that we are all in a box (Wilkerson, 2020). The label on the box signals to the World what is supposed to be in it and what should be done with it. The label indicates which shelf your box should belong on. In a caste system, the label often misaligns with the content; it is incorrectly placed on the wrong shelf, which harms individuals and organisations in various ways, many of which we cannot fully understand. Similarly, refugees possess identities—they are born with some of them and develop others through social interactions and life experiences: self-identity overlapping with ascribed identities. The problem arises when labelled in ways that do not correspond with the actual content. This misalignment constitutes misidentification and ‘hurts’ refugees as they lose rights that they have innately carried from the beginning because of their ‘labelled identities’. This article’s previous part looked closer at the incidents in which State officials pushed refugees back or put them in detention centres because recognition of refugees’ rights and the social cohesion process can only begin if States give them a chance to submit their claims.

For example, in the *A.I. and others v. Poland* case, the Court indicated that the applicants’ “*statements concerning their wish to apply for international protection were disregarded*” (para 54). The applicants attempted to cross a border legally, using an official checkpoint and subjecting themselves to border checks as required by the relevant law (para 55). The Court referred to the independent reports stating that “*the applicants’ case constituted an exemplification of a wider State policy of refusing entry to foreigners coming from Belarus, regardless of whether they expressed a fear of persecution in their countries of origin*” (*A.I. v. Poland*, 2022, para 56). Indeed, Poland’s treatment of refugees from Middle Eastern countries—making them wait at its border with Belarus in freezing temperatures—stands in stark contrast to its favourable treatment of Ukrainian refugees, who are also described as genuine ones (Majetschak and Riemer, 2021). Ukrainians have faced no issues regarding their acceptance into EU countries, including Poland. For example, Ukrainians’ entrance documents were not scrutinised, and they were welcomed into private homes (Samson, 2024). Refugees should not become subjects of rights *if* they “*present themselves as ‘eligible’ or sufficiently vulnerable*” (Cabot, 2018, p. 6).

Who is the vulnerable refugee? How are they identified? What *personal traits* do they possess that put them in a box labelled/identified/categorised as vulnerable?

For example, Abdoulaye Camara, a national of Guinea, arrived in Belgium in 2022 and applied for asylum (*Camara v. Belgium* 2023, para 5). Later, the applicant went to the Federal Agency for the Reception of Asylum-Seekers (FEDASIL) to be allocated a place to stay. However, he was informed that he could not be accommodated because the asylum network was complete (para 8). The applicant brought his claims before the Brussels French-language Labour Court. He submits to the Brussels French-language

Labour Court that there is an imminent danger of severe and irreversible damage to his human dignity because he has nowhere to stay. The Labour Court orders FEDASIL to provide the applicant with accommodation on condition that a fine of €1,000 per night would be payable in default (para 13). However, for 112 days until he gets an accommodation, he sleeps on the streets, in stations or parks (para 21). The applicant claims that during the time of being homeless, he endured dampness and cold in Brussels in October, as the weather was rainy. The temperature was very low (para 24).

The ECtHR observes that the network's hosting capacity proved insufficient to cope with the increase in the number of applicants for international protection (para 114). The Court detected a significant increase in the number of applications for international protection in Belgium in 2022 (para 115).

Belgian authorities allocated accommodation to the most vulnerable individuals -families with children, unaccompanied minors and persons suffering from specific health conditions- by prioritising them. Indeed, the Court considers vulnerability a criterion while assessing the applicant's claims. For example, whether the applicant is "*a minor, a single parent, a family with children, elderly, stateless, LGBTI, an asylum seeker or a refugee, a person with a past trauma, or a person suffering from a medical condition*" (İneli-Ciger, 2021). On the other hand, in the *Camara v. Belgium* case, the State authorities' decision delayed accommodating applicants with the same profile as the applicant for international protection. Nevertheless, as the ECtHR points out, Article 6 of the Convention and the Preamble to the Convention require States to ensure legal certainty. In the time the Belgian authorities took to enforce a court order, they exceeded the reasonable limits of protecting human dignity.

The Court "*attaches considerable importance to the applicant's status as an asylum-seeker*" and considers the applicant "*a member of a particularly underprivileged and vulnerable population group in need of special protection*" (*M.S.S. v. Belgium and Greece* 2011, para 251). Indeed, categorisation benefits the most vulnerable ones. Still, States, while categorising the vulnerabilities of refugees, should bear in mind that treating people with dignity begins with certainty and being able to maintain any process under conditions that they are treated as humans.

Categorisation also happens in another dimension. For example, in the USA, people have been confused about how to perceive refugees: whether as a political category – coming from communism or right-wing governments; as a religious category -Buddhists, Muslims, animists-; as a cultural category -non-English speakers or nonliterate; as an economic category; and as a racial category (Haines, 2010). The USA is a "*synthetic country*". People, including refugees, have come from different places, creating "*a synthesis of disparate influences*" (Volkan, 2017, 16). Categorisations, therefore, may exist, but they should not exist to determine the deservingness of the refugees.

Being a refugee may be a category among the persons who have migrated to the host State. Yet still, refugees may not even want to identify themselves as one because of the way a refugee would be stigmatised. Molly Fee observes that in some societies,

people interpret the term “refugee” as referring to individuals who are inferior to them. Society may associate refugee status with “*dependency, food scarcity, confinement, and restriction*” (Fee, 2024). The negative approach towards the status of being a refugee is also fed by the ‘helpers’, as although they focus on the “*vulnerabilities of refugees and the importance of helping*”, they may still portray refugees as objects requiring help, “*not as subjects with agency and voice*” (Navarro Vigil and Baillie Abidi, 2018, p. 55).

Refugees may get confused about *when and if* they should embrace being a refugee and *when and if* they should sever the ties with refugee status, e.g., after being employed or resettled to a third country. One study revealed that people, on a psychological level, become refugees over time rather than feeling like refugees immediately after their flight. In other words, their understanding of their identity and relationship to this label does not match immediately but becomes aligned in time (Fee, 2024).

The alignment can occur if refugees are integrated into the society in which they reside. If refugees participate in the community’s cultural life, as endorsed in Article 27 of the Universal Declaration of Human Rights, their cohesion with society can happen. Social cohesion is a prerequisite for recognising a person’s right to personal identity. Still, societies need guidance on fostering compassion and integrating refugees. Berna Turam conducted fieldwork in Athens, Greece. Greece has been facing a growing influx of refugees. Turam points out that Alexa, a project manager in an NGO dealing with refugee issues, draws attention to the growth of ethnically focused immigrant neighbourhoods in Athens. As Alexa concludes, diverse migrant neighbourhoods have become safer in Athens (Turam, 2021, p. 756). She continues to explain that Athens owed its success to the close engagement and cooperation between the municipality’s leadership and the city’s progressive activist tradition (Turam, 2021, p. 757).

Turam’s analysis can be observed in the ECtHR *Hoti v. Croatia* case facts. The case establishes that the applicant’s uncertainty about his residence status in Croatia had an adverse impact on his private life. He depended on the authorities to prolong his residence permit, his employment prospects were troubled without a stable legal status, and he had difficulties securing typical health insurance and pension rights (*Hoti v. Croatia*, 2018, para 126). These aspects are particularly relevant to refugees’ integration and the need for certainty.

Municipalities can help refugees integrate into society by implementing the Residence Act, granting social benefits, providing education, health care services and accommodation, organising integration and language courses, and supporting labour market integration (Hunger and Kersting, 2019, p. 417). The means listed here would eventually eliminate the fear that produces false narratives and close the gap between society and the refugees. For example, “*all Arabs are ‘uncivilised’ peoples who ‘live in these tents in the desert’*” (Abaza, 2024, p. 6). The given example demonstrates the false narratives and how they would create a distance between society and refugees. Societies should recognise that refugees must integrate into daily life, which requires them to bond with the people, the language, the culture, and the customs (Miller, 2018). Such a bond can happen once society respects refugees’ identity and who they are as persons and as refugees.

5. HOW CAN THE ECtHR MITIGATE THE TENSIONS ARISING FROM THE MISALIGNMENT BETWEEN LAW AND PRACTICE THAT VIOLATES REFUGEES' IDENTITY RIGHTS?

Relevant regulations on the international law level regarding refugees' rights exist. Still, states may adopt such rules but reverse and integrate them into their domestic law system in ways that would serve their interests. This section addresses two questions: first, why is there such a misalignment between international law and State practice, and second, how can the ECtHR help mitigate the tensions resulting from this misalignment?

We can answer the first question by examining Daniel-Thabani Ncube's analysis. He states that the question should be whether we expect too much from regulations protecting rights and freedoms on international and domestic levels. Or are instruments regulating relevant rights inherently flawed? *"Put differently: is the law the problem, or are we – i.e., society – the problem?"* (Ncube, 2024).

The misalignment between law and practice that results in rights violations for refugees can be discussed based on the fear-based policies. As was explained with links to social cohesion and the obstacles that refugees face, the phenomenon of stranger danger and fear towards the stranger widens the gaps between society and refugees. Not only socially but also legally, the same phenomena play a significant role in shaping policies and legal regulations. As a result, the law and the States' policies become a problem for the vulnerable if they are built upon motives that result in rights violations. Some scholars, such as Andrea Bianchi and Anne Saab, examined the dynamic between law and fear. In their piece, *"Fear and International Law-making"*, (Bianchi and Saab, 2019) the authors discussed how individual and collective fear may affect decision-making processes and shape security policies in the national and international spheres (Bianchi and Saab, 2019, p. 351). They deliver analyses ranging from terrorism and climate change to refugee-related concerns. By giving examples of globally troubling issues, the authors also reflect on the policy response stemming from the emotion of fear. Rational choice theory, the authors state, assumes that *"decisions are taken, and law is made by way of rational determination"* (Bianchi and Saab, 2019, p. 35). On the political level, people often overlook fear, which is primarily a political factor (Turam, 2021, p. 759). On the legal level, for example, most normative instruments used to counter terrorism were adopted when fear was the prevailing emotional state; similarly, many international instruments on climate change have been developed against a narrative of fear (Bianchi and Saab, 2019, p. 351).

Regarding the second limb of the question initially posed in this part of the article, the ECHR serves as a guide for states, and the ECtHR acts as an impartial arbiter. The Court's strength lies in its support for individuals, allowing them to claim their rights when State authorities violate the ECHR. States must comply with the ECtHR's judgments; Article 46 of the ECHR stipulates this obligation. The verbatim of Article 46 is quite clear. It explicitly states in para 1 that the *"High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties"*. Domestic law must align with the law emerging from the case law established by Article 1 of the ECHR. The

rights and freedoms enshrined in domestic law must be compatible with those outlined in the Convention; this is the State's duty. Indeed, the role of the ECtHR is subsidiary; the State's enforcement role is primary.

In a scenario in which refugees' rights are ignored, including the right to personal identity, if the Court delivers a judgment that guides the Contracting State in the direction to repair the loss of right, then the State must abide by the ruling of the ECtHR. According to the ECtHR, it acts as a constitutional document of European public order, positioning itself as a constitution for Europe (*Loizidou v. Turkey*, 1996). The State's discretionary power becomes irrelevant and vanishes if a consensus exists. For instance, in the case of *Demir and Baykara v Turkey*, the ECtHR asserts explicitly that its decisions are binding upon the state (*Demir and Baykara v. Turkey*, 2008).

It is the State's responsibility to abide by the decisions of the Court. The scope of responsibility within the context of the ECHR is stressed by Article 1 of the Convention: "*The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of the Convention.*" In the meantime, Protocol No. 15 to the Convention inserted the principle of subsidiarity into the Preamble to the Convention. This principle "*imposes a shared responsibility between the States Parties and the Court*" (Council of Europe/European Court of Human Rights, 2024c). The fourth instance doctrine comprises the principle of subsidiarity, which requires the Contracting States to enforce the rights and freedoms protected under the ECHR. The fourth instance doctrine and the subsidiarity principle situate the Contracting States as the leading actors under the Convention. Therefore, the fourth instance doctrine positions the ECtHR in a place where the Court does not assess the errors of the decisions delivered by a national court. However, the Court must be satisfied with whether objective bases support the evaluation of the national authorities. The Court must also understand whether any further infringement of the rights and freedoms protected by the Convention occurred due to the judgment of the National Court. The lack of *ex-nunc* assessment of the national Court may lead to such consequences that if the national Court had foreseen the outcomes of its decisions, breaches of rights and freedoms protected under the Convention would not have occurred later. As is confirmed in the case of *Grzęda v. Poland*, "*Contracting Parties have the primary responsibility of securing the rights and freedoms defined in the Convention and the Protocols*" (*Grzęda v. Poland*, 2022, para 324).

The State's responsibility to protect refugees should be adequate, and the State must conduct an effective investigation if there has been a rights infringement (*Safi and Others v. Greece*, 2022). The ECtHR can guide States in conflict regarding the burden of proof and the protection of refugees. But in the meantime, the burden of proof -the claim that the State has not investigated the incident- as discussed in the *N.D. and N.T. v. Spain* case might become a challenge for refugees with limited means to prove their claims. For example, a Syrian refugee drowned during a border control operation at a river on the Hungarian-Serbian border. The applicant claimed that force was used against them to prevent their arrival in Hungary. The ECtHR concluded that such allegations could be accepted if they were proven beyond a reasonable doubt through a practical investigation (*Alhowais v. Hungary*, 2023, paras 119-123). In the meantime, States must conduct

adequate investigations, such as those related to border deaths. In the *Xhavara and Others v Italy and Albania* case, the ECtHR states that Article 2 (right to life) imposes on States the obligation to conduct “*official, effective, independent and public*” investigations (*Xhavara and Fifteen Others v. Italy and Albania*, 2001).

The Court can help ease the tension between the State and refugees by clarifying states’ legal obligations under the ECHR. Fundamental rights for refugee protection include the non-refoulement principle, the prohibition of collective expulsion, and the ban on punishment for illegal entry. Protection from torture and inhumane and degrading treatment provides the ultimate safeguard for refugees. Further, refugees can only be integrated into society if they are respected and not discriminated against by giving them space to express themselves and manifest their thoughts and conscience. All the layers mentioned in this paragraph for refugees’ protection also form the foundation and frame for refugees’ right to personal identity. The recognition of refugees’ right to personal identity recognises them as agents with a voice and rights. The more the Court shapes its case law based on the fundamentals mentioned earlier, the more uniform and consistent the States’ approach can be towards protecting refugees’ right to personal identity.

6. CONCLUSION

Searching for a place to hide from persecution and violence is a human impulse. Yet, some States either question refugees about their intentions or categorise them under presumed identities. The article presented the State’s actions as illicit practices, including pushbacks, summary returns, illegal detention, and policies deriving from fear of outsiders, which hinder social cohesion.

As the article established, personal identity defines an individual, and the rights underpinning personal identity empower human beings. These fundamental rights safeguard and shape the expression of personal identity. States’ abusive treatment of refugees or their refusal to treat them with dignity is a direct assault on refugees’ identity.

The analysis highlighted the importance of identity rights by mentioning several European human rights law regulations. Article 8 of the ECHR safeguards individuals from arbitrary interference by public authorities. Along with Article 3, Article 8 helps individuals maintain a dignified living. ECHR Article 3 protects people as entities in a civilised society. Indeed, expectations and living conditions for a decent human life shape the reach of identity rights (Miller, 2018, p. 31). Accessing sufficient clothing may mean wearing a fur coat in one part of the World and a cotton shirt in another (Miller, 2018, p. 31). Therefore, this article inquired about the fundamental needs of refugees for a dignified existence. Such needs vary from physical requirements to social participation, recognition, and acceptance.

Despite existing rhetoric based on the stranger danger approach, we should embrace any negative emotions/perceptions by singling them out from prejudice that causes humiliation and terror. Indeed, for example, “[f]ear has come to be seen as the most primal, the most fundamental of human emotions” (Smith, 2016, p. 106), which either

saves from mortal danger or can kill (Smith, 2016, p. 107). Yet, it is crucial to navigate our fear. We must be aware that in many cases, such concerns towards certain strangers are fuelled by State policies, resulting in rights violations of the identified strangers.

Against this backdrop, this article mapped relevant ECtHR case law to understand the concrete results of othering mentality shaping presumed identity for/about the refugee. As the facts of the given cases in the article show, how refugees are either left with no clothes and shelter or pushed back to the place where they have escaped from persecution are the results of the perception or already assumed identities of refugees. State officials identify them through the glasses made by state policies without considering the refugee's story as a person. As has been exemplified, suppose the refugee's route begins in a place that resides in the Middle East, Africa, or South America. In that case, they are either opportunity seekers or terrorists coming from Muslim communities or such places; they are male, poor, and young but not human. Therefore, they quickly become the subject of violence and are not protected because they are *identified* as the ones not deserving of protection. Indeed, we use words and identify individuals based on our worldview: "*When I use a word, it means just what I choose it to mean – neither more nor less*" (Carroll, 1994, p. 124). Yet, if the concern is protecting human life, we must do our best to see the one beyond beliefs and dressed-up identities, solely the mind and soul (Aşkın, 2007).

I would like to conclude the article on a personal note. On a humid summer afternoon, I saw a young man, almost 20 years old, on the street a couple of years ago. He was standing in the back of his truck. At a distance, I could only see his upper body as the car was surrounded by people rumouring with each other and interacting with the young guy. I approached the crowd; it turned out that the guy was a refugee, barely spoke the local language and was out and about to sell some culinary items. However, as I started listening to the conversations, I figured the guy needed to be made aware of the local currency. The people surrounding him were there to exploit his vulnerability – the vulnerability of not knowing the language and the customs. They were about to convince him to sell the items at a much lower price, but someone outside of the group finally interrupted them and gave a brief lecture on not taking advantage of the one in need. I could observe some level of remorse that passed through the crowd; they did not insist on pursuing their trick, aiming to reach a better bargain. Eventually, not the stigma but the human compassion overtook the atmosphere. Yet, this incident had me thinking more about the driving factors that made the crowd believe they could take advantage of him. First, I thought of human nature, as Flannery O'Connor summarised in *A Good Man Is Hard to Find*.

On the other hand, I realised later that I needed a more complicated explanation for this incident other than scratching human nature off as bad. The analysis must contain multiple layers of touching social inequalities, structural violence, and invisible walls between 'us' and 'them'. These walls determine who is desirable, wanted, and accepted. They teach us who we are and who can be part of our group. Such identity separation justifies any wrongdoing against the other. We must be sufficiently aware to resist the push that directs us down a path where we long to become part of the group, regardless of the consequences for the 'other' identified as one. Notably, social acceptance, which

is linked to refugees' identification, has a subjective element that requires individuals' awareness. Individuals should be channelled towards a path that reduces responsibility to solid ground to impose responsibility on everyone living on planet Earth to maintain the understanding of respecting and helping one another (Guy S Goodwin-Gill 2021).

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