

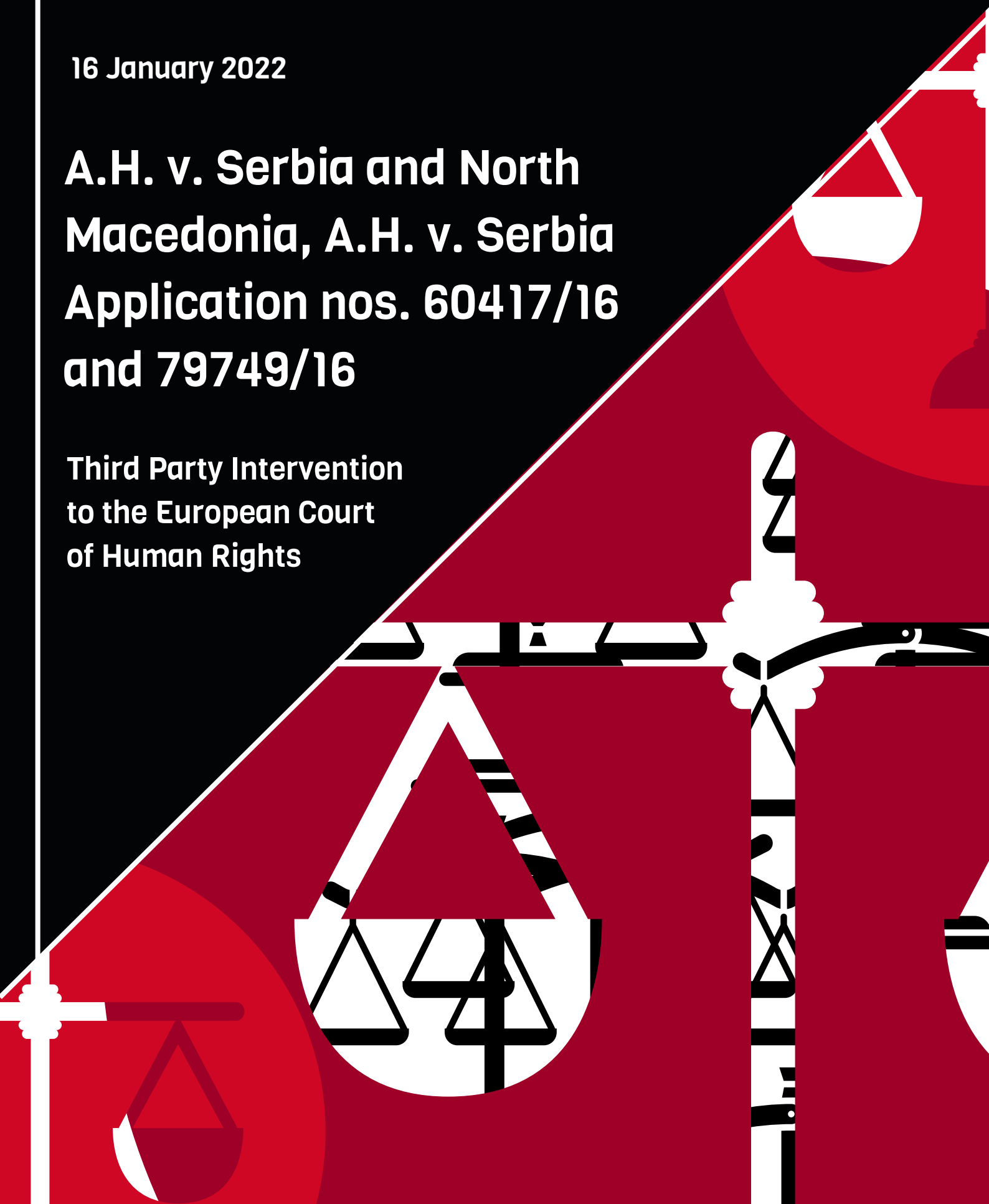


Border Violence Monitoring Network

16 January 2022

**A.H. v. Serbia and North
Macedonia, A.H. v. Serbia
Application nos. 60417/16
and 79749/16**

**Third Party Intervention
to the European Court
of Human Rights**





**Border Violence
Monitoring Network**

Wurzner Str. 34, 04315 Leipzig, Germany. Email: mail@rigardu.de Web: <https://www.borderviolence.eu/>

EUROPEAN COURT OF HUMAN RIGHTS

Council of Europe

67075 Strasbourg

Cedex France

BY POST AND FAX

Leipzig, 16th of January 2022

Application nos. 60417/16 and 79749/16

A.H. v. Serbia and North Macedonia, A.H. v. Serbia.

Third party intervention on behalf of Border Violence Monitoring Network¹

Pursuant to the Registrar's notification dated 6 December 2021 that the President of the Section has granted leave, under Rule 44(3) of the Rules of the European Court of Human Rights

¹ Border Violence Monitoring Network (BVMN) is a coalition of organisations (Are You Serious; Centre For Peace Studies; Collective Aid; Escuela Con Alma; Info Kolpa; Josoor; Mare Liberum; Mobile Info Team; No Name Kitchen; [RE:]Ports Sarajevo; Rigardu) working to document pushbacks and summary removals along the EU's borders since the network's formulation in 2016. Data on illegal pushbacks and police violence is collected by a consortium of independent voluntary field experts who are part of, or cooperate with, humanitarian support groups united through BVMN.

Relevant available information concerning the conditions of reception facing the applicant and other asylum seekers removed from Serbia.

1. In mid-July 2016, Serbia adopted a decision, sending a joint military and police force to guard the border with Bulgaria and Macedonia, in order to “help curb migrant flows”.² By August 2016, the Commander of the Joint Forces, Major General Zelimir Glisovic, stated that since the 22nd of July 2016, the military and police had managed to deter 5,101 migrants from crossing the border.³ Going on to provide a breakdown of the numbers, the Major General said: “the largest number of migrants, 4,428 of them, gave up illegal crossing when they noticed army and police forces, while 673 migrants were found in reception centres [...] or on the territory of Serbia”.⁴ The Major General does not go on to detail which methods were used to “deter” people or what it means to “find” people in reception centres. BVMN submits that it is likely that the Major General was referring to the systematic practice of summary removals, where people are taken from the territory of Serbia, often from reception centres, and forced, without a procedure to challenge their removal, over the border to North Macedonia. This is also suggested by Beznec et al. who claim that the military-police joint force led to “increasing numbers of push-backs”.⁵ BVMN is not aware of the authorities submitting any information on the procedures applied in these 5,101 cases. This includes the “673 migrants” who were “found in reception centres or on the territory of Serbia”.
2. By October 2016, summary removals were a well established and systematic practice in Serbia.⁶ In October 2016, the UNHCR reported: “Of the group of some 230 men and boys who had been transferred from Subotica Transit Centre (TC) to the south on 12 October, 121 arrived at the Presevo Reception Centre. UNHCR received information indicating that the rest, around 110 individuals mainly from Afghanistan and Pakistan, were taken to the border and unlawfully expelled to FYR Macedonia”.⁷ As above, BVMN is not aware of the authorities recording any information as to the procedures applied for these 110 people. This practice of summary removals is echoed in the October 2016 field report from Macedonia Young Lawyers Association (MYLA) in North Macedonia who attest 96 of newly arrived refugees to the Transit Centre (TC) Tabanovce camp “were pushed back from Serbia”.⁸ In the following month, the UNHCR reported that “about 1,000 people were illegally deported from Serbia in November 2016 alone”.⁹
3. The establishment of joint police and army patrols on the southern borders, coincides with the decrease of the UNHCR’s estimates of daily arrivals to Serbia. For example, in July 2016, the month the joint force was

² Barbara Beznec Marc Speer Marta Stojić Mitrović. 2016. Governing the Balkan Route: Macedonia, Serbia and the European Border Regime. Available at: <https://bordermonitoring.eu/wp-content/uploads/2017/01/5-Governing-the-Balkan-Route-web.pdf> [Accessed 15/01/2022]; Sinisa Jakov Marusic and Milivoje Pantovic. 2016. NEWS Serbia, Macedonia, Boost Controls to Stop Migrants. Available at: <https://balkaninsight.com/2016/07/18/serbia-tightening-security-on-it-s-borders-with-bulgaria-and-macedonia-07-18-2016/> [Accessed 14/01/2022].

³ Translation from, PTC. 2016. Dikovic: Team work of the army and police on securing the border. Available at: <https://www.rts.rs/page/stories/sr/story/125/drustvo/2436083/dikovic-timski-rad-vojske-i-policije-na-obebedjenju-granice.html> [Accessed 15/01/2022].

⁴ *Emphasis added. Ibid.*

⁵ Barbara Beznec, Marc Speer, Marta Stojić Mitrović. 2016. Governing the Balkan Route: Macedonia, Serbia and the European Border Regime. Available at: <https://bordermonitoring.eu/wp-content/uploads/2017/01/5-Governing-the-Balkan-Route-web.pdf> [Accessed 15/01/2022].

⁶ See also Amnesty International in 2015 who reported that, “push-backs by Serbian Border Police are routine” Amnesty International. 2015. Europe’s Borderlands: Violations against refugees and migrants in Macedonia, Serbia and Hungary. Page 32. Available at <https://www.amnesty.org/en/documents/eur70/1579/2015/en/> [Accessed 14/01/2022]; see also: HRW. 2015. Serbia: Police Abusing Migrants, Asylum Seekers. Available at: <https://www.hrw.org/news/2015/04/15/serbia-police-abusing-migrants-asylum-seekers> [Accessed 14/01/2022].

⁷ UNHCR. 2016. UNHCR Serbia Update, 13 - 16 October 2016. Available at: <https://reliefweb.int/report/serbia/unhcr-serbia-update-13-16-october-2016> [Accessed 14/01/2022].

⁸ MYLA. 2016. Field Report October 2016. Page 2. Available at: <https://myla.org.mk/wp-content/uploads/2020/07/Field-Report-October-final.pdf> [Accessed 14/01/2022].

⁹ Nemanja Rujevic. 2021. Serbia: Court confirms illegal pushbacks into the EU. Available at: <https://www.dw.com/en/serbia-court-confirms-illegal-pushbacks-into-the-eu/a-56312136> [Accessed 14/01/2022].

created, the average of daily arrivals decreased from 300 to 200.¹⁰ By October 2016, the UNHCR estimated that the number of daily arrivals were “around 150 refugees/migrants per day”.¹¹

*Procedural obligations: the Serbian authorities lack of assessment as to the asylum procedures in North Macedonia and the denial of a sufficient opportunity for migrants to demonstrate that North Macedonia was not a safe third country.*¹²

4. Summary removals from Serbia in 2016 denied asylum seekers the opportunity to demonstrate that North Macedonia was not a safe third country in their particular case.¹³ Instead, Serbian border officials systematically failed to examine the individual situation of each person arriving to Serbia. Instead, they are “ordered to return to Macedonia without being given access to an asylum procedure”.¹⁴
5. In 2015, a year before the creation of the joint police-military force and therefore a year before the large increase in collective expulsions, cases of expulsions without complying with any legal procedures from the territory of Serbia were well reported. For example, a 2015 Human Rights Watch (HRW) study found that 30.77% of their interviewees (who were migrants in Serbia) claim to have been pushed back to Macedonia by the Serbian Border Police, some even on multiple occasions, with no opportunity to claim asylum.¹⁵ An interviewee explained that “Serbian police pushed them back to Macedonia without adequate screening of their individual need for protection”.¹⁶ Another recounted how, “I asked for asylum. They told me to go back to Macedonia. The same day they put me in the car and took me back to Macedonia. It was not an official border crossing. They just ordered me to leave the car and to go in the direction of Macedonia”.¹⁷ Another explained “that the Serbian police summarily returned them to Macedonia without adequate screening to determine their individual need for international protection. They said they were forced back across the border as part of larger groups without proper procedures and with no opportunity to lodge asylum claims”.¹⁸ These accounts are supported by BVMN’s partner organisation Are You Syrious (AYS) who reported in 2016 that people in Serbia often refused to claim asylum at police stations and border points “being afraid they will be forced to go to camps, or even [be] pushed back”.¹⁹
6. The Court has consistently held that the prohibition of *non-refoulement* is absolute.²⁰ The prohibition has both substantive and procedural elements, with the procedural aspect including the obligation to provide individual assessments, interpretation, access to asylum systems and legal assistance.²¹ Yet, the above-described expulsions occurred without any individual assessments. They were also carried out without any identification or documentation procedure and denying people the opportunity to demonstrate that North Macedonia was not a safe third country for them.²² As a consequence of the non-implementation of legal procedures, there were no remedies available to challenge their removal as per Article 13.

¹⁰ UNHCR. 2016. Serbia Interagency Operational Update July 2016. Available at: <http://data2.unhcr.org/fr/documents/details/49993> [Accessed 2/01/2022].

¹¹ *Ibid.*

¹² As required by the Court in *Ilias and Ahmed v. Hungary* [GC]. 2019. Paragraphs 139-141.

¹³ *Ilias and Ahmed v. Hungary* [GC]. 2019.

¹⁴ Amnesty International. 2015: Europe’s Borderlands: Violations against refugees and migrants in Macedonia, Serbia and Hungary. Page 33. Available at <https://www.amnesty.org/en/documents/eur70/1579/2015/en/> [Accessed 14/01/2022].

¹⁵ HRW. 2015. Serbia: Police Abusing Migrants, Asylum Seekers. Available at: <https://www.hrw.org/news/2015/04/15/serbia-police-abusing-migrants-asylum-seekers> [Accessed 14/01/2022].

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ AYS. 2016. AYS Special Report from Serbia: Stacked on the Balkan Route. <https://medium.com/are-you-syrious/ays-special-report-from-serbia-stacked-on-the-balkan-route-113cd1a5e843> [Accessed 12/01/2022].

²⁰ See for example, *Saadi v. Italy* ([GC] no. 37201/06, §§ 124-133, ECHR 2008

²¹ See for example Judge Pinto De Albuquerque, concurring in *Hirsi* 2012 page 72.

²² *Ilias and Ahmed v. Hungary* [GC]. 2019.

Concerningly, due to the increase in summary removals in the second half of 2016, BVMN estimates that many others were also denied their rights as enshrined under Article 3 and Article 13 of the ECtHR.

7. In *Ilias and Ahmed v. Hungary* the Court set out that when a Contracting State, such as Serbia, seeks to remove asylum-seekers to a third country without examining the merits of their asylum request, the key issue to be addressed is the effectiveness of the asylum procedure in the receiving country.²³ It was therefore the duty of Serbia to examine whether or not there was a real risk of the Applicant being denied access to an adequate asylum procedure in North Macedonia, protecting them from direct or indirect *refoulement* to Sudan. It is clear from the above testimonies that the Serbian authorities routinely denied migrants the opportunity to demonstrate that North Macedonia was not a safe third country in their particular case.²⁴ People who were collectively expelled from Serbia in 2016 were not provided any assurances that North Macedonia was a safe third country for them. It is therefore unclear how Serbia fulfilled its obligation to sufficiently support its designation of North Macedonia as safe with sufficient analysis at the outset of the decision to remove people to the territory of North Macedonia.²⁵

The modus operandi of pushbacks at the Serbian-North Macedonian border

8. Research suggests that summary removals from Serbia often happen at night across remote areas of the border. For example, in 2015 HRW quoted an asylum seeker, “it was around 10 at night. When we got to the border they told us to walk over in the direction of Macedonia”.²⁶ While BVMN’s testimony database started in 2020, they reveal patterns in the *modus operandi* of summary removals from Serbia. For example, in 2020, a 24-year-old informed BVMN how he was forced into a police van in Preševo camp which arrived at the Serbian-Macedonian border, “at around 19:00 and were met by two additional police officers and four officers wearing military attire”.²⁷ In another testimony from 2020, 15 people were taken from Tutin camp by Serbian police officers. They were forced into a van which drove for around 9 hours. At 23:00 the police “brought them to a remote area of hills and ordered them to cross into North Macedonia. The Serbian officers pointed guns at them and told them to leave”.²⁸ Another testimony from 2020 details how a group was taken from Preševo camp. They were “transported in the [“furgo”] blue van, escorted by another “army car” which drove alongside [...] Once they arrived, they got out off the van “one by one” and found themselves in a forest area near the border of North Macedonia.”²⁹
9. Reports also suggest that the Serbian authorities routinely deprive migrants of their phones. For example, in 2015, HRW reported on police abusing migrants and asylum seekers, detailing how “migrants and asylum seekers experience a range of abuses at the hands of Serbian police”.³⁰ For example, 20 people recounted how “the police forced them to hand over their money and mobile phones, insulting them and threatening violence and deportation”.³¹ Testimonies in the BVMN database suggest that, at least from 2020, the confiscation of mobile phones is routine to pushbacks from Serbia. In 2020, a respondent informed BVMN that before they were summarily removed to Macedonia, the Serbian military was brought in to “clear the camp”, stating “one night ... special forces [arrived], they start to take our phones, they take our papers,

²³ [GC. 2019. Paragraphs 130-138.

²⁴ *Ilias and Ahmed v. Hungary* [GC]. 2019. Paragraphs 139-141

²⁵ *Ibid.* Paragraph 152.

²⁶ HRW. 2015. Serbia: Police Abusing Migrants, Asylum Seekers. Available at:

<https://www.hrw.org/news/2015/04/15/serbia-police-abusing-migrants-asylum-seekers> [Accessed 14/01/2022].

²⁷ BVMN. 2020. “The officers encouraged the dogs to attack”. Available at:

<https://www.borderviolence.eu/violence-reports/april-17-2020-1900-between-miratovac-srb-and-lojane-mkd/> [Accessed 14/01/2022].

²⁸ BVMN. 2020. “Pushed back from a camp in Serbia to N. Macedonia, and then to Greece”. Available at:

<https://www.borderviolence.eu/violence-reports/april-3-2020-2300-border-of-srb-mnk-close-to-lojane/> [Accessed 14/01/2022].

²⁹ BVMN. 2020. “Serbian authorities place us 500m above the border, they beat you and bring to the border”. Available at:

<https://www.borderviolence.eu/violence-reports/april-17-2020-2030-lojane-area-north-macedonia/> [Accessed 14/01/2022].

³⁰ HRW. 2015. Serbia: Police Abusing Migrants, Asylum Seekers. Available at:

<https://www.hrw.org/news/2015/04/15/serbia-police-abusing-migrants-asylum-seekers> [Accessed 14/01/2022].

³¹ *Ibid.*

they catch us and place us in the truck”. After a long drive, the group was “left free” in a forest on the Serbian-North Macedonian border.³² Again in 2020, a man informed BVMN how he had been taken from Tutin camp by “10 Serbian police officers in black uniforms and balaclavas” who brought him, along with the people from his container, to a “blue police bus”. During the ride, police officers “collected each person’s backpack, money and phones”. These personal belongings were never returned. “They stopped in a wooded area close to Slanishte, a suburb of Tabanovce, in North Macedonia [...] Then, at around 11pm the police officers ordered them to cross into North Macedonia”.³³

Relevant available information concerning the conditions of reception facing the applicant and other asylum seekers removed to North Macedonia.

10. Following the closure of the Balkan route in March 2016, Macedonia resumed summary expulsions without any formal procedure, with Oxfam estimating that in April 2016 alone, “1,579 irregular migrants were apprehended by the Macedonian police and returned to Greece without the possibility to submit an asylum application, while in May it was reported that the figure was 3,763. In the following months, fewer people have been apprehended and deported, but such cases still number several hundred per month”.³⁴ Collective expulsions to Greece were continuously reported throughout 2016, with the UNHCR writing that in 2016 “pushbacks were regularly reported from the former Yugoslav Republic of Macedonia, where the majority of those apprehended in the country are summarily returned to Greece”.³⁵ This continued in November and December 2016, with the UNHCR reporting on various summary expulsions to Greece.³⁶
11. These collective expulsions occurred either from within the territory of Macedonia, often from or around TCs, or at the border with Greece. This is confirmed by Oxfam who in 2016 highlighted how the Macedonian authorities allowed access to the asylum procedure on a highly selective basis, with persons being prevented from submitting “an asylum application in transit centres or at the border [...] sometimes after expressly stating their intention to seek asylum, some have been returned to Greece. According to NGO observers, the intention of the authorities is to deter refugees from applying for asylum in Macedonia thus keeping the number of asylum claims low”.³⁷

Collective expulsion from within the territory of Macedonia

12. In 2017 the Global Detention Project, speaking in relation to two transit centres (TC), Gevgelija and Tabanovce, noted: “In early 2016, FYROM broadened its detention capacity when it began depriving people of liberty at an *ad hoc* “transit centre” in the south of the country; in addition, it started accommodating people in an non secure transit centre in the north, in Tabanovce. These operations are not provided for in law. These centres were originally built to assist the transit of refugees during the border tensions in 2014-2016. Yet, they have become semi-open or closed detention centres since March 2016. After the official re-closure of the borders with Serbia and Greece, some 1,500 people were stranded in the northern camp of Tabanovce and an additional 200 in the southern facility at Gevgelija. These people do

³² BVMN. 2020. “Austrian police officers implicated in pushback to Greece”. Available at:

<https://www.borderviolence.eu/violence-reports/june-15-2020-0000-gevgelija-north-macedonia/> [Accessed 14/01/2022].

³³ BVMN. 2020. “This gateway has been used to carry out pushbacks from North Macedonia to Greece repeatedly”. Available at: <https://www.borderviolence.eu/violence-reports/october-1-2020-1300-near-idomeni-greece/>. [Accessed 14/01/2022].

³⁴ Oxfam International. 2016. Closed Borders: programme report on the impact of the borders closures on people on the move, with a focus on women and children in Serbia and Macedonia. Page 13. Available at: <shorturl.at/diGZ4> [Accessed 12/01/2022].

³⁵ UNHCR. 2017. ‘Desperate Journeys’. Available at: <https://www.refworld.org/docid/58b58b184.html> [Accessed 16/01/2022].

³⁶ UNHCR. 2016. ‘Europe’s refugee emergency response update’ November - December 2016. No.33. Page 7.

³⁷ Oxfam International. 2016. Closed Borders: programme report on the impact of the borders closures on people on the move, with a focus on women and children in Serbia and Macedonia. Page 13. Available at: <shorturl.at/diGZ4> [Accessed 12/01/2022].

not have access to legal pathways to claim any kind of status”.³⁸ This is echoed by the Ombudsman of the Republic of Macedonia’s 2017 report on Tabanovce TC which details that “it was also found that the freedom of movement of the migrants/ refugees was limited by the representatives of the Ministry of Interior. Namely, the persons who were registered and accommodated in the Reception Transit Center “Tabanovce” were able to leave the Center for personal reasons, only in two terms during the day, precisely determined by the representatives of the Ministry of Interior”.³⁹ The ambiguity as to the legality of the deprivation of liberty in Tabanovce TC in 2016/2017 raises concerns as to its compatibility with Article 5 and Article 13. Additionally, the lack of access to protection systems raises Article 3 concerns, in particular the procedural requirements of Article 3.

13. Moreover, it is estimated that in 2016, approximately 8,524 people who arrived in the transit centres of Vinojug and Tabanovce were arrested and returned to Greece without having the opportunity to apply for international protection.⁴⁰
14. In the TC of Vinojug, close to the North Macedonian-Greek border, it has been estimated that in the months of September, October, November and December of 2016, 117, 210, 90 and 141 people respectively were apprehended and “unofficially” returned to points of Greek border where no Greek police patrols were present.⁴¹ These practises continued in January and February 2017, where 100 and 55 people respectively were reportedly apprehended from the Vinojug TC and collectively expelled to Greece.⁴²
15. Following their visits to Vinojug TC in May and October 2016, the Ombudsman of the Republic of Macedonia recommended that the Ministry of the Interior, “to enable unhindered access to migrants / refugees to the procedure for recognition of the right to asylum and stop the group deportation [sic]”.⁴³ In the Ombudsperson’s follow up report, they noted that their recommendation had not been followed, stating “The NPM team concluded that the practice irregular migrants [sic] found on the territory of the Republic of Macedonia, after a couple of hours of a short time accommodation in the tent “Habitat”, to be deported in groups to the country from which they entered (mostly Greece) continues, without any formalities and without keeping official records”.⁴⁴
16. In 2016, it was common for people to be denied access to TC Tabanovce. Instead, they were forced to stay outside the camp. Reports from that time suggest that these precarious reception conditions increased the likelihood of people being collectively expelled to Greece. Even for those hosted inside the camp, the insecurity of the camp and lack of legal protection procedures exposed individuals to the risk of *refoulement* both to their countries of origin and to Greece, through the common practice of collective expulsions, which were especially prevalent in the second half of 2016.

³⁸ Global Detention Project. 2017. Former Yugoslav Republic of Macedonia Immigration Detention Profile. Page 12. Available at: <https://www.globaldetentionproject.org/immigration-detention-in-macedonia>. [Accessed 11/01/2022].

³⁹ The Ombudsman of the Republic of Macedonia. 2018. 7th Annual Report, 2017. Available at: https://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/NPM_Macedonia_2017.pdf [Accessed 15/01/2022].

⁴⁰ MYLA. 2016. Field Report 2016. Page 5. Available at: <https://myla.org.mk/wp-content/uploads/2018/05/MYLA-Field-Report-2016-.pdf> [Accessed 15/01/2022]

⁴¹ MYLA. 2016. Field Report 2016: September. Page 1. Available at: <https://myla.org.mk/wp-content/uploads/2016/11/MYLA-Field-Report-September.pdf> [Accessed 15/01/2022]; MYLA. 2016. Field Report 2016: October. Page 1. Available at:

<https://myla.org.mk/wp-content/uploads/2020/07/Field-Report-October-final.pdf> [Accessed 15/01/2022]; MYLA. 2016. Field Report 2016: November. Page 2. Available at:

<https://myla.org.mk/wp-content/uploads/2016/09/Field-Report-November-.pdf> [Accessed 15/01/2022]; MYLA. 2016. Field Report 2016: December. Page 2. Available at:

<https://myla.org.mk/wp-content/uploads/2016/09/Field-Report-December-1.pdf> [Accessed 15/01/2022].

⁴² MYLA. 2017. Field Report 2016: January. Page 2. Available at: <https://myla.org.mk/wp-content/uploads/2018/05/Field-Report-January-2017-1.pdf> [Accessed: 15/01/2022]; MYLA. 2017. Field Report 2016: February. Page 2. Available at: <https://myla.org.mk/wp-content/uploads/2018/05/Field-Report-February-2017.pdf> [Accessed: 15/01/2022].

⁴³ The Ombudsman of the Republic of Macedonia. 2017. 6th Annual Report, 2016. Page 126. Available at: <https://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/FYRM2016.pdf> [Accessed: 15/01/2022].

⁴⁴ *Ibid.* Page 128.

17. For example, as reported by MYLA in September 2016, migrants “are given food and water from the other refugees staying in the camp as well as clothes. In emergency cases, if medical assistance is needed, they will be allowed to enter inside the camp but only to get the necessary help. After receiving the service, they are taken outside the camp area. The majority of newcomers and refugees that were pushed back from Serbia can be seen in the surrounding areas outside the camp. The camp is constantly being monitored by the police authorities and each time newcomers are detected, they are expelled from the camp”.⁴⁵ MYLA reported again in November 2016 on the very few people allowed to enter TC Tabanovce, with again those who tried to enter being expelled from the camp by Macedonian police authorities; entry was only allowed to receive medical assistance.⁴⁶ This practice continued in December 2016, “when they approached TC Tabanovce they obtained necessary assistance, but police officers did not allow them to stay in the camp longer than needed. The number of refugees staying around the railway has increased this month. 30-40 persons could be seen near the railway station daily.”⁴⁷
18. Those who stayed inside TC Tabanovce rarely stayed for a substantial length of time, either because of attempted onward movement to Serbia or as a result of being collectively expelled to Greece. For example, MYLA recorded in October 2016 that: “around 90 of the newly arrived refugees were brought by the Macedonian army, and 96 were pushed back from Serbia. Of these, only 50 stayed for at least a day in TC Tabanovce”.⁴⁸ A month later, in September 2016, MYLA reported that “during July [2016] a total of 64 persons were intercepted in Serbia and returned back to Macedonia. From this group only 12 persons were accommodated in TC Tabanovce, while the rest were sent back to TC Vinojug in Gevgelija and from there pushed back to Greece”.⁴⁹ In December 2016, it was also reported that around the TC of Tabanovce approximately 100 asylum seekers were spotted, a number which decreased during the last days of the month because of the expulsion of larger groups by Macedonian police to Greece.⁵⁰
19. In 2017, the Ombudsman of the Republic of Macedonia “identified several irregularities in the treatment of the migrants/refugees in RTC “Tabanovce” [...] [including] the case of violent deportation of migrants/refugees who were accommodated in and around the Centre”.⁵¹ They went on to recommend that in relation to Tabanovce TC, “when implementing deportations, the legally prescribed procedure should be observed, adequate records should be kept for the same, and the persons covered by the deportation should be informed in a timely manner about the deportation to be carried out”.⁵²
20. The above reports detail the unwillingness of the Macedonian authorities in 2016 to ensure adequate reception conditions for new arrivals to TCs in Macedonia, with many being forced to stay in precarious locations. The reports also show the lack of access to legal procedures, including access to asylum systems or sufficient opportunities for asylum seekers to demonstrate that Greece was not a safe third country in their particular case.

⁴⁵ MYLA. 2016. Field Report 2016: September. Page 2. Available at: <https://myla.org.mk/wp-content/uploads/2016/11/MYLA-Field-Report-September.pdf>. [Accessed 11/01/2022].

⁴⁶ MYLA. 2016. Field Report 2016: November. Available at: <https://myla.org.mk/wp-content/uploads/2016/09/Field-Report-November.pdf> [Accessed 15/01/2022]

⁴⁷ MYLA. 2016 Field Report 2016: December. Page 1. Available at: <https://myla.org.mk/wp-content/uploads/2016/09/Field-Report-December-1.pdf>. [Accessed 11/01/2022].

⁴⁸ MYLA. 2016. Field Report 2016: October. Page 2. Available at: <https://myla.org.mk/wp-content/uploads/2020/07/Field-Report-October-final.pdf>. [Accessed 11/01/2022].

⁴⁹ MYLA. 2016. Field Report 2016: September. Page 1. Available at: <https://myla.org.mk/wp-content/uploads/2016/09/Field-Report-2016-January-to-August-1.pdf>. [Accessed 11/01/2022].

⁵⁰ MYLA. 2016. Field Report 2016: December. Page 1. Available at: <https://myla.org.mk/wp-content/uploads/2016/09/Field-Report-December-1.pdf> [Accessed 15/01/2022].

⁵¹ The Ombudsman of the Republic of Macedonia. 2018. 7th Annual Report, 2017. Available at: https://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/NPM_Macedonia_2017.pdf [Accessed 15/01/2022].

⁵² *Ibid.* Page 171.

Collective expulsions at the North Macedonian-Greek Border

21. Pushbacks from North Macedonia to Greece have been well documented since 2015. In November 2015, North Macedonia restricted border crossings to nationals from Syria, Iraq and Afghanistan, prohibiting people of other nationalities, including those with legitimate asylum claims, from entering.⁵³
22. This is of particular concern in relation to North Macedonia's obligations under Article 3. For example, in *D.A. and Others v. Poland* (2021) and *M.K. and Others v. Poland* (2020) the Court found that there had been a violation of Article 3 when border officials denied the Applicants entry and summarily removed them to a third country, despite the applicants seeking to lodge an asylum application. Likewise, in *Sharifi and Others v. Italy and Greece* (2014) the Court found that there had been a breach of Article 3 of the Convention due to the Applicants summary return to Greece, despite the Applicant's complaint that they were at risk of indirect refoulement to Afghanistan. Moreover, unlike the Article 4 of Protocol 4, which requires individuals to use legal means of entry, there is no requirement in the Courts Article 3 case law for individuals to make use of a means of legal entry if they express to the responding state authorities their fear of treatment contrary to Article 3 if returned.⁵⁴
23. Despite its obligations as per Article 3, since 2015 violent summary expulsions by North Macedonian authorities have been reported. Human rights organisations, including HRW, Amnesty International and Medecins Sans Frontieres (MSF), reported on collective expulsions in 2015 and 2016. In February 2015, several asylum seekers reported to Amnesty International about ill-treatment by Macedonian border authorities, such as an Afghan asylum seeker who showed visible injuries to his eyes, sustained after being beaten by the North Macedonian authorities.⁵⁵ In September 2015, HRW interviewed 27 asylum seekers who were apprehended, beaten and taken to unknown border sites to cross back into Greece by Macedonian authorities.⁵⁶ Between November and December 2015, MSF provided medical care and psychological support for 16 patients, who were allegedly beaten by the North Macedonian police while they attempted to cross the Macedonian-Greek border.⁵⁷ In January 2016, HRW reported on people who, when they crossed into North Macedonia from Greece, were caught by the Macedonian army who beat them, resulting in a broken skull and the group being abandoned at the border.⁵⁸

Relevant available information concerning the conditions of reception facing the applicant and other asylum seekers removed to Greece.

Risk of Refoulement

24. The removal of asylum-seekers to a third country may be in breach of Article 3 due to inadequate reception conditions in the receiving State.⁵⁹ In November 2016, Dublin transfers to Greece were still suspended by the European Commission due to "systematic deficiencies in the Greek asylum system which risked to

⁵³ HRW. 2016. 'Greece/ Macedonia: Asylum Seekers Trapped at Border'. Available at: <https://www.hrw.org/news/2016/02/11/greece/macedonia-asylum-seekers-trapped-border> [Accessed 15/01/2022].

⁵⁴ See for example *N.D. and N.T. v. Spain* (2020) Paragraph 201; *D. v. Bulgaria* (2021).

⁵⁵ Amnesty International. 2015. 'Europe's borderlands, violations against refugees and migrants in Macedonia, Serbia and Hungary'. Available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/EUR7015792015ENGLISH.PDF> [Accessed 15/01/2022]

⁵⁶ HRW. 2015. 'Police Brutality against Migrants and Asylum Seekers in Macedonia'. Available at: <https://www.hrw.org/report/2015/09/21/though-we-are-not-human-beings/police-brutality-against-migrants-and-asylum> [Accessed at 15/01/2022].

⁵⁷ MSF. 2016. *Obstacle Course to Europe, A policy-made humanitarian crisis at EU borders*. Page 46. Available at: https://www.msf.org/sites/msf.org/files/msf_obstacle_course_to_europe_0.pdf [Accessed 15/01/2022].

⁵⁸ HRW. 2016. *Greece/ Macedonia: Asylum Seekers Trapped at Border*. Available at: <https://www.hrw.org/news/2016/02/11/greece/macedonia-asylum-seekers-trapped-border> [Accessed 15/01/2022].

⁵⁹ *M.S.S. v. Belgium and Greece* [GC]. 2011. Paragraphs 362-368

constitute a violation of the fundamental rights of applicants for international protection".⁶⁰ These deficiencies were found in three aspects of Greece's asylum system: detention conditions, living conditions, and the asylum procedure.⁶¹ For example, the European Commission recognised insufficient reception capacities and conditions on the mainland with respect to living space, sanitation, healthcare, and security.⁶² Other notable areas included the lack of access to free legal aid.⁶³ As Dublin transfers had not yet been resumed by November 2016, it is understood, *prima facie*, that systemic deficiencies were still present in Greece's asylum system.

25. It is therefore likely that in November 2016, the Applicant could arguably claim that there was no guarantee that his asylum application would be seriously examined by Greece. If he could argue that his return to Sudan would violate Article 3 ECHR, North Macedonia would have been obliged to allow him to remain within its territory until their claims had been properly reviewed by a competent domestic authority.⁶⁴
26. Additionally, the Greek authorities have conducted summary removals to Turkey since the mid-1990s,⁶⁵ with Human Rights Watch reporting on systematic summary removals since as early as 2008.⁶⁶ These removals are not preceded by a formal procedure, such as a consideration of individual circumstances, resulting in denial of the possibility of people to challenge their removal, by, for example, raising *non-refoulement* arguments.⁶⁷
27. It is well known that by 2016, summary removals were a well established and systematic practice of the Greek state.⁶⁸ For example, UNHCR has noted that "from 2013 to 2017, they recorded testimonies regarding 350 incidents of illegal pushbacks in the area of Evros river as well as in the sea borders between Turkey and Greece. The incidents involved approximately 11,500 persons. Approximately 7,500 persons were reported to have been pushed back to Turkey in the area of Evros river".⁶⁹ For 2016 in particular, the UNHCR detailed, in a letter to the Greek Ombudsman, 23 summary expulsion incidents in 2016 involving a total of approximately 1,000 people.⁷⁰ This letter built on the UNHCR's letter sent in 2015 to the Greek Ombudsman, which detailed 43 collective expulsion incidents in 2015, involving approximately 1,000

⁶⁰ Commission Recommendation (EU) 2016/193 of 10 February 2016 addressed to the Hellenic Republic on the urgent measures to be taken by Greece in view of the resumption of transfers under Regulation (EU) No 604/2013 of the European Parliament and of the Council.

⁶¹ *M.S.S. v. Belgium and Greece*. 2011 I Eur. Ct. H.R. 255.

⁶² Commission Recommendation (EU) 2016/2256 of 8 December 2016 addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No 604/2013 of the European Parliament and of the Council, *supra* note 14, at recital 12.

⁶³ Boryana Gotsova. 2019. Rules Over Rights? Legal Aspects of the European Commission Recommendation for Resumption of Dublin Transfers of Asylum Seekers to Greece. Available at: shorturl.at/pwCVY [Accessed 15/01/2022].

⁶⁴ *M.K. and Others v. Poland*, 2020, §§ 178.

⁶⁵ Eric Reidy. 2018. An open secret: Refugee pushbacks across the Turkey-Greece border. Available at: <https://www.thenewhumanitarian.org/special-report/2018/10/08/refugee-pushbacks-across-turkey-greece-border-Evros> [Accessed 15/01/2022].

⁶⁶ Human Rights Watch. 2008. Stuck in a Revolving Door: Iraqis and Other Asylum Seekers and Migrants at the Greece/Turkey Entrance to the European Union. Available at: <https://www.hrw.org/report/2008/11/26/stuck-revolving-door/iraqis-and-other-asylum-seekers-and-migrants-greece/turkey> [Accessed 02/12/2021].

⁶⁷ GLAN. 2020. Communication to the United Nations Human Rights Committee in the Case of FAJ against Greece. Available at: shorturl.at/zBKX3 [Accessed 15/01/2022].

⁶⁸ See for example, Amnesty International. 2014. Greece: Stop unlawful and shameful expulsion of refugees and migrants. Available from:

<https://www.amnesty.org/en/latest/news/2014/04/greece-stop-unlawful-and-shameful-expulsion-refugees-and-migrants/> [Accessed 6 April 2020]; Amnesty International. 2015. Fear and Fences – Europe's Approach to Keeping Refugees at Bay. Available from: <https://www.amnesty.org/download/Documents/EUR0325442015ENGLISH.PDF> [Accessed 26 March 2020].

⁶⁹ The Greek Ombudsman. 2020. Alleged pushbacks to Turkey of foreign nationals who had arrived in Greece seeking international protection. Page 16. Available at:

<https://www.synigoros.gr/resources/docs/280421-pushbacks-interim-report-eng.pdf> [Accessed 16/01/2022]

⁷⁰ *Ibid.* Footnote 14.

people.⁷¹ Moreover, half of the interviewees Amnesty International questioned about their flight experiences in Greece between 2012 and 2014 reported that they were, at least once, subjected to a summary removal to Turkey without any legal procedure.⁷²

28. Migrants in the north-east of Greece, especially those in the region that covers Thessaloniki and the Evros border, face a real risk of being summarily removed to Turkey across the Evros-Meriç River. For example, in 2016, a recognized Syrian refugee, with a travel document from Germany was captured by Greek police in Didymoteicho, a town in North-Eastern Greece. Despite his legal presence in Greece, and his German papers, he was summarily expelled across the Evros river to Turkey.⁷³ Similarly, in 2020 Greek officers rounded up 40 people from the Diavata refugee camp (located 4 kilometres from Softex camp) in Thessaloniki and transported them to Evros-Meriç River, where they were sent to Turkey.⁷⁴ These are only two examples of the many summary removals that happen in Greece, where people are intercepted in locations far away from the border.⁷⁵
29. This pattern of people being apprehended far within the Greek territory and then being collectively expelled across the Evros is corroborated by reports received by the UNHCR since 2017 of “foreign nationals [who] were informally arrested by the Greek authorities, in areas which are not in proximity with the borders (eg in the town of Thessaloniki) and were subsequently pushed back to Turkey”.⁷⁶
30. The status of Turkey as a “safe third state” was questionable in 2016.⁷⁷ Several NGOs, such as Amnesty International, Statewatch and HRW have reported violations of the prohibition of *refoulement* by Turkey.⁷⁸ In this way, summary removals to Turkey expose people to a risk of *refoulement* to their countries of origin.

⁷¹ *Ibid.*

⁷² Amnesty International. 2014. Greece: Stop unlawful and shameful expulsion of refugees and migrants. Available at: [shorturl.at/wxGR0](https://www.amnesty.org/en/documents/grk/2014/01/20/1907932/) [Accessed 15/01/2022].

⁷³ GLAN. 2021. Enforced Disappearance & Expulsion at Greece’s Evros Border. Available at: <https://www.glanlaw.org/enforced-disappearance-greece> [Accessed 15/01/2022].

⁷⁴ HRW. 2021. Submission to the Special Rapporteur’s Report on Pushback Practices and Their Impact on the Human Rights of Migrants. Available at: [shorturl.at/lyAE5](https://www.hrw.org/report/2021/01/20/pushback-practices) [Accessed 15/01/2022].

⁷⁵ See for example: BVMN. 2020. Taken from Diavata camp (GRK) and pushed back violently to Turkey. Available at: <https://www.borderviolence.eu/violence-reports/march-31-2020-0000-meric-river-btw-grk-tur/> [Accessed 15/01/2022]; BVMN. 2020. If we had known, we would not have come to Thessaloniki. But I thought we have papers, we have UNHCR documents, nothing will happen to us! Available at:

<https://www.borderviolence.eu/violence-reports/august-27-2020-0900-thessaloniki-greece/>. [Accessed 15/01/2022]; BVMN 2020. They were beating them with the stick when they passed near them you hear the sound of the electric gun. Available at:

<https://www.borderviolence.eu/violence-reports/april-25-2020-0000-evros-delta/> [Accessed 15/01/2022]; BVMN: A Thessaloniki police intervention leads directly to a mass pushback to Turkey. 2020. Available at:

<https://www.borderviolence.eu/violence-reports/june-6-2020-0100-meric-river-ipsala/> [Accessed 15/01/2022]; Simone Innico. 2020. Enacting Statehood in Places of Exception: The Structural Effect of Statehood on Greek Migration Management. Available at: <https://www.tandfonline.com/doi/abs/10.1080/17449057.2021.1907932> [Accessed 15/01/2022].

⁷⁶ The Greek Ombudsman. 2020. Alleged pushbacks to Turkey of foreign nationals who had arrived in Greece seeking international protection. Available at: <https://www.synigoros.gr/resources/docs/280421-pushbacks-interim-report-eng.pdf> ft 33 [Accessed 16/01/2022]

⁷⁷ Reinhard Marx. 2016. Rechtsgutachten zur unionsrechtlichen Zulässigkeit des Plans der Staats- und Regierungschefs der Europäischen Union, die Türkei als „sicherer Drittstaat“ zu behandeln im Auftrag von Pro Asyl. Available at: https://www.proasyl.de/wp-content/uploads/2016/03/160315_Gutachten_Marx_Tuerkei_als_sicherer_Drittstaat_final.pdf [Accessed 15/01/2022].

⁷⁸ Statewatch. 2016. Why Turkey is not a “Safe Country”. Available at: <https://www.statewatch.org/media/documents/analyses/no-283-why-turkey-is-not-a-safe-country.pdf> [Accessed 12/01/2022];

Human Rights Watch, Turkey: Syrians Pushed Back at the Border. Available at: <https://www.hrw.org/news/2015/11/23/turkey-syrians-pushed-back-border> [Accessed 12/01/2022]; Amnesty International. 2015/2016 Yearly Report, Turkey. Available at: <https://www.amnesty.org/en/latest/research/2016/02/annual-report-201516/> [Accessed 12/01/2022].

31. This risk of refoulement is further compounded for Sudanese nationals, as in 2016 Turkey considered Sudan to be a safe third country.⁷⁹ In contrast, Sudanese refugees have had a recognition rate of 55% of international protection across the EU in 2018.⁸⁰
32. Due to the lack of an adequate asylum system in Greece and the systematic use of summary expulsions to Turkey, A.H. would have had a well founded complaint that he was at risk of indirect refoulement to Sudan.

Inadequate reception conditions at Softex Camp

33. The removal of asylum-seekers to a third country may be in breach of Article 3 due to inadequate reception conditions in the receiving State.⁸¹ Softex camp, set up just after the eviction of Idomeni camp, was located in an old toilet paper factory on the outskirts of Thessaloniki and run by the Greek military. Already overcrowded shortly after opening, the Softex camp did not provide adequate conditions to accommodate large numbers of refugees.⁸² Not all of the 1,800 refugees who stayed at Softex camp could be accommodated in the factory hall, with many hosted outside the camp.⁸³ Reports from 2016 attest to the lack of medical supplies and access to health care.⁸⁴ Moreover, it was reported in 2016 that the food rations, delivered twice per week to the camp, were not sufficient neither in terms of quantity nor quality.⁸⁵ Since the camp was set up close to an area with a high density of mosquitos, many refugees suffered from inflamed mosquito bites.⁸⁶ Experts of the Greek Center for Disease Control recommended, after a survey in the country's 16 Greek camps, including Softex, that "it would be best to close them all".⁸⁷ According to a neurologist working at Softex camp, the bad condition of accommodation in the camp raised the level of aggression among the refugees, including ethnic tensions and domestic violence.⁸⁸
34. According to Giorgos Kyritsis, the Greek government's refugee coordinator, Softex camp was, among all Greek camps, the worst in terms of minor crimes.⁸⁹ The military, which ran the camp, was lightly present during the day and mostly absent during the night. Both refugees and volunteers reported that the camp was left to itself and no contact person was available.⁹⁰ This absence has allowed small gangs to be formed, with robbery, abuse and forced prostitution reported.⁹¹ The presence of gangs was also reported by BVMN partners Are You Syrious and Mobile Info Team in 2016.⁹²

⁷⁹ Margarite Zoetewij. 2018. The State of Emergency, Non-Refoulement and the Turkish Constitutional Court. Available at: <https://verfassungsblog.de/the-state-of-emergency-non-refoulement-and-the-turkish-constitutional-court/> [Accessed 15/01/2022].

⁸⁰ Olivia Sundberg Diez. 2019. Diminishing safeguards, increasing returns: Non-refoulement gaps in the EU return and readmission system. Available at: http://aei.pitt.edu/101046/1/Diminishing_safeguards.pdf [Accessed 15/01/2022].

⁸¹ *M.S.S. v. Belgium and Greece* [GC]. 2011. Paragraphs 362-368

⁸² David Lepaska. 2016. Life in the shadows: meet the refugees stranded in Greece's notorious Softex camp. In: The National. 2016. Available at: shorturl.at/nNY23 [Accessed 15/01/2022].

⁸³ Patrick Kingsley. 2016. 'Prisoners of Europe': the everyday humiliation of refugees stuck in Greece. Available at: shorturl.at/dnoG5 [Accessed 15/01/2022].

⁸⁴ David Lepaska. 2016. Life in the shadows: meet the refugees stranded in Greece's notorious Softex camp. In: The National. 2016. Available at: shorturl.at/nNY23 [Accessed 15/01/2022].

⁸⁵ Kristof Botka. 2016. Eigentlich keine Kraft mehr. Available at: <https://taz.de/Fluechtlinge-in-Griechenland/15325761/> [Accessed 14/01/2022]

⁸⁶ *Ibid.*

⁸⁷ Giorgos Christides. 2016. 40 Grad im Zelt - draußen ist es schlimmer. In: Der Spiegel. 2016. Available at: shorturl.at/wFIT3 [Accessed 14/01/2022]

⁸⁸ *Ibid.*

⁸⁹ David Lepaska. 2016. Life in the shadows: meet the refugees stranded in Greece's notorious Softex camp. In: The National. 2016. Available at: shorturl.at/nNY23 [Accessed 15/01/2022].

⁹⁰ Daniel Howden, Apostolis Fotiadis. 2017. The Refugee Archipelago: The Inside Story of What Went Wrong in Greece. Available at: shorturl.at/huRY1 [Accessed 15/01/2022].

⁹¹ Patrick Kingsley. 2016. 'Prisoners of Europe': the everyday humiliation of refugees stuck in Greece. Available at: shorturl.at/fuRT3 [Accessed 15/01/2022].

⁹² AYS. 2016. AYS Special: Europe has no idea what happens in Greece. Available at: shorturl.at/kqCF6 [Accessed 01/12/2021].