SECOND SECTION

EUROPEAN COURT OF HUMAN RIGHTS

***Applications nos. 60417/16 and 79749/16,***

A.H. against Serbia and North Macedonia
and A.H. against Serbia

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WRITTEN SUBMISSIONS ON BEHALF OF THE INTERVENERS:

ADVICE ON INDIVIDUAL RIGHTS IN EUROPE (AIRE CENTRE)
EUROPEAN COUNCIL ON REFUGEES AND EXILES (ECRE)
DUTCH COUNCIL FOR REFUGEES (DCR)

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*pursuant to the Registrar's notification dated 14 April 2022 on the Court's permission to intervene under Rule 44 § 3 of the Rules of the European Court of Human Rights*

**Summary**

i. The interveners submit that, in light of well-established principles of international law and this Court's settled case law, an expulsion that exposes applicants to the risk of *refoulement* and deprives them of protection under international and EU law is prohibited. Article 3 of the European Convention on Human Rights (ECHR) imposes a duty on States to conduct a rigorous assessment of the risk of treatment prohibited by the Convention in the country to which removal is proposed, regardless of whether the latter is the country of origin, or a safe third country. When it concerns removal to a perceived safe third country the assessment should include an analysis of the quality and functioning of the asylum and reception system in practice, including reception conditions and guarantees against onward *refoulement*.

ii. The aforementioned guarantees also apply when individuals are subject to law enforcement activities that can prevent them from expressing a wish to apply for international protection and lodging an asylum application. States must ensure that official and individualised procedures are available in domestic law and are accessible in practice to individuals at the border, in order to prevent their exposure to treatment prohibited by the Convention. Such procedures must be accompanied by access to legal aid, information and effective remedies in order to comply with the guarantees of Article 3 and Article 13 ECHR. In addition, effective legal remedies should be presumed to be unavailable where national legislation does not provide for automatic suspensive effect at the judicial level. Perfunctory and hasty removal procedures must be considered as effectively preventing access to any remedies.

iii. The Court's jurisprudence regarding law enforcement authorities' increased duty to protect individuals under their control and the applicable standards where events take place within the exclusive knowledge of the authorities should be considered, *mutatis mutandis*, applicable to removals at the border in order to prevent arbitrary state action or omission. The assessment of such cases should include an inquiry as to the location and circumstances of removal, the conduct of authorities during removal, and the personal circumstances of the individuals. By virtue of an applicant's vulnerability and often limited access to official data, coherent statements made by the applicant, as well as up-to-date and objective reports by reliable sources should be regarded as *prima facie* evidence, in particular where monitoring is not present, whilst state authorities must produce specific evidence regarding the events in dispute. Due to the particular position of state authorities, having the most control over and knowledge of removals coupled with the state's responsibility to safeguard the Convention rights of individuals within their jurisdiction, the burden of proof in removal cases shall be higher for the State than for the victims of the alleged violations, entailing an obligation to produce specific evidence regarding the events in dispute.

## I. The nature and scope of non-*refoulement* obligations under Article 3 ECHR

1. The *non-refoulement* principle is essential in order to protect '*the fundamental values of democratic societies',*[1] and is '*a value of civilisation closely bound up with respect for human dignity, part of the very essence of the Convention'*.[2] Under the ECHR and other international human rights law instruments applicable to Contracting Parties, this principle entails an obligation not to transfer (*refouler*) people where there are substantial grounds for believing that they would face a real risk of serious human rights violations - including of Article 3[3] - in the event of their removal, in any manner whatsoever, from the State's jurisdiction.

2. Contracting Parties will violate Article 3 by removing an individual '*where substantial grounds have been shown for believing that the person concerned faces a real risk of being subjected to torture or inhuman or degrading treatment or punishment in the receiving country*' under the classic *Soering* test.[4] The *non-refoulement* principle is absolute, permitting no derogations either in law or in practice.[5] Article 3 *non-refoulement* obligations protect individuals against both deliberate harm by State agents and non-State actors[6] and removal to face living conditions amounting to treatment incompatible with the Convention.

3. Contracting Parties have an obligation to secure Convention rights to all those who fall within their jurisdiction per Article 1 ECHR. This general obligation not only includes obligations of *non-refoulement*, but also obligations the

[1] Chahal v. the United Kingdom [GC], no. 22414/93, 15 November 1996, § 96; Vilvarajah and Others v. the United Kingdom, nos. 13163/87, 13164/87, 13165/87, 13447/87 and 13448/87, 30 October 1991, § 108.
[2] Khlaifia and Others v. Italy [GC], no. 16483/12, 15 December 2016, § 158
[3] Othman (Abu Qatada) v. the United Kingdom, no. 8139/09, 17 January 2012, § 233, 258 -261; N.A. v. the United Kingdom, no. 25904/07, 17 July 2008; Soering v. the United Kingdom, App. No. 14038/88, 7 July 1989.
[4] Soering v. the United Kingdom, no. 14038/88, 7 July 1989, § 90-91, Series A no. 161; Vilvarajah and Others v. the United Kingdom, nos. 13163/87 13164/87 13165/87 13447/87 13448/87, 30 October 1991, § 103, Series A no. 125; H.L.R. v. France, no. 24573/94, 29 April 1997, § 34, Reports 1997-III; Jabari v Turkey, no. 40035/98, 11 July 2000, § 38; Salah Sheekh v. the Netherlands, no. 1948/04, 11 January 2007, § 135; and Saadi v Italy, no. 37201/06, 28 February 2008, § 152; M.S.S. v. Belgium and Greece [GC], no. 30696/09, 21 January 2011, § 365.
[5] Saadi v Italy, op. cit, § 127; UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984; Adel Trebourski v. France, UNCAT, CAT/C/38/D/300/2006, 11 May 2007, § 8.2 – 8.3. UN Human Rights Committee, General comment no. 31 [80]. The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, § 12. This is unlike in refugee law, where the principle is not absolute.
[6] J.K and others v Sweden [GC], no.59166/12, 23 August 2016.

States to treat persons with the dignity consonant with Convention standards and, in particular, to enable individuals to effectively exercise their Convention rights wherever and whenever they are within their jurisdiction, lawfully or otherwise.[7] Treating all individuals compatibly with the Convention includes the obligation to identify and pay special attention to the needs of people in a vulnerable situation, including asylum-seekers. States have an obligation to enable those who wish to identify themselves as seeking asylum to do so[8] and to permit them access to determination procedures with all the procedural safeguards required by law,[9] including access to information, legal assistance and access to effective remedies.

### a. The *non-refoulement* principle: substantive aspects of assessment

4. As noted above, Article 3 prohibits authorities from transferring people to States where there are substantial grounds for believing that they face a real risk of a violation of their rights under Article 3 ECHR or other serious human rights violations.[10] The prohibition of ill-treatment under the Convention and the prohibition of indirect (or chain) *refoulement* through an intermediary country are always relevant considerations although the substantive scope of the assessment of such a risk may differ depending on whether the applicants are expelled to a third country or to their country of origin.[11] Consequently, before removing an individual to a third country without an in-merits assessment of their claim for protection, authorities must conduct a thorough examination of whether the asylum system of that third country offers sufficient guarantees against an onward removal to the country of origin or any other country where that individual may be exposed to ill-treatment.[12] In such cases, authorities cannot remove individuals on the basis of assumptions regarding a certain country's asylum system but must conduct a *proprio motu* assessment of "*the accessibility and functioning of the receiving country's asylum system and the safeguards it affords in practice*" based on up-to-date information available at the time of the assessment.[13] Such information includes authoritative findings regarding the risk of denial of access to asylum systems, including those made by UNHCR, Council of Europe and reputable non-governmental organisations.[14]

5. In addition, a removal to a third country is prohibited under Article 3 where the reception/living conditions in that country would result in the individual being exposed to treatment prohibited by the Convention.[15] To reach the threshold of Article 3, such treatment must attain a minimum level of severity, the assessment of which is "*relative, depending on all the circumstances of the case*" including its physical or mental effects, and the age, sex, vulnerability and state of health of the victim.[16] Living conditions which fail to respect human dignity, can undoubtedly give rise to feelings of fear, anxiety or inferiority that can lead to despair. This Court found this threshold to be met when asylum-seekers were left out on the streets with no resources, no access to sanitary facilities, and no means of providing for their essential needs for four weeks.[17] As the Court put it in *Sufi and Elmi*: "*the responsibility of the state under Article 3 might be engaged in respect of treatment where an applicant, who was wholly dependent on state support, found himself faced with official indifference in a situation of serious deprivation or want incompatible with human dignity*".[18]

6. Although it is in principle for the person seeking asylum to make the claim, and present the reasons and evidence that substantiate the existence of the risk of ill-treatment, this Court has found that Articles 2 and 3 can entail an obligation for authorities to consider the existence of such risk *proprio motu*. [19] Such an obligation may arise where the asylum claim is based on "*a well-known general risk, when information regarding such a risk is freely ascertainable from a wide number of sources*", or where, having regard to the vulnerability of asylum-seekers, a state "*is made aware of facts relating to a specific individual that could expose him to a risk of ill-treatment*".[20] Where the applicant is an asylum-seeker, the removing State must not simply assume that the person will be treated in conformity with the Convention standards in the country of removal, but rather must verify whether and how national authorities apply asylum legislation in practice.[21]

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[7] M.S.S. v. Belgium and Greece, no. 30696/09, 21 January 2011, §§ 299-320.
[8] Hirsi Jamaa and Others v. Italy, no. 27765/09, 23 February 2012.
[9] Kebe and Others v. Ukraine, App. No. 12552/12, 12 January 2017, § 104.
[10] M.S.S. v. Belgium and Greece, no. 30696/09, 21 January 201), § 286; Sharifi and Others v. Italy and Greece, no. 16643/09, 21 October 2014, § 166.
[11] Ilias and Ahmed v Hungary, No. 47287/15 [GC], 21 November 2019, §§ 128 and 129; Auad v. Bulgaria, no. 46390/10, 11 October 2011, § 106. See also, M.S.S. v. Belgium and Greece, no. 30696/09, 21 January 2011, § 286; Mohammadi v. Austria, 71932/12, 3 July 2014, § 60.
[12] Ilias and Ahmed v Hungary, op.cit., §§ 137.
[13] *Idem*, § 141.
[14] *Ibid*.
[15] M.S.S. v. Belgium and Greece, op.cit., paras. 366-367.
[16] *Idem*, § 219; Sufi and Elmi v. United Kingdom, nos. 8319/07 and 11449/07 (28 June 2011) para 213.
[17] V.M. and others v. Belgium, no.60125/11, 7 July 2015 §§ 162-163.
[18] Sufi and Elmi v. United Kingdom, nos. 8319/07 and 11449/07, 28 June 2011, § 279.
[19] J.K. and others v. Sweden [GC], no. 59166/12, 23 August 2016, § 98.
[20] F.G. v. Sweden, No. 43611/11, 23 March 2014, §§ 125-127.
[21] Ilias and Ahmed v Hungary, op. cit., § 141.

7. **The interveners submit that the obligation to respect the principle of *non-refoulement* imposes a duty on States to examine the situation that the applicants will encounter in the country of removal, regardless of whether the applicants had an opportunity to raise such concerns and irrespective of whether the destination is a third country or a country of origin. Where the person is being returned to a third country, the authorities cannot operate on the basis of assumptions but must examine the quality and functioning of the asylum and reception system in practice, including reception conditions, quality of protection procedures, content of international protection, and guarantees against onward *refoulement*.**

### b. The *non-refoulement* principle: procedural guarantees

8. Procedurally, the *non-refoulement* obligation under Article 3 ECHR requires, *inter alia,* that the assessment of whether there are substantial grounds for believing that the applicant will face treatment contrary to Article 3 ECHR in the country of removal is *rigorous*.[22] In addition to the duty to examine the general risks as well as the risk that follows from the applicants' individual circumstances, authorities are under an obligation to ensure the individuals' safety, particularly by allowing them to remain in the territory pending an adequate review of their claims, regardless of whether they are in possession of documents authorising entry.[23] The failure to conduct proceedings which properly assess the risk to people who find themselves at the border has been found to constitute a violation of Article 3, including where authorities did not allow the applicants to remain on the state's territory pending the examination of their applications.[24]

9. When assessing compliance with the procedural guarantees of Article 3, this Court has considered whether asylum applicants were provided with all the relevant and necessary information on their rights.[25] This Court found a violation of Article 3 where the applicants encountered difficulties "*including no assistance from the migration officials and confusing and misleading instructions […] in respect of their applications for asylum*."[26] Similarly, where shortcomings in the expulsion procedure reflected the extreme haste ("*précipitation extreme*") with which the authorities conducted the overall procedure, the Court considered it to be an inadequate assessment of Article 3 risks.[27]

10. More specifically, individuals must be told, in simple, non-technical language that they can understand, the reasons for their removal, and the process available for challenging the decision.[28] Accessible legal advice and assistance may also be required for the individual to fully understand his or her circumstances.[29] Further, as it will be submitted below in relation to Article 13, individuals asserting an arguable complaint that they are at risk of prohibited treatment under the Convention have the right to an effective remedy, which is not theoretical or illusory, and allows for the review and, if appropriate, for the reversal of the decision to remove.[30] This remedy must be practical and effective, and must not be unjustifiably hindered by the acts or omissions of the authorities.[31] The absence of a legal framework with adequate guarantees for the rigorous assessment of the risk of treatment prohibited by the Convention prior to removal has led this Court to conclude that there are substantial grounds for believing that the applicant risks a violation of his rights under Article 3.[32]

11. **The interveners submit that summary expulsions of migrants without adequate safeguards constitute a violation of the principle of *non-refoulement* and the procedural guarantees under Article 3. More specifically, the absence of official and individualised procedures, the lack of access to a lawyer and effective remedies capable of suspending an expulsion renders the protection offered under the procedural limb of Article 3 ineffective, theoretical and illusory. In order for States to comply with their Article 3 obligations, the authorities must conduct an effective investigation into the applicant's individual circumstances and the real-time conditions in the country of removal, including the accessibility and reliability of the asylum system and the living conditions in that country.**

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[22] F.G. v. Sweden, No. 43611/11, 23 February 2016, §§ 112-113; Chahal v. the United Kingdom, 15 November 1996, § 96; Hirsi Jamaa and others v. Italy, op. cit., § 116.
[23] M.K. and others v. Poland, Nos. 40503/17 42902/17 43643/17, 23 July 2020, § 178.
[24] Idem, § 185.
[25] D. v. Bulgaria, No. 29447/17, 20 July 2021, § 132.
[26] M.D. and others v. Russia, Nos. 71321/17 and 9 others, 14 September 2021, § 101.
[27] D. v. Bulgaria, No. 29447/17, 20 July 2021, §§ 132-133.
[28] Khlaifia and Others v. Italy [GC], op. cit., § 115; J.R. and Others v. Greece, No. 22696/16, 25 May 2018, § 123-124.
[29] Guideline 5. Remedy against the removal order in CoE Committee of Ministers "Twenty Guidelines on forced return" adopted on 4 May 2005 as referenced by the ECtHR in De Souza Ribeiro v. France, No. 22689/07, § 47.
[30] Shamayev and Others v. Georgia and Russia, No. 36378/02, (12 April 2005), § 460; M.S.S. v. Belgium and Greece, op. cit., § 290; Čonka v. Belgium, 51564/99, 5 February 2002, §§ 77-85.
[31] Menteş and Others v. Turkey 1997-VIII, § 89; İlhan v. Turkey [GC], no. 22277/93, 2000, § 97, Aksoy v. Turkey, 1996, § 95 in fine; Aydın v. Turkey, 25 September 1997, § 103; Paul and Audrey Edwards v. the United Kingdom, no. 46477/99, 2002, § 96.
[32] Auad v. Bulgaria, No. 46390/10, 11 October 2011, § 107.

### c. Ill-treatment during removal procedures

12. Regardless of the existence of treatment prohibited by the Convention in the country to which removal is proposed this Court has recognised that the removal procedure itself can constitute ill-treatment under Article 3. In *Thuo v. Cyprus*, this Court emphasised that the State authorities have an obligation to investigate such a complaint promptly and to make a serious attempt to find out what had happened without hastily drawing conclusions. In the absence of such an investigation, the Court found a violation of the procedural limb of Article 3, whereas a breach of the substantive limb of Article 3 could not be found due to "*the domestic authorities' failure to effectively investigate the applicant's complaint*".[33]

13. The importance of securing the safety and dignity of the person where the authority exercises full control over the applicant has been central to the Court's reasoning in cases where the individual is in a situation of powerlessness before authorities which make the need for robust guarantees imperative. In this regard, the Court has clarified that "[…] *in respect of a person who is deprived of his liberty, or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, in principle, an infringement of the right set forth in Article 3*."[34] Article 3 has also been found to impose on States " […] *a duty to protect the physical well-being of persons who find themselves in a vulnerable position by virtue of being within the control of the authorities*."[35] In *M.A. v. Cyprus*, the Court examined operational decisions by authorities aiming to detain and deport irregularly staying third-country nationals: even if official arrests were not made, Article 5 was found to be applicable as the Court established the existence of coercion and noted the manner of operation (i.e. early morning).[36] Despite the government's objections that the measure was taken in the context of a special operation to prevent criminal offences and identify irregularly staying migrants, the Court found that a clear legal basis for such actions is needed regardless of the difficult situation the authorities are faced with.[37] Consequently, **the interveners submit that these findings are *mutatis mutandis* applicable to use of force against migrants, including asylum-seekers at the border, due to the cumulative effect of the lack of independent monitoring, the lack of effective safeguards and remedies against ill-treatment, as well as the vulnerability of migrants who are powerless against the violation of their Convention rights, including their absolute rights under Article 3 ECHR.**

14. The Convention guarantees in such cases do not necessarily require the occurrence of physical harm; the Court has condemned extreme physical violence during removal procedures[38] but has also found that treatment that "[…] *arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance*" will result in a violation of Convention rights.[39] The Court recently found a violation of Article 3 in a case concerning an applicant with significant mental health problems during incommunicado captivity following apprehension at the border. In doing so, the Court largely relied on the lack of information provided by the State and the absence of satisfactory and convincing reaction to the applicant's detailed and consistent account along with the limited evidence available to him.[40] Previously, it examined the manner of apprehension (abduction and violent interrogation) and the manner of removal (on board an airplane to an unknown destination) and concluded that the cumulative effect of the different aspects of treatment during removal reached the severity of ill-treatment required for an Article 3 violation.[41]

15. In examining the manner of removal, in cases concerning vulnerable applicants, the Court considers whether the authorities identified and paid due attention to the individual's needs. Lack of specific attention to a medical issue in relation to possible complications during transportation for the purpose of removal has been found by the Court to breach Article 3.[42] In *Y. v. Russia*, the Court assessed the manner of deportation of an applicant with a medical condition and dismissed Article 3 concerns only after confirming that the applicant had been examined by a neurologist with valid credentials, the individual was accompanied by a doctor and provided with food and drink during the flight.[43] In a case concerning the removal of parents with their children, the Court considered that the conditions of removal "*must have caused the adults feelings of despair and fear*"[44] as they were not able to prevent the removal in the absence of procedural guarantees, were being sent to an unknown area and spent several days in winter conditions and without shelter in the country to which they were removed.

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[33] Thuo v. Cyprus, No. 3869/07, 4 April 2017, §§ 125-149.
[34] Bouyid v. Belgium, no. 23380/09, 28 September 2015, §§ 88.
[35] Premininy v. Russia, No. 44973/04, 10 February 2011, § 73; I.E. v. The Republic of Moldova, No. 45422/13, 26 May 2020, § 40.
[36] M.A. v. Cyprus, 41872/10, 23 July 2013, § 193.
[37] *Idem*, §§ 200-202.
[38] El-Masri v. The former Yugoslav Republic of Macedonia, No. 39630/09, 13 December 2012, § 205.
[39] Svinarenko and Slyadnev v. Russia, Nos. 32541/08 and 43441/08, § 115; M.S.S. v. Belgium and Greece, op. cit., § 220.
[40] Badalyan v. Azerbaijan, No. 51295/11, 22 July 2021, §§ 41-48.
[41] Nasr and Gahli v. Italy, No. 44883/09, 23 February 2016, §§. 284-291.
[42] Dzidzava v. Russia, no. 16363/07, 20 December 2016, § 70.
[43] Y v. Russia, no. 20113/07, 4 December 2008, § 93.
[44] Ghorbanov and others v. Turkey, No. 28127/09, 3 December 2013, §§ 33-34; See also, Mubilanzila Mayeka and Kaniki Mitunga v. Belgium, App. No 13178/03, 12 October 2006, §§ 66-71, where a violation of Article 3 solely on account of the circumstances of the deportation was found where a child had to travel without an assigned guardian.

16. The Court has emphasised that law-enforcement authorities are under a duty to protect individuals that are found in a situation that "*highlights the superiority and inferiority which by definition characterise the relationship between the former and the latter*", be it due to detention or other measures that bring the individual under the control of the authorities (e.g. interrogation or identity checks).[45] When assessing such cases, the Court considers whether the events have taken place in a situation "*within the exclusive knowledge of the authorities*"[46] and whether the government *alone* has "*access to any other information capable of corroborating or refuting allegations*."[47] In such cases, the authorities have to provide "*a satisfactory and convincing explanation*" addressing allegations and evidence of ill-treatment.[48] Where the State fails to provide such explanations, the Court "*can draw inferences which may be unfavourable for the Government*."[49]

17. The interveners note that the aforementioned jurisprudence is *mutatis mutandis* applicable to situations of removal conducted at the border due to the powerlessness of migrants before law-enforcement officers and the absence of independent monitoring mechanisms that, among other factors, increase the possibility of arbitrary treatment and impede access to reliable information. In addition, the interveners note that, regardless of whether complaints relate specifically to ill-treatment during removal or lack of non-*refoulement* guarantees, the Court assesses Article 3 breaches in the context of removals by attaching significant weight to the statements of applicants when these are corroborated by independent and reliable sources that indicate the existence of systemic practices.[50]

18. The interveners consider the well-documented practice of *refoulement* at the border of Serbia and North Macedonia created a 'situation of danger' for migrants at the real risk of arbitrary removal in violation of their Convention rights, in particular, of their absolute rights under Article 3.[51] **The interveners submit that allegations of treatment incompatible with guarantees under Article 3 during removal procedures should be subject to a thorough examination and investigation. The examination should include the assessment of location and circumstances of removal, the conduct of the authorities, as well as the personal circumstances of the individuals involved. Given the difficulties in obtaining information in removal cases at the border,** victims of arbitrary practices cannot reasonably be expected to provide material evidence to the Court to prove their allegations. **Therefore, coherent statements made by applicants, in particular where corroborated by up-to-date and objective reports by reliable sources, should be accepted as *prima facie* evidence of ill-treatment, shifting thus the burden of proof onto the Government. State authorities cannot merely deny the allegations but must produce specific and reliable evidence regarding the events in dispute.**

## II. North Macedonia and Greece as countries of removal

19. The situation in **North Macedonia** has long been characterized by a general lack of capacity to protect asylum-seekers, generally inadequate decision-making and widespread substandard reception conditions.[52] The problems include significant gaps in the quality of asylum adjudication,[53] the limited scope of judicial review and ineffective legal aid schemes.[54] It is indicative that since 2018 there have been no decisions granting refugee status.[55] According to local reports, most of the persons caught at the southern border by Macedonian police are returned to Greece without any form of identification or other official procedure;[56] this practice persists in 2022 and reflects a general situation of violence at the borders in South Eastern Europe.[57] In its 2020 visit, the Council of Europe's

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[45] Bouyid v. Belgium, no. 23380/09, 28 September 2015, §§ 106-107.
[46] *Idem*, §§ 82-83.
[47] Badalyan v. Azerbaijan, No. 51295/11, 22 July 2021, § 45.
[48] *Idem*, § 48
[49] Bouyid v. Belgium, op. cit., § 83; El-Masri v. The former Yugoslav Republic of Macedonia, No. 39630/09, 13 December 2012, para. 205.
[50] M.K. and others v. Poland, Nos. 40503/17 42902/17 43643/17, 23 July 2020, no. 27765/09, 23 February 2012 § 174; Moustahi v. France, No. 9347/14, 25 June 2020, no. 27765/09, 23 February 2012 § 62.
[51] In December 2020, the Constitutional Court of Serbia reached a similar conclusion in a case concerning the removal of a group of 40 Afghan nationals who were expelled to Bulgaria outside any legal procedure, without any examination of their individual circumstances nor any possibility to provide arguments against their expulsion. See, ECRE, AIDA Country Report: Serbia, 2020 Update, p. 23, available at: https://bit.ly/2ZFGBNM
[52] UN High Commissioner for Refugees (UNHCR), The Former Yugoslav Republic of Macedonia as a country of asylum: Observations on the situation of asylum-seekers and refugees in the Former Yugoslav Republic of Macedonia, August 2015, available at: https://bit.ly/3GvlU7J
[53] European Commission, Commission Staff Working Document, North Macedonia 2021 Report, SWD(2021) 294 final, 19 October 2021, p. 44; See also, Refugee Rights Europe, Limits to access to asylum along the Balkan route, July 2020, p. 19, available at: https://bit.ly/3GyA886
[54] *Ibid*.
[55] *Ibid*. In 2020, 211 asylum claims were submitted and 2 individuals were granted subsidiary protection, see, UNHCR Factsheet, North Macedonia, February 2021, available at: https://bit.ly/3mltuK0
[56] Macedonian Young Lawyers Association, The State of Asylum in the Republic of North Macedonia, 2018-2019, available at: https://bit.ly/3vT7SI3; In 2020, the Border Violence Monitoring Network published extensive reports regarding numerous instances of unlawful returns from North Macedonia to Greece, while according to local reports a total number of 24,153 migrants were prevented from entering North Macedonia or were illegally returned to Greece by September 2020, and almost 4,000 migrants were potential victims of forced returns to Greece during the first three months of 2021. For more information, see BVMN, The Black Book of Pushbacks, Volume I, pp. 405-528, available at: https://bit.ly/3Emttf9; Amnesty International: International Report 2020/2021: North Macedonia, available at: https://bit.ly/2ZvxgrV; Macedonian Young Lawyers Association, Pushing Back Responsibility, April 2021, p. 7, available at: https://bit.ly/3vRKr23
[57] See Border Violence Monitoring Network, Balkan Regional Reports for January, February and March 2022, available here: https://bit.ly/3KBrUg4; See, also, UNHCR, News Comment: UNHCR warns of increasing violence and human rights violations at European borders, 21 February 2022, available at: https://bit.ly/38Jd75L

Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) noted the persisting problem of ill-treatment by law enforcement agencies.[58] Reception conditions in North Macedonia remain generally inadequate, as state accommodation for persons with specific needs is not available while the use of detention is characterized by lack of procedural guarantees and excessive length.[59]

20. In **Greece**, the general deficiencies in the asylum and reception system that led this Court to find violations of the Convention in *M.S.S.* still remain.[60] Asylum procedures in Greece have recently been the subject of several legislative changes, which have been criticized for reducing important procedural safeguards and rendering procedures ineffective;[61] and recent geopolitical developments and COVID-19 have exacerbated the situation.[62] Numerous reliable sources report unofficial policies of illegal expulsions at the border and from the mainland, no access to asylum, physical violence during the interception and return of migrants and a lack of independent monitoring bodies.[63] Reception conditions in Greece continue to be grossly inadequate, with extreme overcrowding, substandard provision of essential services, understaffed reception centres, and inadequate safety and hygiene measures,[64] especially following the onset of the coronavirus pandemic[65] and the handover of reception services from NGOs and UNHCR to the government. [66] In this context, the Council of Europe Commissioner for Human Rights has noted the numerous allegations of pushbacks and ill-treatment of migrants, the inadequate reception conditions and the lack of protection against non-refoulement in proposed deportation-related legislation.[67]

## III. The requirements of Article 3 in conjunction with Article 13 ECHR regarding access to effective remedies against removal

21. Article 13 imposes a positive obligation on the State to ensure access to effective remedies for any arguable violations. Individuals at risk of prohibited treatment under the Convention have a right to an effective remedy, which is capable of reviewing and overturning the decision to expel,[68] regardless of whether the destination is a third country or the country of origin. This Court has found a close and rigorous scrutiny of arguable[69] claims in *non-refoulement* cases to be an integral part of protecting an individual's rights under Articles 3 and 13 ECHR.[70] This requires the Contracting Parties, *inter alia,* to assess all evidence at the core of a *non-refoulement* claim,[71] including, where necessary, to obtain such evidence *proprio motu*; not to impose an unrealistic burden of proof on applicants or require applicants to bear the entire burden of proof;[72] to take into account all relevant country of origin information

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[58] CPT, Report to the Government of North Macedonia on the visit to North Macedonia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 7 to 9 December 2020, CPT/Inf (2021) 18, 29 July 2021, available at: https://bit.ly/3y83ybg.

[59] European Commission, Commission Staff Working Document, North Macedonia 2021 Report, SWD(2021) 294 final, 19 October 2021, p. 43; Refugee Rights Europe, Limits to access to asylum along the Balkan route, July 2020, p. 19, available at: https://bit.ly/3GyA886; Fundamental Rights Agency, Migration: Key Fundamental Rights Concerns, Quarterly Bulletin: 01.01.2021-30.06.2021, pp. 28-29, available at: https://bit.ly/3vPHajK; Committee on the Elimination of All Forms of Discrimination Against Women, Concludin Observations 2018, CEDAW/C/MKD/CO/6, para. 45, available at: https://bit.ly/3CpDgAA

[60] In their most recent decision, the Committee of Ministers noted the persisting delays in asylum procedures, the increasingly lengthy appeal procedures and the limited legal aid; regarding living conditions, the Committee raised concerns regarding the future of accommodation in the government's plans, and noted shortcomings in the protection of unaccompanied children who are frequently detained. See, Committee of Ministers, MSS and Rahimi groups, Decision CM/Del/Dec(2020)1383/H46-7, 1 October 2020. See also, UNHCR, News Comment: UNHCR warns of increasing violence and human rights violations at European borders, 21 February 2022, available at: https://bit.ly/38Jd75L;

[61] ECRE, AIDA Country Report: Greece, 2020 Update, p. 33.-34, available at: https://bit.ly/3CviPSY; For more information, see also, ECRE, Legal Note No. 9, Asylum in Greece: A situation beyond judicial control?, pp. 7-20, available at: https://bit.ly/3CqhxbB

[62] ECRE Legal Note No. 9, op. cit., pp. 19-20.

[63] Human Rights Watch, "Their Faces Were Covered": Greece's Use of Migrants as Police Auxiliaries in Pushbacks, 7 April 2022, available at: https://bit.ly/3LL4uq3; Amnesty International, Greece: Violence, lies, and pushbacks – Refugees and migrants still denied safety and asylum at Europe's borders, June 2021, available at: https://bit.ly/2Zs7DYr ; World Organization Against Torture (OMCT), Greece: Pushbacks of over 7000 migrants including children may amount to torture and must be investigated, June 2021, available at: https://bit.ly/2XUdZj1; See also, Reuters, EU executive demands probe into alleged migrant pushbacks in Greece, Croatia, October 7, 2021, available at: https://reut.rs/3vRlDXY

[64] ECRE, Legal Note No. 9, op. cit., pp. 34-35.

[65] Fundamental Rights Agency, Migration: Key Fundamental Rights Concerns, Quarterly Bulletin: 01.01.2021-30.06.2021, p. 17, available at: https://bit.ly/3vPHajK

[66] ECRE, Greece: Government Want to Keep Pushback Investigation In-House, Pushbacks Continue as Reports of Refoulement from Turkey Emerges, Food Provision and Cash Assistance in Shambles, 22 October 2021, available at: https://bit.ly/3EmAeh2

[67] Commissioner for Human Rights, Greece's Parliament should align the deportations and return bill with human rights standards, 3 September 2021, available at: https://bit.ly/38Q3q5J; Commissioner for Human Rights, Letter addressed to the Minister for Citizens' Protection, the Minister of Migration and Asylum, and the Minister of Shipping and Island Policy of Greece, Ref: CommHR/DM/sf 019-2021, 3 May 2021, available at: https://bit.ly/3OZmaAg.

[68] Shamayev and Others v. Georgia and Russia, App. No. 36378/02, (12 April 2005), § 460; M.S.S. v. Belgium and Greece, op. cit.; Čonka v. Belgium, op. cit., §§ 77-85.

[69] This Court has noted that in order to be arguable the right in question must not necessarily be violated and does not require certainty, but rather the claim must not be so weak that it would not be admissible under the ECtHR. Diallo v. Czech Republic, App. No. 20493/07, 28 November 2011, §§ 59 -71.

[70] Jabari v. Turkey, No. 40035/98, 11 July 2000, §§ 39, 50.

[71] *Idem*, §§ 39-40; Singh and Others v. Belgium, No. 33210/11, 2 October 2012, § 104.

[72] M.S.S. v. Belgium and Greece, op. cit., §§ 344-359; Hirsi Jamaa and Others v. Italy, op. cit., §§ 122-158.

materials originating from reliable and objective sources;[73] and to apply the principle of the benefit of the doubt in light of specific vulnerabilities of asylum-seekers.[74]

22. Any remedy must be accessible in practice as well as in law, not theoretical and illusory, and cannot be unjustifiably hindered by the acts or omissions of the authorities.[75] This Court's jurisprudence highlights a number of obstacles that may render the remedy against prohibited treatment under Article 3 ineffective, including, *inter alia*, removing the individual before he or she had the practical possibility of accessing the remedy;[76] the absence of automatic suspensive effect of any available remedy;[77] excessively short time limits in law for submitting the claim or an appeal;[78] insufficient information on how to gain effective access to the relevant procedures and remedies;[79] obstacles in physical access to and/or communication with the responsible authority;[80] lack of (free) legal assistance and access to a lawyer;[81] lack of interpretation;[82] and limited access to transit zones.[83] Hasty procedures of removal have also been found to generally have the effect of rendering existing remedies inoperative in practice and thus unavailable.[84]

23. National authorities make a thorough assessment of the risk of ill-treatment and the foreseeable consequences of removal to the destination country in light of the general situation there as well as the applicant's personal circumstances.[85] It is the duty of those authorities to seek all relevant, up-to-date and generally available information. This Court has also affirmed the importance of international and national NGOs in monitoring, reporting and providing evidence[86] of the actual human rights situation in a particular country, and specifically, in relation to the contemplated removal of people raising a risk of Article 3 violations.[87] According to this Court, in order to evaluate a 'country's safety', due consideration must be given to the range of the publications available and the consistency of the nature of the information reported.[88] The Court has previously stated that "[*g]eneral deficiencies well documented in authoritative reports, [such as] by UNHCR, Council of Europe and EU bodies, are in principle considered to have been known" to the authorities."*[89]

24. **The interveners submit that, in order to treat all individuals compatibly with the Convention, special consideration must be given to the vulnerable condition of asylum-seekers in general and to the specific circumstances of each individual, in order to ensure that all asylum-seekers enjoy a full and effective access to domestic remedies. Access to rights under Articles 3 and 13 of the Convention can be rendered ineffective on account of disregard towards country reports and other evidence provided by the applicants; unfair and excessive burden of proof on individuals concerned; lack of information and interpretation; lack of access to a lawyer; and lack of access to effective remedy with a jurisdiction of *ex nunc* examination of the case and suspensive effect. In the removal context, effective legal remedies should be presumed to be unavailable where judicial bodies with jurisdiction and competence to automatically suspend the removal and guarantee the abovementioned procedural standards, including the right to an individualized assessment, are not prescribed by national legislation. Removal procedures that are conducted in haste and in a perfunctory manner by definition prevent effective access to remedies.**

## IV. Obligations under international law, in particular, regarding non-*refoulement* standards, access to remedies and ill-treatment during removal

25. The interveners note that under Article 53 ECHR, where Contracting Parties to the ECHR are also bound by specific international law, agreements the Court must ensure that the Convention rights are interpreted and applied in a

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[73] Salah Sheekh v. the Netherlands, op cit., § 136.
[74] M.A. v. Switzerland, No. 52589/13, 18 November 2014, § 55.
[75] Čonka v. Belgium, op. cit, §§. 46, 75.
[76] Shamayev and Others v. Georgia and Russia, op cit., § 460; Labsi v. Slovakia, No. 33809/08, 15 May 2012, § 139.
[77] Baysakov and Others v. Ukraine, No. 54131/08, 18 February 2010, § 74; M.A. v. Cyprus, No. 41872/10, 23 July 2013, § 133.
[78] I.M. v. France, App. No. 9152/09, 14 December 2010, § 144; M.S.S. v. Belgium and Greece, op. cit., § 306.
[79] Hirsi Jamaa and Others v. Italy, op. cit., § 204.
[80] Gebremedhin v. France, App. No. 25389/05, 26 April 2007, § 54; I.M. v. France, op cit., § 130; M.S.S. v. Belgium and Greece, op cit., §§ 301 - 313.
[81] M.S.S. v. Belgium and Greece, op cit., § 319; *mutatis mutandis* N.D. and N.T. v. Spain, Nos. 8675/15 and 8697/15, 3 October 2017, § 118.
[82] Hirsi Jamaa and Others v. Italy, op cit., § 202.
[83] Shahzad v. Hungary, No. 12625/17, 8 July 2021, § 77.
[84] D. v. Bulgaria, No. 29447/17, 20 July 2021, §§ 133-134.
[85] Vilvarajah and Others v. United Kingdom, no. 13448/87, 30 October 1991, § 108; Tarakhel v. Switzerland, no. 29217/12, 4 November 2014, § 104.
[86] Chahal, op.cit, §§ 99-100; Müslim v. Turkey, no. 53566/99, 26 April 2005, § 67; Said v. the Netherlands, no. 2345/02, § 54, ECHR 2005-VI; Al-Moayad v. Germany (dec.), no. 35865/03, §§ 65-66, 20 February 2007; and Saadi, § 131.
[87] Mohammed v. Austria no. 2283/12, 6 June 2013, §§ 97-102; Sharifi v. Austria no 60104/08, 5 December 2013, § 46; Mohammadi v. Austria no. 71932/12, 3 July 2014, § 69; M.S.S. v. Belgium and Greece, op. cit., §§ 346-353; F.G. v Sweden [GC] no. 43611/11, 23 March 2016, § 117, cross-referencing Safaii v Austria, no. 44689/09, 7 May 2014, § 44&46.
[88] Safaii v. Austria, op.cit., §§ 46-47.
[89] Ilias and Ahmed v Hungary, op. cit., § 141.

manner which does not diminish the rights guaranteed under the applicable international agreements which bind the state in question.

26. States parties to the 1951 Refugee Convention and its 1967 Protocol[90] are by default required to accept those who claim to be refugees in order to examine their claim.[91] However, States may, in certain circumstances, send asylum-seekers to countries that can be considered safe, provided that removal there is consistent with their obligations under the Refugee Convention, including full access to the rights under Articles 2 – 34, including the principle of *non-refoulement* under Article 33.[92] UNHCR, scholars and domestic judges have expressed the view that a State may only send an asylum-seeker to a country where he or she will be granted protection 'comparable' or 'equivalent' to what he or she is entitled to under the Refugee Convention in the sending State, including, at least, all the rights that the Refugee Convention guarantees.[93] The sending State must also satisfy itself that the receiving State interprets refugee status in a manner that respects the true and autonomous meaning of the refugee definition set by Article 1 of the Refugee Convention.[94] It should be noted that a state's ratification of international human rights treaties is not in itself sufficient to ensure adequate protection against the risk of ill-treatment where reliable sources report practices that contravene the rights guarantees under those international treaties.[95]

27. In addition, Contracting Parties are also required to observe the principle of *non-refoulement* under international human rights law.[96] It should be noted that both North Macedonia and Serbia have ratified the international treaties analysed below and are bound to comply with their obligations and uphold their legal standards.[97] The obligation of *non-refoulement* has been interpreted by the relevant UN Treaty Bodies to include a requirement to ensure access to territory and to effective judicial and administrative guarantees. The Human Rights Committee (CCPR) has noted that the right to life under Article 6 of the International Covenant on Civil and Political Rights (ICCPR) requires States to "*allow all asylum seekers claiming a real risk of a violation of their right to life in the State of origin access to refugee or other individualized or group status determination procedures that could offer them protection against refoulement*."[98] The UN Committee Against Torture (CAT) considers that Article 3 of the Convention against Torture requires "*access to all legal and/or administrative guarantees and safeguards provided by law*" in order for an adequate assessment of claims of ill-treatment to take place.[99] The Committee on the Rights of the Child (CRC) has explicitly connected access to territory with the protection against *refoulement* guaranteed under Article 37 of the CRC,[100] while the Committee on the Elimination of all forms of Discrimination Against Women (CEDAW) has recognized the right of women to "*have access to asylum procedures without discrimination or any preconditions*", as well as their right to be informed on "*the status of the determination process and how to gain access to it".*[101]

28. In respect of ill-treatment during return, the CAT Committee has relied on Article 16 of the CAT in the context of inhuman detention conditions pending return,[102] or where the return itself was conducted using excessive force or in an otherwise cruel manner.[103] In *Arkauz Arana v. France*, the Committee noted in particular that the deportation was executed in the context of an administrative procedure without the intervention of a judicial authority, nor any

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[90] North Macedonia and Serbia have both ratified the 1951 Refugee Convention and its 1967 Protocol. For the ratification of the 1951 Convention see here: https://bit.ly/37iNRmE; for the ratification of the 1967 Protocol, see here: https://bit.ly/3kzULa9.

[91] UNHCR, *Background Note on the Safe Country Concept and Refugee Status Background Note on the Safe Country Concept and Refugee Status* EC/SCP/68, 26 July 1991, para 16.

[92] UNHCR, *EXCOM Conclusions No. 15 (XXX) of 1979 on refugees without an asylum country and No. 58 (XL) of 1989 on the irregular movement of asylum-seekers, in Compilation of Conclusions Adopted by the Executive Committee on the International Protection of Refugees: 1975-2004*, available at: http://www.unhcr.org/uk/publications/legal/41b041534/compilation-conclusions-adopted-executive-committee-international-protection.html

[93] Michelle Foster, *Protection Elsewhere: The Legal Implications of Requiring Refugees to Seek Protection in Another State*, 28 Michigan Journal of International Law 233 (2007), available at: http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1175&context=mjil, p. 264-5.

[94] University of Michigan Law School, *The Michigan Guidelines on Protection Elsewhere*, Michigan Journal of International Law 209 (2007), available at: http://www.refworld.org/docid/4ae9acd0d.html, para 4 and UNHCR, Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept, 23 March 2016, available at: http://www.refworld.org/docid/56f3ee3f4.html p. 2.

[95] Saadi v. Italy, Application no. 3720106, 28 February 2008, para. 147.

[96] UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85; Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13; UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3; both Serbia and North Macedonia have signed and/or ratified the aforementioned treaties.

[97] The ratifications status of Serbia can be found here: https://bit.ly/3yh2rpE; the ratification status of North Macedonia can be found here: https://bit.ly/3P7enR0.

[98] CCPR, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, 30 October 2018, para. 31.

[99] CAT, General comment No. 4, 2017, on the implementation of article 3 of the Convention in the context of article 22, para. 49 (d).

[100] CRC, D.D. v. Spain, Communication No. 4/2016, 1 February 2019, para. 14.4.

[101] CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, 14 November 2014, paras. 45 and 50 (b).

[102] CAT, Hanny Khater v. Morocco, Communication No. 782/2016, 22 November 2019, para. 10.10; CAT, S.A.M. v. Denmark, Communication No. 693/2015, 3 August 2018, para. 7.3.; CAT, F.K. v. Denmark, Communication No. 580/2014, 23 November 2015, para. 7.7; CAT, A.A. v. Denmark, Communication No. 412/2010, 13 November 2012, para. 7.3.

[103] CAT, Sonko v. Spain, Communication No. 368/2008, 25 November 2011, para. 10.4; CAT, Kwami Mopongo and others v. Morocco, Communication No. 321/2007, 7 November 2014, para. 6.2.

possibility for the individual to contact their family or lawyer, and "*entailing a direct handover from police to police*."[104] In *Barry v. Morocco*, the Committee found that the authorities violated Article 16 CAT by abandoning the complainant and 40 other undocumented migrants in the border between Morocco and Mauritania, with minimal supplies of food and water and forcing them to walk 50 kilometres in a dangerous border zone.[105] According to the Committee, "*the circumstances of the complainant's expulsion by the State party constitute the infliction of severe physical and mental suffering on the complainant by public officials.*"[106]

29. Regarding the existence of remedies, the CCPR has stated that in order to comply with *non-refoulement* obligations, the national procedure must foresee an effective remedy to provide for an independent review of a decision of return,[107] which must take place prior to the removal itself in order to avoid irreparable harm and ensure that the remedy is meaningful and effective.[108] The CAT has also considered that each case needs an individual, impartial and independent examination, the possibility for review and an appeal with a suspensive effect,[109] as the inability to contest a return decision before an independent authority will render the protection provided by Article 3 CAT illusory.[110] The CEDAW has noted that States are to determine "*the nature, structure and procedures of [their] own asylum system, as long as basic procedural guarantees set down in international law are provided*."[111]

30. In addition to the instruments of international law noted above that create obligations on the Parties in question, the interpretation of the principle of *non-refoulement* can benefit from an approach that includes the relevant findings of other regional human rights systems. The Court has considered such findings by other legal systems to be "*instructive for the Court's inquiry*" and has identified the Inter-American Court of Human Rights (IACtHR) as a noteworthy source of interpretation.[112] In the context of *non-refoulement*, the IACtHR has recognised that individuals cannot be "rejected at the borders" without an adequate examination of the risks of return to a third country or the country of origin.[113] An effective remedy with suspensive effect has been found to constitute an indispensable element of any procedure aimed at protecting individuals against *refoulement*.[114]

31. The IACtHR's jurisprudence can also provide guidance regarding risks emanating from the manner of execution of a deportation measure. In this respect, the IACtHR has found that the retention of the applicants' documents, the uncertainty regarding the next steps of the procedure, the lack of information and the overall hurried expulsion created feelings of despair, fear and anxiety that constituted a violation of their right to physical and moral integrity.[115] In a case against the Dominican Republic, the IACtHR stated that the disregard or destruction of personal documentation during a removal procedure can affect the individuals' enjoyment of their rights under the American Convention on Human Rights, including the right to identity, legal capacity and nationality, as well as the best interests of the child.[116] In the same case, the Inter-American Commission on Human Rights had stated that such practices placed the individuals in "a situation of extreme risk."[117] Although the events in that case took place in a specific local context, the Inter-American Court's findings underline the importance of lawful and dignified treatment where vulnerable individuals are involved, especially when the situations are characterised by the actions of an unchecked authority and unpredictable risks of ill-treatment.

32. This Court has regularly considered the jurisprudence of the Court of Justice of the European Union (CJEU) as a source of comparative law in its assessment of points of law regardless of whether the Contracting Parties involved were also Member States of the EU.[118] In addition, it should be noted that, although Serbia and North Macedonia are not members of the European Union (EU), they have been given EU Candidate Country status in 2012 and 2005 respectively; they are, therefore, under obligation to align their legislation and the practices of their competent authorities with the EU acquis. The CJEU has stated that the prohibition of ill-treatment and torture under Article 4 of the Charter of Fundamental Rights of the EU (CFREU) is "*absolute in that it is closely linked to respect for human dignity, the subject of Article 1 of the Charter*."[119] In this vein, where an Article 4 CFREU case is assessed "*it is immaterial* […] *whether it is at the very moment of the transfer, during the asylum procedure or following it that the person concerned would be exposed, because of his transfer* […] *to a substantial risk of suffering inhuman or*

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[104] CAT, Arkauz Arana v. France, Communication No. 63/1997, 9 November 1999, para. 11.5.
[105] CAT, Barry v. Morocco, Communication No. 372/2009, 19 May 2014, para. 7.2.
[106] *Ibid*.
[107] CCPR, Mohammed Alzery v. Sweden, Communication No. 1416/2005, 25 October 2016, para. 11.8.
[108] CCPR, Maksudov et al. v. Kyrgyzstan, Communications Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006, 16 July 2008, para. 12.7.
[109] CAT, General comment No. 4, 2017, on the implementation of article 3 of the Convention in the context of article 22, para. 12. See also, CAT, S.H. v. Australia, Communication No. 761/2016, 23 November 2018, para. 9.7.
[110] CAT, Agiza v. Sweden, Communication No. 233/2003, 20 May 2005, paras. 13.6 and 13.7.
[111] CEDAW, Rahma Abdi-Osman v. Switzerland, Communication No. 122/2017, 6 July 2020, para. 7.4.
[112] Magyar Helsinki Bizottság v. Hungary, 18030/11, 8 November 2016, § 146; S.M. v. Croatia, No. 60561/14, 25 June 2020, §§ 188-191; See also, Öcalan v. Turkey, No. 46221/99, 12 May 2005, § 60.
[113] IACtHR, Caso Familia Pacheco Tineo vs. Estado Plurinacional de Bolivia, 25 November 2013, para. 153.
[114] *Idem*, 159.
[115] *Idem*, 206-208.
[116] IACtHR, Caso de Personas Dominicanas y Haitianas Expulsadas vs. República Dominicana, 28 August 2014, 273-276.
[117] Caso de Personas Dominicanas y Haitianas, para. 230.
[118] See, for example, Xhoxhaj v. Albania, No. 15227/19, 9 February 2021; Sergey Zolotukhin v. Russia, No. 14939/03, 10 February 2009.
[119] Judgment of 5 April 2016, Aranyosi and Căldăraru, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 85 and 86.

*degrading treatment*."[120] In addition, according to the CJEU, border controls "*must be carried out without prejudice to the application of provisions which protect applicants for asylum, in relation to, inter alia, the principle of non-refoulement*."[121] Regarding the possibility to object against a return that would expose an individual to risk of ill-treatment, the Court has held that "*the protection inherent in the right to an effective remedy and in the principle of non-refoulement*" requires a right to an effective remedy with an automatic suspensive effect before at least one judicial body.[122]

33. **The interveners submit that, under Article 53 ECHR, Convention rights must be interpreted in the light of international law obligations requiring Contracting Parties to observe the principle of non-*refoulement* by ensuring access to asylum and effective domestic remedies against any returns. Asylum and, where relevant, return procedures must be conducted in a manner that ensures the dignity and safety of the person concerned, paying due regard to the situational vulnerability of individuals that are apprehended at the border, or are otherwise involved in return proceedings, and the increased potential for risks to their physical and moral integrity.**

[120] CJEU, Judgment of 19 March 2019, Ibrahim, Joined Cases C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, paragraph 87; See also, CJEU, Judgment of 19 March 2019, Jawo, Case C-163/17, EU:C:2019:218, paragraph 88.
[121] CJEU, Judgment of 14 June 2012, Anafe, C-606/10, EU:C:2012:348, paragraph 40.
[122] CJEU, Judgment of 19 June 2018, Gnandi, C-181/16, EU:C:2018:465, paragraph 58.