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Jurisprudence on Asylum Pronounced by the European Court of Human Rights in 2024–2025

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Jurisprudence on Asylum Pronounced by the European Court of Human Rights in 2024–2025

By N. FERRÉ TRAD, V. HERRAIZ JAGEROVIC and L. TEJEDOR LEJONA[1]

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The information presented in this report is extracted from the EUAA Case Law Database and covers judgments delivered between January 2024-December 2025.

As guardian of the European Convention on Human Rights (ECHR), the European Court of Human Rights (ECtHR) ensures that "the rights and freedoms set out in the Convention are secured to everyone within the jurisdiction of the Contracting States" (Article 1 ECHR). Within its mandate, the court supervises compliance by States with their obligations under the Convention, examines individual applications alleging violations of fundamental rights, and delivers legally binding judgments that shape the interpretation and application of the Convention across Europe. Through its case law, the court plays a central role in safeguarding human rights and ensuring that the principles of the Convention remain practical and effective.

In matters of asylum and migration, the ECtHR interprets key Convention guarantees—most notably Articles 2, 3, 5, 8 and 13 of the ECHR, as well as Article 4 of Protocol No 4—to assess State conduct at borders, in asylum procedures, during detention and removal operations, and in the treatment of vulnerable applicants. Its judgments provide essential guidance on the practical implications of the principle of *non-refoulement*, the prohibition of collective expulsions, the conditions under which deprivation of liberty is compatible with the Convention, and the level of protection owed to asylum seekers, refugees and other persons in need of international protection.

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In 2024–2025, the ECtHR ruled on a number of cases concerning asylum and migration, addressing issues such as pushbacks at land and sea borders, access to asylum procedures, reception conditions, detention and transit zones, expulsion of seriously ill applicants, protection of unaccompanied minors, and the procedural safeguards required before a removal. These decisions further refined the court's interpretation of State obligations, clarifying the standards of an individualised assessment, effective remedy and risk evaluation that must be met to comply with the Convention.

As European States continue to face migratory pressures and to adapt their asylum systems, the court's jurisprudence remains a crucial reference point, ensuring that measures adopted in the context of migration management respect fundamental rights. The developments analysed in this report illustrate the evolving role of the ECtHR in shaping a human-rights-centred approach to asylum and migration governance in Europe.

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Key ECtHR jurisprudence on asylum in 2024–2025

In 2024–2025, the ECtHR delivered a number of judgments concerning asylum, migration management, detention and removals. These decisions clarified the scope of States' obligations under the ECHR, particularly in relation to:

- ***Non-refoulement* obligations** under Articles 2 and 3 of the ECHR, including the requirement for a rigorous, *ex nunc* and individualised risk assessment before a removal.
- **Collective expulsions** under Article 4 of Protocol No 4 of the ECHR, especially in cases involving summary removals at land borders or interceptions at sea.
  - ✓ Land borders and transit-zone removals: *K.P.* v *Hungary* (2024), *M.D. and Others* v *Hungary* (2024), *H.Q. and Others* v *Hungary* (2025) and *Sherov and Others* v *Poland* (2024) confirmed that escorting individuals to the external side of border fences or refusing entry at official checkpoints may constitute collective expulsions where no individualised assessment and effective remedies are available.
  - ✓ Interceptions at sea: *M.A. and Z.R.* v *Cyprus* (2024) clarified that bilateral readmission arrangements or visa requirements cannot replace individual assessment or access to asylum procedures.
- **Pushback practices and border management operations**, both at the EU's external land borders and at sea.
  - ✓ Violations of the procedural limb of Article 3 ECHR were found in *Sherov and Others* v *Poland* (2024) and *M.A. and Z.R.* v *Cyprus* (2024).
  - ✓ In *G.R.J.* v *Greece* (2024) and *A.R.E.* v *Greece* (2025), the court clarified that applicants may rely on prima facie evidence where relevant information lies predominantly within State control; *A.R.E.* also recognised a systematic practice of pushbacks.
  - ✓ *H.T.* v *Germany and Greece* (2024) confirmed that bilateral administrative arrangements cannot relieve States of their Convention obligations, including the duty to assess risks of chain *refoulement* and detention conditions.
- **Procedural duties under Article 3 of the ECHR**, including the need to ensure genuine and effective access to asylum procedures.
- **Returns and removals (Articles 2 and 3 of the ECHR):** the ECtHR reiterated that all returns must be preceded by a rigorous, *ex nunc* and individualised risk assessment.
  - ✓ Health-related claims: *A.K.* v *France* (2024) and *S.N.* v *France* (2024) applied the *Paposhvili/Savran* standard, requiring a real risk of serious, rapid and irreversible health deterioration.
  - ✓ Religion and *sur place* claims: *B.S.* v *Türkiye* (2024) found a procedural violation where risks linked to conversion were not assessed.
  - ✓ Sexual orientation: *M.I.* v *Switzerland* (2024) confirmed that applicants cannot be required to conceal their sexual orientation.

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  - ✓ General and individual risk assessments: Procedural violations were identified in *J.A. and A.A.* v *Türkiye* (2024) and *K.J. and Others* v *Russia* (2024); no violations were found where thorough assessments were conducted (*U.* v *France* (2024), *A.D. and Others* v *Sweden* (2024), *R.G.* v *Switzerland* (2025)).
  - ✓ Interim measures: *A.F.* v *Austria* (2025) clarified the threshold for maintaining Rule 39 protection.
- **Failure to investigate deaths** or ill treatment at borders, reinforcing the procedural dimension of Article 2 of the ECHR.
  - ✓ Use of force at sea: *Alkhatib and Others* v *Greece* (2024) and *Almukhlas and Al-Maliki* v *Greece* (2025) found substantive and procedural violations due to disproportionate use of lethal force.
  - ✓ Search and rescue: *F.M. and Others* v *Greece* (2025) identified failures in planning, coordination and investigation.
  - ✓ Prevention of self-harm: *Hasani* v *Sweden* (2025) clarified States' positive obligations in asylum and removal contexts.
- **Reception conditions** under Article 3 of the ECHR, with a particular focus on the heightened vulnerability of unaccompanied minors and families with children.
  - ✓ Violations were found in *T.K.* v *Greece* (2024), *W.S.* v *Greece* (2024), *N.N. and Others* v *Greece* (2024), *A.I.* v *Greece* (2024) and *A.R. and Others* v *Greece* (2024), concerning homelessness, inadequate accommodation, lack of sanitation and medical care.
- **Detention** of asylum seekers under Article 5 of the ECHR, including confinement in transit zones, prolonged detention without a legal basis and a lack of an effective judicial review.
  - ✓ Arbitrary detention: Violations of Article 5(1) of the ECHR were found in *L.* v *Hungary* (2024), *M.H. and S.B.* v *Hungary* (2024), *J.B. and Others* v *Malta* (2024), *B.A.* v *Cyprus* (2024) and *K.A.* v *Cyprus* (2024).
  - ✓ Detention conditions: *B.F.* v *Greece* (2025) and *H.T.* v *Germany and Greece* (2024) found degrading treatment under Article 3 of the ECHR.
  - ✓ Transit zones: *Z.L.* v *Hungary* (2024) and *S.H.* v *Hungary* (2024) confirmed that prolonged confinement may amount to de facto detention
- **Expulsion and private/family life** under Article 8 of the ECHR, balancing public order considerations with the right to family unity.
  - ✓ Expulsion following criminal convictions: No violation was found in *Al-Habeeb* v *Denmark* (2024) and *Winther* v *Denmark* (2024).
  - ✓ Family reunification: *Dabo* v *Sweden* (2024), *D.H. and Others* v *Sweden* (2024) and *Okubamichael Debru* v *Sweden* (2024) upheld maintenance requirements where individualised assessments were carried out.
- **Effectiveness of domestic remedies** under Article 13 of the ECHR, including the requirement for a suspensive effect in removal cases.

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- ✓ Violations of Article 13 of the ECHR were found where remedies lacked automatic suspensive effect (*K.P.* v *Hungary* (2024), *H.Q. and Others* v *Hungary* (2025), *Sherov and Others* v *Poland* (2024), *M.A. and Z.R.* v *Cyprus* (2024), *A.R.E.* v *Greece* (2025); *J.B. and Others* v *Malta* (2024)).

- **Protection of vulnerable groups**, including unaccompanied minors.
  - ✓ Failures in accommodation, guardianship and age assessment were condemned in *O.R.* v *Greece* (2024), *T.K.* v *Greece* (2024), *W.S.* v *Greece* (2024), *N.N. and Others* v *Greece* (2024) and *F.B.* v *Belgium* (2025).

Overall, the ECtHR's case law during this period strengthened the Convention's protective framework in the field of asylum and migration, placing particular emphasis on the prohibition of collective expulsions, safeguards in detention and the protection of vulnerable applicants. It also highlighted persistent systemic challenges across several States, especially in relation to border practices, reception conditions and access to effective remedies.

The case law analysed in this report is of direct relevance for the implementation of the EU Pact on Migration and Asylum, as it addresses core elements of the new framework, including the Screening Regulation, the Asylum Procedures Regulation and the reinforced EU return system. A significant part of the ECtHR's 2024–2025 jurisprudence concerns border situations, access to asylum procedures and accelerated or summary removals, which closely correspond to the operational settings envisaged under the Pact's border and screening procedures. The court's findings on collective expulsions and pushback practices clarify that procedures conducted at borders or in transit-like facilities must always include an individualised assessment and genuine access to international protection, irrespective of their speed or location. This has particular relevance for the application of border procedures under the Asylum Procedures Regulation, which cannot be implemented in a manner that circumvents the prohibition of *refoulement* or the safeguards required under Articles 2 and 3 of the ECHR.

The jurisprudence on detention and transit-zone confinement is likewise pertinent to the implementation of the Pact, as the expansion of screening and border procedures may entail restrictions on freedom of movement. The court consistently underlines that such measures may amount to *de facto* detention unless they are based on a clear legal framework, applied on an individual basis and subject to effective judicial review, in line with Article 5 of the ECHR. In addition, the case law on reception conditions highlights the importance of adequate material standards and reception capacity, especially where procedures are accelerated or conducted at the border, a matter directly relevant to the Pact's emphasis on swift processing. The court's repeated focus on vulnerability, notably in cases involving unaccompanied minors and families, reinforces the need for effective identification and protection mechanisms as foreseen under the Screening Regulation. Finally, the findings on effective remedies confirm that return-related measures implemented under the Pact must ensure access to remedies with suspensive effect, as required by Article 13 of the ECHR. Taken together, the case law provides an important interpretative framework for the application of the Pact, indicating that its implementation must remain fully aligned with Convention standards to ensure that fundamental rights are practical and effective in all procedural contexts.

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1. *Non-refoulement*

The ECtHR continued to develop its extensive jurisprudence on *non-refoulement* in 2024–2025, particularly in relation to collective expulsions, access to asylum procedures at borders and returns carried out without an individual assessment. In ECtHR case law, collective expulsions and pushbacks are closely related but not identical concepts. Collective expulsion, prohibited under Article 4 of Protocol No 4 to the Convention, is understood as "any measure compelling aliens, as a group, to leave the country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group" (see for instance: *Khlaifia and others* v *Italy* (No 16483/12, 15 December 2016). The decisive criterion is the absence of an individualised assessment and procedural safeguards, rather than the number of persons affected or the manner in which the removal is carried out[2]. By contrast, pushbacks refer to summary refusals of entry or returns at borders or at sea, carried out without an assessment of individual protection needs, also defined as "refusals of entry and expulsions without any individual assessment of protection needs" by the Parliamentary Assembly of the Council of Europe[3]. While "pushback" is not an autonomous legal concept under the Convention, the ECtHR has consistently examined such practices under Articles 2 and 3 of the ECHR and Article 4 of Protocol No 4 of the ECHR, clarifying that pushbacks may amount to collective expulsions where individuals are removed without an individualised examination, notably in cases such as *Hirsi Jamaa and others* v *Italy* (No 27765/09, 23 February 2012).

The following line of case law is particularly relevant for the application of the EU Pact on Migration and Asylum, especially the Screening Regulation and the border procedures under the Asylum Procedures Regulation, as it clarifies that accelerated or border-based processes cannot dispense States from ensuring individualised assessments and genuine access to international protection.

1.1. Collective expulsions

This section outlines the European Court of Human Rights' approach to collective expulsions under Article 4 of Protocol No 4 to the ECHR in the context of border-related migration control measures. The case law analysed below, concerning removals at land borders and at sea, illustrates that the decisive criterion for identifying a collective expulsion is the absence of a reasonable and objective examination of the individual circumstances of each person concerned, irrespective of the number of persons affected or the manner in which the removal is carried out.

In these cases, the court has examined removal measures primarily under Article 4 of Protocol No 4, often in conjunction with Article 3 of the ECHR, emphasising States' procedural obligations to ensure individualised assessment, effective access to asylum procedures and protection against *refoulement*. The case law examined in this section builds on the court's established principles on collective expulsions, as developed notably in *Hirsi Jamaa and Others* v *Italy, Khlaifia and Others* v *Italy* and *N.D. and N.T.* v *Spain* (No 8675/15 and 8697/15, 13 February 2020). The more recent Chamber and Committee judgments

[2] European Court of Human Rights, *Guide on Article 4 of Protocol No 4 to the European Convention on Human Rights – Prohibition of collective expulsion of aliens*, updated 31 August 2025.
[3] Parliamentary Assembly of the Council of Europe, *Resolution 2299 (2019) – Pushback policies and practice in Council of Europe member States*, adopted on 28 June 2019.

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apply and further clarify these principles in contemporary border-control contexts, including land borders, transit zones and maritime interceptions.

a) Collective expulsions regarding crossings by land

The four cases below all concern situations where the applicants crossed land borders to enter the States concerned, specifically Hungary through the Serbian border and Poland through the Ukrainian border. In these cases, the applicants were returned by Hungarian and Polish authorities to Serbia and Ukraine respectively. In *K.P. v Hungary* (No 82479/17, 18 January 2024, fifth section, sitting as a Committee), the ECtHR ruled on a case concerning an unaccompanied minor who was detained upon entry to Hungary and expressed his wish to apply for asylum. Two days later, he was transported to the border fence by police officers and escorted towards the Serbian side of the border. The ECtHR found that his expulsion was collective in nature, given that it was executed in the absence of a formal decision or examination of his situation, thus constituting a violation of Article 4 of Protocol No 4 of the ECHR. The court also highlighted that the procedure of legal entry available to the applicant could not be considered to be effective, since the only means of legal entry into Hungary were two transit zones which had limited access through a daily quota and lacked any formalised procedure with appropriate safeguards governing the admission of individual migrants.

In *M.D. and Others v Hungary* (No 60778/19, of 19 September 2024, first section, sitting as a Chamber), an Afghan family of six members applied for asylum in Hungary on 9 January 2019 while they were held in the Röszke transit zone. Their requests were dismissed as inadmissible 3 days later, and their removal to Serbia was ordered. After Serbia refused to readmit the applicants on 2 April 2019, the Hungarian asylum authorities changed their destination country to Afghanistan. The applicants unsuccessfully challenged this decision before the Budapest Administrative Court, demanding that the Hungarian authorities examine their case on the merits. After being notified that they would be returned to Afghanistan on 7 May 2019, the applicants submitted a request for interim measures to the ECtHR under Rule 39. That night, the applicants were brought by Hungarian officers to the border with Serbia and escorted towards the external side of the border. While the Hungarian government held that the departure was voluntary (since one of the minors of the family had allegedly signed a document agreeing to the departure), the applicants maintained that it was a collective expulsion, executed in the absence of a formal decision authorising a transfer to Serbia.

The ECtHR assessed the nature of the removal of the applicants under Article 4 of Protocol No 4. It held that to assess whether a sufficiently individualised examination has taken place, it is necessary to consider the "general context at the material time" and not only the particular circumstances of the expulsion. Thus, the court rejected the voluntary nature of the removal alleged by the government, in view of the circumstances, such as the applicants' deprivation of liberty in the transit zone and the absence of safeguards when the minor signed the purported agreement. The court held that the authorities had not examined the applicants' individual circumstances before their removal (especially in view of Serbia's denial to readmit them), the removal was not based on any formal decision and they were not given the possibility to challenge their removal, thus finding a violation of Article 4 of Protocol No 4.

In *H.Q. and Others v Hungary* (46084/21, 40185/22 and 53952/22, 24 June 2025, second section, sitting as a Chamber), the ECtHR ruled jointly on the claims of two Afghan nationals

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and one Syrian national who were removed from Hungary to Serbia by being escorted to the external side of the Hungary-Serbia border fence under Section 5(1)(b) of the State Borders Act. The first applicant had entered Hungary regularly for study purposes and applied for international protection when his residence permit expired. The police authorities refused to examine his asylum application on the merits and removed him to Serbia by transporting him to an area near the border and escorting him towards the external side of it. The two other applicants, one of whom stated that he was an unaccompanied minor, had entered Hungary irregularly. After suffering serious injuries due to traffic accidents and being taken to hospital, where they expressed their intention to apply for asylum, they were removed directly from the hospital to the Serbian side of the border.

All applicants attempted to challenge their removals before domestic authorities in Hungary. Two of them filed complaints against the police authorities under the Police Act contesting the removal, but these proved unsuccessful. One applicant attempted to lodge a 'declaration of intent' at the Hungarian embassy in Belgrade, as required by the 'embassy procedure' established in the 2020 Transitional Act, which provided that asylum applicants outside of Hungary must submit a declaration of their intent to apply for asylum in a Hungarian embassy before being granted permission to enter Hungary and lodge an asylum application. After his attempt to lodge the declaration of intent proved unsuccessful, the applicant filed an administrative action before the Budapest High Court. The court found that the embassy procedure was unlawful under Article 6 of the Asylum Procedures Directive (specifically in light of the Court of Justice of the European Union (CJEU) case *European Commission v Hungary,* C-808/18) but still denied permission to enter.

The ECtHR held that all three applicants had been subjected to collective expulsions under Article 4 of Protocol No 4 of the ECHR, since they had been removed to Serbia without an individual decision on their case and without an opportunity to contest their removal. Referring to its previous case law in *Ilias and Ahmed (Bangladesh) v Hungary* (No 47287/15, 21 November 2019) and *Shahzad v Hungary* (No 12625/17, 8 July 2021) among others, the ECtHR emphasised that even when removal measures are taken individually (implying that the applicant was not removed together with other persons), they may fall under the scope of Article 4 of Protocol No 4 of the ECHR. The court held that the collective nature of an expulsion is not determined by whether the persons expelled are members of a particular group or removed simultaneously. The decisive criterion, the court noted, was expulsion in the absence of a "reasonable and objective examination of the particular case of each individual alien of the group". It was thus the nature of the measure (namely, the lack of an individual and reasoned expulsion decision), rather than the manner of the execution, that determined the scope of application of Article 4. The court also stated that escorting the applicants through the border fence to the external side of the border still qualifies as an expulsion within the meaning of that provision.

The ECtHR also held that the embassy procedure failed to provide genuine and effective access to legal entry for asylum seekers, and Hungary had violated its procedural obligations under Article 3 of the ECHR, since it had not ascertained whether the applicants would have access to asylum procedures in Serbia.

In *Sherov and Others v Poland* (No 54029/17, 54117/17, 54128/17 and others, 4 April 2024, first section, sitting as a Chamber), four Tajik nationals who made several attempts to enter Poland through Ukraine were refused entry each time by border guards, who interviewed them and recorded an official summary note in Polish, which the applicants never read nor

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signed. The applicants submitted that, despite having expressed on every attempt their desire to apply for asylum in Poland, they were returned to Ukraine.

Relying on *M.K. and Others* v *Poland* (Nos 40503/17, 42902/17 and 43643/17, 23 July 2020), the ECtHR found that the Polish authorities had breached the procedural limb of Article 3 of the ECHR, since they did not examine whether the applicants would have access to adequate asylum procedures and protection from *refoulement* in Ukraine before enforcing their removal without examining their claims on merits. The court also found a violation of Article 4 of Protocol No 4 of the ECHR, holding that the removal constituted a collective expulsion. Despite the conduct of interviews and the existence of a summary note deciding on the removal, the court held that the authorities had not entertained the applicants' arguments concerning their protection claims. The decisions did not reflect the individual circumstances of the applicants and were part of a broader policy of not receiving applications for international protection from persons presenting themselves at the Polish-Ukrainian border and returning those persons to Ukraine. The court held that the applicants had attempted to cross the border in a legal manner, using an official checkpoint, and they had attempted to use the procedure to apply for international protection that should have been available to them under Polish law, and thus the State's refusal to entertain their arguments concerning their international protection claims could not be attributed to the applicants' own conduct.

The judgment in *Sherov and Others* v *Poland* should also be read in the context of the ongoing supervision of the execution of *M.K. and Others* v *Poland* by the Committee of Ministers of the Council of Europe. In its decision of December 2025[4], the Committee noted recent legislative and administrative changes, including the repeal of discretionary powers to refuse examination of asylum applications and the introduction of mechanisms allowing foreigners to express their wish to apply for international protection, while at the same time raising concerns regarding their practical application, the absence of automatic suspensive effect of refusal-of-entry appeals and compliance with interim measures. Against this background, *Sherov* confirms that formal legal adjustments must be accompanied by effective procedural guarantees in practice, including accurate recording of protection claims and genuine access to asylum procedures at official border crossings.

b) Collective expulsions regarding interceptions at sea

Lastly, in *M.A. and Z.R.* v *Cyprus* (No 39090/20, 8 October 2024, third section, sitting as a Chamber), the ECtHR addressed a case where applicants were intercepted at sea and returned before they entered the territorial waters of Cyprus, the State concerned. This is a key judgment, since it clarifies the specific test to be applied for determining whether an expulsion can be considered collective in the context of interceptions at sea. Notably, the court also rejected the requirement of a visa as an effective means of legal entry available to the applicants.

In the case, two Syrian nationals who left Lebanon by boat towards Cyprus were intercepted in Cypriot territorial waters. The applicants claimed that they had told the Cypriot coastguard that they wished to apply for asylum and explained their claims to them, but they were kept at sea for 2 days, had their ID cards confiscated and were not allowed to disembark to claim

[4] Council of Europe, Committee of Ministers, *Decision CM/Del/Dec(2025)1545/H46-29*, adopted at the 1545th meeting (2–4 December 2025). Available at: https://search.coe.int/cm?i=09125948802992c7

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asylum. Afterwards, they were returned to Lebanon by boat, despite filing an application for interim measures with the ECtHR under Rule 39.

In light of the government's inconsistent account of the events and the fact that the applicants had been held at sea for 2 days, as well as the existence of several reports of pushbacks and summary returns to Lebanon, the ECtHR considered it credible that the applicants had expressed their wish to apply for asylum. The court analysed whether the applicant's removal could be considered a collective expulsion within the meaning of Article 4 of Protocol No 4. to the Convention. Citing *Hirsi Jamaa and others* v *Italy* and *N.D. and N.T.* v *Spain*, it held that in order to determine whether there was a sufficiently individualised examination, it was necessary to consider the circumstances of each case to establish whether the removal decisions considered the specific situation of each individual. The court highlighted that the Cypriot government had failed to provide the court with records specific to each of the migrants or transcripts of interviews with them. The court highlighted that the applicants, who were prevented from disembarking the boat to impede their arrival on Cypriot soil, were not given access to legal advisers or informed of their rights. The lack of any written decisions informing the applicants of the reasons for their return to Lebanon was also noted by the court. Lastly, the court held that the absence of an individual decision could not be attributed to the applicants' own conduct, since there was no evidence of a lack of cooperation on their part and they did not have any genuine and effective possibilities to submit their asylum application. Contrary to what the government suggested, the application for an entry visa, subject to financial and other requirements, could not be considered an effective means of legal entry available to the applicants. Thus, the court found a collective expulsion in breach of Article 4 of Protocol No 4 of the ECHR.

Taken together, the jurisprudence reviewed above illustrates the court's approach to the assessment of removal measures under Article 4 of Protocol No 4, with particular emphasis on the requirement of an individualised examination and the availability of effective procedural safeguards in the context of border management. Further guidance may emerge from the pending Grand Chamber cases *C.O.C.G. and Others* v *Lithuania* (No 17764/22), *R.A. and Others* v *Poland* (No 42120/21) *and H.M.M. and Others* v *Latvia* (No 42165/21), which concern alleged pushbacks at the borders between EU Member States and Belarus and raise comparable factual and legal issues.

Finally, the court's approach is consistent with the case law of the Court of Justice of the European Union, which has similarly emphasised that access to the asylum procedure must be guaranteed in practice and cannot be made dependent on restrictive or discretionary arrangements. In particular, in *European Commission* v *Hungary* (C-808/18), the CJEU held that limiting access to asylum through transit zones and embassy procedures was incompatible with EU law, a finding which aligns with the ECtHR's emphasis on individualised assessment and effective access to protection.

1.2. Pushbacks

This section examines selected ECtHR case law concerning pushbacks, focusing on situations in which summary returns or refusals of entry have been examined by the court primarily under Articles 3 of the ECHR, and, where relevant, in conjunction with Article 4 of Protocol No 4. While pushbacks are not an autonomous legal concept under the Convention, the court has consistently assessed such practices in light of States' procedural obligations, in particular the duty to assess, prior to removal, the risk of *refoulement* and of treatment contrary to Article 3 of the ECHR.

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The jurisprudence reviewed below highlights key principles developed by the court in this context, including the requirement to conduct an individualised assessment of protection needs, the limits of reliance on bilateral or administrative arrangements to justify removals, and the evidentiary standards applicable in cases where applicants allege pushbacks, notably the acceptance of *prima facie* evidence in view of the practical difficulties inherent in documenting such practices. In examining alleged pushback practices, the court has consistently relied on principles established in leading judgments such as *Hirsi Jamaa and Others* v *Italy* and *M.K. and Others* v *Poland*, concerning the procedural obligations under Articles 3 and 13 of the ECHR. The Committee and Chamber cases reviewed in this section follow this settled case law, applying it to situations involving summary returns, refusals of entry and informal removals at borders.

In two of the aforementioned cases, the applicants alleged breaches of Article 3 of the ECHR, in addition to Article 4 of Protocol No 4. In *Sherov and others* v *Poland,* the ECtHR found that the Polish authorities had acted in breach of the procedural limb of Article 3 of the ECHR. It stressed that the border guards, who had returned the applicants to Ukraine despite their stated wish to apply for asylum in Poland, had not examined whether the applicants would have access to adequate asylum procedures and protection from *refoulement* in Ukraine before enforcing their removal, in the absence of an assessment of their claims on the merits. In *M.A. and Z.R.* v *Cyprus,* the court also found a violation of the procedural limb of Article 3 of the ECHR, since the applicants, who had expressed their wish to apply for asylum in Cyprus, had been returned to Lebanon on the sole basis of the 2022 bilateral readmission agreement between Cyprus and Lebanon. The court noted that the shortcomings of Lebanon's asylum system were well-known, and the Cypriot authorities were or ought to have been aware of them. It held that the Cypriot authorities' sole reliance on the bilateral readmission agreement, without assessing the risks of *refoulement* and ill treatment in Lebanon, was contrary to ECtHR case law in *Hirsi Jamaa and others* v *Italy*, holding that Cyprus could not evade its Convention obligations by relying on bilateral agreements. Thus, it held that the Cypriot authorities had breached their procedural duty under Article 3 of the ECHR.

H.T. v *Germany and Greece* (No 13337/19, 15 October 2024, fourth section, sitting as a Chamber) addressed the removal of a Syrian asylum seeker from Germany to Greece under a bilateral administrative arrangement, and the subsequent legality and conditions of his detention in Greece. *H.T.* v *Germany and Greece* is particularly noteworthy as the first judgment since *Ilias and Ahmed v Hungary* in which the court assessed removals carried out on the basis of a bilateral administrative arrangement between two EU Member States. The ECtHR made clear that reliance on such arrangements cannot dispense the removing State from its Convention obligations. In this case, the applicant was apprehended by German police at the German–Austrian border on 4 September 2018, at 5:20 a.m., after arriving from Austria. A Eurodac search revealed that the applicant had lodged an asylum application in Greece on 18 July 2018. During his questioning by German police, the applicant had expressed his wish to apply for asylum in Germany. However, relying on an administrative readmission arrangement between Germany and Greece, the German authorities refused him entry and, on the same day of his arrival, at 7:20 p.m., transferred him by air to Greece. This removal took place within a few hours, without an individual assessment of the merits of his protection needs or a formal registration of his asylum application, without a substantive examination of whether he would have effective access to an asylum procedure in Greece, and without the applicant having had practical access to a lawyer prior to removal. Upon arrival in Greece, the applicant was placed in detention and initially held at the Attica Directorate for Foreigners for 6 days. He was subsequently transferred to the

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island of Leros, where he was placed in detention at a local police station. He was detained mainly at Leros police station for about 2 months and 23 days and was finally released from detention on 27 November 2018. Shortly after his return to Greece, the applicant had requested the continuation of his asylum procedure, which was examined within the regular Greek asylum procedure. He was granted international protection in Greece on 7 April 2020. Thus, *refoulement* did not materialise.

Before the ECtHR, the applicant argued that his detention in Greece was arbitrary and he did not have a possibility to challenge its lawfulness, which was in breach of Article 5(1) and (4) of the ECHR. He also stated that he was held in degrading conditions contrary to Article 3 of the ECHR. He argued that his removal from Germany to Greece was in breach of Article 3 of the ECHR, since Germany failed to register his asylum request, did not conduct an individualised assessment of the risks he faced in Greece regarding the risk of suffering chain *refoulement* and of being detained in inadequate conditions, and relied on an administrative arrangement that lacked guarantees regarding access to adequate asylum procedures.

Regarding the claims against Greece, the ECtHR found a violation of Article 3 of the ECHR, stating that the applicant had been detained for more than 2 months in a local police station, which lacked the amenities for such a prolonged detention, such as outdoors access, sanitation or sufficient space.

The court considered that at the time of the removal, Germany could not reasonably assume that he would have access to a proper asylum process in Greece or be protected against *refoulement* and from treatment contrary to Article 3 of the ECHR. The court highlighted that the administrative arrangement on the basis of which the applicant was removed from Germany to Greece did not contain any provisions guaranteeing that asylum-seekers removed under the arrangement would have access to a proper examination of the merits of their asylum claims in Greece. The administrative agreement also did not include any guarantees that asylum-seekers removed would not be exposed to treatment contrary to Article 3 of the ECHR in Greece. Germany also failed to demonstrate that it had assessed these risks before carrying out the removal, which was executed hastily and without giving the applicant access to legal assistance, or attempted to obtain individual assurances from Greece regarding the applicant´s access to asylum procedures and his protection from degrading treatment. Subsequent events in Greece—where the applicant was in fact detained in conditions violating Article 3 and could not revive his original asylum claim—did not change this conclusion. Although he later submitted a new asylum application and ultimately received refugee status, this was not foreseeable or assured at the time of his removal. Thus, the court found a violation of the procedural limb of Article 3 of the ECHR and held that there was no need for a separate finding on the applicant's access to an effective remedy under Article 13.

In cases *G.R.J.* v *Greece* (No 15067/21, 3 December 2024, third section, sitting as a Chamber) and *A.R.E.* v *Greece* (No 15783/21, 7 January 2025, third section, sitting as a Chamber), the ECtHR established that a clear finding on a systematic practice of pushbacks in a specific State did not exempt applicants from the duty to substantiate their allegations. However, given the evidentiary hurdles faced by applicants in cases of pushbacks, the court held in both cases that it was sufficient for applicants to furnish prima facie evidence in support of their account. While the ECtHR found in both cases that Greece carried out a systematic practice of pushbacks to Türkiye from the Greek islands (in the case of *G.R.J.* v *Greece*) and from the Evros region (in the case of *A.R.E.* v *Greece*), the court held that only

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the applicant in *A.R.E.* had provided sufficient *prima facie* evidence to demonstrate that they had been subjected to pushbacks in their individual cases.

In *G.R.J.* v *Greece*, the court examined the case of an unaccompanied Afghan minor who alleged that, upon arriving in Greece by boat in September 2020, he had expressed his intention to seek asylum at the Samos refugee camp. The applicant claimed that the day after his arrival, he was boarded onto a raft by the Greek coastguards and effectively pushed back to Turkish territorial waters by being left adrift in the Aegean Sea. He was subsequently recovered by the Turkish coastguard. Once in Türkiye, the applicant lodged an application with the ECtHR. He later re-entered Greece and was granted international protection in November 2022.

Before the ECtHR, the applicant held that his alleged summary removal to Türkiye had exposed him to a risk of ill treatment and potential chain *refoulement* to Afghanistan, in violation of Article 3 of the ECHR. He further maintained that he had been denied access to asylum procedures and to an effective remedy, contrary to Article 13 of the ECHR. He also contended that the alleged pushback had put his life and physical integrity at risk, in breach of Article 2 of the ECHR. The court first examined if a systematic practice of pushbacks from Greece to Türkiye was taking place, noting that several reports pointed to repeated pushbacks by the Greek coastguard and border guard, which aimed to remove foreign nationals from Greece to Türkiye, either through the Aegean islands or the Evros river.

The court noted that the applicant's story was generally consistent with known patterns of pushbacks from Greece to Türkiye reported by national and international bodies. However, this similarity alone did not prove that a pushback had happened in his case. To establish that the alleged pushback occurred, it would have been necessary to show both that the applicant entered Greece and that he was later found in Türkiye on the dates claimed, as well as a clear connection between those two events. After reviewing the evidence, the court found that the applicant's statements were sometimes contradictory and inconsistent. He had not provided sufficient initial proof (*prima facie* evidence) of being in Greece or being pushed back from Samos to Türkiye on the dates he alleged. Therefore, he could not be considered a victim under Article 34(5) of the Convention.

In *A.R.E.* v *Greece*, a Turkish national who had been sentenced to 6 years and 3 months' imprisonment in Türkiye in March 2019 for membership of the movement FETÖ/PDY fled the country after being provisionally released pending her appeal. In May 2019, she crossed the Evros River reaching Greece, where she was apprehended by the Greek police and applied for international protection. She was unofficially transferred and held in a border guard post, before being forced into a small inflatable boat with two other Turkish nationals and pushed back towards the Turkish shore, where they were located and arrested in May 2019. During the border crossing to Greece and throughout the removal, she remained in close contact with her brother who was living in Greece and regularly sent him videos and pictures documenting her situation. Before she was transported to the boat which returned her to Türkiye, the Greek authorities confiscated all her belongings, including her phone.

After her return to Türkiye, the applicant attempted to challenge her removal by filing a criminal complaint which was dismissed by the prosecutor for a lack of evidence. She then appealed to the ECtHR, claiming that she was subjected to *refoulement* in Greece in breach of Article 3 of the ECHR, her return to Türkiye posed a risk to her life under Article 2 of the ECHR and her deprivation of liberty violated Article 5 of the ECHR. The Greek government denied any involvement of Greek officers in the events, denied that the applicant had ever

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been present on Greek territory and questioned the applicant's account as vague and inconsistent. Greece also disputed the existence of a systematic practice of *refoulement* from Greece to Türkiye.

The ECtHR highlighted the existence of numerous, consistent and credible reports from both national and international organisations indicating a systematic practice by Greek authorities of returning foreign nationals who irregularly entered Greece through the Evros region to prevent them from seeking asylum. Due to the volume, diversity and consistency of relevant sources, it held that such a systemic practice existed at the time of the events. It further held that the judgment of the Izmir Criminal Court issued immediately after the applicant's return—which recorded that she had fled to Greece and been sent back—provided *prima facie* support for her account, which was also consistent with the audiovisual material she had submitted. Although no direct evidence of the pushback existed, the fact that she was last seen in Greek custody shortly before the confiscation of her phone, combined with her reappearance hours later on the Turkish side of the Evros region, sufficed to establish her allegations beyond reasonable doubt.

The court found that the Greek authorities had violated their procedural obligations under Article 3 of the ECHR: the applicant was returned to Türkiye without any assessment of the risks she faced there and despite the seriousness of her fears of persecution. With respect to the applicant's allegations of violations of Articles 2 and 3 of the ECHR during the *refoulement*, the court held that the alleged risks to life or ill treatment could not be established as there was insufficient evidence that her life had been endangered or that the treatment during the crossing met the threshold of severity required by Articles 2 and 3 of the ECHR.

Alongside the ECtHR´s findings in *A.R.E.* and *G.R.J.,* the issue of burden of proof and *prima facie* evidence in cases regarding pushbacks was also recently addressed by the CJEU in *Hamoudi v Frontex* (C-136/24 P, 18 December 2025). The applicant in the case was a Syrian national who alleged that, in April 2020, he was intercepted in the Aegean Sea during a joint operation coordinated by Frontex and the Hellenic Coast Guard and was subsequently subjected to a pushback to Türkiye. He lodged a complaint with Frontex under the agency's internal mechanism, which was rejected due to lack of sufficient evidence establishing Frontex's involvement and his presence in the incident. After the rejection was upheld by the General Court, the applicant appealed to the CJEU, which held that Frontex and the General Court had applied an excessively strict evidentiary standard. The CJEU clarified that, in cases concerning alleged pushbacks during Frontex-coordinated operations—where applicants face inherent evidentiary constraints and where relevant information lies predominantly within the control of public authorities—it is sufficient for applicants to submit *prima facie* evidence, consisting of a coherent, specific and credible account supported by available contextual elements.

The case *S.S. and Others v Italy* (No 21660/18, 20 May 2025, first section, sitting as a Chamber) concerned a 2017 maritime distress situation involving approximately 150 migrants travelling on a rubber dinghy in international waters within the Libyan search and rescue (SAR) region. After a distress alert was received, the Italian authorities, acting through the Rome Maritime Rescue Coordination Centre (MRCC), did not deploy Italian rescue assets but instead informed the competent Libyan authorities, who formally assumed coordination of the operation. At Libya's request, the Libyan patrol vessel *Ras Jadir* was dispatched and was the first ship to reach the scene, thereby exercising *de facto* control over

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the rescue operation. During manoeuvres carried out by the *Ras Jadir* in close proximity to the dinghy, significant water movements were generated, causing panic on board and resulting in several individuals falling into the sea; a number of them subsequently drowned. The applicants—17 Nigerian and Ghanaian nationals—complained that Italy, by initiating Libyan involvement and refraining from intervening despite its operational capacity, had exercised extraterritorial jurisdiction and contributed to the fatal outcome.

The applicants argued that Italy had effectively engaged in a practice of '*refoulement* by proxy', exposing them to inhuman treatment, loss of life and subsequent abuses in Libya, thus breaching Articles 2 and 3 of the ECHR. They invoked the case *Hirsi Jamaa and others* v *Italy*, holding that bilateral agreements between Italy and Libya could not be used by Italy to circumvent its ECHR obligations, and the assistance and influence Italy provided to Libyan migration authorities placed the Libyan vessel's actions under Italian jurisdiction. They also held that they had been exposed to the risk of being returned to Libya, where irregular migrants were held in inhumane conditions which violated Articles 3 and 4 of the ECHR, and that they had no access to effective remedies in Italy to challenge the ill treatment received, in breach of Article 13 of the ECHR. Two applicants who had been returned to Libya also alleged a breach of Article 4 of Protocol No 4 to the Convention.

The ECtHR unanimously declared the application inadmissible, holding that Italy did not have extraterritorial jurisdiction under Article 1 of the ECHR. The court first examined whether Italy exercised effective control over an area (*ratione loci*) and found that this was not the case: the events occurred in international waters within the Libyan search and rescue (SAR) region, and the rescue operation was *de facto* controlled on site by the Libyan patrol vessel *Ras Jadir*, which intervened first and directed the manoeuvres. The court then turned to the existence of any transfer or assumption of competence through bilateral arrangements, noting that, unlike in cases concerning migration control or returns, there was no agreement or practice by which Italy had taken over responsibility for immigration matters from the Libyan authorities in the context of this operation. The financial and technical support provided by Italy to the Libyan state under bilateral agreements was also not such as to lead to the conclusion that Italy exercised effective control or decisive influence over the actions of the Libyan coastguard or within the international maritime area off the Libyan coast. Finally, regarding the question of whether Italy exercised authority or control over the persons involved, the court concluded that the *Ras Jadir* was a Libyan-flagged vessel, that its Libyan crew acted autonomously without Italian control, and the mere initiation of the rescue procedure by Italy did not establish a jurisdictional link. The court added that concluding otherwise would risk discouraging States from complying with their international obligations to respond to distress situations at sea. Consequently, the applicants' complaints under Articles 2, 3, 4, 13 and Article 4 of Protocol No 4 to the Convention were deemed outside of Italy's jurisdiction. The application was therefore dismissed.

The approach explained in this section is further consistent with the CJEU's judgment in *X* v *State Secretary for Justice and Security* (C-392/22), in which the court held that pushbacks and detention at border control posts are incompatible with EU asylum law and may constitute serious flaws in the asylum procedure where they preclude access to international protection. By contrast, as interpreted by the CJEU in this case, the EU law framework governing Dublin transfers adopts a methodological approach that differs from that developed by the ECtHR in *H.T.* v *Germany and Greece*. In *H.T.* v *Germany and Greece*, the ECtHR required, as a precondition for transfer, the existence of sufficient guarantees that the applicant would have access to an effective asylum procedure and protection against refoulement, and would not face treatment contrary to Article 3 ECHR. Whereas, under

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Article 3(2), second subparagraph, of the Dublin III Regulation, as interpreted by the CJUE, a transfer may be barred only where systemic deficiencies in the asylum procedure or reception conditions of the responsible Member State give rise to a real risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter, reflecting the principle of mutual trust.

1.3. Returns, expulsions and refusals of entry

This section examines the jurisprudence of the ECtHR concerning returns, expulsions and refusals of entry, addressing the substantive and procedural safeguards required under the ECHR when Contracting States seek to remove third-country nationals. The cases included illustrate how the court assesses removal measures in light of alleged risks upon return under Article 3 of the ECHR, as well as the proportionality of expulsions interfering with private and family life under Article 8 of the ECHR.

The section brings together case law addressing different grounds invoked to oppose removal—such as health conditions, religion, sexual orientation, general security situations, criminal convictions, and family ties—alongside judgments clarifying the procedural obligations of national authorities, including the requirement to conduct a rigorous and *ex nunc* risk assessment and the conditions under which applicants may be regarded as victims for the purposes of Article 34 of the ECHR.

This jurisprudence is particularly relevant in the context of the evolving EU framework on returns, including recent initiatives aimed at strengthening mutual recognition and enforcement of return decisions across EU Member States. The ECtHR has consistently reaffirmed that, irrespective of the efficiency objectives underpinning return policies, any removal measure must be preceded by an individualised, up-to-date assessment of the foreseeable consequences of return and must fully comply with the principle of *non-refoulement* and other Convention guarantees. These requirements remain applicable even where return decisions are adopted or enforced within EU-level mechanisms for cooperation in return proceedings.

These findings are of direct relevance for return procedures envisaged under the EU Pact on Migration and Asylum, as they confirm that returns following accelerated or border procedures must be preceded by a rigorous and up-to-date individual risk assessment in line with Article 3 of the ECHR.

a) Health-related challenges to removal under Article 3 of the ECHR: access to adequate medical treatment in the country of return

This subsection examines the ECtHR's jurisprudence concerning health-related obstacles to removal under Article 3 of the ECHR, focusing in particular on cases where applicants allege that their expulsion would expose them to inhuman or degrading treatment due to the lack of adequate medical care in the country of return. The court assesses whether removal would give rise to a real risk of a serious, rapid and irreversible deterioration of health or a significant reduction in life expectancy as a result of the unavailability or inaccessibility of appropriate treatment. The cases reviewed illustrate the court's approach to evaluating both the availability of suitable medical treatment and the applicant's effective access to such treatment in the receiving State, while reaffirming that Article 3 of the ECHR does not guarantee the right to the same standard or quality of healthcare as in the expelling State. Particular emphasis is placed on the evidentiary burden resting on applicants and on the

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obligation of national authorities to conduct an individualised and up-to-date assessment of medical risks in light of reliable and specific information.

In *A.K.* v *France* (Committee judgment, No 46033/21, 18 April 2024), a Guinean national suffering from a mental illness challenged his forced removal from France, claiming a lack of access to medical treatment in his country of origin, thus violating Article 3 of the ECHR. The ECtHR recalled that the general principles governing the removal of seriously ill foreign nationals were established in *Paposhvili* v *Belgium* (No 41738/10, 13 December 2016) and reaffirmed in *Savran* v *Denmark* (No 57467/15, 7 December 2021), including for mental health conditions. A removal may violate Article 3 of the ECHR when there are substantial grounds to believe that, although the person is not at immediate risk of death, they would face a real risk of a serious, rapid and irreversible decline in their health or a significant reduction in life expectancy due to the lack of adequate treatment in the receiving country. Applicants must provide evidence showing serious reasons to believe they would face such risks if removed. The assessment does not compare the quality of healthcare between countries but focuses on whether suitable treatment is effectively accessible in the destination country.

In this case, the applicant claimed that the required treatment for his condition was unavailable in Guinea and discontinuing care would cause serious and irreversible health deterioration or significantly reduce his life expectancy. He provided various medical documents and reports criticising Guinea's mental healthcare system. The court observed, however, that these documents did not specifically address the availability of treatment for the applicant's particular condition. Some medical reports described his past self-harm and treatment history but did not establish irreversible consequences or a significant reduction of life expectancy if treatment ceased. A later psychiatric evaluation even assessed his suicide risk as low.

While acknowledging the overall deficiencies of the Guinean healthcare system and the limited availability of mental health services, the court held that the applicant would be able to effectively benefit from an appropriate treatment in Guinea. Therefore, the ECtHR held that there was no violation of Article 3 of the ECHR.

Similarly in *S.N.* v *France*, (Committee judgment, No 14997/19, 18 April 2024), a Senegalese national with schizophrenia argued that his removal to Senegal would breach Article 3 of the ECHR due to the lack of adequate psychiatric care. The ECtHR recalled the principles set out in *Paposhvili* v *Belgium* and reaffirmed in *Savran* v *Denmark* in the same vein as in the previous case.

The ECtHR found that the medical certificates submitted by the applicant lacked verifiable sources and did not clearly establish irreversible consequences or a substantiated suicide risk. By contrast, four medical opinions from the French Office for Immigration and Integration (OFII), supported by MedCOI information (EUAA MedCOI Availability Answers) and official correspondence listing the availability of the prescribed medications in Senegal, indicated that appropriate treatment was available and that the absence of care would not entail consequences of exceptional gravity. While acknowledging the shortcomings of the Senegalese healthcare system, the court found that the applicant would still be able to access suitable treatment. It therefore held that his removal would not amount to a violation of Article 3 of the ECHR.

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b) Religion-related challenges to removal: assessment of risks linked to religious conversion or practice under Article 3 of the ECHR

This subsection examines the ECtHR's jurisprudence concerning religion-related obstacles to removal, with particular attention to cases involving alleged risks arising from religious conversion or the practice of religion in the country of return. The case law highlights the procedural obligations incumbent on national authorities when assessing removal under Article 3 of the ECHR, notably the requirement to conduct a rigorous and *ex nunc* evaluation of the foreseeable consequences of return once relevant information has come to their attention. The judgments reviewed illustrate the court's approach to situations where applicants invoke risks linked to *sur place* developments or to evolving country conditions and reaffirm that removal decisions must be based on an individualised assessment based on up-to-date and reliable information, irrespective of whether the elements relied upon were raised during the initial asylum proceedings.

In *B.S. v Türkiye* (Committee judgment, No 14820/19, 21 March 2024), the ECtHR held that the applicant's removal to Iran would amount to a procedural violation of Articles 2 and 3 of the ECHR, as Turkish authorities had failed to assess the risks arising from her *sur place* conversion from Islam to Christianity of death or ill treatment upon a return. The court recalled the principles established in *F.G. v Sweden* (No 43611/11, 23 March 2016), requiring national authorities to rigorously assess the genuineness of a conversion and the potential consequences upon a return. It emphasised that, even though the applicant had not raised her conversion to Christianity during the initial asylum proceedings, once the Turkish authorities were made aware of the fact that she had converted, they were under an obligation to investigate and evaluate the potential risks linked to that conversion. The ECtHR held that the national court had adopted a simplistic approach when rejecting the applicant's claim and returning the applicant to Iran without the Turkish authorities first conducting an *ex nunc* assessment of her alleged conversion and its consequences would violate Articles 2 and 3 of the ECHR in their procedural aspect.

In *A.B. and Y.W. v Malta* (Chamber judgment, No 2559/23, 4 February 2025), two Chinese nationals of Uighur ethnicity and Muslim faith challenged their removal to China, alleging a real risk of persecution and ill treatment in Xinjiang. They invoked Articles 2 and 3 of the ECHR, alone and in conjunction with Article 13 of the ECHR, arguing that the Maltese authorities had failed to properly assess the risk.

The ECtHR held that the Maltese authorities had not carried out an *ex nunc* and rigorous assessment of the applicants' situation, despite the significant deterioration of conditions in Xinjiang and the availability of updated COI. The Immigration Appeals Board had competence to reassess the risks but merely relied on a 6-year-old Refugee Appeals Board decision from 2017, without considering new evidence or the applicants' submissions. The court stressed that applicants were not required to lodge a subsequent asylum application, as they had exhausted the relevant remedy available at the material time. It concluded that removal to China without a fresh and timely risk assessment would amount to a procedural violation of Article 3 of the ECHR. The court maintained the interim measure preventing a removal until the judgment becomes final.

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c) Sexual-orientation-based challenges to removal: Risk of persecution and ill-treatment under Article 3 of the ECHR

This subsection addresses the ECtHR's assessment of removal measures challenged on the basis of sexual orientation under Article 3 of the ECHR. It focuses on cases in which applicants allege risk of persecution or ill-treatment in the country of return and on the principles governing the evaluation of such risks prior to removal. The case law reviewed illustrates the court's findings concerning the treatment of undisputed sexual orientation, the assessment of risks linked to criminalisation and punishment of same-sex relations, and the obligation of national authorities to carry out a fresh and *ex nunc* assessment of the risk of ill-treatment, including the examination of risks from both State and non-State actors and the availability of State protection.

In *M.I. v Switzerland* (Chamber judgment, No 56390/21, 12 November 2024), an Iranian national identifying as homosexual challenged his removal from Switzerland, alleging a real risk of persecution and ill treatment in Iran. The Swiss authorities rejected his asylum application, concluding that he could avoid the risk by living discreetly upon return.

The ECtHR recalled the general principles concerning the responsibility of Contracting States under Article 3 of the ECHR, as summarised in *J.A. and A.A. v Türkiye* (Chamber judgment, No 80206/17, 6 February 2024), stressing the duty to give applicants the benefit of the doubt in credibility assessments, the need for authorities to examine general risks of their own motion, and the requirement of a full *ex nunc* evaluation when a removal has not yet taken place. Applying these principles, the court noted that the applicant's homosexuality was undisputed and sexual orientation is a fundamental aspect of identity which cannot be required to be concealed to avoid persecution. It emphasised that homosexuals in Iran face risks from both State and non-State actors, same-sex acts remain criminalised and severely punished, and the discovery of sexual orientation may occur regardless of discretion.

International sources indicated that Iranian authorities were unwilling to provide effective protection against ill treatment of LGBTIQ persons, and it would be unreasonable to expect them to seek protection given the criminalisation of same-sex relations. The court further held that Swiss authorities had failed to assess the availability of State protection against harm by non-State actors. Accordingly, the ECtHR held that the applicant's removal to Iran without a fresh and rigorous reassessment would breach Article 3 of the ECHR.

d) Expulsion of long-term residents with criminal convictions: Proportionality assessment under Article 8 of the ECHR

This subsection examines the ECtHR's assessment of expulsion measures affecting long-term residents with criminal convictions under Article 8 of the ECHR. It focuses on the proportionality assessment carried out by national authorities when balancing the seriousness of criminal offences and the risk of reoffending against the applicant's private and family life, including long-term lawful residence, marital and parental ties, and the best interests of the child.

In *Al-Habeeb v Denmark* (Chamber judgment, No 14171/23, 12 November 2024), an Iraqi national, who had lived lawfully in Denmark for more than 21 years, married a Danish citizen and had a child, complained that his expulsion and 12-year re-entry ban violated Article 8 of the ECHR. He had been convicted of a particularly brutal knife assault, following a history of violent offences.

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The ECtHR noted that the domestic courts had carried out a detailed proportionality assessment, applying the relevant criteria under Article 8 of the ECHR. They gave significant weight to the seriousness of the offence, the applicant's prior convictions, the prior warning of possible expulsion, and the risk of reoffending. They also considered his strong personal and family ties in Denmark, the best interests of the child and the fact that his wife and daughter could maintain contact with him from abroad. Crucially, the courts reduced what would normally have been a permanent re-entry ban to a 12-year ban, and the ECtHR accepted that this time-limited ban could not be regarded as a merely theoretical possibility for future family reunification. While acknowledging the applicant's long residence, family life and the best interests of the child, the ECtHR held that the domestic courts had provided relevant and sufficient reasons and had duly assessed proportionality. It concluded that the gravity of the applicant's criminal convictions outweighed his family interests, and therefore his expulsion to Iraq with a 12-year re-entry ban did not violate Article 8 of the ECHR.

e) Procedural safeguards in return proceedings: Victim status, admissibility and absence of an enforceable removal order

This subsection addresses the ECtHR's case law concerning procedural safeguards and admissibility in return-related complaints under Article 3 of the ECHR. It focuses on situations in which applicants challenge the rejection of their applications for international protection in the absence of an enforceable removal order. The cases reviewed illustrate the court's approach to the assessment of victim status under Article 34 of the ECHR, the relevance of the distinction between asylum procedures and removal procedures, and the importance of the existence of an actual or foreseeable removal measure. Particular attention is given to the availability of effective domestic remedies with suspensive effect and to the impact of pending asylum proceedings on the admissibility of complaints alleging risk of ill-treatment upon return.

In *F.O. and G.H. v Belgium* (Chamber decision, No 9568/22, 16 April 2024), the ECtHR held that, in a legal system where the rejection of an application for international protection does not in itself entail an enforceable removal order and where effective remedies with automatic suspensive effect are available, applicants cannot claim to be victims within the meaning of Article 34 of the ECHR in the absence of such an order.

The case concerned a Salvadoran couple who alleged that the rejection of their applications for international protection in Belgium exposed them to a risk of gang-related violence if returned, invoking Article 3 of the ECHR.

The ECtHR recalled that under Belgian law the asylum procedure and the removal procedure are distinct: the decision of the Commissioner General for Refugees and Stateless Persons (CGRS) and the Council for Alien Law Litigation (CALL) do not in themselves entail an enforceable removal measure, which must be adopted separately by the Immigration Office. Although the applicants' asylum claims had been rejected, in this case no removal order had been issued and they remained in Belgium.

The court emphasised that the risk of ill treatment under Article 3 of the ECHR does not arise from the mere rejection of an asylum claim, but only from an actual and enforceable removal decision. It further noted that if such a removal order were adopted, the applicants would have access to effective remedies, including suspension and annulment proceedings before CALL, and in cases of an imminent removal, an 'extreme urgency' suspensive appeal. Accordingly, the ECtHR held that the applicants could not claim to be 'victims' within the

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meaning of Article 34 of the Convention, declared the application inadmissible *ratione personae* and rejected the complaint.

J.B. and Others v *Belgium* (Committee decision, No 43539/21, 4 July 2024), does not introduce new principles into the court's case law but confirms the court's established approach to admissibility and victim status in return-related complaints. Five Salvadoran nationals, including two minors, challenged the rejection of their application for international protection based on gang-related persecution. Their initial applications had been dismissed by the Belgian authorities and courts, but a subsequent application lodged in 2022 was still pending when the ECtHR examined the case. The applicants claimed that, following the rejection of their applications for international protection in Belgium, their removal to El Salvador would expose them to a real risk of inhuman or degrading treatment, contrary to Article 3 of the ECHR.

The ECtHR dismissed the complaint as it noted that after lodging their application in Strasbourg, the applicants submitted a new request for international protection to the Belgian asylum authorities, and this new request was pending before the Commissioner General for Refugees and Stateless Persons (CGRS). During the CGRS' examination of their claim, they cannot be subjected to a forced removal under Belgian law. If their request is later rejected, they will have access to a full-jurisdiction appeal, which automatically suspends the enforcement of any potential expulsion order. Given these procedural safeguards, the court considered that the applicants did not face a current or foreseeable risk of being removed to El Salvador. Should their new asylum application ultimately be rejected, they would still be able, after exhausting domestic remedies, to file a new application before the ECtHR, including seeking interim measures to prevent a removal if necessary.

In *Y.K.* v *Croatia* (Chamber judgment, No 38776/21, 17 July 2025), a Turkish national of Kurdish ethnicity was detained in Croatia in February 2021 after entering irregularly from Serbia and was issued return decisions with a view to his removal. While detained in the Ježevo Immigration Centre, the applicant expressed his intention to request international protection on political grounds, alleging past persecution in Türkiye. Despite this, the Croatian authorities failed to register his asylum application, prevented his lawyer from accessing him on public-health grounds, issued a new return decision without informing legal counsel and ultimately removed him towards North Macedonia.

The ECtHR recalled that neither domestic law (citing *M.H. and others* v *Croatia*, No 15670/18 and 43115/18, 18 November 2021) nor its own case law (citing *N.D. and N.T.* v *Spain*) required a request for asylum to take any particular form and reiterated that the authorities are obliged to take account of an expressed intention to seek international protection (citing *O.M. and D.S.* v *Ukraine* (No 18603/12, 15 September 2022). It found that the Croatian authorities were aware of the applicant's wish to apply for asylum, as this had been communicated directly to detention-centre officials, to representatives of the Ombudsperson and repeatedly through his lawyer.

The court noted that the authorities prevented the applicant's lawyer from contacting him while simultaneously interviewing the applicant, inducing him to sign statements requesting return to Greece and issuing a new return decision without informing the legal counsel. Referring to *M.A.* v *Belgium* (No 19656/18, 27 October 2020), the court held that the conditions for a valid waiver of Convention rights had not been met and considered that the applicant's removal had therefore been forced, engaging the State's responsibility. The court

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reiterated that, where an asylum seeker is removed without a substantive examination of his claim, the removing State must assess *ex officio* whether the person would have access to effective and adequate asylum procedures in the receiving third country and whether there is a risk of chain *refoulement*. This obligation applies even where the receiving State is a party to the Convention. In the present case, Croatia failed to assess whether the applicant would have access to effective and adequate asylum procedures in North Macedonia or whether he would face a risk of chain *refoulement*. The court therefore found a violation of the procedural limb of Article 3 of the ECHR.

The ECtHR also recalled that, in removal cases raising an arguable risk of treatment contrary to Article 3 of the ECHR, an effective remedy must have automatic suspensive effect. It found that the available remedies in Croatia lacked such effect and that the applicant's lawyer had been unable to access the applicant, the removal procedure or the return decisions. These deficiencies rendered the domestic remedies ineffective and, therefore, the court found a violation of Article 13 of the ECHR read in conjunction with Article 3 of the ECHR.

f) Assessment of general and individual risks in return proceedings under Article 3 of the ECHR

In *U.* v *France* (Chamber judgment, No 53254/20, 15 February 2024), a Russian national of Chechen origin challenged his removal to Russia after French authorities withdrew his refugee status due to multiple criminal convictions. Although he had initially been granted asylum in 2012 on account of past persecution linked to his human rights activism, OFPRA and the National Court of Asylum (CNDA) later found that his subsequent violent and radicalised behaviour posed a serious threat to public order, justifying the withdrawal of protection. The French authorities—at all judicial levels—conducted repeated and up-to-date assessments of the risk he claimed to face in Russia. They concluded that his allegations relied solely on events predating 2009 and that he had shown no evidence of current interest or pursuit by the Russian authorities.

The ECtHR held that, although the human rights situation in Chechnya remained worrying, the applicant had failed to demonstrate real, present and personal risk of ill treatment. It therefore found that his removal to Russia would not violate Article 3 of the ECHR.

In *J.A. and A.A.* v *Türkiye*, an Iraqi Sunni couple and their four minor children challenged their removal to Iraq, claiming a real risk of death or ill treatment given the destruction of their home and the ongoing threat from ISIS.

The ECtHR found that the Turkish authorities had not carried out any meaningful assessment of the risks: the Administrative Court relied solely on intelligence reports and ignored the applicants' allegations of violations of Articles 2 and 3 of the ECHR, and the Constitutional Court acknowledged that no proper assessment had been made, yet it still dismissed the claim for a lack of further evidence. The court recalled that once applicants raise arguable protection claims, the authorities have a procedural duty to conduct a rigorous, *ex nunc* evaluation using reliable country information and considering both general and personal risks. This case highlights the importance of providing up-to-date COI to the ECtHR, as the court must assess risks as they exist at the time of its decision; although the application was lodged in 2017, the situation in the country of return may have evolved by the time the court examines the case. Because an assessment had not taken place, the ECtHR held that

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removing the applicants to Iraq without a fresh e*x nunc* examination would entail a procedural violation of Articles 2 and 3 of the ECHR.

In *K.J. and others* v *Russia* (Chamber judgment, Nos 27584/20 and 39768/20, 19 March 2024), three North Korean nationals challenged their removal from Russia, alleging that they faced a real risk of death, torture and inhuman treatment if returned to the Democratic People's Republic of Korea. Two of the applicants, K.J. and C.C., had been convicted of illegal fishing in Russian waters and were later detained pending an expulsion. The third applicant, S.K., was a student in Vladivostok who had sought international protection but was allegedly apprehended by Russian police and handed over to North Korean officials without any formal expulsion order. The applicants argued that their removal would breach Articles 2 and 3 of the ECHR, given the well-documented risks of torture, execution and political persecution in North Korea. They also complained of unlawful detention under Article 5 of the ECHR, pointing to the absence of a judicial review and the excessive length of detention pending an expulsion. In S.K.'s case, he alleged that he had been subjected to unacknowledged detention and an illegal transfer.

The court recalled that expulsion engages State responsibility where substantial grounds show a real risk of death or ill treatment, and such claims must be examined rigorously by domestic authorities. It found that S.K. had presented an arguable claim, supported by credible evidence, that he faced an extremely high risk if returned to North Korea. Yet no competent authority in Russia had examined his claim and his alleged transfer to North Korean officials had not been investigated effectively. The court held that this failure violated Articles 2 and 3 of the ECHR.

With respect to detention, the court noted that S.K.'s apprehension and handover were unacknowledged and lacked any legal basis, amounting to arbitrary detention under Article 5(1) of the ECHR. For K.J., detention pending an expulsion lasted more than 2 years without a realistic prospect of a removal, exceeding what was reasonably required. The court also found that he had no effective judicial review of his detention, in breach of Article 5(4) of the ECHR. Accordingly, the ECtHR found violations of Articles 2 and 3 of the ECHR due to Russia's responsibility for S.K.'s illegal transfer and the failure to examine the real risk of ill treatment, violations of Article 5(1) and (4) of the ECHR concerning unlawful and prolonged detention pending expulsion.

In *A.D. and Others* v *Sweden* (Chamber judgment, No 22283/21, 7 May 2024), an Albanian family consisting of a father, mother and three children requested international protection in Sweden in 2018. They alleged that they had been targeted in Albania because of the father's work as a police officer combating cannabis production and trafficking. They referred to several incidents: an attempted kidnapping of their eldest daughter, shots fired at their home and a grenade explosion nearby. They claimed that these attacks were linked to the father's police work, returning to Albania would expose them to a real risk of illtreatment by non-State actors and they could not rely on effective State protection (pointing to corruption and inefficiency in law enforcement) in Albania, therefore breaching Article 3 of the ECHR.

The court noted that the Swedish authorities had accepted that the family had been subjected to threats and attacks but had treated them as criminal acts by unknown individuals (non-State actors). The decisive issue was whether Albania could provide effective protection. The court emphasised that the applicants had not demonstrated that Albanian institutions were unwilling or incapable of acting, particularly since police reports had been filed and there was no evidence of systemic failure. It highlighted that Albania had

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undertaken reforms to strengthen its judiciary and law enforcement, and corruption, while a concern, did not negate the availability of protection in individual cases.

The ECtHR concluded that the Swedish authorities had carried out a thorough and informed assessment, relying on COI and giving the applicants opportunities to present evidence. Since the applicants had not shown substantial grounds for believing that removal would expose them to a real risk of ill treatment, the court held that their deportation to Albania would not breach Article 3 of the ECHR.

In *R.G.* v *Switzerland* (Chamber judgment, No 30036/22, 23 October 2025) a Russian national ethnically Chechen complained about a removal decision issued by the Swiss authorities following the rejection of his asylum application. He argued that his return to Russia would expose him to a real risk to his life and to ill-treatment, in breach of Articles 2 and 3 of the ECHR. He relied on his alleged political opposition activities and support for Chechen separatism, as well as on risks linked to the war in Ukraine and possible forced military recruitment.

Before the ECtHR, the applicant maintained that the Swiss authorities had underestimated both his personal risk and the general security situation, including risks stemming from Russia's war against Ukraine. The court reiterated that it is for the applicant to substantiate, as far as possible, the existence of a real risk of treatment contrary to Article 3 of the ECHR upon removal. It found that the Swiss authorities had conducted a thorough and careful examination of the claim, in compliance with their procedural obligations under Article 3 of the ECHR.

Relying on up-to-date COI, including EUAA COI Query: Major developments regarding human rights and military service, Q82-2024 (21 November 2024), the court found no indication of generalised violence affecting civilians in Russia linked to the war in Ukraine. It also rejected the argument concerning forced conscription, noting that the applicant was over 30 years old and therefore outside the age group subject to mandatory military service, that the partial mobilisation campaign of 2022 had not been repeated, and that there was no evidence of a current, systematic practice of forced recruitment of Chechens that would place the applicant at a heightened risk.

Finally, in *A.F.* v *Austria* (Interim Measure, No 24394/25, 23 September 2025), a Syrian national challenged his planned removal from Austria to Syria, alleging a real and imminent risk to his rights under Articles 2 and 3 of the ECHR due to the volatile security and humanitarian situation in his country of origin. After his asylum proceedings in Austria had been discontinued twice for absconding and later rejected, and following criminal convictions for shoplifting and unarmed robbery, he was detained pending removal. The Austrian courts found his second asylum request—lodged only after a removal date had been set—to be manifestly aimed at delaying proceedings and concluded that he faced no individualised risk, noting that he was young, healthy, able to work, spoke the language, and had family support in his region of origin.

On 11 August 2025, the ECtHR applied an interim measure under Rule 39, temporarily suspending his removal to obtain further information from the Government. The measure was extended on 5 September. However, on 23 September 2025, the Duty Judge discontinued the interim measure, finding that—on the basis of the parties' submissions, the facts of the case, and publicly available COI material—it had not been shown that the applicant would face a real and imminent risk of irreparable harm if returned to Syria. The

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court emphasised that the general situation in Syria, combined with the applicant's individual circumstances, did not reach the threshold required under Articles 2 and 3 ECHR for maintaining Rule 39 protection.

2. Right to life: Assessment of risks of death in return and expulsion cases

2.1 Right to life in maritime and border-control operations at sea

In its recent case law concerning the application of Article 2 of the ECHR, the ECtHR addressed three cases involving coastguard operations off the coast of Greece, namely *Alkhatib and Others* v *Greece* (No 3566/16, 16 January 2024, third section, sitting as a Chamber), *Almukhlas and Al-Maliki* v *Greece* (No 22776/18, 25 March 2025, third section, sitting as a Chamber) and *F.M. and Others* v *Greece* (No 17622/21, 14 October 2025, third section, sitting as a Chamber). All three cases assessed whether there had been a violation of Greece´s Article 2 obligations in its substantive limb, concerning the causal link between the planning and conduct of maritime operations and the loss of life, and its procedural limb, involving deficient investigation of the events on the part of the authorities. While all three cases concern coastguard operations, *Alkhatib* and *Almukhlas* involve the planning and conduct of interception operations of migrant vessels, and *F.M. and others* concerns failures in search-and-rescue operations following distress signals on the sinking of a vessel.

In *Alkhatib and Others* v *Greece*, the applicants denounced the death of a relative following a pursuit by a Greek coastguard vessel of a motorboat trying to enter Greek territorial waters. After unsuccessful attempts to stop the motorboat, the Greek coastguard shot 13 times at the motorboat's engine, which finally disabled the motorboat. Fourteen people were later found hidden on board, including the applicants and the victim (their relative), who had been fatally shot in the head. Although preliminary criminal investigations were opened in Greece, they were discontinued without result. By contrast, the two Turkish individuals operating the vessel were convicted.

In *Almukhlas and Al-Maliki* v *Greece,* the applicant's minor son died after being struck in the head by a shot fired by the Greek coastguard during an operation aimed at intercepting a boat engaged in the irregular transportation of migrants to Greece.

In both cases, the applicants alleged substantive breaches of Article 2 of the ECHR, arguing that the use of lethal weapons had neither been absolutely necessary nor strictly proportionate to the aims pursued by the coastguard operations. Also in both cases, they alleged procedural violations, claiming that the administrative and judicial investigations had been inadequate and fell short of the standards required under Article 2.

In both cases, the ECtHR held that Article 2 of the ECHR allows the use of lethal force only when absolutely necessary and only after a concrete and adequate assessment of risks to life. It found that, in both cases, the presence of passengers—particularly migrants concealed in the vessels—was sufficiently foreseeable to the coastguard. Moreover, the Greek authorities did not verify whether additional individuals were on board before opening fire. The court also examined the broader nature and planning of the operations, concluding that they had not been organised in a way that minimised risks to life. In *Almukhlas and Al-Maliki* v *Greece,* the court specifically held that there was no evidence of preparatory

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measures aimed at reducing lethal risk, since the Greek government failed to demonstrate that alternative methods were considered or that the coastguards were prepared to deal with high-intensity situations while ensuring the protection of passengers' lives. Consequently, the interception operation was not conducted in a way that minimised resorting to lethal force and the risks to the applicants' son's life.

The court then assessed whether the use of weapons had been necessary and proportionate to the aims of the operations. In the case of *Alkhatib and Others* v *Greece,* the court held that despite the vessel's reckless manoeuvres, the objectives of preventing irregular entry and arresting the driver could not justify firing thirteen potentially lethal shots—actions inherently endangering the lives of the passengers. The lack of vigilance and the absence of measures to minimise risk led the court to conclude that Greece had failed to show that the force used was absolutely necessary. A substantive violation of Article 2 was therefore found.

In *Almukhlas and Al-Maliki* v *Greece,* the court found a substantive violation based on the overall conduct and planning of the operation. However, as the key facts could not be established beyond reasonable doubt because of the investigative shortcomings, it held the use of force in the specific circumstances has not been shown to have gone beyond what was "absolutely necessary".

Finally, the ECtHR held that Greece had breached its procedural obligations under Article 2 of the ECHR in both cases. In *Almukhlas and Al-Maliki* v *Greece,* the court held that the investigation lacked independence, since it was conducted by colleagues of the coastguard officers involved in the incident and serious shortcomings resulted in the loss of key evidence. In *Alkhatib and Others* v *Greece,* although the Turkish drivers had been convicted for injuries to the passengers, the court held that the Greek authorities had failed to take investigative steps that could have clarified the coastguards' responsibility, as no forensic examination of the victim was carried out, and the ballistics reports and the examination of the vehicles were inadequate. These factors had led to a loss of evidence and prevented the determination of whether the potentially lethal use of force had been justified.

In *F.M. and Others* v *Greece*, two Afghan nationals and two Iraqi nationals complained before the ECtHR under both the substantive and procedural limbs of Article 2 of the ECHR, following the death of several of their relatives during a shipwreck near the Greek coast in March 2018. They alleged that the Greek authorities had breached their positive obligation to take all reasonable operational measures once they knew or ought to have known of a real and immediate risk to life, and that Greece had also failed to conduct an independent, thorough and effective investigation into the incident and the alleged shortcomings in the rescue response.

The case arose after the Greek Joint Search and Rescue Coordination Centre (JRCC) received distress information early on 16 March 2018, including a call relayed via the NGO *Watch the Med* and a separate emergency call from a man reporting that his family members were on a vessel in distress, likely carrying around twenty people. The applicants argued that, despite having enough information early on 16 March 2018 to treat the situation as life-threatening, the authorities did not conduct an adequate search-and-rescue (SAR) response on 16 March. They argued that the second emergency call should have led to the immediate escalation of emergency measures and to efforts from the Coast Guard to coordinate with nearby local units. The following day, survivors and bodies were discovered, confirming the occurrence of a shipwreck and the loss of life.

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The Greek government disputed the date of the incident, stating that it did not occur on 16 March but on 17 March, since a shipwreck on 16 March would mean the authorities had actual or constructive knowledge of a real and immediate risk to life at the relevant time, triggering their operational obligations under Article 2. The authorities argued that the 16 March distress calls and search efforts were unrelated to the fatal incident, and thus that the JRCC's actions on 16 March were not causally related to the deaths. They argued that a search conducted on 16 March yielded no results, and that bodies and survivors were only discovered on March 17. On the substantive limb of Article 2, the ECtHR held that the Greek authorities had sufficient information to trigger the duty to take operational measures and concluded that they did not do everything that could reasonably be expected to protect the applicants and their relatives. The court emphasised that the fact that no wreckage or persons were sighted during the 16 March operation did not demonstrate that no shipwreck occurred; rather, it highlighted the numerous shortcomings in the SAR operation on that day. It also found inadequate the authorities' decision to end a SAR operation after approximately three hours even though the individuals had not been found and there remained a reasonable prospect of recovering survivors under SAR standards. The court therefore found a violation of Article 2 in its substantive aspect.

On the procedural limb, the court held that Greece failed to conduct an independent, thorough, and effective investigation into the shipwreck and the alleged failures in the rescue response. It underlined that formal statutory independence of military prosecutors was not sufficient to ensure independent investigations and noted that while the applicants' complaint implicated the Coast Guard as an institution, key investigative steps were entrusted to bodies within the Coast Guard itself. It further identified serious investigative deficiencies that undermined the investigation's ability to resolve the central disputed question—the date of the shipwreck—including the failure to properly assess a message of particular importance for establishing the date, and gaps in the forensic and autopsy material, which made it impossible to reliably establish the time of death. Taken together, these weaknesses prevented the investigation from meeting Article 2 standards, leading the ECtHR to find a violation of the procedural limb.

2.2 Positive obligations to protect life: prevention of self-harm and suicide in removal and detention contexts

In *Hasani* v *Sweden* (No 35950/20, 6 March 2025, first section, sitting as a Chamber), the ECtHR addressed the application of Article 2 obligations in a different context, namely, the issue of positive obligations of State authorities to take appropriate measures preventing the risk of suicide from materialising, particularly when asylum applicants suffer from mental health conditions.

The applicant in the case, an Afghan national, claimed that the Swedish authorities had failed to protect his brother's life, who committed suicide after the rejection of their asylum claims. His brother had a severe visual impairment and long-standing serious mental health problems, including previous suicide attempts and self-harm. The applicant held that in view of this, the Swedish authorities knew, or ought to have known, that the negative asylum decision would cause his brother deep distress and that the risk of self-harm was high. The applicant further held that the authorities had not done everything in their power to prevent the risk from materialising, since no lawyer was present when his brother was notified of the decision and no psychological assistance was facilitated. The applicant highlighted that his brother was a highly vulnerable individual who also depended on the Swedish Migration

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Agency for his housing and care, and Sweden had a positive obligation to prevent him from self-harm as required by Article 2 of the ECHR.

The ECtHR held that Article 2 of the ECHR imposes a positive obligation on States to take preventive operational measures to protect individuals when there is a real and immediate risk to their lives, including risks of self-harm or suicide. However, this duty applies only when authorities knew or ought to have known of such a risk, and it must not impose an impossible or disproportionate burden on the State. The court noted that the real question was whether the authorities knew or should have known that the applicant's brother was at a real and immediate risk of suicide, and if so, whether they took reasonable preventive measures. The court acknowledged the applicant's brother's mental health problems and his suicide attempts and noted that he had even expressed suicidal thoughts relative to a possible rejection of his asylum application. However, the court held that he had never been diagnosed with any psychiatric condition or prescribed medication, and most importantly, he had not exhibited suicidal tendencies or signs of mental distress in the period leading up to the asylum decision or even after becoming aware of its outcome. The court held that, while authorities were generally aware of the applicant's brother's mental health problems, it had not been established that they knew or ought to have known that there was a real and immediate risk. Thus, no violation of Article 2 of the ECtHR was found.

Notably, the judgment includes a dissenting opinion from three court members, which found that in view of the applicant's brother's particularities and his multiple vulnerabilities, including his status as an orphaned minor, his visual disability and his mental health problems, the Swedish authorities did not take sufficient preventative measures to fulfil their positive obligation under Article 2 of the ECHR. The affected individual had various suicide attempts and self-harm, and had expressed, during asylum interviews, suicidal thoughts in connection to his possible removal to Afghanistan. Therefore, the dissenting judges believed that the risk of committing suicide could not have been unknown to the Swedish authorities. Firstly, the fact that the delivery of the Migration Agency's negative decision was not preceded by an assessment of the person's mental health or his risk of suicide, and secondly, the absence of psychological or psychiatric support or monitoring once the rejection and removal decision had been notified were considered to be in breach of Sweden's positive obligations under Article 2 of the ECHR. According to the dissenting opinion, these measures, while having a real prospect of altering the outcome or at least mitigating the harm, were not unreasonable and would not have placed an unbearable burden on the authorities.

3. Reception conditions: Assessment of living conditions under Article 3 of the ECHR

In 2024 and 2025, the ECtHR ruled on five cases involving reception conditions of asylum seekers, mostly concerning violations of Article 3 of the ECHR. In cases *T.K. v Greece* (No 16112/20, 18 January 2024, fifth section, sitting as a Committee), *W.S. v Greece* (No 65275/19, 23 May 2024, fifth section, sitting as a Committee) and *N.N. and others v Greece* (No 59319/19, 19 December 2024, fifth section, sitting as a Commitee), the applicants were unaccompanied minors who claimed that their access to accommodation and living conditions were so deficient that they constituted ill treatment within the meaning of Article 3 of the ECHR. In assessing such complaints, the court applied the general principles established in the Grand Chamber judgment *M.S.S. v Belgium and Greece* (No 30696/09, 21 January 2011).

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The court highlighted the applicants' extreme vulnerability as unaccompanied minor applicants and found violations of Article 3 of the ECHR in all three cases. In *N.N. and others* v *Greece* and *T.K.* v *Greece*, the applicants were either wrongfully classified as adults or faced delayed and flawed age assessment procedures, which deprived them of procedural guarantees such as a legal guardian and prevented them from accessing adequate accommodation. The applicant in *T.K.* v *Greece* held that he had only been given a mat to sleep on by the authorities, having to sleep outside the Samos camp in a tent in deplorable living conditions: filth, overcrowding, lack of sanitation, water and food. The applicant, who suffered from mental health problems, also received no medical assistance. He claimed that the absence of a guardian and his erroneous registration as an adult made the conditions in the camp more deplorable. The applicants in *N.N. and others* v *Greece* either lived in "protective custody" in appalling conditions, on the streets or in substandard housing for periods of between 1.5-5 months.

In *W.S.* v *Greece*, the applicant had been identified as an unaccompanied minor, but despite this, the Greek authorities failed to provide him with adequate reception conditions. As a result, he was first left entirely to himself, homeless or depending on housing offered by compatriots for 18 days, and then he was placed in protective custody in a police station, where he had remained indoors and isolated for 17 days, without access to interpreters or psychological assistance. Thus, the applicant was only placed in adequate accommodation 1 month and 7 days after his asylum application and recognition as an unaccompanied minor.

A.I. v Greece (No 13958/16, 18 January 2024, fifth section, sitting as a Committee) concerned the application of a father and his two minor children, aged 4 and 7, who complained about their living conditions in Idomeni camp, where they stayed between March-May 2016.The applicants stayed in a tent without adequate protection against weather conditions and complained of overpopulation and inadequate hygiene, nutrition and sanitation facilities. The applicants also suffered from medical conditions while in the camp and were unable to obtain medical assistance.

The ECtHR relied on its previous case law in *Sh.D and Others v Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia* (No 14165/16, 13 June 2019) on reception conditions in the Idomeni camp during the period of the applicants' stay. It also referred to the findings in the reports of several organisations about the deplorable situation in the camp. It specifically mentioned the visit of the Special Representative of the General Secretary of the Council of Europe on Migration and Refugees in March 2016, following which concerns were expressed about the situation of more than 13,000 applicants in the area. The court highlighted its case law in *Muskhadzhiyeva and others v Belgium* (No 41442/07, 19 January 2010) regarding the reception of unaccompanied and accompanied minors, noting that the child's extreme vulnerability in these cases was the decisive factor, taking precedence over considerations relating to their status of irregular immigrants. It also referred to the applicants' vulnerability, due to the adult applicant's medical condition and the minor applicants' age. In light of this, the ECtHR concluded that the treatment the applicants were subjected to in the camp reached the threshold of severity to establish a violation of Article 3 of the ECHR.

Finally, the case of *A.R. and Others v Greece* (No 59841/19, 15782/20 and 21997/20, 18 April 2024, fifth section, sitting as a Committee) concerned the living conditions and access to medical assistance of three applicants while staying in Greek reception and identification centres (RICs) in Pyli RIC (Kos), Chios Vial RIC and Samos RIC. The ECtHR found that in all

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cases there had been violations of Article 3 of the ECHR due to the living conditions in the RICs, as applicants were either denied entry to the RICs entirely and forced to homelessness, placed in tents which were inadequate for their needs (especially for one of the applicants who was an elderly man with several medical conditions and had also been denied medical care), or accommodated in the RICs in a context of severe overcrowding and lack of access to medical and sanitary facilities. The court relied on the applicants' accounts, as well as several reports from international and domestic sources on the deficient conditions in the RICs where they were staying.

The reception conditions case law demonstrates that structural deficiencies—overcrowding, inadequate sanitation, lack of medical care and insufficient protection for children and other vulnerable applicants— give rise to violations of the Convention, in particular under Article 3 of the ECHR, frequently coupled with shortcomings under Article 13 of the ECHR. The cases also show that "short duration" arguments do not necessarily neutralise Article 3 risks where conditions are particularly severe or vulnerability is acute.

This approach is consistent with the CJEU's case law on reception conditions, which recognises the particular vulnerability of asylum seekers and requires Member States to ensure material conditions that guarantee a dignified standard of living. In *Haqbin* (C-233/18), the CJEU held that even temporary withdrawal of reception conditions may breach EU law where it undermines human dignity. A comparable assessment of systemic deficiencies can be found in the CJEU's judgment in *RL, QS* v *Germany* (C-185/24 and C-189/24), where the court clarified that deficiencies in reception conditions, including those linked to capacity constraints and border practices, may preclude a Dublin transfer where they give rise to a real risk of inhuman or degrading treatment. These approaches mirror the ECtHR's assessment of reception conditions under Article 3 of the ECHR, particularly in cases involving vulnerable applicants.

The case law analysed in this section remains highly relevant to the EU Pact on Migration and Asylum's implementation, as any increase in border processing and accelerated procedures may intensify pressure on reception and border facilities. From a compliance perspective, the judgments suggest that Pact-driven acceleration must be matched by capacity planning and vulnerability-sensitive safeguards; otherwise, the risk of systemic Article 3 of the ECHR findings is likely to persist or increase.

4. Detention conditions

This section examines the jurisprudence of the ECtHR on the detention of asylum seekers, highlighting both substantive and procedural safeguards under the ECHR. Detention in the context of asylum is primarily assessed under Articles 3 and 5 of the ECHR, with Article 3 of the ECHR protecting against inhuman or degrading treatment and Article 5 of the ECHR regulating the lawfulness, proportionality, and purpose of deprivation of liberty. Article 5(1)(f) of the ECHR allows detention of aliens for the purpose of preventing unauthorised entry or facilitating expulsion, provided it is lawful, proportionate, and closely connected to those aims. Article 5(4) of the ECHR guarantees the right to a prompt and effective judicial review of detention. The following cases illustrate how the court evaluates the lawfulness, necessity, duration, conditions, and judicial oversight of detention, taking into account vulnerability, age, and procedural safeguards. The case law examined in this section builds on the court's well-established interpretation of Article 5 of the ECHR, notably in *Saadi* v *the United Kingdom* and *Khlaifia and Others* v *Italy.* The more recent Chamber and Committee

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judgments apply these principles to detention in asylum and migration contexts, including transit zones, border facilities and detention on national security grounds.

The detention-related judgments show consistent scrutiny of arbitrariness, the quality of the legal basis, and the effectiveness of judicial review under Article 5. A recurrent pattern across States is the reliance on administrative detention in fast-paced migration contexts, with legal safeguards struggling to keep pace with operational imperatives. This is directly relevant to the EU Pact on Migration and Asylum, as its implementation is expected to increase the use of containment measures in screening and border procedures, raising the risk that restrictions on movement may amount to *de facto* detention if applied automatically or without meaningful individual assessment.

In this regard, the jurisprudence signals two practical compliance priorities for Pact implementation: (i) ensuring that any deprivation of liberty is clearly anchored in accessible and foreseeable law with individualised reasoning; and (ii) guaranteeing speedy, effective judicial review capable of ordering release. These safeguards will likely become a focal point of future litigation as border procedures expand and Member States operationalise new facilities.

This jurisprudence is particularly relevant in the context of the EU Pact on Migration and Asylum's border procedure and screening, as it demonstrates that containment measures at borders may amount to *de facto* detention unless accompanied by clear legal bases, individual reasoning and effective judicial review.

4.1. Detention pending removal or Dublin transfers

In *L. v Hungary* (Committee judgment, No 6182/20, 21 March 2024), the case concerned the detention of a Syrian national who had first requested international protection in Greece and later again in Hungary. On 29 January 2019, the Hungarian Asylum and Immigration Office ordered her detention under Section 31/A of the Asylum Act, initially citing the pending Dublin transfer to Greece. Even after it was established that Hungary was responsible for examining her claim, the detention continued, with repeated extensions by domestic courts on the basis of generic references to a risk of absconding and alleged threats to national security. The detention lasted almost 6 months. The applicant argued that her detention was arbitrary, no genuine alternatives had been considered and the authorities had ignored her vulnerability and cooperation.

The court recalled that under Article 5(1) of the ECHR, the deprivation of liberty must not only comply with national law but also protect individuals against arbitrariness. Detention must remain closely connected to its lawful purpose and cannot exceed the time required. It found that once the Dublin transfer was no longer possible, the applicant remained detained without a legal basis between 11-27 March 2019. Subsequent extensions relied on unsubstantiated claims of absconding, despite her voluntary surrender and cooperation and vague references to national security threats that were never substantiated. The authorities failed to demonstrate why less restrictive measures could not be implemented, contrary to the requirements of Hungarian law itself. The ECtHR concluded that the applicant's detention, particularly from March 2019 onwards, was arbitrary, lacked a proper legal basis and violated Article 5(1) of the ECHR.

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4.2. Detention of minors

In *M.H. and S.B. v Hungary* (Chamber judgment, Nos 10940/17 and 15977/17, 22 February 2024), two people were detained in Hungary in 2016 after crossing the border as unaccompanied minors. Although they initially said they were adults during their asylum interviews, they soon corrected their statements and asked for the age assessment procedure. Despite this, both remained in detention for weeks or months, even though Hungarian law prohibits the detention of unaccompanied minor asylum seekers.

The ECtHR emphasised that detaining migrant children should be avoided and is only acceptable for a very short period and under appropriate conditions, and only if no less restrictive alternative exists. The court found that Hungarian authorities did not act promptly to verify the applicants' age, did not consider alternatives to detention and placed the burden on the minors to prove their age. The authorities also failed to treat the children's vulnerability and best interests as a priority. Because the applicants were kept in detention for a considerable time after claiming to be minors, and because the decisions prolonging their detention were arbitrary and lacked proper justification, the ECtHR held that the authorities had not acted in good faith. It concluded that there had been a violation of Article 5(1) of the ECHR.

In *J.B. and Others v Malta* (Chamber judgment, No 1766/23, 22 October 2024), six Bangladeshi nationals, five of them minors, were detained at the Ħal Far Initial Reception Centre in Malta after arriving by boat in November 2022. They complained that their detention had been imposed without a legal basis, they were held in overcrowded and inadequate conditions, and remedies to challenge their situation were ineffective.

The court first examined the conditions of detention under Article 3 of the ECHR. It distinguished between the applicants: for the first applicant, ultimately found to be an adult, the cumulative conditions did not reach the threshold of inhuman or degrading treatment. For the remaining applicants, however, presumed minors, the court stressed that their age and vulnerability required heightened protection. It noted reports confirming poor sanitary facilities, lack of meaningful activities and confinement indoors, as well as medical assessments showing severe anxiety, depression and post-traumatic stress. Taken together, these factors amounted to inhuman and degrading treatment in violation of Article 3 of the ECHR.

Turning to Article 5(1) of the ECHR, the court found that the applicants' initial detention had been imposed in a legal vacuum, without a clear basis or safeguards, and was therefore unlawful. While the subsequent detention of the first applicant, once recognised as an adult, complied with Article 5(1) of the ECHR, the continued detention of the minors was arbitrary, as national rules required alternatives to detention once a vulnerability was established. Under Article 5(4) of the ECHR, the court criticised the Immigration Appeals Board for confirming detention in a collective hearing without an individualised review and for lacking independence, impartiality and an effective judicial oversight. This amounted to a violation of the right to a speedy and effective review of detention. The ECtHR found violations of Articles 3, 5(1) and (4), and Article 13 of the ECHR, but not all applicants succeeded — the first applicant's conditions of detention were held not to reach the thresholds of Article 3.

Both cases illustrate the court's strong stance against prolonged or arbitrary detention of minors. While the first case involved a procedural failure to verify age and consider alternatives, the second case highlighted both poor conditions and ineffective judicial review.

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4.3. Detention on national security grounds

In *M.B. v the Netherlands* (Chamber judgment, No 71008/16, 23 April 2024), a Syrian national who, after serving a 10-month prison sentence for terrorism-related offences, was placed in immigration detention in Rotterdam while his application for international protection was pending. The Dutch authorities justified the measure under Section 59b(1)(d) of the Aliens Act 2000, which transposes Article 8(3)(e) of the recast Reception Conditions Directive and allows the detention of asylum applicants on public order or national security grounds. The applicant argued that his detention was arbitrary, since no removal proceedings were underway and his asylum claim had not yet been decided. The court recalled that under Article 5(1)(f) of the ECHR, detention is permissible only if it is closely connected to the aim of preventing unauthorised entry or facilitating deportation. It stressed that detention cannot be used as a purely preventive measure detached from those purposes. The court further examined the first limb of Article 5(1)(f) of the ECHR, which allows detention of an asylum-seeker until the State has granted authorisation to enter. Once entry is formally authorised, the first limb ceases to apply, as there is no longer an unauthorised entry. In the present case, although the applicant was physically on Dutch territory and considered to have "lawful residence" under Section 8(f) of the Aliens Act 2000 (which implements Article 9(1) of the Asylum Procedures Directive), the court clarified that this provision does not constitute formal authorisation to enter. Lawful residence pending an asylum decision prevents expulsion but does not provide a residence permit or formal authorisation. Accordingly, detention under the first limb of Article 5(1)(f) remained legally possible. While EU law allows detention on public order or national security grounds, the ECtHR emphasised that no such independent ground exists under the ECHR: a direct link to preventing unauthorised entry or effecting removal must exist.

The ECtHR noted that the applicant had already spent 10 months in criminal detention before being placed in immigration custody, during which no steps had been taken to advance his asylum claim. Once criminal proceedings ended, the authorities relied on public order grounds to continue holding him, but without initiating or pursuing removal proceedings. The court found that this created a lack of a sufficiently close connection between detention and the legitimate aim of preventing unauthorised entry or deportation. Public order concerns, while serious, could not in themselves justify prolonged immigration detention in the absence of active deportation steps. The court did not find that there existed a sufficiently close connection between his immigration detention and the aim of preventing his unauthorised entry. The applicant's immigration detention was thus arbitrary, and therefore incompatible with the first limb of Article 5(1)(f).

Both cases show that detention cannot be justified solely by public order or prior criminality in the absence of active removal proceedings. The first case additionally demonstrates the importance of considering less restrictive alternatives. The second case underscores the importance of recognising when the first limb of Article 5(1)(f) of the ECHR ceases to apply.

In *B.A. v Cyprus* (Chamber judgment, No 24607/20, 2 July 2024), a Syrian national was detained on national security grounds under Section 9ΣΤ(2)(e) of the Refugee Law shortly after applying for international protection. He remained in custody for nearly 3 years, first at Lakatamia Police Station and then at Menoyia Detention Centre. He argued that his detention was arbitrary, excessively long and not subject to an effective judicial review.

The court recalled that detention under Article 5(1)(f) must be lawful, pursued in good faith and closely connected to the legitimate aim of preventing unauthorised entry or facilitating a

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removal. It emphasised that national security concerns cannot be applied as a general preventive mechanism detached from those aims. In this case, although the detention was authorised under domestic law, it was imposed solely on national security grounds and not linked either to the examination of the asylum claim or to removal proceedings. The absence of a statutory time limit and the duration of almost 3 years rendered the measure disproportionate and arbitrary. The court therefore found a violation of Article 5(1) of the ECHR.

Turning to Article 5(4) of the ECHR, the court stressed that a judicial review of detention must be effective and conducted with 'speediness'. In Cyprus, the applicant's appeals and *habeas corpus* petitions were dismissed without meaningful scrutiny of the evidence, and equality of arms was not respected since classified material was withheld. The Supreme Court took more than 2 years to decide on the appeal, with long periods of inactivity even before the COVID-19 pandemic. The court held that such delays were unjustified and incompatible with ECHR's requirement of a prompt review, amounting to a violation of Article 5(4) of the ECHR.

The ECtHR found that the applicant's prolonged detention on national security grounds was arbitrary and disproportionate, violating Article 5(1) of the ECHR, and the lack of an effective and speedy judicial review breached Article 5(4) of the ECHR.

Similarly, in *K.A.* v *Cyprus* (Chamber judgment, No 63076/19, 2 July 2024), a Moroccan applicant for international protection was detained on national security grounds in Cyprus between 2019-2020. Following intelligence reports linking him to terrorism-related activities, the Civil Registry and Migration Department issued a detention order under Section 9ET(2)(e) of the Refugee Law. The applicant was placed in custody and transferred to the Menoyia Detention Centre, where he remained until February 2020. The applicant argued before the domestic courts that his detention was arbitrary and unlawful under Article 5 of the ECHR. He maintained that the authorities had relied on vague intelligence reports without disclosing the underlying evidence, depriving him of the equality of arms. He further contended that his detention was disproportionate, since no removal proceedings were pending and no alternatives to detention had been considered. Most importantly, he complained that his appeal against the detention order had not been examined 'speedily', as more than 9 months passed without any progress before his release. The Administrative Court upheld the detention order, finding that it was justified on national security grounds. The applicant appealed to the Supreme Court, but the proceedings were marked by prolonged inactivity.

The ECtHR recalled that Article 5(4) of the ECHR requires strict compliance with the speediness requirement, given that personal liberty is at stake. It emphasised that a judicial review must be both effective and prompt, and prolonged inactivity attributable to the authorities cannot be reconciled with the ECHR's guarantees. In this case, the court noted that the appeal lodged in May 2019 was not listed for directions until April 2020, and no steps were taken in the interim. The applicant's conduct had not contributed to the delay, which was entirely attributable to the Cypriot authorities. The court stressed that even after release, applicants retain a legitimate interest in the determination of the lawfulness of their detention, so the lack of progress remained relevant. The ECtHR therefore held that the appeal proceedings did not comply with the requirement of speediness and therefore violated Article 5(4) of the ECHR.

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4.4. Detention conditions

In *B.F.* v *Greece* (Chamber judgment, No 59816/13, 14 October 2025), an Iranian national was placed in administrative detention pending deportation for 2 months and 18 days in the Kolonos police station in Athens. After unlawfully entering Greece in 2012, the applicant requested international protection. His first asylum procedure was discontinued after he failed to attend the interview, and following a second arrest in July 2013 he was again detained while attempting to have his asylum claim examined. During detention, he repeatedly complained of overcrowding, poor hygiene, lack of outdoor exercise, inadequate food and the impact of detention on his bronchial asthma. He challenged both the lawfulness of his detention and the conditions before the domestic courts, which dismissed his objections.

The ECtHR examined the conditions of detention under Article 3 of the ECHR. The court recalled that Greek police stations are by nature unsuitable for long-term detention. It noted that the applicant had been held for over 2 and a half months in a police station lacking the amenities required for prolonged deprivation of liberty. Having regard to the cumulative effect of the conditions and the duration of detention, the court concluded that the applicant had been subjected to degrading treatment in violation of Article 3 of the ECHR. Turning to Article 13 of the ECHR in conjunction with Article 3 of the ECHR, the court found that the applicant had an arguable complaint regarding his detention conditions. Although domestic law provided for judicial objections against detention, the administrative courts failed to engage meaningfully with the applicant's detailed and substantiated complaints concerning overcrowding, health risks and medical care. The remedies available in practice did not allow for a genuine examination of the substance of his allegations. The ECtHR therefore held that there had been a violation of Article 13 of the ECHR read together with Article 3 of the ECHR.

The court noted that the applicant's detention fell within the scope of Article 5(1)(f) of the ECHR since it was ordered with a view to deportation and later to ensure the effective examination of his application for international protection. It found that the detention had a clear legal basis in domestic law, was pursued in good faith and that the authorities had acted with due diligence. While the conditions of detention were incompatible with Article 3 of the ECHR, the court held that, in the circumstances of the case and given the absence of particular vulnerabilities, those deficiencies did not undermine the connection between the lawful basis of detention and its execution so as to render it arbitrary. It further determined that the duration of detention was not excessive. Accordingly, the ECtHR found no violation of Article 5(1) of the ECHR.

In addition to these judgments, in *H.T.* v *Germany and Greece* (mentioned above) a Syrian asylum seeker was removed from Germany to Greece under a bilateral administrative arrangement and subsequently detained for more than 2 months in a local police station. He argued that his detention was arbitrary, lacked an effective judicial review and the conditions were degrading, in breach of Articles 3, 5(1) and 5(4) of the ECHR. The ECtHR found that the detention conditions violated Article 3, noting the absence of outdoor access, sanitation and sufficient space for such prolonged custody. While the court accepted that the detention was lawful under Article 5(1) given its connection to expulsion formalities, it held that Article 5(4) of the ECHR had been violated: although the applicant challenged his detention twice, the domestic courts dismissed his claims without examining his concrete allegations about conditions. The ECtHR therefore concluded that the applicant's prolonged detention in

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inadequate facilities amounted to degrading treatment under Article 3 of the ECHR and the lack of meaningful judicial scrutiny violated Article 5(4) of the ECHR.

4.5. Detention in transit zones

In 2024–2025, the ECtHR continued to scrutinise the use of transit-zone confinement in Hungary, with particular attention to the prolonged duration of such measures and the absence of effective procedural safeguards. The following judgments illustrate how extended stays in transit zones, combined with inadequate conditions and limited judicial oversight, were found to amount to *de facto* deprivation of liberty and to raise issues under Articles 3, 5(1) and 5(4) of the ECHR.

In *Z.L. v Hungary* (Committee judgment, No 13899/19, 12 September 2024), a mother and her four children (three minors and one adult) arrived in Hungary in December 2018 and requested international protection in the Röszke transit zone. Their claims were rejected in February 2019, followed by an expulsion order first to Serbia, then to Afghanistan after Serbia refused readmission. They remained confined in the transit zone until its closure in May 2020 — a total of 17 months.

The ECtHR acknowledged that the family faced episodes of food deprivation during confinement: the mother and her adult son were denied food for 4 days. One minor also experienced inadequate medical care, including police escort and lack of interpretation during examinations. The ECtHR held that the minors' prolonged confinement amounted to inhuman and degrading treatment under Article 3 of the ECHR, emphasising their vulnerability and the impact of a lengthy detention. It found that placement in the transit zone constituted *de facto* deprivation of liberty, and the excessive duration of it amounted to a violation of Article 5(1) of the ECHR. Furthermore, the ECtHR highlighted systemic deficiencies: the absence of formal detention decisions, lack of statutory time limits and insufficient judicial review. It concluded that Hungarian law failed to provide safeguards against arbitrariness, resulting in violations of Article 5(1) and 5(4) of the ECHR.

In *S.H. v Hungary* (Committee judgment, No 47321/19, 20 June 2024), an Iranian national requested international protection in the Tompa transit zone in January 2018 together with her brother. Her application was rejected in March 2018, but she remained confined for 13 months while her appeal was pending. Initially accommodated with her brothers in the family sector, sharing a 13 sq.m. container, she complained of noise, heat, harassment from other applicants for international protection, and deteriorating mental health. After her brother's release in February 2019, she was transferred to the healthcare sector, normally used for isolation, where she was kept alone under constant surveillance. Police officers ordered her to keep the lights on and the door open, which intensified her sense of insecurity and suicidal thoughts.

The ECtHR found that the authorities failed to provide adequate psychiatric care despite being aware of her suicidal risk, which amounted to inhuman and degrading treatment under Article 3 of the ECHR. The court held that the 13-month confinement in a transit zone constituted *de facto* deprivation of liberty and therefore found violations of Article 5(1) and 5(4) of the ECHR.

The ECtHR's findings on detention under Article 5 of the ECHR are broadly consistent with the CJEU's interpretation of detention under EU asylum law. The CJEU has repeatedly held that detention of asylum applicants must be exceptional, based on an individual assessment

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and subject to effective judicial review, notably in *FMS and Others* (C-924/19 PPU and C-925/19 PPU). In *C.* v *State Secretary for Justice and Security* (C-387/24), the CJEU reiterated that detention constitutes a serious interference with the right to liberty and is strictly limited by conditions and procedural safeguards, including the obligation to release the person as soon as detention becomes unlawful.

5. Private and family life

The ECtHR issued four decisions regarding the right to private and family life between 2024 and 2025, in all of which it found no violation of Article 8 of the ECHR. One of the judgments was against Denmark and involved the expulsion of a refugee due to a criminal conviction, and the other three were against Sweden and all concerned the denial of family reunification requests from recognised refugees in Sweden.

5.1 Family reunification and maintenance requirements

In cases *Dabo* v *Sweden* (No 12510/18, 18, January 2024, first section, sitting as a Chamber), *D.H. and Others* v *Sweden* (No 34210/19, 25 July 2024, first section, sitting as a Chamber) and *Okubamichael Debru* v *Sweden* (No 49755/18, 25 July 2024, first section, sitting as a Chamber), the applicants, who were granted refugee status in Sweden, challenged the refusals of their family reunification requests under the Swedish Temporary Restrictions Act. The act entered into force in 2016 and remained in force until July 2019. Section 9(1) of the act introduced a condition for family reunification ('the maintenance requirement'), requiring that the foreign national resident in Sweden (the sponsor) shows sufficient income to maintain themselves and any person being sponsored, and has accommodation sufficient for themselves and the person being sponsored. If the person residing in Sweden had been granted refugee status or subsidiary protection, the maintenance requirement only applied if the application for family reunification was submitted more than 3 months after the granting of refugee status or subsidiary protection. Thus, beneficiaries of refugee status or subsidiary protection were exempted from the maintenance requirement within the first 3 months after obtaining international protection.

In all three cases, the applicants had been denied family reunification because they failed to fulfil the maintenance requirement and had lodged their reunification requests after the 3-month exemption deadline. The applicants complained that the strict application of this rule violated Article 8 of the ECHR, since in most cases it was not possible for refugees to fulfil the maintenance requirement and apply for reunification within 3 months after being granted asylum. The applicants in *D.H. and Others* v *Sweden* and *Okubamichael Debru* v *Sweden* also argued that their health conditions and reduced mobility had prevented them from securing a stable income to support themselves, and thus the denial of family reunification was discriminatory in breach of Article 14 of the ECHR.

The ECtHR held in *Dabo* v *Sweden* that the 3-month deadline for exemption from the maintenance requirement was not, in itself, contrary to Article 8 of the ECHR. It recalled that whether a State has a positive obligation to allow family reunification depends on a fair balance between the individual's right to family life and the State's interest in immigration control. The court examined whether the Swedish authorities had achieved a fair balance - within their margin of appreciation – between the applicant's interest in being reunited with his family and the State's interest in managing immigration for the sake of the country's economic well-being. The ECtHR held that the 3-month exemption period is consistent with

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EU law, reflects common European practice and was adopted after extensive political and judicial scrutiny in response to high migration pressures. The court therefore held that States enjoy a wide margin of appreciation in imposing such a maintenance requirement on refugees applying after the initial 3-month window, as long as authorities undertake a sufficiently individualised assessment of reunification requests and there are no objectively excusable reasons for late applications. The ECtHR found that Sweden struck a fair balance between the applicant's interest in family reunification and the State's interest in controlling immigration and protecting its economic well-being.

Following the findings in *Dabo* v *Sweden,* the court also found no violation of Article 8 of the ECHR in the cases of *D.H. and Others* v *Sweden* and *Okubamichael Debru* v *Sweden*. The court held that in both cases, despite the applicants' mobility challenges, they had not shown that they were incapable of working or that they had taken all reasonably expected measures to earn sufficient income. They court also highlighted that they had received assistance from the Swedish authorities in their search for employment suitable to them and learning the Swedish language. Thus, the ECtHR did not find any discriminatory treatment in breach of Article 14 of the ECHR.

5.2 Expulsion orders

In *Winther* v *Denmark* (No 9588/21, 12 November 2024, fourth section, sitting as a Chamber), a Syrian national who was granted refugee status in Denmark had been convicted of several crimes and sentenced to 7 months' imprisonment, expulsion from Denmark and a 6-year entry ban. The applicant had challenged the sentence before domestic courts, holding that after his conviction, his twins had been born prematurely, one with health problems, and that since his release he had been living with his family, participating in childcare, completing his education and securing a job. His girlfriend and children were Danish nationals. The Supreme court upheld his conviction, deeming it proportionate and holding that the severity of his crimes outweighed the impact on his family life. After he was released from prison, he was moved to a deportation centre. The Aliens Appeal Board eventually allowed him to stay in Denmark on a tolerated stay as he could not be forcibly returned to Syria due to the situation there. He absconded from the centre and attempted to obtain asylum in the Netherlands but was returned to Denmark.

The ECtHR analysed the applicant's claim of a breach of his right to private and family life under Article 8 of the ECHR. Relying on *Üner* v *the Netherlands* (No 46410/99, 18 October 2006) and *Savran* v *Denmark* where the ECtHR established that the proportionality of an expulsion depends on factors such as: the nature and seriousness of the offence, the length of the applicant's stay, the time elapsed and conduct since the offence, the strength of social and family ties in both countries, and the duration of the re-entry, the court analysed whether the applicant's expulsion was an interference "necessary in a democratic society". The ECtHR considered the Supreme Court's assessment, which gave particular weight to the nature and seriousness of the crimes committed. It also weighed in the applicant's particular circumstances, such as the fact that he still had strong ties to Syria, where he lived for most of his life, the fact that the applicant had left his family in Denmark to apply for asylum in the Netherlands, and his partner and children were Danish nationals who had no ties to Syria. The court acknowledged that the 6-year re-entry ban was relevant but noted that it had not been decisive in the domestic courts' reasoning, which focused mainly on the gravity of the offences. While in some borderline cases the realistic possibility of future readmission may matter, this was not such a case. Overall, the court found that the domestic courts had given relevant and sufficient reasons, applied the proper legal standards, and struck a fair

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balance between the applicant's rights and public interest. There were no strong grounds for the court to substitute its own assessment. It therefore concluded that there had been no violation of Article 8.

6. Remedies and suspensive effect

In cases regarding collective expulsions under Article 4 of Protocol No 4, the ECtHR found breaches of Article 13 of the ECHR in a number of instances. In *K.P.* v *Hungary* and *H.Q. and others* v *Hungary,* the court addressed specifically removals under Section 5(1)(b) of the State Border Act, whereby Hungarian legislation did not provide for any specific remedy by which to challenge a removal. In any case, removals carried out under Section 5(1)(b), which were executed immediately and in the absence of any formal decision, prevented access to remedies with an automatic suspensive effect, since expulsions were effective immediately before any complaint could be submitted. Thus, even if remedies at the domestic level existed, they could not prevent a removal. Thus, the court found that the applicants did not have at their disposal any remedies which may satisfy the criteria under Article 13 of the ECHR.

In *Sherov and others* v *Poland,* the applicants held that, even if they had a right to appeal their removal, the decisions refusing their entry into Poland had been executed immediately and their appeals had not had a suspensive effect. Having found that the applicants' removals were in violation of Article 3 of the ECHR and Article 4 of Protocol No 4 to the Convention, the court held that the complaints lodged by the applicants were arguable for the purposes of Article 13 of the ECHR. Citing its case law in *A.B. and others* v *Poland* (No 42907/17, 30 June 2022), the ECtHR also held that appeals against a refusal of entry could not be considered effective remedies within the meaning of the Convention because they did not have an automatic suspensive effect.

In *M.A. and Z.R.* v *Cyprus,* the applicants argued that they did not have access to any domestic remedies with an automatic suspensive effect in respect of their complaints under Article 3 of the ECHR and Article 4 of Protocol No 4 to the Convention. The court held that the remedies suggested by the government (appeals to domestic courts) would not have been effective within the meaning of Article 13 of the ECHR, as they could not have had an automatic suspensive effect in the circumstances of the case, since the applicants were held at sea for 2 days and then returned to Lebanon.

In cases regarding pushbacks, the court found a violation of Article 13 of the ECHR in the case *A.R.E* v *Greece.* It held that in order to be compliant with Article 13 of the ECHR, a remedy must be effective in practice as well as in law, meaning that it could have prevented the alleged violation from occurring, remedied the situation in question, or provided the person with appropriate redress for any violation already suffered. The applicant, who had been pushed back from Greece in violation of Article 3 of the ECHR, had attempted to challenge her removal after her return to Türkiye by filing a criminal complaint in Greece (filed by the Greek Council for Refugees on behalf of the applicant) for abuse of power, dereliction of duty, unlawful detention, endangerment of life, serious bodily harm, destruction of property, torture and other violations of human dignity. After an investigation, the complaint was dismissed due to a lack of evidence. The ECtHR held that the investigation conducted by the Greek authorities following the complaint fell far short of the Convention's effectiveness requirements and the national legal system offered no effective remedy to the applicant in her circumstances.

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Regarding the cases of detention, in *J.B. and Others* v *Malta,* the ECtHR held that Malta violated Article 13 of the ECHR, in conjunction with Article 3 of the ECHR, because the applicants had no effective remedy to challenge the conditions of their ongoing detention. The court found that Malta still lacked a functioning procedure—either in law or in practice—that would allow detainees to obtain a prompt and meaningful review of allegedly inhuman or degrading conditions, noting that this structural deficiency had already been identified in earlier case law yet remained unaddressed.

The requirement that remedies in removal cases have automatic suspensive effect is also reflected in the CJEU's jurisprudence. In *Gnandi* (C-181/16) and *Abdida* (C-562/13), the CJEU held that effective judicial protection under EU law requires remedies capable of preventing removal where serious risks are alleged. This corresponds to the ECtHR's findings under Article 13 of the ECHR in cases involving immediate removals and collective expulsions.

7. Protection of vulnerable persons: Unaccompanied minors

In 2024–2025, the ECtHR examined a range of issues affecting unaccompanied minors, addressing both failures in basic care and protection, and procedural shortcomings in age assessment processes. The following judgments illustrate how different forms of State inaction or inadequate safeguards—whether relating to accommodation, guardianship, or the use of medical examinations—may amount to violations of Articles 3 and 8 of the ECHR, particularly in light of the heightened vulnerability of children arriving alone.

In *O.R.* v *Greece* (Chamber judgment, No 24650/19, 23 January 2024), an Afghan minor arrived in Greece in late 2018 and repeatedly informed the authorities—through his lawyer and social workers—that he was a child in need of protection. Despite these repeated alerts, he was left without accommodation or an appointed guardian for nearly 6 months. During this time, he survived in public squares, overcrowded informal houses and in unauthorised stays in camps such as Malakasa and Skaramagas, where he did not have access to basic necessities and was twice subjected to sexual harassment by adult men. The applicant argued that the authorities' inaction exposed him to cold, hunger, lack of hygiene, insecurity and psychological distress, amounting to inhuman and degrading treatment under Article 3 of the ECHR. He stressed that his vulnerable status, aggravated by a traumatising family history that had been documented in social and psychosocial reports, had been clearly communicated to the authorities.

The ECtHR stated that the authorities were made aware of the applicant's situation as early as November 2018, yet he was not placed in suitable accommodation until mid-May 2019, despite repeated warnings about his homelessness. The ECtHR acknowledged the difficulties Greece faced, but stressed that Article 3 of the ECHR does not allow exceptions due to administrative strain. For nearly 6 months, the applicant lived in extreme deprivation. Although the authorities knew he was a highly vulnerable unaccompanied minor with a traumatic past, they did not appoint a guardian or accelerate his placement in appropriate accommodation. The ECtHR concluded that he was effectively abandoned in conditions wholly inappropriate for a child, exposing him to insecurity, neglect and psychological harm. Consequently, he was subjected to inhuman and degrading treatment in violation of Article 3 of the ECHR.

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In *F.B. v Belgium* (Chamber judgment, No 47836/21, 6 March 2025), a Guinean national claimed to be 16 years old when seeking international protection in Belgium. Although she presented documents indicating her minority and was initially registered as an unaccompanied foreign minor, the authorities ordered an immediate 'triple bone test' (hand, clavicle and dental X-rays) to assess her age. The examination concluded that she was over 21, and her minor status — with the accompanying guardianship and specialised support — was withdrawn. The applicant argued before the ECtHR that this procedure violated Article 8 of the ECHR, stressing that she had not given free and informed consent to the medical tests, she had not been assisted by a guardian or lawyer at that stage and less intrusive methods had not been considered. She underlined that losing her minor status had immediate consequences for her protection as an unaccompanied child.

The ECtHR emphasised the importance of ensuring informed and explicit consent, which had not been adequately guaranteed, particularly given the invasive nature of the medical tests performed. It noted that less intrusive measures, such as interviews conducted by trained staff, should have been attempted before resorting to medical examinations. The ECtHR also pointed out that the applicant had not been assisted by a representative or lawyer during the assessment phase. Although it did not determine whether the applicant was in fact a minor, it concluded that the decision-making process lacked sufficient procedural safeguards. The ECtHR held that the age assessment procedure violated the applicant's right to respect private life under Article 8 of the ECHR.

In addition to the judgments, the ECtHR also addressed the situation of unaccompanied minors in other cases covered in different parts of this report. In *N.N. and others* v *Greece* and *W.S.* v *Greece*, the ECtHR found systemic shortcomings in Greece's accommodation and protective custody of Afghan minors. In *K.P.* v *Hungary* the ECtHR stressed the vulnerability of minors in the context of detention without a prompt age assessment. In *M.H. and S.B.* v *Hungary* the ECtHR underlined that minors may initially present themselves as adults for understandable reasons, including fear of being separated from their group or an adult relative. It held that this cannot justify dismissing subsequent claims of minority and that the authorities must take appropriate measures to verify age, in light of the child's extreme vulnerability.

The ECtHR's emphasis on enhanced protection for unaccompanied minors is in line with the CJEU's case law, which requires that the best interests of the child be a primary consideration in all procedures affecting minors. In *M.A. and Others* (C-648/11) and *TQ* (C-441/19), the CJEU stressed the need for procedural safeguards, including appropriate care arrangements and individual assessments. In *CR, GF, TY* v *Landeshauptmann von Wien* (C-560/20), the CJEU reaffirmed that the best interests of the child must be a primary consideration and strengthened the right to family reunification for unaccompanied minor refugees. Both courts thus underline the need for enhanced safeguards for children in migration contexts.

The court's emphasis on vulnerability is important for the implementation of the EU Pact on Migration and Asylum, particularly in cases concerning unaccompanied minors, reinforces the importance of the vulnerability screening mechanisms foreseen under the Screening Regulation and their effective implementation in practice.

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8. Conclusions

The jurisprudence of the ECtHR in 2024–2025 reflects a consistent deepening of the court's protective framework in the field of asylum and migration. Across the full spectrum of issues—*non-refoulement*, border practices, detention, reception conditions, the right to life, family and private life, effective remedies and the protection of vulnerable applicants—the court consistently emphasised the primacy of Convention guarantees and the need for States to ensure that asylum systems function in practice, not merely in law.

A central and recurrent theme concerns *non-refoulement* and collective expulsions, which remain among the most prominent areas of violation. Several judgments delivered during the reporting period are of particular jurisprudential importance, as they go beyond the application of settled principles and clarify their operational meaning in contemporary border-management contexts. In cases such as *H.Q. and Others* v *Hungary* and *M.A. and Z.R.* v *Cyprus*, the ECtHR consolidated its approach by confirming that the decisive criterion under Article 4 of Protocol No 4 is the absence of a reasonable and objective examination of each individual situation, irrespective of the form, speed or location of the removal. These judgments significantly narrow the scope for States to rely on legal or factual constructions—such as transit zones, embassy procedures or maritime interceptions—to justify summary removals. The court made clear that bilateral agreements, administrative arrangements or operational constraints cannot relieve States of their Convention obligations.

In relation to border management and pushback practices, the court reiterated that the prohibition of *refoulement* applies with full force in both land and maritime contexts, including situations in which States seek to prevent entry or operate extraterritorially. The judgment in *A.R.E.* v *Greece* is particularly significant in this regard, as it confirms that where applicants provide *prima facie* evidence consistent with a well-documented pattern of pushbacks, the burden cannot be shifted entirely onto individuals to prove every element of their removal. The court's acceptance of contextual and circumstantial evidence reflects a realistic approach to the evidentiary difficulties inherent in documenting pushbacks and reinforces States' procedural obligations under Article 3 of the ECHR. Taken together with earlier case law, this line of jurisprudence sends a clear signal that deterrence-oriented border practices, including informal and unrecorded removals, remain incompatible with Articles 2 and 3 of the ECHR and Article 4 of Protocol No 4.

Judgments concerning Article 2 of the ECHR, notably those arising from fatal incidents during coastguard operations, further illustrate the court's insistence on strict standards of planning, risk assessment and accountability. In cases such as *Alkhatib and Others* v *Greece* and *Almukhlas and Al-Maliki* v *Greece*, the court clarified that the use of potentially lethal force in migration-control operations must be absolutely necessary and strictly proportionate, and that operational or migratory pressures cannot justify failures to minimise risks to life, particularly where the presence of migrants on board is foreseeable. The court further emphasised that interception operations must be planned and conducted in a manner that reduces, to the greatest extent possible, the need to resort to lethal force. The accompanying findings on the procedural limb of Article 2, including in *F.M. and Others* v *Greece*, underline the importance of independent and effective investigations capable of establishing responsibility where loss of life occurs.

With respect to reception conditions, the court continued to find violations of Article 3 of the ECHR where States fail to provide adequate material conditions or ensure dignified living standards for asylum seekers. The case law concerning Greece highlights persistent

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structural deficiencies in reception conditions, particularly affecting children and families. Judgments such as *T.K.* v *Greece, W.S.* v *Greece* and *N.N. and Others* v Greece demonstrate that even relatively short periods spent in severely inadequate conditions may reach the Article 3 threshold where vulnerability is acute. Similar findings were made in respect of families with children in *A.I.* v *Greece*.

The court's findings on detention reinforce the requirement that any deprivation of liberty must be lawful, necessary, proportionate and accompanied by effective judicial review. Several judgments reveal recurring shortcomings, including detention imposed in a legal vacuum, prolonged deprivation of liberty without sufficient justification and ineffective judicial oversight. In this context, *J.B. and Others* v *Malta* stands out as a key judgment, as it exposes structural deficiencies in both the legal basis and the practical review of detention, particularly concerning minors. The court's findings highlight that collective and superficial judicial scrutiny, coupled with inadequate conditions and the absence of effective remedies, renders detention arbitrary under Article 5 of the ECHR. This jurisprudence underscores that detention cannot be justified by administrative convenience or migration-management objectives alone, and that heightened safeguards are required where vulnerable persons are concerned.

In the field of private and family life, the court maintained a balanced approach under Article 8 of the ECHR. While it upheld expulsions linked to serious criminality in cases such as *Al-Habeeb* v *Denmark* and *Winther* v *Denmark*, it reiterated in its family reunification case law, including *Dabo* v *Sweden, D.H. and Others* v *Sweden* and *Okubamichael Debru* v *Sweden*, that family unity, the best interests of the child and the individual circumstances of applicants must be genuinely weighed.

Regarding effective remedies, the court identified persistent deficiencies under Article 13 of the ECHR, particularly in cases involving collective expulsions, pushbacks and detention. Remedies lacking automatic suspensive effect, or rendered ineffective because removals are executed immediately, were repeatedly found incompatible with the Convention. These findings reinforce the court's long-standing position that access to a remedy must be practical and capable of preventing or redressing alleged violations.

Finally, the jurisprudence places strong emphasis on the protection of vulnerable persons, especially unaccompanied minors. Judgments such as *O.R.* v *Greece, M.H. and S.B.* v *Hungary* and *F.B.* v *Belgium* condemned structural shortcomings in age assessment procedures, guardianship and access to appropriate accommodation and care, reaffirming that States must adopt special protective measures reflecting the heightened vulnerability of children in migration contexts.

Regarding jurisprudential trends by State, recent case law reveals clear and persistent patterns in several Member States. In Hungary, the ECtHR identified systematic practices of collective expulsions carried out without an individualised assessment or formal decision, often through the physical infrastructure of the border fence. These cases also highlight structural barriers to accessing asylum, such as the embassy procedure, which the court consistently found ineffective. In Greece, the jurisprudence reflects recurring issues related to pushbacks in both the Aegean and Evros regions, deficiencies in the protection of unaccompanied minors, and failures to conduct effective investigations into lethal incidents involving the coastguard. In Poland, the court observed a deliberate pattern of refusing access to asylum procedures at official border points. Cyprus exhibits a problematic reliance on bilateral agreements for returns without sufficient examination of individual risks or

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provision of effective remedies. Malta continues to face systemic failings concerning prolonged and arbitrary detention, especially of minors, as well as a lack of an effective judicial review and structural problems within the Immigration Appeals Board.

The case law illustrates persistent tensions between States' border control strategies and their obligations under the ECHR. States frequently rely on immediate returns, bilateral agreements or *de facto* deterrence measures to manage migration flows. These actions often conflict with the duty to ensure access to asylum procedures and to prevent *refoulement*. Practices such as systematic pushbacks, prolonged detention without safeguards and the use of poor reception conditions as deterrence all reflect broader political pressures. The court repeatedly underscored that operational or migratory challenges cannot justify departures from Convention standards, particularly in relation to Articles 3 and 13 of the ECHR.

The judgments examined have significant implications for national asylum and migration systems. Several States face pressure to amend legislation, particularly Hungary, Malta and Cyprus, where systemic deficiencies are evident.

Overall, the jurisprudence examined reveals a high degree of convergence between the ECtHR and the CJEU in the field of asylum and migration. While grounded in distinct legal frameworks, both courts increasingly emphasise effective access to procedures, individualised assessment, protection of vulnerable applicants and the availability of remedies capable of preventing irreparable harm. Moreover, the ECtHR explicitly referenced CJEU case law in key judgments, such as C-808/18 against Hungary, demonstrating a growing alignment in standards. Nonetheless, important differences remain. While the CJEU focuses on compliance with EU secondary law, the ECtHR grounds its analysis directly in the Convention, which allows it to evaluate systemic patterns of practice even where national legislation formally aligns with EU law. This leads to a more practice-based and rights-centred approach by the ECtHR. Overall, the jurisprudence reflects a clear and consistent strengthening of the court's protection framework regarding asylum seekers and migrants. The ECtHR increasingly conducts structural analyses, recognising systemic violations rather than isolated incidents. This aligns the Convention system more closely with EU asylum law, even though each body adopts distinct legal methodologies. The judgments collectively reinforce the absolute nature of the prohibition of *refoulement*, the need for effective access to asylum procedures and the obligation to protect vulnerable individuals. At the same time, they expose growing tensions between restrictive migration policies and human rights standards. These decisions will continue to influence national reforms, shaping the asylum landscape across Europe in a direction more firmly anchored in rights-based principles.

The jurisprudence examined in this report is highly relevant for the implementation of the EU Pact on Migration and Asylum, as several components of the Pact intersect directly with areas that have generated repeated findings of violations by the ECtHR. In particular, the expansion of border procedures, screening mechanisms and accelerated asylum and return processes is likely to intensify scrutiny under Articles 3, 5 and 13 of the ECHR. The court's recent case law on collective expulsions, pushbacks, access to asylum procedures and detention in border or transit-like facilities provides clear guidance on the Convention limits of such measures. The judgments analysed confirm that efficiency-driven migration management cannot dispense States from conducting individualised assessments, ensuring effective remedies with suspensive effect, and preventing arbitrary or *de facto* detention. As the Pact encourages new forms of containment at borders and greater reliance on accelerated procedures, the ECtHR's jurisprudence will play a key role in assessing whether

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these practices remain compatible with the Convention's requirement that rights be practical and effective, particularly for vulnerable applicants.

Taken together, the jurisprudential developments analysed in this report confirm the indispensable role of the ECtHR as the ultimate guarantor of the effective protection of the fundamental rights of migrants, asylum seekers and refugees, particularly in contexts marked by heightened political and security pressures. Recent initiatives promoted by certain Council of Europe Contracting Parties[5], which seek to restrict or recalibrate the interpretation of Convention rights in the field of migration, entail significant risks not only for the protection of these groups, but also for the integrity of the Convention system as a whole. By calling into question structural principles such as the absolute prohibition of *refoulement*, judicial independence and the court's interpretative authority, such proposals risk shifting the focus from protection against abuses of power towards a logic of permanent exception. The jurisprudence examined demonstrates, by contrast, that the ECtHR does not constitute an obstacle to migration governance, but rather a crucial safeguard ensuring that State responses remain firmly anchored in the rule of law and in the universal and non-derogable nature of human rights.

To read more case law related to asylum, consult the EUAA Case Law Database

[5] Ministry for Foreign Affairs of Finland, *Joint Statement delivered to the Conference of Ministers of Justice of the Council of Europe, 10 December 2025* (10 December 2025): https://um.fi/statements/-/asset_publisher/6zHpMjnolHgl/content/joint-statement-delivered-to-the-conference-of-ministers-of-justice-of-the-council-of-europe-10-december-2025-1/35732

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European Court of Human Rights (ECtHR), *H.T. v Germany and Greece*, No 13337/19, Judgment of 15 October 2024.

European Court of Human Rights (ECtHR), *J.B. and Others v Malta*, No 1766/23, Judgment of 22 October 2024.

European Court of Human Rights (ECtHR), *M.I. v Switzerland*, No 56390/21, Judgment of 12 November 2024.

European Court of Human Rights (ECtHR), *Winther v Denmark*, No 9588/21, Judgment of 12 November 2024.

European Court of Human Rights (ECtHR), *Al-Habeeb v Denmark*, No 14171/23, Judgment of 12 November 2024.

European Court of Human Rights (ECtHR), *G.R.J. v Greece*, No 15067/21, Judgment of 3 December 2024.

European Court of Human Rights (ECtHR), *N.N. and others v Greece*, No 59319/19, Judgment of 19 December 2024.

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EUAA Grants

The EUAA Regulation No 2021/2303 introduced the possibility for the EUAA to award grants to help carry out its mandate, which is to support Member States in implementing the Common European Asylum System (CEAS).

The call for proposals for "Research and analysis of jurisprudence on international protection and registration in the EUAA Case Law Database "(EUBA-EUAA-2025-ASYLUMCASELAW) was launched on 31 October 2024 to enrich the collection of jurisprudence stored in the EUAA Case Law Database, improve access to relevant asylum case law and to strengthen the effective implementation of the CEAS.

IMPACt Project and the University Institute of Studies on Migration (Comillas Pontifical University)

The IMPACt Project is the first grant awarded by the EUAA. The University Institute of Studies on Migration (Instituto Universitario de estudios sobre Migraciones) (IUEM) implements this grant from 6 May 2025 to 5 January 2026.

The project entails collecting relevant publicly available jurisprudence on asylum and registering them in the EUAA Case Law Database, and also drafting two analytical reports on topics related to CEAS or the implementation of the Pact on Migration and Asylum.

The **University Institute of Studies on Migration (IUEM)** at the Comillas Pontifical University is a specialized academic center dedicated to research, teaching, and social engagement in the fields of migration, refuge, international protection and cooperation. Since its foundation in 1994, IUEM has developed interdisciplinary research lines and collaborative projects involving faculties and units across the university.

IUEM manages a wide range of academic and outreach initiatives, including:

- The **Doctoral Programme on Migration and International Cooperation**, which provides advanced training and fosters original research on the dynamics of migration, forced displacement, asylum, and global cooperation.
- The official **Master's Degree in International Migration** and the **Master's Degree in International Development Cooperation**, which combine academic training with professional internships in national and international organisations.
- The **Cátedra de Refugiados y Migrantes Forzosos** (Chair of Refugees and Forced Migrants, sponsored by INDITEX), which carries out interdisciplinary research, training, and policy engagement in the field of forced displacement.
- The **Cátedra de Catástrofes** (Chair on Catastrophes), focused on analysing humanitarian crises and disaster response, particularly in relation to displaced populations and vulnerable communities.
- The **Observatory Iberoamericano on Mobility, Migration and Development (OBIMID)**, a regional research and cooperation network linking institutions in Latin America, Portugal, and Spain.

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- The peer-reviewed journal **Migraciones**, a bilingual (Spanish/English), open-access publication ranked Q1 in SCImago Journal Rank.
- The annual **Seminar "Migraciones y Refugio"**, which gathers academics, NGOs, public agencies and practitioners to debate emerging issues on migration and protection.

In addition, IUEM has successfully implemented **numerous national and European projects** funded under competitive calls, in areas such as refugee protection, human trafficking, integration policies, humanitarian assistance, and the development of the EU's Common European Asylum System.

Note on the EUAA Case Law Database

The cases presented in this report are based on the EUAA Case Law Database, which contains summaries of decisions and judgments related to international protection pronounced by national courts of EU+ countries, the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECtHR). The database serves as a centralised platform on jurisprudential developments related to asylum, and cases are available in the Latest updates (last ten cases by date of registration), Digest of cases (all registered cases presented chronologically by the date of pronouncement) and the Search page.

See here an updated list of jurisprudence on international protection pronounced by the ECtHR.