

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF A.H. v. SERBIA AND NORTH MACEDONIA

(Applications nos. 60417/16 and 79749/16)

JUDGMENT

Art 3 (procedural) • Expulsion • Applicant's two *de facto* expulsions from Serbia to North Macedonia without any individual decision authorising them and outside any procedure enabling him to contest the destination or obtain an examination of risks involved • Applicant simply taken to the border and ordered to cross it • Applicant deprived of procedural safeguards against refoulement • State's failure to discharge its obligations to assess the risks of treatment contrary to Art 3 before removing the applicant
Art 3 (procedural) • Expulsion • Applicant's *de facto* expulsion from North Macedonia to Greece with extreme haste and in the absence of a legal procedure providing safeguards against unlawful expulsion • Authorities induced the applicant to cross into Greece illegally exposing him to heightened risk

Prepared by the Registry. Does not bind the Court.

STRASBOURG

3 November 2026

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the cases of A.H. v. Serbia and North Macedonia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Ioannis Ktistakis*, President*,
Lətif Hüseynov,
Jovan Ilievski,
Darian Pavli,
Úna Ní Raifeartaigh,
Mateja Đurović,
Canòlic Mingorance Cairat*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the applications (nos. 60417/16 and 79749/16) against the Republic of Serbia and North Macedonia, and against the Republic of Serbia, respectively, lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Sudanese national, Mr A.H. ("the applicant"), on 15 November and 27 December 2016 respectively;

the decision to indicate interim measures to the Government of North Macedonia and the Government of Serbia under Rule 39 of the Rules of Court and the subsequent decision to lift that measure in respect of North Macedonia;

the decision to give priority to the applications;

the decision to give notice to the Serbian Government of the complaints concerning two *de facto* expulsions to North Macedonia, and a lack of an effective domestic remedy in that regard;

the decision to give notice to the Government of North Macedonia of the complaints concerning two *de facto* expulsions to Greece, an unlawful deprivation of liberty, and a lack of an effective domestic remedy in relation to these two complaints;

the decision not to have the applicant's name disclosed;

the observations submitted by the respondent Governments and the observations in reply submitted by the applicant;

the comments submitted by Border Violence Monitoring Network, Advice on Individual Rights in Europe, European Council on Refugees and Exiles, and Dutch Council for Refugees, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 6 October 2026,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The present cases concern the applicant's complaints under Article 3 of the Convention about two alleged *de facto* expulsions from Serbia to North

Macedonia and two alleged *de facto* expulsions from North Macedonia to Greece, and under Article 5 of the Convention that he was unlawfully deprived of his liberty in a transit centre in North Macedonia. The cases also concern the applicant's complaint under Article 13 of the Convention that there had been no effective domestic remedy available in respect of his complaints under Articles 3 and 5.

THE FACTS

2. The applicant was born in 1988 and lives in Belgrade. He was represented by O. Đurović, a lawyer who, according to the information available, worked for the non-governmental organisation ("NGO") Assistance to and Protection of Asylum-Seekers Centre ("*Centar za zaštitu i pomoć tražiocima azila*"; hereinafter "APC") from Belgrade. Namely, the lawyer gave the APC's postal address and its two telephone numbers as her contact details, her e-mail address at the APC, and a mobile phone number. The APC website specifies that the APC provides comprehensive support to asylum-seekers ranging from free legal aid to psychological, social, assistance with interaction and integration and works, all through APC teams of lawyers, psychologists, social workers, educators, volunteers, interns and translators.

3. The Government of Serbia were represented by their Agent, Ms. Z. Jadrijević Mladar and the Government of North Macedonia by their acting Agent, Ms. D. Djonova.

4. The facts of the cases may be summarised as follows.

I. BACKGROUND INFORMATION

5. In the course of 2014 there was a significant increase in the number of migrants trying to reach various European Union countries. One of the routes used was the so-called "Balkan route", which involved travelling from Türkiye via Greece to the then former Yugoslav Republic of Macedonia (hereinafter "North Macedonia") and then through Serbia to the European Union ("EU"). In response to the influx of refugees, countries along the route adopted a "wave-through" approach, by mostly permitting the migrants to pass through to another country. During 2015, up to the November of that year, there was an influx of approximately 800,000 migrants and refugees transiting from Greece to the EU member States through the "Balkan route".

6. On 19 August 2015 the Government of North Macedonia declared a "crisis situation" in the country because of the increased volume of migrants entering and transiting through its territory. That decision was extended to last until at least June 2022.

7. The same year, as a response to such a large influx of migrants along the "Balkan route", two reception and transit centres (TCs) were set up for migrants in North Macedonia: TC Tabanovce, near Kumanovo, in the north, close to the border with Serbia, and TC Vinojug, near Gevgelija, in the south, close to the border with Greece.

8. By the second half of 2015, the continued and sustained irregular migrant flows had become a wider concern, prompting the EU to address the situation. On 7 March 2016, after several meetings and talks at the EU level and involving the countries on the route, the EU Heads of State or Governments announced, *inter alia*, that flows of irregular migrants along the "Balkan route" had come to an end.

9. On 8 March 2016 a decision entered into force not to allow the entry and controlled transit through North Macedonia of migrants who were seeking to transit to Western European countries and who did not meet the requirements for entry or did not seek asylum in North Macedonia.

II. ASYLUM PROCEEDINGS IN SERBIA

10. The applicant is a Sudanese national. He came to Serbia illegally in July 2014, via Türkiye and Bulgaria.

11. On 25 November 2014 the applicant applied for asylum in Serbia claiming that he was in fear for his life in Sudan. In particular, he stated in his application form that he had been born in Darfur, but that he had lived in Mahlia Medina Arab, where the local tribes were intolerant (*netrpeljivost*) towards people from Darfur, who were recognisable by their accent. He submitted that knife attacks on the streets were an everyday occurrence and that he had been attacked and beaten himself and that local tribes had also stolen their cattle. He explained that he had left Sudan in late October 2013 and had gone to Türkiye with his passport. After that he had left for Bulgaria, and seven months later he had arrived in Serbia.

12. On 15 May 2015 the Asylum Office (*Kancelarija za azil*) held an oral hearing. It established the details of the applicant's arrival in Serbia and his reasons for leaving Sudan, notably the alleged racism of local people towards those from Darfur, whom they did not consider Arabs (see paragraph 11 above). In reply to the questions of the official conducting the proceedings the applicant said the following: He had never been seriously wounded in the street attacks in Sudan, but he had feared for his life there. He had contacted the police about the attacks but had been told that because they had taken place at night the police could not identify the attackers. He and his family had been farmers (*zemoljoradnik*) in Sudan, but he had not been happy with what he had earned, and very often he had not been paid for his work, presumably because he was from Darfur. He had not been able to continue his education because other students would beat him. He had not suffered any discrimination from the authorities, only from the local population. He also

submitted that if he had moved to a different part of Sudan he would not have been able to support himself economically, and anyway he would still have had problems because he was from Darfur, and that there was nowhere in Sudan where he could live in safety. Neither he nor anybody from his family had ever been a member of any military or paramilitary formation, nor had they ever participated in any war operations. His family, which remained in Sudan, had the same problems there but they had not left the country as they had agreed that they would collect money for him to leave. He also explained how he had arrived in Serbia. He had gone to Türkiye by plane with his passport, which he had lost during his journey, probably in Türkiye. He had stayed with a smuggler and had not been allowed to go out. He had not applied for asylum in Türkiye. The smuggler had taken him to the Bulgarian border, which he had crossed illegally with some other migrants. In Bulgaria he had been found by the police and taken to a closed refugee camp for several months, and then had gone to Sofia. He had heard from others in the camp that the guards spoke ill of refugees and even beat some of them. He had never been beaten nor had he ever seen the guards beating anyone. He had been insulted by people in the Sofia metro several times though. He had applied for asylum in Bulgaria even though he had not wanted to, but it had been the only way to get identity documents and get out of the refugee camp. He had not wanted to stay in Bulgaria because he had heard that there were problems with racism there. He had left the country before he had got any decision on his asylum application. He had also come to Serbia with the help of smugglers, and had crossed the border illegally.

13. On 31 July 2015 the Asylum Office rejected (*odbacuje*) the applicant's application for asylum and ordered him (*obavezuje se imenovani*) to leave the country within three days of the day when that decision became final, on the grounds that he had already applied for asylum in Bulgaria and Bulgaria was a signatory of the Convention on the Status of Refugees and the Protocol on the Status of Refugees. The decision referred to Article 33 § 1(5) of the Asylum Act (see paragraph 51 below).

14. On 4 December 2015 the Asylum Commission (*Komisija za azil*) dismissed an appeal by the applicant.

15. On 2 September 2016 the Belgrade Administrative Court (*Upravni sud*) dismissed an administrative action by the applicant and upheld the previous decisions. It found, in substance, that the applicant had not claimed that he had been ill-treated or filed any evidence to show that he had been exposed to any ill-treatment in Bulgaria or that that country had not been safe for him. The Asylum Act did not require the authorities to consider the circumstances which had made an individual apply for asylum in a certain country, nor did it allow an individual who had claimed asylum in another country to prove later that that other country was not safe for him or her. The court also held that "the reports of international organisations about human rights in a certain country referred to by the applicant in his administrative

action could not, on their own, prove that the country in question was not a safe third country for the applicant".

16. On 8 October 2016 the applicant lodged a constitutional appeal. He complained that his right to a fair trial in the asylum proceedings had been violated, and maintained that the rejection of his asylum application amounted to a violation of his "right to asylum" (*pravo na utočište*) and of his rights not to be expelled or subjected to torture. He submitted, in particular, that his expulsion to Bulgaria and being accommodated there or his further chain expulsion to Türkiye and onwards to Sudan would cause him irreparable harm, and he asked for the enforcement of the decision of 31 July 2015 (see paragraph 13 above) to be stayed.

17. On 13 January 2017 the applicant supplemented his constitutional appeal with an additional submission (*dopuna*) reiterating the risk he would face if he were to be expelled to Bulgaria, notably because of bad conditions in detention centres and reception facilities there and because he believed he would be arbitrarily expelled onwards, by chain expulsion, to Türkiye.

18. On 25 December 2019, in reply to an enquiry from the Constitutional Court, the applicant's representatives confirmed that the applicant was living in Belgrade and that he still wanted to pursue his constitutional appeal.

19. The applicant's constitutional appeal was still pending at the time of the most recent update, which was on 27 March 2026.

III. THE ALLEGED EXPULSIONS OF THE APPLICANT

20. The applicant submitted that at about 5 a.m. on 12 October 2016 the police had taken him and a number of other migrants, including a certain A.A. from Pakistan, from a transit centre in Subotica, in the north of Serbia, and had put them on five buses in total and taken them to the south of Serbia. The applicant said that he had been staying elsewhere in Subotica but that that particular night he had stayed with some of his friends in the transit centre. He submitted that three buses had gone to TC Preševo in Serbia, and two other buses, including the one with him and A.A. on, had been driven to the border of North Macedonia, which they had reached at about 7 p.m. He maintained that they had been searched there, that his asylum-seeker identity card and his mobile phone SIM card had been taken from him, and that after being driven further into the woods they had been ordered to walk across the border to North Macedonia. About fifteen minutes later the applicant and the other migrants had encountered the police of North Macedonia. He submitted that although the journey from TC Subotica to the border of North Macedonia had taken the whole day, they had not been given any water, only a piece of bread and some tuna fish, and nor had they been allowed to go to the toilet.

21. On 13 October 2016 the police of North Macedonia found 53 migrants, including the applicant, close to the northern border. The same day, the applicant and four other persons were interviewed by the police of North

Macedonia. An official report (*службена белешка*) on the interviews noted, in so far as relevant, the applicant's description of events and that the five of them had been taken to and placed in TC Tabanovce, while the others had been taken to the southern border. The report also noted that the applicant spoke Serbian. In the proceedings before the Court the applicant submitted that he and A.A. had been locked in room no. 26 until the evening. He also maintained that at the centre the following day he had printed out a photograph of his Serbian asylum-seeker's identity card, which he had had on his Facebook account, and had handed it in to the police officers of North Macedonia. He further submitted that he could not leave the transit centre and that he had contacted NGOs in the centre asking for their help to return to Serbia.

22. On 19 October 2016 the UNHCR field office in North Macedonia informed the applicant's representatives in Serbia - two lawyers from the APC - that the applicant was in TC Tabanovce. The same day the Macedonian Young Lawyers Association ("MYLA") (see paragraph 109 below) informed the applicant's representatives that the applicant had been taken from TC Tabanovce but they did not know where to. Following the applicant's representatives' request to that effect the Court issued an interim measure in respect of North Macedonia and indicated that the applicant should not be expelled to Greece. The same day the applicant and A.A. were returned to Serbia on the basis of a readmission agreement between the two countries, following a readmission request made by North Macedonia on 16 October 2016. In view of that, the Court lifted the interim measure on 27 October 2016.

23. On 19 October 2016, after their readmission to Serbia, the applicant and A.A. were taken into custody by the Serbian police and brought before a judge of the Preševo Misdemeanour Court (*Prekršajni sud*), where they were sentenced to five days' imprisonment for crossing the border from Serbia to North Macedonia illegally. The applicant submitted that during an interview on 19 October he had been told that he would be taken to Belgrade where he would be given an asylum-seeker's card.

24. The applicant submitted that on 24 October 2016, after being released from prison, he and A.A. had been taken first to a police station, and then, with several other people, to the border of North Macedonia. They had been about twenty in total. He maintained that the police had taken away his mobile phone battery and had ordered them to walk across the border into North Macedonia. He further submitted that along the way they had found a village where a local woman had explained them where TC Tabanovce was. They had arrived there a few hours later, and the applicant submitted they had not been allowed to leave again.

25. On 25 October 2016 MYLA informed the applicant's representatives in Serbia that the applicant was again in TC Tabanovce, that he had entered the centre irregularly, by climbing over a fence, and that he was living there

unofficially, that is, he was not registered. MYLA also informed the applicant's representatives that MYLA lawyers had interviewed him and had explained to him that if the police authorities noticed his presence there was a high probability that he would be removed from the centre again.

26. The applicant submitted that his representatives had got in touch with him, without specifying how, and that they had learned that there were misdemeanour proceedings against him in Preševo. On 27 October 2016 they filed an appeal on his behalf against the Preševo court decision. On 7 November 2016 the appeal was dismissed by the Niš High Court. On 17 December 2020 the Constitutional Court rejected the applicant's constitutional appeal relating to the misdemeanour proceedings in Preševo.

27. In the meantime, on 26 October 2016, the applicant was interviewed by the police of North Macedonia in TC Tabanovce. The report of the interview noted the applicant's version of events from 19 October 2016 to his arrival in TC Tabanovce (see paragraphs 23-24 above). The report also noted that the applicant had stated that he had wanted to return to Serbia, that his representatives had been told that, and that he had not wanted to apply for asylum in North Macedonia. The report also noted that the applicant's statement had been made in English.

28. The Government of North Macedonia provided the Court with a statement of the applicant, written in English and signed by him, describing his readmission to Serbia and the events leading up to his arrival to TC Tabanovce. The statement included his wish to go back to Serbia, and said that his representatives had known that, and that he had not wished to stay in North Macedonia or apply for asylum there.

29. The applicant submitted that his representatives from Serbia had visited him in TC Tabanovce, together with an Arabic interpreter, on 4 November 2016. He gave them a written statement which in substance described the above events (the two expulsions and his imprisonment in Preševo).

30. The applicant further maintained that on 9 November 2016 he, A.A., and eight more persons had been taken to the border by the police and army of North Macedonia and *de facto* removed to Greece. In support of his claim the applicant submitted a screenshot of text messages which he claimed were an exchange between A.A. and the applicant's representatives in Serbia informing them about their expulsion to Greece. There was no date on the screenshot to show when the messages were exchanged.

31. The applicant submitted that on 10 November 2016 he had walked back to North Macedonia, while A.A. had remained in Greece.

32. On 11 November 2016 the applicant was caught by the police of North Macedonia at the Skopje train station. He was taken to TC Vinojug, where he was registered. The "Person Profile Report" issued for the applicant on that occasion included his photograph, name, date of birth and nationality, and a fingerprint, and recorded that he had arrived at the transit centre on

11 November 2016. The applicant submitted that after that he had been removed to Greece again. He also submitted a photograph of himself in front of a Greek camp, with no date on it. He was still in Greece when his representatives lodged an application on his behalf with the Court.

33. On an unspecified date in December 2016 the applicant returned to Serbia. There is no information in the case file about how he did so.

34. On 27 December 2016 the Court issued an interim measure in respect of Serbia under Rule 39 of the Rules of Court at the request of the applicant, indicating that the applicant should not be removed from Serbia for the duration of the proceedings before the Court. The Court also gave priority to the application under Rule 41. Both the interim measure and the decision on priority have remained in force.

35. The respondent Governments disputed that the applicant had been removed either to North Macedonia or to Greece.

IV. OTHER RELEVANT FACTS

36. The applicant was represented by APC lawyers in Serbia.

37. The applicant's representative submitted to the Court, *inter alia*, screenshots of her text messages with the applicant, from which it is clear that they communicate in English and that the applicant's level of English is somewhat basic.

38. On 16 July 2016 Reuters published a statement of the Serbian Prime Minister in which he said that the Serbian police and army would form joint patrols to protect the country's borders against illegal crossings by migrants.

39. The authorities of North Macedonia also asked Serbia to readmit a Pakistani national, S.A., in its readmission request of 16 October 2016 (see paragraph 22 *in fine* above), together with the applicant and A.A. and some other migrants, but S.A. was not readmitted to Serbia.

40. On 8 and 9 November 2016 eight Pakistani nationals, including A.A. and S.A., gave statements to APC employees. A.A., whose statement was taken in TC Tabanovce and who provided a copy of his asylum-seeker identity card, stated that he and the applicant had been expelled from Serbia to North Macedonia on 14 October 2016, had been readmitted to Serbia on 19 October 2016, had spent five days in prison, and then on 24 October they had both again been removed to North Macedonia. Six of the other seven Pakistani nationals, including S.A., stated that they had been taken from TC Subotica to the border by bus and expelled to North Macedonia on 12 October 2016, and four of them confirmed that the applicant had been among them. The seventh person stated that migrants had been taken from TC Subotica, and that he had been on a bus which had gone to Preševo, but he had heard that migrants who had been on two other buses had been expelled to North Macedonia.

41. The applicant submitted to the Court a copy of a humanitarian aid distribution card from North Macedonia which had been valid for A.A. for 18-19 October and 24 October-1 November 2016.

42. On 19 June 2021 the applicant was apprehended by Serbian police officers in Sombor and taken to a police station. The Government of Serbia submitted, and the applicant did not contest, that when he had been stopped by the police that day, he had had no identity documents with him and that his identity had been established on the basis of his own statement. The police also established that on three previous occasions the applicant had given three different names and three different dates of birth to the Serbian authorities. The same day, 19 June 2021, the police issued a decision in which they noted that the applicant was illegally in Serbia and ordered him to leave the country within 30 days. The decision included the information that an appeal did not stay (*ne odlaže*) the enforcement of the decision. On 2 July 2021 the applicant appealed to the Ministry of the Interior, as a second-instance body. On 9 July 2021 the applicant applied to the Administrative Court for a stay of the enforcement of the police decision of 19 June 2021. On 14 July 2021 the Administrative Court stayed the enforcement of that decision pending the second-instance body ruling on the applicant's appeal. On 26 July 2021 the Ministry of the Interior revoked the expulsion order and ordered a rehearing of the case. At the time of the most recent update, on 27 March 2026, no new decision had been issued.

43. On 26 November 2021 the Serbian Refugees and Migration Commissariat informed the Government's Agent before the Court that the applicant had been registered in TC Subotica between 19 and 25 December 2016, and that the people whose statements the applicant had submitted in support of his claims (see paragraph 40 above) had not been found in its official records under those data ("*nismo pronašli u našim službenim evidencijama pod tim podacima*").

44. On 27 April 2022 three APC employees made written statements confirming that they had collected the statements from eight Pakistani nationals on 8 and 9 November 2016 (ibid.).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

A. Relevant domestic law in respect of Serbia

1. *The Constitution of the Republic of Serbia (*Ustav Republike Srbije; *published in the Official Gazette of the Republic of Serbia – OG RS – no. 98/2006)*

45. Article 25 of the Constitution provides, *inter alia*, that nobody may be exposed to torture, inhuman or degrading treatment or punishment.

46. Article 27 guarantees the right to freedom and security.

47. Article 39 guarantees freedom of movement. It provides, *inter alia*, that an alien can be expelled only on the basis of a decision of an appropriate authority, in a lawful procedure and where he or she has a right of appeal and only where there is no risk of persecution and no risk of a violation of the rights guaranteed by the Serbian Constitution.

2. *The Constitutional Court Act (*Zakon o Ustavnom sudu; *published in OG RS nos. 109/07, 99/11, 18/13, and 40/15)*

48. Articles 82-92 of the Constitutional Court Act set out the process for the adjudication of constitutional appeals in Serbia.

49. Articles 82 and 83, taken together, provide that a constitutional appeal can be brought against an individual decision or act (*radnje*) of a State body which violates or deprives a person of the human rights guaranteed by the Constitution, when other legal remedies have been exhausted or where there is no avenue to seek redress. A constitutional appeal can be lodged by any person who considers that his or her human rights have been violated by a decision or act of a State body.

50. Article 86 provides that a constitutional appeal, in principle, does not stay the execution (*ne sprečava primenu*) of the disputed decision or act. The Constitutional Court may stay the execution of the disputed decision or act on the application of an appellant, if its execution would cause irreparable harm to the appellant and if a stay is not contrary to the public interest and would not cause greater damage to a third party.

3. *The Asylum Act (*Zakon o azilu*; published in the OG RS no. 109/07)*

51. Article 33 § 1(5) as in force at the material time provided that the Asylum Office would reject an asylum application without examining whether the person seeking asylum met the conditions for asylum if the asylum-seeker had already claimed asylum in another country that complies with (*koja poštuje*) the 1951 Refugee Convention.

52. Article 57 provided that an alien whose asylum claim had been refused or rejected and who did not have another basis for staying in Serbia had to leave the country within the time-limit set in the refusal/rejection decision. If the alien did not leave the country voluntarily within the specified time-limit, he or she was to be forcibly removed in accordance with the provisions relating to the movement and stay of aliens.

53. Article 59 provided that a certificate issued to a person who had expressed an intention to seek asylum was not an identification document.

*4. The Asylum and Temporary Protection Act (*Zakon o azilu i privremenoj zaštiti*; published in the OG RS no. 24/2018)*

54. Article 86 provides that an alien whose asylum claim has been rejected and who does not have another basis for staying in Serbia must (*dužan je*) leave the country within the time-limit set in that decision. If an alien does not leave the country voluntarily within the set time-limit, he or she shall be forcibly removed in accordance with the provisions regulating the legal status of aliens.

55. Article 88 provides that a registration certificate issued to a person who has expressed an intention to seek asylum is not an identification document.

*5. The 2008 Aliens Act (*Zakon o strancima*; published in the OG RS no. 97/2008)*

56. Article 43 provided that the appropriate authority would give a decision in which they would set the time-limit for an alien unlawfully in Serbia to leave the country. An appeal against that decision did not stay its execution.

*6. The 2018 Aliens Act (*Zakon o strancima*; published in the OG RS, nos. 24/18 and 31/19)*

57. Article 77 provides that an appropriate authority will decide to expel (*rešenje o vraćanju*) an alien who is unlawfully in the territory of Serbia and will set a time-limit in that decision within which the alien has to leave the country. If he or she does not comply with the decision, he or she will be forcibly removed.

58. Article 80 provides that an alien can appeal to the Ministry of the Interior against an expulsion order. The appeal does not stay the execution of the decision, except in cases where there is a real risk of a violation of rights provided in Article 83 of this Act (see paragraph 60 below) or if there are serious humanitarian reasons for a stay. An administrative dispute can be commenced against the second-instance decision.

59. Article 81 provides that an alien can be forcibly expelled from Serbia if he or she does not leave the country within the set time-limit or if no time-limit for voluntary return has been set.

60. Article 83 provides that an alien must not be (*ne sme*) forcibly removed to a territory where he or she would face a risk of persecution or torture, inhuman or degrading treatment, or where he or she would face a risk of serious violations of the rights guaranteed by the Constitution.

61. Article 84, in so far as relevant, provides that an appropriate authority shall stay the execution of an expulsion order if there are reasons to do so as set out in Article 83 of this Act, and that an alien whose forced removal has been stayed will be issued an alien's temporary identity card.

62. Article 85 provides that a stay of execution of an expulsion order may be granted for a period of up to one year and may be extended by the appropriate authority. The same Article provides for an appeal against a decision revoking a stay of execution of an expulsion order, with suspensive effect. The Ministry of the Interior will decide the appeal, and an administrative dispute may be brought against that decision.

*7. The Administrative Disputes Act (*Zakon o upravnim sporovima*; published in the OG RS no. 111/2009)*

63. Article 14 provides that an administrative dispute can be initiated against a second-instance administrative decision, as well as against a first-instance decision if no appeal is allowed.

64. Article 23 provides that in principle an administrative action does not stay the execution of the administrative decision against which it is brought. At the request of a claimant the Administrative Court can stay the execution of a final substantive administrative decision until the court has decided the administrative action, if the execution of the decision would cause the claimant harm which it would be difficult to repair, and if staying the decision would not be against the public interest. Exceptionally, a party to the administrative proceedings can request the court to stay the execution of an administrative decision even before filing an administrative action against that decision, in cases of emergency and when filing an appeal against the disputed decision does not have suspensive effect and the proceedings on the appeal against that decision are still pending.

*8. The Signature and Handwriting Verification Act (*Zakon o overavanju potpisa, rukopisa i prepisa; *published in the OG RS nos. 93/14, 22/15 and 87/18)*

65. Articles 5 and 19, taken together, provide that a notary can certify by verifying signatures or handwriting that a person whose identity the notary had confirmed beforehand signed or wrote a document in the notary's presence, or that he or she acknowledged that a document previously made or signed had been made or signed by him or her.

66. Articles 8 and 9 provide that a notary must confirm the identity of a person filing a document (*podnosioca isprave*) by inspecting (*uvidom*) an identity document which contains that person's photograph or, in the absence of a document, by hearing from two witnesses who can identify that person. An identity witness can be any adult person who can give notary the necessary information about the identity of the person filing the document.

B. Relevant domestic law in respect of North Macedonia

1. *The Asylum and Temporary Protection Act (*Закон за азил и привремена заштита; *published in the Official Gazette – OG – nos. 49/03, 66/07, 142/08, 146/09, 166/12, 101/15, 152/15, 55/16 and 71/16)*

67. Section 2 of the Asylum and Temporary Protection Act provided that asylum was international protection granted by the State, under the conditions and through the procedure defined by the Act, to a recognised refugee (a refugee within the meaning of the 1951 Refugee Convention and the 1967 Protocol relating to the Status of Refugees) or a person under subsidiary protection.

68. Section 4-a provided that a person under subsidiary protection was an alien who did not qualify as a recognised refugee, but whom the State would recognise as having a right of asylum and whom it would allow to remain within its territory because there were substantial grounds for believing that if he or she returned to the State of his or her nationality, or if he or she was a stateless person to the State of his previous habitual residence, he or she would face a real risk of suffering serious harm. Serious harm meant the death penalty or execution, torture or inhuman or degrading treatment or punishment, or serious and individual threats to a civilian's life or person by reason of indiscriminate violence in international or internal armed conflict.

69. Section 7 provided, *inter alia*, that an asylum-seeker, a recognised refugee, or a person under subsidiary protection, could not be expelled or forcibly returned to the borders of a State where he or she would be subjected to torture, inhuman or degrading treatment or punishment.

70. Section 14 provided that asylum-seekers had the right to legal assistance and to an explanation of the requirements and procedure for recognition of the right of asylum, and the right to free legal aid at all stages of the procedure, in line with the regulations on free legal aid. At any stage of the procedure, asylum-seekers may communicate with persons who are giving legal assistance, with the representatives of the High Commissioner for Refugees and with non-governmental humanitarian organisations.

71. Section 16 provided that a foreign national at a border crossing or on the territory of the State could, orally or in writing, express an intention to apply for recognition of the right of asylum to a police officer from the Ministry of the Interior. The police officer would record the applicant's personal details, issue a copy of a certificate of the declaration of intention and would direct the person to submit an application for recognition of the right of asylum within 72 hours to the appropriate official in the office of the Sector for Asylum in the Reception Centre for Asylum-Seekers. Should a foreign national fail to proceed in accordance with that procedure, he or she would be processed under the provisions for foreign nationals.

72. Section 16-a provided that an asylum-seeker could apply for recognition of the right of asylum to the police at the border crossing point, at the nearest police station or at the office of the Sector for Asylum in the Reception Centre for Asylum-Seekers. If the application was made to police at a border crossing point or at a police station, the police officer would escort the asylum-seeker to the Reception Centre for Asylum-Seekers. An asylum-seeker who resided within the territory of the State would make an asylum application to the Sector for Asylum.

73. Section 18 provided that an asylum application could be made in writing or orally, in Macedonian, or if that was not possible, in the language of the asylum-seeker's country of origin, in a foreign language in common use or in a language the asylum-seeker might reasonably be believed to understand.

74. Section 28 provided that before a decision was taken by the Sector for Asylum, an asylum-seeker would have the opportunity of a personal interview, during which he or she would present all the facts and evidence relevant to establishing a well-founded fear of persecution in the sense of section 4 of the Act.

75. Section 30 provided that if it was established that an asylum-seeker did not meet the conditions for recognition of the right to asylum under section 2(1) of this Act, the Sector for Asylum would of its own motion consider whether the reasons and requirements for subsidiary protection under section 2(2) of the Act were satisfied.

76. Section 37 provided that an asylum-seeker had the right to bring an appeal against a decision rejecting an asylum application in an urgent procedure within three days from the date of delivery of the decision. Lodging an appeal would have suspensive effect (*одлага извршувањето*).

77. This Act was in force until mid-April 2018.

*2. The Aliens Act (*Закон за странците; *published in the OG nos. 35/2006, 66/2007, 117/2008, 92/2009, 156/10, 158/11, 84/12, 13/13, 147/13, 148/15 and 217/15)*

78. Section 21 provided, *inter alia*, that a foreigner's entry into the State would be deemed unauthorised if he or she crossed or attempted to cross the State border other than at a designated place or outside designated hours or in a way other than as prescribed for border crossing.

79. Section 23 set out when a foreigner may be denied entry into North Macedonia. It included non-fulfilment of the conditions for entry into the State as set out in the Aliens Act, or an intention to pass through its territory without meeting the entry requirements of a third country.

80. Section 25 provided that a foreigner could not be denied entry on the basis of section 23 of the Act if he or she expressed an intention to apply for asylum in North Macedonia, or had lodged such an application, or had been granted asylum.

81. Section 26 provided that a foreigner could freely leave the State territory in accordance with the Act.

82. Section 27 provided that a foreigner had to leave the State territory when he or she was expelled.

83. Section 99 provided, *inter alia*, that the Government could limit or prohibit the movement of foreigners within certain areas by a separate general document where reasons of national security or the defence of the State so required.

84. Section 101 provided that a foreigner had to leave the State territory if he or she was staying illegally in the State. This provision did not apply to a foreigner seeking protection from the State under the Asylum and Temporary Protection Act.

85. Section 103 provided that the Ministry of the Interior would make the decision to expel a foreigner from the State. The decision would give the time limit within which the foreigner concerned had to leave the country, as well as the period for which he or she was banned from re-entering the country, which could not be less than six months nor longer than five years. The decision would include the information that if the foreigner did not leave the country voluntarily within the specified period, he or she would be removed from the State. A foreigner had the right to appeal to a Commission of the Government within eight days from the date of receipt of the decision. An administrative dispute could be commenced against the Commission's decision in a court designated under the Administrative Disputes Act.

86. Section 105 provided that a foreigner who had to leave the country following a decision of the Ministry of the Interior had to leave on a voluntary basis immediately or within the specified period. A foreigner who did not do so, or in certain circumstances where it appeared that he or she had no intention of leaving the country on a voluntary basis, would be removed. A foreigner could be removed only if a decision that he or she must leave the country was enforceable.

87. Section 106 provided that a foreigner who must, under the Act, be removed from the country would be taken to the State border by authorised officials of the Ministry of the Interior and handed over to the representatives of the country whose citizen he or she was or to the representatives of the country from which he or she had arrived. If there were well-founded reasons for it, a foreigner could be transferred to a third country rather than to a country whose citizen he or she was.

88. Section 107 provided that a foreigner could not be removed to a country where his or her life or freedom would be threatened because of his or her race, religion or nationality, membership of a social group or political opinion, or where he or she would be subjected to torture, inhuman or degrading treatment or punishment.

89. Section 142 provided that if he or she was to be expelled or deprived of his or her liberty, a foreigner would be informed about his or her right to

legal aid and the right to contact a representative of his or her country in the State.

*3. The Law on Administrative Disputes (*Закон за управните спорови*; published in the OG nos. 61/2006 and 150/2010)*

90. Section 14 provided that filing an action in an administrative dispute did not, as a rule, suspend the enforcement of the administrative decision against which it was lodged. If the enforcement of an administrative decision would cause harm which it would be difficult to repair, and a stay of enforcement would not be contrary to the public interest or inflict greater irreparable harm to an opposing party, the body which had taken the decision could stay its enforcement at the request of a claimant. The appropriate authority had to make a decision on any request within three days of receiving it at the latest. It could stay the enforcement of a disputed decision for other reasons until the final court decision was issued, if the public interest so permitted.

91. Section 15 provided that if the authority which had taken the administrative decision referred to in section 14 started to enforce the decision before the court had rendered its decision, the claimant could request the court to issue an interim measure and stay the execution (*да го одложи извршување*) of the administrative decision. The court had to decide on the request within seven days, and there was a right of appeal against a decision on an interim measure to the High Administrative Court. The court could require the claimant to give security for any damage that might be caused to an opposing party.

92. Sections 56-65, taken together, and in so far as relevant, provided for an action for protection against an unlawful act (*предлог за заштита поради незаконско дејствие*) in cases when freedoms and rights guaranteed by the Constitution were violated by an activity of an official in a State administration body, that is, by a person managing a public enterprise, institution or other organisation or community. The action had to specify the act, the place where and the time when it had been committed, the body or official who had committed the act, the evidence, and a request for the lifting of the restrictions on the exercise of rights or obligations. An action could be brought while the act was still going on, and if the person against whom the act had been committed was not able to bring an action, it could also be brought by his or her legal representative. The Administrative Court would act on the action urgently, serving it immediately on the body or individual responsible, who would be required to reply within a time-limit determined by the court. Depending on the circumstances of the case, the court could decide the action immediately, without sending it to the other party for a response. If the court found that the action was well-founded, it would require the defendant to stop committing the act complained about. Otherwise, it would reject the action. The court would simultaneously determine what was

necessary to establish a lawful situation, leaving a deadline for enforcement and determine sanctions if the decision was not obeyed. A special appeal could be brought against the court's decision in the Supreme Court within three days of the day the decision was delivered. The appeal did not stay the enforcement of the decision, but the court could, on application, order a stay of execution if it found it necessary given the circumstances of the case. If the decision was not enforced before the set deadline, the court would enforce it directly or through another court or authority.

4. *The Criminal Code (*Кривичен законик; *published in OG nos. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 115/2014, 132/2014, 160/2014, 199/2014, 196/2015, 226/2015 and 97/2017)*

93. The Criminal Code provides for, *inter alia*, criminal offences of: violations of equality on the grounds of, *inter alia*, national and social origin; unlawful deprivation of liberty; harassment in the performance of official duties; abuse of official position and powers; and violations of the right to make use of a remedy (Articles 137, 140, 143, 353, and 153 respectively).

5. *The Obligations Act (*Закон за облигационите односи*; published in OG nos. 18/2001, 4/2002, 5/2003, 84/2008, 81/2009, 161/2009 and 215/21)*

94. This Act, in so far as relevant, prohibits acts which cause damage to another person (section 9). A person to whom personal harm is caused is entitled to seek from a court or other competent authority an order for the cessation of any act violating rights pertaining to his or her personality (section 144(1)). The person who caused damage must compensate the victim for such damage (section 141(1)), as must that person's employer if the damage has been caused in the course of or in relation to the employment (section 157). A legal entity is also responsible for paying compensation where damage has been caused by its body to a third party in the performance or in connection with the performance of its functions (section 158).

6. *The Civil Proceedings Act (*Закон за парничната постапка*; published in OG nos. 79/2005, 110/2008, 83/2009, 116/201 and 124/15)*

95. Section 269(3) provides that where the particular circumstances of a case so require and, in particular, where it is necessary for deciding an application for an interim measure, the court may, immediately or within three days from the day of receiving the application, schedule a hearing of the

application and shall order that a copy of the claim be served on the respondent party.

II. RELEVANT DOMESTIC PRACTICE

96. Between 8 May 2017 and 3 April 2020 the Administrative Court in Serbia issued eight decisions staying the enforcement of police decisions ordering eight foreign nationals to leave the territory of Serbia within between five and 30 days to await the decisions of an appeal body on their appeals. The Administrative Court delivered these decisions within between one and nine days.

97. On 29 December 2020 the Constitutional Court of Serbia held that there had been a violation of Article 4 of Protocol No. 4 to the Convention in respect of 17 Afghani nationals and awarded each of them 1,000 euros compensation for non-pecuniary damage. The Constitutional Court found that the appellants (*podnosioci ustavne žalbe*) had been *de facto* expelled from Serbia to Bulgaria by police officers in the night between 3 and 4 February 2017 even though they had expressed their intention to apply for asylum in Serbia to a Pirot Misdemeanor Court. The court also found that their documents had been taken away. It found that they had been expelled without any decision to that effect and contrary to a decision of the Pirot Misdemeanor Court, which had ordered the police to place the appellants in a reception facility in Divljane (Serbia). The court found a violation of the prohibition on expulsion with the "elements" of inhuman treatment.

98. Between 27 November 2012 and 26 November 2019 the Constitutional Court of Serbia issued six decisions relating to asylum procedure, entering the country, detention, house arrest, the confiscation of money and extradition. In two of them the Constitutional Court dismissed constitutional appeals relating to the rejection of an asylum claim and alleged deficiencies in the related procedure, and a ban on entering the country. In the other four it rejected constitutional appeals relating to detention, house arrest, the confiscation of money, and extradition.

III. RELEVANT MATERIALS

A. The United Nations Office of the High Commissioner for Refugees (UNHCR)

1. UNHCR Serbia update for 10-12 October 2016

99. The UNHCR Serbia update for 10-12 October 2016 reported that the total number of asylum-seekers in the north had decreased since the week before, and that the decrease had been caused by the authorities transporting over 200 single men from TC Subotica to the south of Serbia.

2. Europe's Refugee Emergency Response – Update #32, October 2016

100. In its "Europe's Refugee Emergency Response – Update #32" of October 2016 the UNHCR noted that on 12 October 2016 some 230 men and boys had been transferred from TC Subotica to the south of Serbia. While 121 of them had arrived at the Preševo Reception Centre, the UNHCR had received statements alleging that the rest had been taken to the border and unlawfully expelled to North Macedonia. The UNHCR had said it was following it up with the Ministry of the Interior. The same information was also published in the UNHCR Serbia update for 13-16 October 2016.

101. The UNHCR further observed that during the reporting period only some of the 49 persons who had been accommodated in TC Tabanovce after being pushed back from Serbia had been registered there.

102. The report further noted that the UNHCR frequently received allegations of numerous pushbacks to Greece from North Macedonia each week, which also concerned people who had been returned to the territory of North Macedonia from Serbia. It also noted that there had been reports of people pushed back from Serbia to North Macedonia without having previously entered through that country. A new practice of pushing people back and forth between North Macedonia and Serbia had also recently been identified.

103. The report also noted that freedom of movement for asylum-seekers in the transit centres in North Macedonia had remained of concern during the reporting period.

3. Europe's Refugee Situation Update #33, November-December 2016

104. Part of the report in respect of North Macedonia said that the criteria for registration were selective and unclear. In some cases, registration had involved the fingerprinting and photographing of apprehended persons, without any registration documents being issued. Those persons were almost invariably pushed back into Greece after registration. The report also noted that pushback operations had continued throughout the reporting period, with most pushback incidents concerning persons who had been caught on the territory of North Macedonia and pushed into Greece, followed by persons who had been returned to North Macedonia from Serbia. It was also noted that persons had been pushed back into North Macedonia despite their not having previously travelled through the country.

4. "Desperate Journeys" report published in 2017

105. The "Desperate Journeys" report of 2017 noted that in 2016 there had been frequent reports of pushbacks from North Macedonia, where the majority of those apprehended in the country had been summarily returned to Greece.

B. The Helsinki Committee for Human Rights in North Macedonia

106. A report about the situation at the border crossings at Gevgelija and Kumanovo for the period 10-16 October 2016 said that on 13 October 2016 two groups of refugees had been brought to TC Tabanovce. It specified that one of the two groups had arrived from Serbia after they had been transported by the Serbian police and that it had consisted of seven refugees from Sudan and Pakistan.

107. A report about the situation at the same border crossings for the period 7-13 November 2016 said that on 11 November 2016 seven refugees, one of whom had been from Sudan, had been caught at the railway station in Skopje and brought to the camp in Gevgelija by a police van. They did not express any intention to seek asylum, although they knew about the procedure and their right to seek asylum. The people from Syria and Sudan were registered, as they were the only ones from the entire group who had personal identification documents. After they had been given medical and humanitarian assistance, they were taken back onto Greek territory.

108. The report "Refugee Rights: National and International Standards vis-à-vis the situation on the ground" was prepared in partnership with several other organisations and foundations. It said that in September 2015 refugees in North Macedonia had started to be transported via improvised transit camps at Vinojug and Tabanovce. The camps were set up away from the populated areas, by the railway tracks 500 metres from the border with Greece and Serbia. After the closure of the borders in March 2016, about 130 refugees remained at the camp in Vinojug, which was a closed refugee camp, that is, refugees were not allowed to leave the camp. Tabanovce was an open-type camp, that is, refugees could leave whenever they wanted, and about 1,400 unregistered refugees "dispersed" themselves throughout the country and abroad. The same report noted that during the period of some seven months following the closure of the borders there had been only one registered case of family reunification. It concerned a man who was recognised as an asylum-seeker in Germany with his family, namely his wife and children, who had been detained in TC Tabanovce in Kumanovo.

C. The Macedonian Young Lawyers Association ("MYLA")

109. MYLA is a not-for-profit civil society organisation which provides free legal assistance to asylum-seekers in North Macedonia, and monitors the reception and treatment of refugees and asylum-seekers (see *A.A. and Others v. North Macedonia*, nos. 55798/16 and 4 others, § 105, 5 April 2022). Its work has been supported by the United Nations High Commissioner for Refugees, the Ministry of Foreign Affairs of the Kingdom of the Netherlands and Oxfam.

110. The MYLA "Field Report 2016 October" said that 96 refugees who had been staying in TC Tabanovce during the month had been pushed back from Serbia. It further noted that MYLA's field lawyers had informed all refugees in TC Tabanovce about their right to apply for asylum in North Macedonia and how MYLA could help them with the process. It further said that MYLA's field lawyers had also given the refugees in TC Vinojug necessary information, mostly on questions about the procedure for claiming asylum. It noted lastly that MYLA had at its disposal 12 field lawyers, 3 on-call lawyers, 8 interpreters and a "24/7" free legal aid phone number.

111. The MYLA "Field report 2016 November" noted that in total, 90 persons from Syria, Afghanistan, Algeria, Morocco, Pakistan, Tunisia and Sudan had been pushed back to Greece during November. All of the pushbacks had been carried out unofficially at points without Greek police patrols. It further noted that there had been several voluntary departures from TC Vinojug: 12 refugees from Syria and Iraq had left the camp in November and had gone to Greece. They had explained that they had left because there had been family waiting to reunite with them in Greece, and perhaps they would find better living conditions there. The report also noted that there had been a change in the practice of the police authorities of North Macedonia, who had tolerated the stay of approximately 200 persons in the vicinity of the Tabanovce camp without trying to deport anyone to Greece.

112. The MYLA Field Report 2016 noted that throughout the period March-December 2016 the number of refugees accommodated at the transit centres decreased and that the refugees and migrants accommodated there had not been officially allowed to leave the centre, and that restrictions on freedom of movement had been imposed on all persons accommodated there, irrespective of vulnerability, demographics, or legal status. It further reported that the freedom of movement of asylum-seekers accommodated at the transit centres had also been unlawfully restricted. The same report noted that since the border closures in early March, the transit centres had been officially closed to new arrivals, but that, incidentally, refugees and migrants would be allowed to enter the transit centres. Also, many of the refugees resorted to the use of smugglers to move on, and refugees and migrants apprehended by the police had been taken to TC Vinojug, where they had been fingerprinted and photographed by the police, and subsequently pushed back to Greece. The same report also noted that in 2016 MYLA had recorded a total of 8,524 refugees caught by the police and pushed back to Greece within few hours of being detained.

113. MYLA's "Annual Report on Immigration Detention in Macedonia – 2016" reported that the average length of stay of detainees in the Reception Centre for Asylum-Seekers was four days. Most of them (31,3%) left the centre within one day of arrival, 18% left the centre within two days and 11,77% left on the same day that they arrived.

114. A report of June 2017, prepared by MYLA and Emilie Pesselier – Migreurop, noted that between December 2015 and the summer of 2016, camps at the borders of North Macedonia had shifted from being open transit camps to becoming official "transit centres" that were in practice closed detention centres. It also noted that TC Tabanovce and Vinojug had not been set up by legislation, and that there was therefore no legal maximum length of detention in these camps and the individuals detained there did not have any legal status but were in a sort of legal limbo.

D. Other reports

115. On 23 September 2016 the UN High Commissioner for Human Rights called on the authorities of North Macedonia to end their systematic policy of expelling and detaining migrants. He said he was particularly concerned at the situation of some 180 migrants who had been living in limbo since March in TCs Tabanovce and Vinojug. They had become stranded in the country after its borders were closed on 8 March and had later been transferred to the two centres. He noted that since their arrival there had been no individual assessment of the necessity or proportionality of their *de facto* detention. The High Commissioner was also deeply concerned at reports of pushbacks into neighbouring countries and of collective and arbitrary expulsions of migrants, in breach of North Macedonia's international human rights obligations. He expressed serious concerns about "some very restrictive provisions" of the Asylum Act, including its recently amended section 10a, which offered "almost no possibility for the vast majority of the people who [had] arrived irregularly to legalize their stay, even when they [had] requested asylum". He called for asylum procedures to be strengthened, noting that of the some 600 people who had applied for asylum since 2015, only five had been granted refugee status at first instance.

116. In a special report on the visit to TC Tabanovce the Ombudsman of North Macedonia noted on 28 September 2016 that the Asylum Sector teams were not present in the centre, given the changed situation and the reduced number of refugees accommodated there, and that all information and legal advice regarding the procedure for recognition of the right to asylum continued to be provided through talks by field representatives of MYLA.

117. LEGIS is a humanitarian not-for-profit civil society organisation from North Macedonia. It was founded in 2009 and provides humanitarian aid and assistance to refugees, asylum-seekers, internally displaced persons, irregular and detained migrants and people in need. In its annual report for 2016 it said that both TC Tabanovce and Vinojug had been turned into unofficial detention centres with a strong initial military and police presence which was still in evidence at the date of the report. It also noted that stranded refugees had been repeatedly denied access to asylum procedures, and in the rare cases when they had been permitted to make asylum claims, asylum-

seekers had not been relocated to the open Asylum-Seekers Centre in Skopje but had remained in unofficial detention and unable to leave the transit centres. The report also noted that that practice had changed in November 2016, after sustained pressure from organisations and agencies working on human and refugee rights and protection. It further specified that the rest of the people staying in the transit centres who had not made asylum claim or had not been allowed to make them, remained in the transit centres without any official status and without the ability to leave. The report also found that mass expulsions had been an everyday occurrence: hundreds of refugees had been deported back to Greece without due process and to a "green" border as they had been caught to enter the country irregularly. There had also been mass expulsions in the north of Macedonia – refugees and migrants were often escorted by Serbian authorities to the "green" border and pushed back to North Macedonia.

118. Asylum Information Database (AIDA), "Country report: Serbia" 2016 Update noted that in July 2016 the Serbian Government had decided to form mixed patrols of the army and the police to strengthen the borders with North Macedonia and Bulgaria. It also noted that between September and December 2016 the Belgrade Centre for Human Rights had received 13 complaints concerning collective expulsions or pushbacks to North Macedonia that had involved approximately 750 persons. Those removed were mostly people who had been living in the reception centre in Preševo, as well as persons who had been intercepted by patrols of the police or army at the border or by mixed patrols deeper within the territory of Serbia.

119. The Global Detention Project reported in 2017 that in early 2016 North Macedonia had increased the number of people it could keep in detention when it had begun detaining people at a "transit centre" in the south of the country; in addition, it had started accommodating people in an open transit centre in Tabanovce. There was no legislative basis for those operations. The report further noted that the centres had originally been built to assist the transit of refugees during border tension in 2014-2016, and that they had become semi-open or closed detention centres after March 2016. It also said that after a further official closing of the borders with Serbia and Greece some 1,500 people had been stranded in the northern camp of Tabanovce and an additional 200 in the southern facility at Gevgelija. The report noted that these people had no access to any legal way of claiming any status. The same report further noted that TC Tabanovce operated largely as an open facility, where people were strongly encouraged not to leave the camp but had been seen leaving and entering the camp at will. Even though the gates of the centre were never closed during the daytime, people were afraid to leave for fear of not being allowed back in.

120. On 12 October 2016 after a field visit to the reception centre in Preševo, APC reported that three buses had arrived at the reception centre and

there had been rumours that there had been five buses in all and that the refugees on them had been returned from Subotica.

THE LAW

I. JOINDER OF THE APPLICATIONS

121. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. PRELIMINARY REMARKS

122. The applicant complained under Article 3 of the Convention that he had been *de facto* expelled from Serbia to North Macedonia on 12 and 24 October 2016 without any decisions in that regard, and that he had then been *de facto* expelled from North Macedonia to Greece on 9 and 11 November 2016, also without any legal process, where there was a serious risk of his chain *refoulement* to his country of origin, Sudan, where there was a risk that he would be persecuted for reason of his ethnicity.

123. As both respondent Governments disputed that the applicant had been expelled (see paragraph 35 above), the Court first needs to establish whether the alleged expulsions took place.

A. Alleged expulsions from Serbia to North Macedonia on 12 and 24 October 2016

1. The parties' submissions

(a) The Government of Serbia

124. The Serbian Government submitted that the applicant had not provided any relevant evidence about his alleged *de facto* removal to North Macedonia. They also maintained that he could not have been removed to North Macedonia as he had not arrived from there.

125. They argued, in particular, that on 12 October 2016 he had crossed the border into North Macedonia illegally, as he had done before, for which misdemeanour proceedings had been brought against him (see paragraphs 12 and 23 above). The Government further submitted that there was no evidence that either the applicant or the Pakistani nationals whose statements he had submitted in support of his allegations had been staying in TC Subotica in October 2016 when the alleged removal took place. The Government referred to information from the Refugees and Migrants Commissariat (see paragraph 43 above), which they said was managing the centre and had a legal obligation to keep records of all people staying in asylum centres, regardless of whether they stayed there for only one night or for longer. The applicant's assumption that the Pakistani nationals had been registered with

different details and that that was fairly common because of misspelling (see paragraph 134 below) was illogical and groundless. In any event, there were eight statements, and the Government wondered how it could have been possible for all eight names to have been misspelled.

126. The Government also maintained that the written statements of the Pakistani nationals were not valid evidence as, apart from their names and nationalities, there were no other details about the identity of the makers of the statements, which meant that it could not be certain that the statements were genuine. Most of the aliens illegally entering Serbia were given a registration certificate by the Serbian police which, even though it was not a document proving the identity of the asylum-seeker, could certainly be taken into account. The Government claimed that even if the aliens had lost their registration documents they could have asked for a copy to be issued. The Government further maintained that the statements could have been notarised, when the notary would have established their identities from a personal identification document or, if that was not possible, by hearing from two people who could confirm their identity (see paragraphs 65-66 above). It was unclear why the statements had not been given in the presence of other people who had their personal documents, which would have allowed verification of the authenticity of the statements. The fact that the statements had been made to the representatives of the same NGO whose lawyer was the applicant's legal representative in the present case further brought into question their validity and authenticity, as the applicant's legal representative was directly interested in the outcome of these proceedings. The Serbian Government contested not only the contents of the statements but also whether they had been made at all. The statements made by the APC employees almost six years after the statements of Pakistani nationals had been allegedly taken (see paragraph 44 above) amounted to a subsequent attempt to reinforce the reliability of the statements in question.

127. The Government submitted that an APC field report (see paragraph 120 above) to which the applicant had referred (see paragraph 133 below) could not be used in evidence before the Court, as the APC was the applicant's legal representative and so was directly interested in the outcome of these proceedings, and the document in question was internal to the APC. In any event, the report did not mention the expulsion of migrants to North Macedonia, but only that three buses with migrants from different camps had been taken to the reception centre in Preševo, and that there had been "rumours" that there had been five buses. A report based on "rumours" could not be evidence that there had been a *de facto* removal of migrants to North Macedonia on 12 October 2016.

128. The Serbian Government contested the official note of 13 October 2016 of the police of North Macedonia as it stated that the applicant had made his statement in Serbian, which was unusual given that no similar observations had been made about the other persons interviewed and given

that the applicant's mother tongue was Arabic and that he could use English. In any event, that statement could only be evidence that the applicant had been in North Macedonia at the relevant time, not that he had been forcibly expelled there by Serbian police.

129. The *de facto* removals discussed in reports of some international and non-governmental organisations could not be treated as sufficiently clear and solid evidence, nor did they show that the applicant himself had been *de facto* removed from Serbia to North Macedonia twice in October 2016. In particular, the Government submitted that the UNHCR Serbia update for 13-16 October 2016 (see paragraph 100 above) was irrelevant as it only established that a large group of migrants had been transported to the south of the country and that only some of them had arrived at the reception centre in Preševo. The UNHCR had not had reliable information that there had been a *de facto* removal of a large group of migrants to North Macedonia.

130. The applicant produced no evidence, except for his own statement, that after having been readmitted to Serbia he had been removed to North Macedonia on 24 October 2016 and afterwords to Greece.

131. The Government said that the applicant could not prove that he had been a victim of *de facto* removals by referring to joint police and army patrols formed by the Serbian authorities in order to better control State borders (see paragraphs 38 and 118 above, and 133 below).

132. Lastly, the Government disputed the third-parties' submissions (see paragraphs 137-138 below), in particular that there had been a well-documented practice of *refoulement* on the border between Serbia and North Macedonia, and submitted that the Constitutional Court's judgment, to which the interveners had referred (see paragraph 97 above), was evidence that the domestic legal system provided adequate protection in cases of gross violations of constitutionally guaranteed rights.

(b) The applicant

133. The applicant contested all the facts found in the misdemeanour proceedings, saying he had been unable to follow the proceedings given that there had been no interpreter for Arabic, the only language he could speak. He maintained that his version of events of 12 October 2016 was corroborated by the official note of 13 October 2016 from North Macedonia, UNHCR's Serbia update for 13-16 October 2016, the Helsinki Committee for Human Rights' report for 10-16 October 2016, the MYLA Field report of October 2016, and the APC field report of 12 October 2016 (see paragraphs 21, 100, 106, 110 and 120 above), and that it was further confirmed by statements taken by APC representatives (see paragraphs 40 and 44 above). He also submitted that his claims were consistent with general public information regarding the Serbian joint police forces' practice of expelling migrants in 2016 (see paragraphs 38 and 118 above). He referred to the UNHCR Serbia update for 10-12 October 2016, the MYLA field report of October 2016, the

AIDA 2016 report on Serbia, and a Reuters report (see paragraphs 99, 110, 118, and 38 above).

134. The applicant repeated that he had not been staying in TC Subotica at the relevant time, and that he had spent the night before the expulsion there at his friends' invitation (see paragraph 20 above), which was why he had not been registered there. He submitted that the Refugees and Migrants Commissariat's letter cited by the Government referred to other persons not being found in the official records "under those data" (see paragraph 43 above). He maintained that it did not mean that the witnesses had not been placed in TC Subotica, and therefore did not exist, but that it had been possible that they had been recorded under different details. That was understandable given the frequent differences and errors in transcription of foreign personal names and other data, and given that in case of illegal migrants case records were kept on the basis of data obtained from their personal statements, and that errors and inconsistencies in transcription and communication were possible, especially because there were often no interpreters in the reception centres.

135. Furthermore, a registration certificate was not an identification document (see paragraph 53 and 55 above). Asylum-seekers faced difficulties in obtaining replacements if their asylum-seeker's official cards were lost or stolen, and the witnesses had themselves been the victims of expulsion by the Serbian authorities from TC Subotica, when all their personal and other documents had been destroyed. They could not reasonably have been expected to bring long and complicated proceedings in the police system to obtain copy documents in the way the Government had suggested. The applicant submitted that, in any event, their statements had been given in the presence of the APC employees, who had confirmed that they had taken the statements in question (see paragraph 44 above).

136. As proof of his *de facto* removal on 24 October 2016 the applicant submitted a statement of A.A., A.A.'s humanitarian aid distribution card, and the official note of the police of North Macedonia of 26 October 2016 (see paragraphs 40-41, and 27 above).

2. The third-party interveners

137. The Border Violence Monitoring Network ("BVMN") submitted that by October 2016 summary removals were a well-established and systemic practice in Serbia. It referred, in particular, to the UNHCR and MYLA reports (see paragraphs 100 and 110 above).

138. The Advice on Individual Rights in Europe (the AIRE Centre), the European Council on Refugees and Exiles (ECRE) and the Dutch Council for Refugees (DCR) submitted jointly that significant weight should be attached to the applicants' statements when they were corroborated by independent and reliable sources that indicated systemic practices. They also referred to

the judgment of the Constitutional Court of Serbia of 29 December 2020 (see paragraph 97 above).

3. The Court's assessment

139. The Court observes significant differences in the parties' accounts of the facts. The relevant principles as regards the assessment of the evidence and establishment of the facts in cases such as the present one are set out in, for example, *G.R.J. v. Greece* ((dec.), no. 15067/21, §§ 174-80, 3 December 2024), and *A.R.E. v. Greece* (no. 15783/21, §§ 209-15, 7 January 2025; albeit the respondent Government in those cases denied both the presence in its territory and the expulsion of the applicants). According to its case-law, the distribution of the burden of proof and the level of persuasion necessary for reaching a particular conclusion are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (ibid. § 212; see, also, among other authorities, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 151, ECHR 2012). In this context it must be borne in mind that the absence of identification and personalised treatment by the Serbian authorities in the present case, which has contributed to the difficulty experienced by the applicant in adducing evidence of his involvement in the events in issue, is at the very core of his complaint. The Court will therefore seek to ascertain whether the applicant has provided prima facie evidence in support of his version of events. If that is the case, the burden of proof should be on the Government to rebut the allegations (ibid., § 152; see also *Baka v. Hungary* [GC], no. 20261/12, § 149, 23 June 2016, and *A.R.E.*, cited above, § 214).

(a) Events of 12 October 2016

140. The Court observes that the applicant gave a coherent account of his individual circumstances, his country of origin, the difficulties that had led him to Serbia and his being expelled with other migrants over the land border between Serbia and North Macedonia on 12 October 2016 (see paragraphs 11-12, and 20-21 above). In support of his assertions the applicant submitted the statements of eight other persons (see paragraph 40 above), two of whom had also been in North Macedonia at the relevant time, having arrived from Serbia, given that North Macedonia had also sought their readmission (see paragraph 39 above), which the Court accepts as valid evidence. The applicant also referred to a number of reports (see paragraph 133 above). The Court notes that these reports showed that there had been an unlawful expulsion of migrants from Subotica in Serbia to North Macedonia on 12 October 2016. These reports included UNHCR Serbia Updates for 10-12 October 2016 and for 13-16 October 2016, its Update #32 from October 2016 (see paragraphs 99-100 above), the Helsinki Committee

for Human Rights report (see paragraph 106 above), and MYLA Field Report 2016 October (see paragraph 110 above).

141. In such circumstances and in view of the background of the present case, the Court finds that the applicant has presented prima facie evidence of his expulsion from Serbia to North Macedonia on 12 October 2016, which has not been convincingly refuted by the respondent Government. Consequently, the Court dismisses the Government's preliminary objection in this regard, and will presume the account of the events in relation to 12 October 2016 presented by the applicant to be truthful (see, *mutatis mutandis*, *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, §§ 85-88, 13 February 2020).

(b) Events of 24 October 2016

142. It is clear from the case file, and undisputed by the parties, that on 24 October 2016 the applicant was released from prison in Serbia and that on 25 October 2016 he was again in North Macedonia (see paragraphs 24-25 above). The parties disagree, however, as to how the applicant arrived in North Macedonia.

143. The Court observes that the applicant gave a coherent account of what happened on 24 October 2016 both in his interview in North Macedonia and in his statement filed in the Court (see paragraphs 24 and 27 above). According to that statement, he, A.A. and several other persons were expelled from Serbia to North Macedonia on that day. In support of his allegation the applicant submitted A.A.'s statement, his humanitarian aid distribution card from TC Tabanovce, and the official note of the police of North Macedonia of 26 October 2016 (see paragraphs 40-41 and 27 above).

144. The Court considers that the evidence must be assessed cumulatively. The applicant's undisputed detention in Serbia until 24 October 2016 and his presence in North Macedonia the following day, his coherent account recorded shortly after the alleged events, A.A.'s corroborating statement and the contemporaneous information concerning their presence in TC Tabanovce must be considered together and against the background of reports concerning similar removals during the relevant period (see paragraphs 24-25 and 27 above). Although none of these elements, taken in isolation, directly establishes the forced crossing of the border, the absence of a report documenting an operation on that particular date is not decisive.

145. In such circumstances the Court considers that, taken together, those elements constitute prima facie evidence in support of the applicant's account of his expulsion from Serbia to North Macedonia on 24 October 2016, which has not been convincingly rebutted by the respondent Government. Consequently, the Court dismisses the Government's preliminary objection in this regard, and will presume the account of the events in relation to 24 October 2016 presented by the applicant to be truthful.

B. Alleged expulsions from North Macedonia to Greece

1. The parties' submissions

(a) The Government of North Macedonia

146. The Government submitted that neither the applicant nor any other person had been expelled to Greece on 9 and 11 November 2016, and that the applicant's claims in that regard had not been adequately corroborated.

147. In particular, the applicant sought to corroborate his claim to have been removed to Greece on 9 November 2016 by undated and unclear Viber communication with A.A., and his claim that he had been removed on 11 November 2016 by circumstantial evidence of an alleged expulsion of several foreigners over the southern border on that day. The Government referred to publicly available information about the voluntary departure of foreigners from TC Vinojug to Greece in November 2016 and about the authorities tolerating the stay of about 200 persons in the vicinity of the transit centre (see paragraph 111 above). They maintained that the only evidence of the applicant's alleged stay in Greece was an undated black-and-white photocopy of a photograph showing him in front of an outdoor public information board with letters of the Greek alphabet on it (see paragraph 32 *in fine* above). The Government further submitted that the applicant had also failed to provide details of his return to Serbia in December 2016 (see paragraph 33 above).

148. The Government also addressed the statement the applicant said had been taken in the presence of his legal representative and an Arabic interpreter on 4 November 2016 in the premises of TC Tabanovce (see paragraph 29 above). They maintained that it had been submitted only with the applicant's reply to the Government's observations, instead of having been enclosed with the application, which raised serious doubts as to its credibility. Furthermore, it did not conclusively support the applicant's statement that he had been in TC Tabanovce on 4 November 2016, and, even assuming that that had been the case, it could not possibly prove or even suggest that he had remained there until 9 November 2016, when he claimed to have been summarily removed to Greece.

149. The Government maintained that the present case differed from a number of other cases in which it had been beyond any dispute that a respondent State had expelled an alien or had failed to admit an alien to its territory. They submitted that none of the information and the reports referred to by the BVMN (see paragraph 153 below) had identified any specific event targeting the applicant or which could be reasonably linked to him, given that there had been no evidence that he had been removed to Greece. Also, the information provided by the BVMN had been almost irrelevant in the particular circumstances of the present case, as it related to the alleged

practice of summary returns ("pushbacks") to Greece, whereas the applicant had arrived in North Macedonia from Serbia.

(b) The applicant

150. The applicant confirmed the details of his complaint and submitted that the report referred to by the Government had stated that, in total, 90 persons, including from Sudan, had been pushed back to Greece during November, and that all of the pushbacks had been carried out unofficially at points without Greek police patrols (see paragraph 111 above). He referred to the person profile report issued in his regard and the findings in respect of 11 November 2016 in the relevant Helsinki Committee for Human Rights weekly report (see paragraphs 32 and 107 above).

151. Numerous reports by international bodies and non-governmental organisations confirmed that North Macedonia had a practice of expelling migrants, including those from Serbia, to Greece, even those who had never been in the country before. This was what had happened in November 2016. The applicant referred to the UNHCR Updates #32 and #33, the report of Legis (see paragraphs 100, 102, 104 and 117 above) and various other reports from July and September 2015, April, May, and July-September 2016, and from 2021.

152. The applicant also submitted that the claim of the Government of North Macedonia that he had gone to Greece voluntarily was not logical given all his attempts to stay in and return to Serbia. All of the above showed his statement to be credible and consistent with general publicly available information concerning the practice of expulsion and the chain expulsion of migrants from Serbia through North Macedonia to Greece between October and December 2016.

2. Third party interveners

153. The BVMN submitted that following the closure of the Balkan route in March 2016 North Macedonia had resumed summary expulsions without any formal procedure, and that collective expulsions to Greece had been continuously reported throughout 2016 (see paragraphs 102 and 105 above). They maintained that it had been estimated that even though after April and May 2016 fewer people had been apprehended and deported to Greece such cases still numbered several hundred per month.

154. The AIRE Centre, ECRE and DCR reiterated that increased weight should be given to the statements of applicants which were corroborated by independent and reliable sources showing that the practices were systemic.

3. The Court's assessment

155. The Court observes that the applicant claims that he was expelled from North Macedonia to Greece on 9 November 2016 from TC Tabanovce,

and on 11 November 2016 from TC Vinojug. A number of reports referred to by the applicant do not concern the events of November 2016 (see paragraph 151 *in fine* above). The Court therefore finds them irrelevant to the issue of whether the applicant was expelled on 9 or 11 November 2016 from North Macedonia to Greece.

(a) Events of 9 November 2016

156. The Court notes that the screenshot of text messages allegedly exchanged between A.A. and the applicant's representatives and submitted by the applicant in support of his allegation that he had been expelled on 9 November 2016 does not show the date when they were exchanged (see paragraph 30 above). While the part of the MYLA report referred to by the applicant indicated that in total 90 persons, including one or more from Sudan, had been pushed back to Greece during November, it did not specify when in November or from where exactly they had been pushed back. The applicant claimed that he had been in TC Tabanovce at the relevant time. It is observed in this respect that the same MYLA report clearly indicated a change in the practice of the police authorities of North Macedonia in that they had tolerated the stay of approximately 200 persons even in the vicinity of TC Tabanovce without taking measures for their deportations towards Greece (see paragraph 111 above).

157. In these circumstances, the Court finds that the applicant failed to present sufficient evidence that he had been expelled from North Macedonia to Greece on 9 November 2016, especially given the reports of the tolerance of the police authorities and their refraining from carrying out deportations to Greece from TC Tabanovce at the time. Consequently, the Court finds that it cannot be established beyond reasonable doubt that any forcible expulsion of the applicant from North Macedonia to Greece took place on that date.

(b) Events of 11 November 2016

158. There is evidence in the case file that the applicant, who is from Sudan, was registered in TC Vinojug on 11 November 2016 (see paragraph 32 above). The Court also notes that the report of the Helsinki Committee of Human Rights for 7-13 November 2016 established that on 11 November 2016 seven refugees who had been found on a railway station in Skopje, one of whom was from Sudan, had been taken to TC Vinojug. It further noted that those from Syria and Sudan had been registered and, after they had been provided with medical and humanitarian help, transported back to Greek territory (see paragraph 107 above). The Court further observes that MYLA Field Report 2016 found that those apprehended by the police had been taken to TC Vinojug and registered, and subsequently pushed back to Greece (see paragraph 112 above), all of which is consistent with the applicant's submissions. While the MYLA "Field report 2016 November"

recorded some voluntary departures from TC Vinojug, it also noted that they had involved refugees from Syria and Iraq, but not from Sudan (see paragraph 111 above).

159. In these circumstances, the Court finds that the applicant has presented sufficient prima facie evidence of his expulsion from North Macedonia to Greece on 11 November 2016 and that it has not been convincingly refuted by the respondent Government. Consequently, the Court dismisses the Government's preliminary objection in this regard, and will presume the account of the events in relation to 11 November 2016 presented by the applicant to be truthful (see, *mutatis mutandis*, *N.D. and N.T.*, cited above, §§ 85-88).

III. COMPLAINTS IN RESPECT OF SERBIA

A. Alleged violation of Article 3 of the Convention

1. Expulsions of 12 and 24 October 2016

160. The applicant complained under Article 3 of the Convention that he had been subjected to *de facto* expulsions to North Macedonia on 12 and 24 October 2016 without any decision of a competent domestic body in that regard, and that from there he had been expelled onwards to Greece, where there had been a risk that his treatment would be violation of Article 3 of the Convention because of the inhuman reception conditions, and that he would be subjected to further chain expulsion to Türkiye and/or his country of origin, where he would face a risk of persecution on account of his ethnicity.

161. Article 3 of the Convention reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

(a) Admissibility

(i) The parties' submissions

(α) The Government

162. The Government submitted that the applicant had failed to raise his complaint at the domestic level, as the first time that he had alleged that he had been removed twice to North Macedonia had been in his application before the Court. In particular, the applicant had failed to raise his complaint in his constitutional appeal, in his additional submissions to the Constitutional Court (see paragraphs 16-18 above), or in a separate constitutional appeal. They submitted that a constitutional appeal could be made against the individual decisions and actions (*protiv radnji*) of police officers and that that was also an effective domestic remedy in respect of *de facto* removals. They referred to the relevant domestic case-law of the Constitutional Court and, in particular, its judgment of 29 December 2020, in which, they submitted, the

circumstances of the case were very similar to the circumstances of the present case and in which the Constitutional Court had found a violation (see paragraphs 97-98 above).

163. The Government further submitted that a constitutional appeal would have been an effective domestic remedy for *de facto* removals even though it would not have had automatic suspensive effect. The nature of the act complained about - *de facto* removal without any decision in that regard - involved *de facto* depriving an alien of any opportunity of lodging any kind of complaint or contesting the expulsion. Given the nature of an alleged breach, the applicant could have lodged a constitutional appeal only after *de facto* removal had been conducted, and therefore the automatic suspensive effect of a constitutional appeal was irrelevant to its effectiveness.

164. The Government further maintained that it was irrelevant that at the time of the applicant's alleged *de facto* removal the Constitutional Court had had no established case-law on the issue, as mere doubts as to the prospects of success of a particular remedy did not mean the applicant did not have to make use of it.

(β) *The applicant*

165. The applicant submitted that he had filed a constitutional appeal seeking a stay of execution of the decision of the Asylum Office of 31 July 2015 ordering him to leave the country within three days. He also maintained that a constitutional appeal was not an effective remedy in expulsion cases as it did not have automatic suspensive effect. He also could not have effectively filed a constitutional appeal because of the way he had been expelled, which had not allowed him to contact his representatives. Furthermore, at the time of his expulsions there had been no established case-law of the Constitutional Court about cases similar to his. He maintained that the judgment submitted by the Government did not concern similar facts because the appellants there had already been expelled when they had lodged their constitutional appeal whereas his constitutional appeal had been pending. He submitted that the only way to prevent chain removals was to apply to the Court for an interim measure.

(ii) Third-party submissions

166. The BVMN submitted that there were a number of cases of expulsions from Serbia to North Macedonia in which legal procedures had not been complied with, the consequence of which was that there were no remedies available to challenge the removals.

167. The AIRE Centre, ECRE and DCR submitted that there were a number of obstacles that might render a remedy for treatment prohibited under Article 3 ineffective, including removing an individual before he or she

had a practical opportunity of accessing the remedy, the absence of a remedy which had automatic suspensive effect, and hasty removals.

(iii) The Court's assessment

168. The relevant general principles as regards the requirement to exhaust domestic remedies are set out in, for example, *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC] (no. 21881/20, §§ 138-44, 27 November 2023). In particular, there is no obligation to have recourse to remedies which are inadequate or ineffective (ibid., § 141). Where an applicant seeks to prevent his or her removal from a Contracting State, alleging that such a removal would place him or her at risk of treatment contrary to Article 3 of the Convention, a remedy will only be effective if it has automatic suspensive effect (see *D.A. and Others v. Poland*, no. 51246/17, § 38, 8 July 2021, and the authorities cited therein). Where a remedy does have automatic suspensive effect, the applicant will normally be required to use that remedy (see *L.M. and Others v. Russia*, nos. 40081/14 and 2 others, § 100, 15 October 2015). The Court already held, in the extradition context, that in Serbia a constitutional appeal could not be considered an effective domestic remedy as it did not have automatic suspensive effect (see *Ali v. Serbia*, no. 4662/22, §§ 85-87, 25 March 2025).

169. Turning to the present case, the Court observes that the Government did not claim that a constitutional appeal had automatic suspensive effect in *de facto* expulsion cases. Rather, they acknowledged that, given the nature of the applicant's complaint, the applicant could have made use of a constitutional appeal, or any other form of complaint, only after *de facto* removal (see paragraph 163 above). The Court further notes that in the case to which the Government referred a constitutional appeal had also been lodged only after the applicants had been *de facto* expelled (see paragraph 97 above). That being so, and in view of the relevant case-law (see paragraph 168 above), the Court considers that a constitutional appeal cannot be regarded as an effective remedy in Serbia for *de facto* expulsions (see, *mutatis mutandis*, *A.A. and Others v. North Macedonia*, nos. 55798/16 and 4 others, § 70, 5 April 2022, albeit in the context of Article 4 of Protocol No. 4 to the Convention). The Government's objection of non-exhaustion must therefore be dismissed.

170. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

(b) Merits

(i) The parties' submissions

171. The applicant reaffirmed his complaint and submitted that the Serbian authorities had made no assessment of the risk of a violation of

Article 3 of the Convention before his removals to North Macedonia. He maintained that such a risk had existed both on account of the widespread practice of pushing migrants from North Macedonia back to Greece and onwards to their countries of origin, as well as on account of the reception conditions in those two countries.

172. The Government reiterated that the applicant had not been *de facto* removed to North Macedonia and that therefore there had been no violation of his rights in that regard.

(ii) The third-party interveners

173. The BVMN reiterated the importance of the principle of *non-refoulement* and submitted that the procedural obligations included providing individual assessments, interpreting, access to the asylum system and legal assistance.

174. The AIRE Centre, ECRE and DCR reiterated the *non-refoulement* principle and the State's obligation under Article 3 to conduct a rigorous assessment of the risk of treatment prohibited by the Convention in the country to which removal was proposed. This included both general risk and any risk consequent on the applicant's personal circumstances, as well as whether the asylum system of a third country offered sufficient guarantees against onward removal to the country of origin or any other country where an individual could be exposed to ill-treatment. They submitted that the summary expulsion of migrants without adequate safeguards constituted a violation of the principle of *non-refoulement* and the procedural guarantees under Article 3.

(iii) The relevant principles

175. The relevant principles have been set out in, for example, *Ilias and Ahmed v. Hungary* [GC] (no. 47287/15, §§ 124-41, 21 November 2019). In particular, in all cases of removal of an asylum-seeker from a Contracting State to a third intermediary country without consideration of the asylum claim on the merits, regardless of whether or not the receiving third country was an EU Member State or a State Party to the Convention, it is the duty of the removing State to examine thoroughly the question of whether or not there is a real risk of the asylum-seeker being denied access, in the receiving third country, to an adequate asylum procedure which will protect him or her against *refoulement*. If it is established that the existing guarantees in that regard are insufficient, Article 3 implies a duty not to remove the asylum-seekers to the third country concerned (ibid. § 134). In addition to this main question, where the alleged risk of being subjected to treatment contrary to Article 3 concerns, for example, conditions of detention or living conditions for asylum-seekers in a receiving third country, that risk is also to be assessed by the expelling State (ibid. §§ 130-31).

(iv) The Court's assessment

176. The Court firstly notes that since the Serbian authorities' removals of the applicant to North Macedonia were unrelated to the situation in Sudan and the merits of the applicant's asylum claim, it is not the Court's task to examine whether the applicant risked ill-treatment in Sudan. Such an analysis would be unrelated to the question of whether the respondent State discharged its procedural obligations under Article 3 in the present case, that is, in relation to the applicant's expulsions to North Macedonia (ibid., § 145). The question of whether there is an arguable claim about Article 3 risks in the country of origin is relevant in cases where the expelling State deals with those risks (ibid., § 147 *in fine*).

177. The Court further notes that the applicant's asylum claim in Serbia was rejected without being examined on the merits on the grounds that he had already sought asylum in Bulgaria (see paragraph 13 above). The Court further notes, and the Government did not contest, that the Serbian authorities did not conduct any examination, let alone a rigorous one, of the asylum system in North Macedonia and/or the reception conditions of the asylum-seekers there and/or the risk of further removal to Greece and/or *refoulement* nor did they give the applicant any opportunity to demonstrate that North Macedonia was not a safe third country in his particular case (see *Ilias and Ahmed*, cited above, § 148).

178. The Court emphasises that the shortcomings in the present case were not confined to an inadequate assessment preceding otherwise formal removals. The applicant was removed without any individual decision authorising his expulsions to North Macedonia and outside any procedure enabling him to contest that destination or obtain an examination of the risks involved. Nor was he handed over to the authorities of that country within the framework of an orderly readmission process. Instead, he was simply taken to the border and ordered to cross it. The manner in which the removals were carried out thus deprived him of the procedural safeguards necessary to secure practical and effective protection against *refoulement* (see paragraphs 20 and 141 above).

179. That being so, the Court finds that the respondent State failed to discharge its procedural obligations under Article 3 of the Convention to assess the risks of treatment contrary to that provision before removing the applicant from Serbia (see, *mutatis mutandis*, *Ali*, cited above, § 108; see also, *mutatis mutandis*, *Ilias and Ahmed*, cited above, § 163).

180. There has accordingly been a violation of the procedural aspect of Article 3 of the Convention by the applicant's expulsions from Serbia to North Macedonia on 12 and 24 October 2016.

2. Alleged degrading treatment during the applicant's removals on 12 and 24 October 2016

(a) The parties' submissions

181. The applicant submitted that during his removal on 12 October 2016, which had lasted more than ten hours, he and the others had been given only a piece of bread and tuna during the whole day, they had not been allowed to go to the toilet, his documents had been confiscated and he had been left without knowing his whereabouts in the middle of the night (see paragraph 20 above), all of which had caused him a feeling of humiliation, mental pain and subjugation. The applicant also submitted that on 24 October 2016, after being released from prison, he had been taken to a police station, and then, with several other people, to the border of North Macedonia, where the police had taken away his mobile phone battery and had ordered them to walk across the border into North Macedonia (see paragraph 24 above).

182. The Government contested the applicant's submissions. They submitted that, in any event, he had failed to raise his complaint domestically, notably by means of a constitutional appeal.

(b) Third party interveners

183. The BVMN submitted that during pushbacks at the border between Serbia and North Macedonia Serbian police would take migrants to remote areas at night and order them to leave and/or cross the border to North Macedonia, and would deprive them of their phones and sometimes also money. They referred to reports from 2015 and some witness statements from 2020.

184. The Aire Centre, ECRE and DCR submitted that the removal procedure itself could constitute ill-treatment under Article 3, even where there was no physical harm. Treatment which aroused feelings of fear, anguish or subjugation capable of breaking an individual's moral and physical resistance would be in violation of Convention rights.

(c) The Court's assessment

185. While Article 3 of the Convention requires that an official investigation be conducted even in the absence of an express complaint, if there are sufficiently clear indications that ill-treatment might have occurred (see *Gjini v. Serbia*, no. 1128/16, § 93, 15 January 2019), the Court has not equated the absence of a requirement to lodge a criminal complaint with a general exemption from the requirement to pursue a constitutional appeal (see *Gjini*, cited above, §§ 96-103 and 60-63, where the applicant was deemed not to have needed to file a criminal complaint because the State authorities had been aware of what had happened to him, but he had nevertheless gone on and had raised his complaint before the Constitutional Court). In view of the circumstances of the present case, the Court notes that the applicant failed to

raise his complaint about the conditions of the bus journey and the forced overnight expulsion on 12 October and the conditions of the forced expulsion on 24 October 2016 domestically by means of a constitutional appeal, which is an effective domestic remedy (see *Vinčić and Others v. Serbia*, nos. 44698/06 and 30 others, § 51, 1 December 2009, and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 84, 25 March 2014, and the authorities cited therein; compare and contrast *Gjini*, cited above, §§ 96-103 and 60-63). Accordingly, this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

3. Risk of ill-treatment of the applicant in the event of his expulsion

186. The applicant submitted that there was a risk of his ill-treatment if he were to be expelled to Bulgaria or Türkiye or if he were to be returned to his country of origin.

(a) The parties' submissions

(i) The Government

187. The Government submitted that the decision of the Asylum Office rejecting the applicant's asylum claim and giving a time-limit within which the applicant could voluntarily leave the country was not the basis for any forced removal. They maintained that the sole (*isključivi*) basis for the forced removal of an alien was an expulsion order under the Aliens Act (see paragraph 57 above). They submitted that the only expulsion order made in respect of the applicant was that of 19 June 2021, which was subsequently quashed (see paragraph 42 above), and that no other expulsion order had been made against him. It was therefore irrelevant that the applicant had filed a constitutional appeal seeking the staying of the Asylum Commission's decision. The Government confirmed that when there was a final decision on the rejection of an alien's asylum claim and he or she had no other basis to stay in the country and did not comply with an order to leave the country, the Ministry of the Interior would make an expulsion order. They referred to Article 77 of the Aliens Act (see paragraph 57 above).

188. They further submitted that if an expulsion order were made the applicant could not be expelled to North Macedonia, as the return to Macedonia was regulated by a Readmission Agreement between the two countries which provided a State was not obliged to accept an alien who had stayed more than 12 months in the territory of the sending State, which was the applicant's case, who had been in Serbia since July 2014. As he could not be expelled to North Macedonia there was no risk that he would be further expelled to Greece either.

189. They maintained that the applicant could only be returned to Bulgaria. There was a possibility that he could be returned from there to

Türkiye, or that he could be returned directly to Sudan, but they reiterated that the applicant could be removed from Serbia only on the basis of an expulsion order.

190. Furthermore, expulsion was not allowed to a territory where an alien would risk persecution or ill-treatment (see paragraph 60 above). If an expulsion order would be issued the applicant could appeal against it, which appeal would have a suspensive effect if there was a real risk for an alien to be removed to a country where he would face persecution or ill-treatment (see paragraph 58 above). It would also be possible to seek a stay of execution of the expulsion order for up to one year, and that period could be extended. The Government maintained that in view of that even if an expulsion order would be issued against the applicant, he would have a genuine opportunity to have his allegations of the risk of persecution and torture thoroughly examined by the domestic authorities, regardless of whether such allegations had been made in the course of asylum proceedings or not. They averred that, in addition, he could also make use of an Administrative Disputes Act remedy, which gave an appeal against an expulsion order suspensive effect (see paragraph 64 above). They provided copies of relevant domestic decisions, including the one made on application by the applicant (see paragraphs 96 and 42 above).

191. The Government lastly submitted that even if the applicant were to be expelled to Bulgaria, Türkiye or Sudan he would not face a risk of treatment contrary to Article 3 of the Convention. In particular, the reception conditions in Bulgaria and Türkiye were not in violation of Article 3 and the applicant would have adequate and effective access to an asylum procedure there. They also submitted that the applicant had not made credible claims that he would risk persecution and/or ill-treatment if he were to be returned to Sudan, and they maintained that any deterioration of the general political and security situation in Sudan was not of such intensity and scope that the mere return of the applicant to Sudan would pose a risk of treatment contrary to Article 3.

(ii) The applicant

192. The applicant submitted that the basis for his forced removal was the final decision of the Asylum Office of 31 July 2015 (see paragraph 13 above). As he did not leave the country voluntarily within the set time-limit the conditions for its enforcement and his removal had been met. He referred to the relevant provisions of the Asylum Act and Aliens Act (see paragraphs 52, 54 and 59 above). His forcible removal to Bulgaria, Türkiye and/or Sudan would confront him with a real risk of treatment contrary to Article 3 of the Convention, on account of serious shortcomings of the asylum system and poor reception conditions in Bulgaria and Türkiye, and in Sudan because of his ethnicity and the widespread interethnic conflicts and violence there. He

asserted that returnees and failed asylum-seekers had previously suffered abuse in Sudan.

193. He would have no effective domestic remedy with suspensive effect if the authorities were to try to expel him. Even if he appealed against an expulsion order, his arguments that there would be a risk of a violation of Article 3 if he were deported to Bulgaria or Sudan would not be heard in that procedure as they had already been assessed in the asylum procedure and it was therefore *res judicata*. The provision concerning the suspensive effect of an appeal was also vague, implying that the decision-maker deciding on removal would also decide on whether the appeal would have suspensive effect. He also referred to the expulsion decision of 19 June 2021, which specified that an appeal did not stay the enforcement of the decision (see paragraph 42 above). While the Administrative Disputes Act provided that a request for an interim measure would stay the enforcement of a decision in cases where an appeal did not have suspensive effect, the applicant reiterated that only the lawfulness of an alien's stay was at issue in removal proceedings, and not whether there might be a violation of Article 3, which had already been decided in the asylum procedure.

(b) Third parties' submissions

194. BVMN submitted that removals of asylum-seekers to a third country may be in breach of Article 3 if there are inadequate reception conditions in the receiving State.

195. The AIRE Centre, ECRE and DCR submitted that States may in certain circumstances send asylum-seekers to safe third countries, provided that removal there is consistent with their obligation under the Refugee Convention.

(c) The Court's assessment

196. The Court reiterates that in cases where applicants have faced expulsion or extradition the Court has consistently held that an applicant cannot claim to be a "victim" of a measure which is not enforceable (see *Kebe and Others v. Ukraine*, no. 12552/12, § 86, 12 January 2017, and the authorities cited therein). It has adopted the same stance in cases where enforcement of a deportation or extradition order has been stayed indefinitely or otherwise deprived of legal effect, and where any decision by the authorities to proceed with deportation can be appealed against in the relevant courts (ibid.; see, also, see *Nasrulloyev v. Russia*, no. 656/06, § 59, 11 October 2007; *Rakhmonov v. Russia*, no. 50031/11, §§ 34-37, 16 October 2012; and *Budrevich v. the Czech Republic*, no. 65303/10, §§ 64-72, 17 October 2013).

197. Turning to the present case, and to the extent that the applicant also complained that he would risk treatment in breach of Article 3 if he were to

be expelled to one of the transit countries or his country of origin, the Court notes that the decision of the Asylum Office to reject the applicant's asylum claim and ordering him to leave the country (see paragraph 13 above) is not enforceable in itself. Under the relevant domestic legislation an alien whose asylum request has been rejected and who will not leave the country voluntarily within the time-limit specified in the decision rejecting his asylum claim would be forcibly removed in accordance with the provisions relating to the movement and stay of aliens, that is, the provisions regulating legal status of aliens (see paragraph 52 *in fine* and 54 *in fine* above). The relevant provisions of the Aliens Act say that an appropriate body will make an expulsion order (*rešenje o vraćanju*) against an alien who is unlawfully staying in the territory of Serbia which will set a time-limit within which an alien has to leave the country. If he or she does not comply with the decision, he or she will be forcibly removed (see paragraphs 57 and 59 above). In other words, a forcible removal can be undertaken only on the basis of an expulsion order. The only expulsion order against the applicant was made in June 2021, and it was then quashed after the applicant appealed against it and lodged an application with the Administrative Court to stay its enforcement (see paragraph 42 above). The Court observes that should a further expulsion order be made the applicant would again have domestic remedies at his disposal, including those by which his expulsion could be stayed until examined by the relevant bodies - an appeal is provided for in Article 80 of the Aliens Act, with accompanying safeguards, and an application for a stay of the enforcement of an administrative decision can be made under Article 23 of the Administrative Disputes Act (see paragraphs 58, 60-62, and 64 above; see, also, *mutatis mutandis*, *Vijayanathan and Pusparajah v. France*, 27 August 1992, § 46, Series A no. 241-B). As regards an application for a stay of the enforcement of an administrative decision under Article 23 of the Administrative Disputes Act the Court notes that it has been successfully used in a number of expulsion cases, including by the applicant himself (see paragraphs 96 and 42 above).

198. As there is no current expulsion order against the applicant, and as the applicant could appeal against any decision to expel him in the courts and have its enforcement stayed until the appeal has been decided on, the Court finds that the applicant's complaint is premature and must be rejected under Article 35 §§ 1 and 4 of the Convention.

B. Alleged violation of Article 13 in conjunction with Article 3

199. The applicant complained under Article 13 of the Convention that he had had no effective domestic remedy at his disposal for his *de facto* expulsions on 12 and 24 October 2016 from Serbia to North Macedonia.

200. Article 13 of the Convention reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

201. The Government contested the applicant's complaint and submitted that a constitutional appeal constituted an effective domestic remedy.

202. Having found a violation of Article 3 of the Convention (see paragraph 180 above) and in view of the fact that the alleged procedural shortcomings as regards the applicant's removals have been sufficiently examined under that Article, the Court finds it unnecessary to examine the admissibility and merits of the applicant's complaint under Article 13 regarding those same alleged shortcomings (see *Ali*, § 109, and *Ilias and Ahmed*, § 179, both cited above).

C. Alleged violation of Article 5 of the Convention

203. The applicant complained under Article 5 §§ 1 and 2 of the Convention that he had been deprived of his liberty by the police from the early morning until late in the evening on 12 October 2016, without due process or any proper decision, when he was being transported by bus from Subotica to the border with North Macedonia, and again on 24 October 2016, when he was expelled to North Macedonia.

204. Article 5 §§ 1 and 2 of the Convention read, in so far as relevant, as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

205. The Government contested the applicant's complaint and submitted that he had not raised it domestically, notably with the Constitutional Court by means of a constitutional appeal, which was an effective domestic remedy.

206. The Court reiterates that Article 35 § 1 of the Convention requires that complaints intended to be made subsequently before it should have been made to the appropriate domestic body, at least in substance, and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used (see, for instance, *Vučković and Others*, cited above, § 72, and the authorities cited therein). Where an applicant has failed to comply with these requirements, his or her application should in principle be declared inadmissible for failure to exhaust domestic remedies (ibid.).

207. The Court notes that the applicant did not raise his complaint with any domestic body, whether by means of a compensation claim, which, in principle, constitutes an effective domestic remedy where an alleged deprivation of liberty has come to an end before an applicant lodges an application with the Court, and which needs to be pursued if its effectiveness in practice has been convincingly established (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, §§ 207-08, 22 December 2020), or by means of a constitutional appeal, which is in principle an effective domestic remedy in Serbia (see *Vinčić and Others*, § 51, and *Vučković and Others*, § 84, both cited above). This complaint must therefore be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. COMPLAINTS IN RESPECT OF NORTH MACEDONIA

A. Alleged violation of Article 3 of the Convention

208. The applicant complained under Article 3 of the Convention that on 11 November 2016 he had been subjected to *de facto* expulsion from North Macedonia to Greece, where there had been a risk of treatment in violation of Article 3 of the Convention because of inhuman reception conditions and of further chain expulsion to his country of origin, where he would face a risk of persecution on account of his ethnicity, without any decision of a competent domestic body in that regard.

1. Admissibility

(a) The parties' submissions

(i) The Government

209. The Government submitted that the applicant had failed to exhaust any of the available effective domestic remedies, without providing a satisfactory explanation. In particular, he had not applied for asylum and he had not raised his complaint by means of an administrative action for protection against an unlawful act in the Administrative Court. The appropriate application would also have covered a complaint about activity being carried out without a decision (see paragraph 92 above). They submitted that both an asylum application and an action for protection against an unlawful act involved the suspension of the disputed activity, and they referred to the principle of subsidiarity. The applicant had not raised his complaint in administrative proceedings and he had not filed any criminal charges (see paragraph 93 above). He had made no claim for compensation, either within criminal proceedings or by means of a civil claim, which could have been supplemented by seeking an interim measure (see paragraphs 94 and 95 above).

210. The Government submitted that, had the applicant applied for asylum his claim of fear of persecution would have been examined by the appropriate authorities who would also automatically have investigated whether there was a real risk of his being subjected to torture or inhuman or degrading treatment in another country, potentially giving rise to recognition that he should be granted subsidiary protection as an alternative form of asylum. He would therefore have been protected against *refoulement*, even if his asylum request had been dismissed in a fast-track procedure, until the Administrative Court gave judgment in a procedure which had suspensive effect. They referred to section 30 in conjunction with section 4-a, and sections 7 and 37 of the Asylum and Temporary Protection Act, and section 101 of the Aliens Act (see paragraphs 75, 68-69, 76 and 84 above). On the contrary, he had expressly refused to apply for asylum in North Macedonia and expressed his wish to go back to Serbia, which had been a well-informed decision. Furthermore, he had not expressed an intention to seek asylum even when his expulsion was imminent, even though he knew about the right to seek asylum and the procedure for doing so, as established by the Helsinki Committee for Human Rights in North Macedonia (see paragraph 107 above). Moreover, he had further failed to attempt to redress the alleged situation by claiming asylum at a border crossing point before or after the alleged expulsion. That form of international protection had been available and widely sought in the relevant period, as confirmed in *A.A. and Others v. North Macedonia* (cited above, §§ 116 and 122).

211. The Government further submitted that there had been, in addition, an opportunity in the administrative proceedings to seek a stay of enforcement of an activity if the enforcement was causing damage that would be difficult to repair, as well as an opportunity to seek interim measures and an opportunity to ask for security for the damage from the opposite party (see paragraphs 90-91 above). The Administrative Court proceeded urgently when dealing with claims concerning unlawful activities, by immediately submitting the action to the State body or official concerned and by prohibiting further activity if the action was well-founded, as well as by enforcing or ensuring enforcement of its decision (see paragraph 92 above). Furthermore, domestic legislation allowed victims or third parties affected by a particular crime to file a property claim within criminal proceedings or in separate civil proceedings (see paragraph 94 above).

212. In short, at no point had the applicant drawn the attention of the authorities of North Macedonia to why he could not or did not want to return to his country of origin. He could have done it either through UNHCR, OIM or MYLA, or through his legal representatives, who had been aware of his being in North Macedonia nearly three weeks before the alleged removal to Greece had taken place and who had allegedly visited him in TC Tabanovce on 4 November 2016. There had been nothing to prevent the applicant from seeking legal aid through his lawyer, or arranging with his lawyer to have a

domestic lawyer appointed to him, either of his own choosing or through the legal aid scheme.

213. The Government of North Macedonia submitted that the BVMN's allegation that access to the asylum procedure had been allowed on a highly selective basis (see paragraph 218 below) was irrelevant as the applicant had had an opportunity to apply for asylum which he had explicitly declined. They reiterated that the applicant in the present case had expressly refused to apply for asylum in North Macedonia, where an application would have had suspensive effect, and had not provided the authorities with any specific information as to whether he would face a real risk of ill-treatment in his country of origin or elsewhere.

(ii) The applicant

214. The applicant disputed the effectiveness of the legal remedies put forward by the Government, and, in particular, that he had been fully informed about his choice not to apply for asylum in North Macedonia. He submitted that he had not applied for asylum in North Macedonia as he had requested a readmission to Serbia, which could not be construed as his consent to be expelled to Greece or deprived of liberty in TC Tabanovce.

215. He submitted that he had told all the authorities and organisations in TC Tabanovce that he was an asylum-seeker and that he had wanted to return to Serbia where he would await the outcome of the Constitutional Court proceedings. However, even though the authorities had been aware of his being an asylum-seeker in Serbia from Sudan, which was known for having a precarious human right situation, he had been only asked whether he had wanted asylum in North Macedonia, without being questioned about the fear of persecution in his country of origin or other countries to which he might be returned and without being informed that he would not be readmitted to Serbia again. It was therefore clear that he could not make an informed decision about seeking asylum in North Macedonia. Had he been given an indication that he would not be readmitted to Serbia and that he would otherwise be returned to Sudan or deported to Greece, he would have certainly sought asylum because he was undoubtedly in need of international protection.

216. He disputed the effectiveness of the other legal remedies put forward by the Government. In particular, there were no legislative time-limits for the Administrative Court to act on an administrative action, or for the state authorities to act on a court order, and there were no clear consequences for failing to act on such an order. In any event, the Government had provided no case-law showing the effectiveness of an administrative action or the effectiveness of other legal remedies they had put forward.

217. He also submitted that during his entire stay in North Macedonia he had not been provided with an Arabic interpreter and his freedom of movement had been restricted, as well as his access to any means of direct

communication, so that none of the legal remedies referred to by the Government could be regarded as effective for him. He submitted that he had not fallen under the UNHCR's or MYLA's mandate, which was why UNHCR had contacted his legal representative from Serbia. His legal representative, however, was not legally entitled to represent clients in North Macedonia nor did he know the language. His representative had been in direct contact with him after his second removal to North Macedonia, but not more than a couple of days prior to his removal to Greece. Migrants also did not in practice have access to free legal aid in North Macedonia.

(b) Third-party submissions

218. The BVMN submitted that reports had shown a lack of access to legal procedures in North Macedonia, including access to asylum systems or to sufficient opportunities for asylum-seekers to demonstrate that Greece would not be a safe third country in their particular case. It further maintained that the authorities of North Macedonia had allowed access to the asylum procedure on a highly selective basis, with persons being prevented from submitting an asylum application in transit centres or at the border, and sometimes to have been returned to Greece after expressly stating their intention to seek asylum.

219. The AIRE Centre, ECRE and DCR submitted jointly that there were a number of obstacles that might render a remedy against prohibited treatment under Article 3 ineffective, including removing an individual before he or she had a practical opportunity to seek the remedy, the absence of automatic suspensive effect, and hasty removal procedures. They also maintained that the situation in North Macedonia had long been characterised by a general lack of capacity to protect asylum-seekers, and generally inadequate decision-making.

(c) The Court's assessment

(i) Relevant principles

220. The relevant general principles are set out in paragraph 168 above. The Court reiterates, in particular, that where an applicant seeks to prevent his or her removal from a Contracting State, alleging that such a removal would place him or her at risk of treatment contrary to Article 3 of the Convention, a remedy will only be effective if it has automatic suspensive effect. Where a remedy does have automatic suspensive effect, the applicant will normally be required to use that remedy (see paragraph 168 above).

(ii) Application of the principles to the present case

221. The Court finds that the Government's objection as regards the applicant's failure to apply for asylum in North Macedonia is closely linked

to the substance of his complaint and that it should be joined to the merits of the case.

222. As regards the other remedies put forward by the Government the Court observes that there were no administrative proceedings conducted in respect of the applicant in which he could have raised his complaint prior to his removal from North Macedonia.

223. The Court further notes that the remedy for protection against an unlawful act requires an application to the Administrative Court, during the alleged unlawful activity or thereafter (see paragraph 92 above). In the circumstances of the case, the applicant was not in a position to make an application to the Administrative Court while the removal was being conducted, and nor could have his representatives done so on his behalf given that they have not been informed of his removal. Also, obviously, making use of it after the removal could not have prevented the removal itself.

224. The Court further notes that the rest of the remedies put forward by the Government – criminal charges and a compensation claim, either within the criminal proceedings or by means of a separate civil claim – could have been made use of only after the applicant had been removed and thus, likewise, could not have prevented the removal itself (see, *mutatis mutandis*, *H.T. v. Germany and Greece*, no. 13337/19, § 125, 15 October 2024; see, also, *A.A. and Others v. North Macedonia*, cited above, § 70, albeit in the context of Article 4 of Protocol No. 4 to the Convention).

225. In view of the above, the remainder of the Government's objection of non-exhaustion must be dismissed.

226. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

(i) The applicant

227. The applicant reaffirmed his complaint, and submitted that the real risk of a violation of Article 3 of the Convention had not been considered before his summary removal to Greece, although it had certainly existed and had been well documented. He maintained that there had been significant deficiencies in the Greek reception system, that the living conditions in the reception and detention centres were inhuman and degrading and that there had been a constant risk of *refoulement* to Türkiye and other countries since 2016. He submitted that North Macedonia had not explained why he had not been readmitted to Serbia again.

(ii) The Government

228. The Government repeated that the applicant had not been expelled from North Macedonia and that he had not drawn the attention of the authorities to the alleged risk, and that therefore the State authorities had not been called upon to examine whether the applicant faced any risk abroad, including from the reception conditions in Greece. They concluded that there had been no violation of Article 3.

(b) Third-party interveners

229. The BVMN submitted that the removal of asylum-seekers to a third country could be in breach of Article 3 because of inadequate reception conditions in the receiving State. It referred to the poor reception conditions in Greece and the summary removals from Greece to Türkiye.

230. The AIRE Centre, ECRE and DCR submitted that the general deficiencies in the asylum and reception system in Greece that had led the Court to find violations of the Convention in *M.S.S. v. Belgium and Greece* ([GC], no. 30696/09, ECHR 2011) still remained and that the legislative changes from 2020 and 2022 had been criticised. They also reiterated the importance of the principle of *non-refoulement* (see paragraph 174 above).

(c) The Court's assessment

(i) Relevant principles

231. A person's claim that his or her return to a third State would expose him or her to treatment prohibited by Article 3 of the Convention must be carefully reviewed by a national authority (see *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 448, ECHR 2005-III; see also *Jabari v. Turkey*, no. 40035/98, § 39, ECHR 2000-VIII). The Court reiterates in particular the importance of ensuring that persons affected by an expulsion measure, the consequences of which are potentially irreversible, have the right to obtain sufficient information to enable them to have effective access to the proceedings and to substantiate their complaints (see *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 204, ECHR 2012). A lack of information will constitute a major obstacle to access to asylum procedures (see *M.S.S. v. Belgium and Greece*, cited above, § 304). Depending on the circumstances, the fact that an applicant failed to request asylum would not exempt the respondent State from fulfilling its obligations under Article 3 (see *D v. Bulgaria*, no. 29447/17, § 116 *in fine*, with further reference, 20 July 2021).

(ii) Application of these principles to the present case

232. The Court found that the applicant was removed to Greece on 11 November 2016 from TC Vinojug (see paragraph 159 above). The

information available indicates that while the migrants brought to the transit centre that day were apparently aware of the right to asylum and the related procedure (see paragraphs 107 and 110 above), it is unclear in what language that information was communicated to them or whether the applicant benefited from the assistance of an interpreter, although his knowledge of English was rather basic (see paragraph 37 above). There is also nothing in the case-file to indicate that, apart from having been asked for basic information about himself (see paragraph 32 above), the applicant was given an opportunity to provide any details about his personal situation and circumstances. More importantly, it does not appear that he was informed that he would be expelled to Greece. The Court further notes that the applicant, on his way to Serbia, never travelled through North Macedonia and/or Greece (see paragraph 11-12 above), never expressed any interest in seeking asylum in either of those two countries, and had no connection to either of the two. It is also observed that there was a Readmission Agreement in force between Serbia and North Macedonia at the relevant time, on the basis of which he had already been readmitted to Serbia once, about three weeks earlier (see paragraph 22 above).

233. In view of the above, the Court finds that the applicant was not given an appropriate opportunity and sufficient information to allow him to make a well-informed decision on whether to apply for asylum in North Macedonia or not. In such circumstances, his failure to apply for asylum did not exempt the respondent State from fulfilling its obligations under Article 3 (see *D v. Bulgaria*, cited above, § 116).

234. The applicant was removed to Greece shortly after having been registered in TC Vinojug which reflects, in the Court's view, the extreme haste with which he was expelled. The domestic authorities made no expulsion order nor did they conduct any prior examination of the risks the applicant ran under Article 3 of the Convention, that is they removed him in the absence of a legal procedure providing safeguards against unlawful expulsion (see also, *mutatis mutandis*, *Hirsi Jamaa and Others*, cited above, § 147, ECHR 2012; *Amerkhanov v. Turkey*, no. 16026/12, § 57, 5 June 2018; and *Batyrkhairov v. Turkey*, no. 69929/12, § 50, 5 June 2018). Lastly, it is also observed that the authorities of North Macedonia did not hand the applicant over to the Greek authorities within the framework of an orderly readmission process, but rather exposed him to heightened risk by inducing him to cross into Greece illegally (see *Ilias and Ahmed*, cited above, §§ 161 and 163; contrast *M.S. v. Slovakia and Ukraine*, no. 17189/11, § 88, 11 June 2020).

235. In view of the above, the Court finds that the Government's objection in respect of non-exhaustion of domestic remedies, notably his failure to make an asylum claim, must be dismissed. It further finds a violation of the procedural aspect of Article 3 of the Convention in relation to the applicant's expulsion from North Macedonia to Greece on 11 November 2016.

B. Alleged violation of Article 13 in conjunction with Article 3 of the Convention

236. The applicant complained under Article 13 of the Convention that he had had no effective domestic remedy at his disposal for his *de facto* expulsion on 11 November 2016 from North Macedonia to Greece.

237. The Government maintained that the applicant had had a number of effective remedies at his disposal.

238. Having found a violation of Article 3 of the Convention (see paragraph 235 above) and in view of the fact that the alleged procedural shortcomings of the applicant's removal have been sufficiently examined under that Article, the Court finds it unnecessary to examine the admissibility and merits of the complaint under Article 13 regarding those same alleged shortcomings (see *Ilias and Ahmed*, cited above, § 179).

C. Alleged violation of Article 5 §§ 1 and 2 of the Convention

239. The applicant complained under Article 5 §§ 1 and 2 of the Convention that he had been unlawfully deprived of his liberty in TC Tabanovce between 14 and 19 October 2016, and between 24 October and 9 November 2016, as well as when he was being taken on a bus to be expelled to Greece, without due process and without having been informed about his status.

240. The relevant parts of Article 5 are cited in paragraph 204 above.

1. The parties' submissions

(a) The Government

241. The Government disputed that the applicant had been in TC Tabanovce after 26 October 2016 and contested the credibility of the statement allegedly taken by his representative on 4 November 2016, as it had been submitted only with his observations and had not been enclosed with his application form. Alternatively they contested that it had been necessarily taken in TC Tabanovce. They also submitted that the applicant had not raised the complaint that he had not been informed about the reasons for his deprivation of liberty as such before the Court.

242. The Government maintained that the applicant's complaint under Article 5 was incompatible *ratione materiae* with the Convention, that he had not exhausted all effective domestic remedies and that, in any event, there had been no violation of that provision.

243. In particular, TC Tabanovce was an open-type camp, which the refugees could leave whenever they wanted (see paragraph 108 above). The applicant's accommodation there had therefore not amounted to a deprivation of liberty, so there would by definition be no documents confirming the

alleged deprivation of liberty, nor had there been any need to inform the applicant about anything in that regard.

244. Secondly, the Government submitted that the applicant had failed to make use of any of a number of remedies which he had had at his disposal. He could have applied for asylum, in which case he would have been transferred to the Reception Centre for Asylum-Seekers. The rules in the Reception Centre accommodation were more liberal, and would have meant that freedom of movement would not have been an issue of concern. He could have also filed an action for protection against an unlawful act under the Administrative Disputes Act, while the disputed activity was still going on, and which was appropriate to cases of a violation of personal liberty and freedom of movement. Moreover, he had failed to file criminal charges or a criminal complaint for, *inter alia*, unlawful deprivation of liberty and/or abuse of office, and he had failed to make use of civil law remedies, including an action for damages under the Obligations Act. The Government also maintained that the outcome of criminal proceedings was not decisive to the prospect of success of a compensation claim and referred to *FINE DOO and Others v. North Macedonia* (dec.) (no. 37948/13, 17 May 2022). He could have also sought a cessation of any act violating rights pertaining to his personality and an interim measure in that regard (see paragraphs 94 and 95 above). The Government submitted that the remedies were available, adequate and effective, and that a lack of case-law did not make them ineffective, especially in view of their effectiveness in other contexts. They referred to *Delovski v. the former Yugoslav Republic of Macedonia* (dec.) [Committee], no. 56148/15, §§ 22 and 25, 7 July 2020; *DOOEL Zlaten Egej v. North Macedonia* (dec.) [Committee], no. 4051/13, § 19, 17 November 2020; and *Bekir and Others v. North Macedonia* (dec.) [Committee], no. 46889/16, §§ 41 and 50, 24 June 2021.

245. In any event, the applicant's accommodation at TC Tabanovce had been lawful and justified in view of the authorities' efforts to ensure his readmission to Serbia. The Government submitted that the applicant's references to reports and other publicly available documents on the situation in the transit centres had no direct relevance to him, as he had not been accommodated in TC Tabanovce for a protracted time period and had not been either "in limbo" or at risk of being summarily removed. They concluded that there had been no violation of Article 5 of the Convention.

246. Lastly, the Government submitted that a reference from the report cited by the BVMN (see paragraph 250 below) had been inconsistent with an assessment from the same source that notably stated that TC Tabanovce operated largely as an open facility (see paragraph 119 above), which the third party had failed to cite. The part of the report in question referred to by the BVMN had also referred further to the MYLA reports for January-March 2016 and had been at odds with the MYLA annual field report.

(b) The applicant

247. The applicant reaffirmed his complaint and contested the Government's submission that he had left TC Tabanovce after having been interviewed on 26 October. His legal representative and an Arabic interpreter had visited him there on 4 November 2016 in order to collect his statement (see paragraph 29 above). He maintained that numerous reports of international bodies and non-governmental organisations had confirmed that freedom of movement in reception and transit centres in North Macedonia at the relevant time had been unlawfully restricted. He referred, in particular, to the UN High Commissioner for Human Rights' call on the authorities of the former Yugoslav Republic of Macedonia in September 2016, the UNHCR report for October 2016, LEGIS and MYLA/Emilie Pesselier reports (see paragraphs 115, 103, 117 and 114 above), and the 2021 MYLA report. He also submitted that there had been no official decision on the establishment of TC Tabanovce and Vinojug determining the nature of those centres, which was especially important given the presence of police and army in these centres. The rights and freedoms of persons accommodated in these centres, the duration and nature of such accommodation - that is, detention, and so on - had not been regulated either. TCs were *ad hoc* established institutions which had been used and managed arbitrarily by state bodies.

248. The applicant maintained that the Helsinki Committee for Human Rights report, to which the Government had referred (see paragraphs 243 and 108 above), was not relevant as it was not clear from that report during what period TC Tabanovce had been an open-type camp, and the same report stated that some people had been detained in it (see paragraph 108 *in fine* above).

249. He also contested the availability and the effectiveness of the remedies put forward by the Government, including because of the restrictions on his freedom of movement and there having been no Arabic interpreter available.

2. Third-party submissions

250. The BVMN maintained that the ambiguity as to the legality of the deprivation of liberty in Tabanovce in 2016/2017 raised concerns as to its compatibility with Article 5, and referred to the Global Detention Project reporting findings in that regard (see paragraph 119 above).

3. The Court's assessment

251. The Court finds that there is no need to examine whether Article 5 was applicable in the present case, because even assuming that it was (compare *Ilias and Ahmed*, cited above, §§ 239-240, 249-250, and contrast *J.R. and Others v. Greece*, no. 22696/16, §§ 85-87, 25 January 2018), the complaint in that respect is inadmissible for the following reasons.

252. The Court reiterates that the principles relevant to the requirement to exhaust domestic remedies are set out in, for example, *Communauté genevoise d'action syndicale (CGAS)*, cited above, §§ 138-44). In particular, under Article 35 § 1 of the Convention, the Court may only deal with an application after the exhaustion of those domestic remedies that relate to the breaches alleged and are also available and sufficient. In particular, in the context of Article 5 of the Convention, a remedy that does not afford a possibility of release cannot be regarded as an effective remedy while the deprivation of liberty is ongoing. However, where the applicant complains that he or she was detained in breach of domestic law and where the detention has come to an end, a compensation claim capable of leading to an acknowledgment of the alleged violation and an award of compensation is in principle an effective remedy which needs to be pursued if its effectiveness in practice has been convincingly established (see *Selahattin Demirtaş,* cited above*,* §§ 207-08).

253. Turning to the present case, and quite apart from the fact that the applicant did not point to any particular occasion when he had tried to leave TC Tabanovce but had been prevented from doing so (compare *A.A. v. Serbia* (dec.), no. 50898/20, § 45, 14 October 2025), the Court notes that the applicant's alleged deprivation of liberty ended on 9 November 2016, and that the first time he complained about it was in his application lodged with the Court on 15 November 2016. In other words, his alleged deprivation of liberty had already ended by that time. It is further noted that the applicant did not raise his complaint before any domestic authority whatsoever, thus preventing them from examining whether his stays in the transit centre amounted to a deprivation of liberty and, if so, whether or not it was lawful.

254. The Court observes that the applicant could have raised his complaint that he had been deprived of his liberty or that his movement had been restricted by means of an action for protection against unlawful act, criminal complaint or a civil claim (see paragraphs 92-94 above). This is particularly the case given that the applicant submitted that he had been in contact with his representatives from Serbia during both his stays (see paragraphs 26 and 29 above), and it is clear from the case file that he also had contact with MYLA, who had lawyers available at all times (see paragraphs 21-22, 110 *in fine* above). In other words, the applicant had access to the remedies put forward by the Government (compare and contrast *J.R. and Others v. Greece*, cited above, §§ 100 and 102), and regardless of that no complaint about an alleged deprivation of liberty and/or restriction of movement has ever been made by the applicant or on his behalf, either through the applicant's Serbian representative or through any of the available lawyers in North Macedonia, either during his stays in TC Tabanovce or afterwards.

255. The applicant does not dispute that he has not raised his complaints domestically. Instead, he disputed the effectiveness of the suggested

remedies. While the Government did not refer to any previous cases in which those remedies had been used in the context of a deprivation of liberty, the Court observes that it has already found them effective in other contexts (see paragraph 244 *in fine* above; see, also, as regards the effectiveness of a civil action for compensation in various contexts, *Vraniškoski v. the former Yugoslav Republic of Macedonia* (dec.), no. 39168/03, 22 June 2010; *Koceski v. the former Yugoslav Republic of Macedonia* (dec.), no. 41107/07, § 27, 22 October 2013; and *V.V.G. v. the former Yugoslav Republic of Macedonia* (dec.), no. 55569/08, §§ 45-46, 20 January 2015). The Court has also found that the outcome of criminal proceedings is not decisive for the prospect of success of a compensation claim (see *FINE DOO and Others*, cited above, § 35 *in fine*, and the authorities cited therein; contrast *Dubovtsev and Others v. Ukraine*, nos. 21429/14 and 9 others, §§ 67-71, 21 January 2021). The Court further reiterates the principle of subsidiarity, requiring that complaints intended to be made subsequently before it should have been made to the appropriate domestic body, at least in substance (see *Vučković and Others*, cited above, § 72), and that the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (see *Selahattin Demirtaş*, cited above, § 206).

256. In view of the above, this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

D. Alleged violation of Article 13 in conjunction with Article 5 of the Convention

257. The applicant complained under Article 13 of the Convention that he had had no effective remedy for his complaint under Article 5.

258. The Government submitted that the applicant had had at his disposal a number of effective domestic remedies none of which he had made use of. His complaint was therefore manifestly ill-founded or, alternatively, there had been no violation of Article 13.

259. The applicant disputed the effectiveness of the remedies put forward by the Government.

260. In view of its conclusion in respect of the complaints under Article 5 of the Convention, that is, that the applicant failed to make use any of the available domestic remedies which were not clearly futile, the Court finds that the applicant's complaint under Article 13 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

E. Other aspects of the case

261. In his application the applicant, who was represented by a lawyer, raised exclusively the complaints which the Court addressed above. When giving notice of the application to the Government of North Macedonia, the Court asked also questions under Article 2 of Protocol No. 4 to the Convention and Article 5 § 4 of the Convention. In view of its above findings, the Court does not consider it necessary to pursue the examination of those issues.

V. RULE 39 OF THE RULES OF COURT

262. The Court reiterates that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if referral of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

263. It considers that the indication made to the Government of Serbia under Rule 39 of the Rules of Court should remain in force until the present judgment becomes final or until the Court takes a further decision in this connection (see *D.M. v. Sweden*, no. 32694/23, § 201, 26 March 2026).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

264. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

265. The applicant claimed 20,000 euros (EUR) in compensation for non-pecuniary damage in respect of Serbia, and EUR 15,000 in respect of North Macedonia, plus any tax that might be chargeable.

266. Both Governments contested the applicant's claim as unfounded and exaggerated.

267. The Court awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable, in respect of each respondent State.

B. Costs and expenses

268. The applicant claimed EUR 3,500, plus any tax that may be chargeable, for the costs and expenses incurred before the Court in respect of Serbia, and the same amount in respect of North Macedonia. He submitted no documents proving that he had incurred any costs and expenses.

269. Both respondent Governments contested the applicant's claim and submitted that he had not incurred any costs or expenses as he had been represented by an NGO which provided free legal aid to asylum-seekers (see paragraph 2 above).

270. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. That is, the applicant must have paid them or be bound to pay them pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the violation found or to obtain redress (see, among other authorities, *Đurić v. Serbia*, no. 24989/17, § 95, 6 February 2024, with further references).

271. While, in principle, the lawyers in Serbia are entitled to recover their fees in accordance with the relevant legislation, the situation in the present case appears to be specific. In particular, the documents before the Court indicate that the lawyer representing the applicant, a member of the Bar Association, acted on behalf the APC, which itself has made it publicly known, via their website, that it provides free legal aid (see paragraph 2 above). In these circumstances and in the absence of any concrete proof that the applicant has indeed incurred any legal costs in term of legal representation, the Court rejects his claim in that regard.

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to join the applications;

2. *Dismisses*, unanimously, the respondent Governments' preliminary objections in respect of the applicant's participation in the events of 12 and 24 October 2016 and 11 November 2016 respectively, and accepts the objection of the Government of North Macedonia as regards the alleged expulsion of the applicant on 9 November 2016;

3. *Decides*, unanimously, to join to its consideration of the merits of the complaint under Article 3 of the Convention the preliminary objection of the Government of North Macedonia concerning the exhaustion of domestic remedies, notably the failure to pursue an asylum application, and dismisses it;

4. *Declares*, unanimously, the complaints under Article 3 of the Convention concerning *de facto* removals of the applicant from Serbia to North Macedonia on 12 and 24 October 2016 and from North Macedonia to Greece on 11 November 2016 admissible;

5. *Declares*, by a majority, the complaint under Article 3 of the Convention in respect of Serbia about an alleged degrading treatment during the applicant's removals on 12 and 24 October 2016 and the risk of ill-treatment in case of his expulsion inadmissible;

6. *Declares*, unanimously, the complaints under Article 5 §§ 1 and 2 of the Convention in respect of both respondent States inadmissible;

7. *Declares*, unanimously, the complaint under Article 13 in conjunction with Article 5 of the Convention in respect of North Macedonia inadmissible;

8. *Holds*, unanimously, that there has been a violation of the procedural aspect of Article 3 of the Convention in respect of Serbia in relation to the applicant's expulsions on 12 and 24 October 2016;

9. *Holds*, unanimously, that there has been a violation of the procedural aspect of Article 3 of the Convention in respect of North Macedonia in relation to the applicant's expulsion on 11 November 2016;

10. *Holds*, unanimously, that there is no need to examine the complaints in respect of either respondent State under Article 13 in conjunction with Article 3 of the Convention;

11. *Holds*, unanimously, that it is not necessary to examine the case under Article 5 § 4 of the Convention and Article 2 of Protocol No. 4 to the Convention in respect of North Macedonia;

12. *Decides*, unanimously, to continue to indicate to the Government of Serbia under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to expel the applicant until such time as the present judgment becomes final or until further notice;

13. *Holds*, by six votes to one,
    (a) that the respondent States are each to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in

respect of non-pecuniary damage, to be converted into the currencies of the respondent States at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

14. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 November 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Ioannis Ktistakis President