



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

## **ECHR/UNHCR seminar on migration**

Opening words by Marko Bošnjak

*Strasbourg, 25 October 2024*

Dear Judges,  
Dear participants,

It is a great pleasure for me, as President of the European Court of Human Rights, to launch today's seminar on the European Convention on Human Rights and international refugee law this morning. On behalf of the Court, it is also a great pleasure for me to welcome you all to the Court and to Strasbourg.

Before turning to the theme for today, I would like to thank those who have helped to organise today's seminar, namely Zoë Bryanston-Cross, Valérie Schwartz and Tatiana Kirsanova from the Registry of the Court and from the UNHCR, Andreas Wissner, Jutta Seidel, and Dylan Lakhal who have made this seminar possible. This is the first time in a long time that we have held a joint seminar of this type, and I think it is the moment to take up this initiative again.

The challenges facing refugees and asylum seekers have multi-faceted causes and now more than ever we see persons seeking refuge from conflict, persecution, violence and social or environmental threats as the world witnesses the highest number of displacements on record<sup>1</sup>, largely driven by new and ongoing conflicts across the world.<sup>2</sup>

This is why UNHCR, and the Court, felt it was a suitable time to gather together judges deciding cases relating to migration, in order to discuss the important legal rights that relate to refugees and asylum seekers, and the challenges that arise when they seek refuge at state borders. With our distinguished panel of speakers from many countries I am sure that we will have a very fruitful and constructive dialogue.

At the outset, it is worth noting that the European Convention on Human Rights and its Protocols does not establish a stand-alone right to asylum. This is the case even though certain Articles refer to "aliens", such as Article 4 of Protocol No. 4 (which prohibits the collective expulsion of aliens), and Article 1 of Protocol No. 7 (which outlines procedural safeguards related to the expulsion of aliens).

However, this does not mean that a lacuna arises in protection for asylum seekers and refugees at the Court. In fact, issues related to migration have been brought before the Court in many forms and under many Convention Articles since its inception. We have dealt with complaints that may arise at each part of a migrant's journey.

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<sup>1</sup> [Refugee Statistics | USA for UNHCR \(unrefugees.org\)](#)

<sup>2</sup> [Global Trends | UNHCR](#)

Turning now to the substance of today's seminar, two sub-topics have been highlighted for discussion, namely: (I) Prohibition of collective expulsions under Article 4 of Protocol No.4 of the Convention and admission to territory and procedures for persons seeking international protection and (II) Protection against Refoulement under Article 3 of the Convention and removal to a 'Safe Third Country'.

As we will hear in greater detail later, the first topic today concerns collective expulsion. Collective expulsion can be understood as any measures compelling aliens, as a group, to leave a country except where the measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group.<sup>3</sup> This is prohibited under Article 4 of Protocol No. 4. The rationale for this prohibition is to ensure that States examine the personal circumstances of aliens before removing them.<sup>4</sup>

Now I will briefly outline some key principles from the Court's case law on this article.

This provision, applies even when the removal occurs outside a national territory. As such, *Hirsi Jamaa and Others v. Italy* confirmed that it covers removals that occur on the high seas.<sup>5</sup> It also applies to the non-admission of aliens at the land border of Contracting States.<sup>6</sup>

To determine the compliance of Article 4 of Protocol No. 4 where individuals are expelled from a land border which they have crossed, a two-tier test was established in *N.D and N.T v. Spain*. Firstly, it must be considered whether the State provided genuine and effective access to means of legal entry. Particularly, if there were border procedures that enabled all people who faced persecution to submit an application for protection under conditions which ensured that the application was processed in a manner consistent with international norms.<sup>7</sup> Secondly, if a State has provided such genuine and effective access and an applicant did not use it, there must be cogent reasons for this based on objective facts for which the State was responsible.<sup>8</sup>

The burden of proof for showing that the applicants did have genuine and effective access to procedures for legal entry is on the respondent state. All cases thus far have turned on whether the State had satisfied this burden of proof.<sup>9</sup>

Recent violations under this provision have been found where there was a collective expulsion of an Afghan family from Hungary to Serbia without considering the Serbian authorities' refusal to readmit them or their personal circumstances<sup>10</sup> and where applicants were removed to a country which they had not come from without being afforded an effective opportunity to submit arguments against their removal.<sup>11</sup>

In session 1, we will go into greater depth on this case law that has been briefly outlined.

The second session concerns the protection against Refoulement under Article 3 and removal to a 'Safe Third Country'.

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<sup>3</sup> *Khlaifa and Others v. Italy*, [GC], no. 16483/12, 2016, § 237

<sup>4</sup> *Ibid* § 238

<sup>5</sup> *Hirsi Jamaa and Others v. Italy* [GC], no.27765/09, 2012

<sup>6</sup> *N.D. and N.T. v. Spain* [GC], nos 8675/15 and 8697/15, 2020

<sup>7</sup> *Ibid* , § 237

<sup>8</sup> *Ibid*

<sup>9</sup> See: [Guide on Article 4 of Protocol No.4](#), §12

<sup>10</sup> *M.D and Others v Hungary*, no 60778/19, 2023 § 64

<sup>11</sup> *S.S. and Others v. Hungary*, nos. 56417/19 and 44245/20, 12 October 2023 § 51

When it comes to this protection against Refoulement under Article 3, the case law of the Court makes it clear that Article 3 may be engaged if substantial grounds have been shown for believing that the person in question would face a real risk of being subject to treatment contrary to Article 3 if they were deported.<sup>12</sup>

In determining the existence of such risk, the Court is concerned with whether there are effective guarantees that protect the applicant against arbitrary refoulement from the country from which they have fled.<sup>13</sup> There is a focus on the foreseeable consequences of the applicants removal to the country in light of the general situation there and the applicant's personal circumstances.<sup>14</sup> If the existence of this risk is established, the applicants removal would breach Article 3.<sup>15</sup>

In this regard, in principle, the burden of proof is on the applicant to adduce evidence to prove that there are substantial grounds for believing that they would be exposed to a real risk of treatment contrary to Article 3 if they were deported.<sup>16</sup> However, the Court recognises that it may be difficult or impossible for the applicants to collect this information.<sup>17</sup> As such, the Court may give applicants the benefit of the doubt when assessing their evidence.

A recent violation under Article 3 in this area was found where applicants, who had fled Iraq due to a threat posed by ISIS, were threatened with expulsion and there was an inadequate assessment conducted by the domestic authorities regarding the risk that the applicants would be exposed to upon their removal.<sup>18</sup>

When it comes to removal to 'safe third country', the Court's case law is clear that it is the duty of the removing State to examine thoroughly whether or not there is a real risk of the asylum seeker being denied access to an adequate asylum procedure in the third country.<sup>19</sup> If it is determined that the guarantees are insufficient, Article 3 gives rise to a duty not to remove the asylum seeker to the third country.<sup>20</sup>

As I have just demonstrated, the case law of the Court provides protections for asylum seekers and refugees. Outside of the Court, protections are also provided by international law as we will hear shortly from Phillippe Leclerc from the UNHCR and later from Catherine Woollard from the ECRE.

I encourage participants to actively take part in today's discussions. We are so fortunate in having a wealth of different European and international experience sitting together in this room. I am looking forward to hearing from our speakers, but also to hearing from you.

Now I will hand over to Phillippe Leclerc, Director of the UNHCR Regional Bureau for Europe, Geneva, Phillippe, the floor is yours. I wish you a fruitful day of discussions.

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<sup>12</sup> *F.G. v. Sweden*, 2016 §§ 110-111, *J.K. and Others v. Sweden* [GC], 2016, §§ 77-105 and most recently *Khasanov and Rakhmanov v. Russia* [GC], nos. 28492/15 and 49975/15, 29 April 2022 §§ 93-116.

<sup>13</sup> *ibid*

<sup>14</sup> *Khasanov and Rakhmanov v. Russia* [GC], 2022, § 95

<sup>15</sup> *Ibid*

<sup>16</sup> *Ibid* § 109

<sup>17</sup> in *J.K. and Others v. Sweden* [GC], 2016, §§ 91-98, *K.I. v. France*, no. 5560/19, § 139, 15 April 2021 and most recently *J.A. and A.A. v. Türkiye*, no. 80206/17, 6 February 2024

<sup>18</sup> *J.A. and A.A. v. Türkiye\**, no. 80206/17, 6 February 2024

<sup>19</sup> *Ilias and Ahmed v. Hungary* [GC], 2019, § 130

<sup>20</sup> *Ibid* § 134