



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



SEMINAR

**European Convention on Human Rights and international refugee law
compliant procedures at state borders
Jurisprudence of the European Court of Human Rights and measures taken in
the context of the execution of judgments**

Presentation by Catherine Woollard,
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ARTICLE 3: REMOVAL TO A THIRD COUNTRY OVERVIEW OF MAIN CHALLENGES ENCOUNTERED BY APPLICANTS

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TOPICS COVERED

- 1) Experiences of applicants in the border context (largely from AIDA, www.aida.org)
- 2) Access to justice (ELENA network)
- 3) Contemporary developments: border context and STC (analysis of EU legislative change)

FOCUS: REMOVAL TO THIRD COUNTRY

Use of some form of safe country concept – a small proportion of cases, but still important numbers. Legal challenges claiming breach of principles.

Removal to third countries: principles applicable to removal without in-merits examination

Ilias and Ahmed v. Hungary [GC], 2019

Distinct from return to country of origin in relation to duties under Article 3: key principle is access to asylum

State must thoroughly examine risk of denial of access in the third country to an adequate asylum procedure, without which the risk of refoulement pertains

Test: thorough examination of information concerning third country's asylum procedure; and full opportunity for the applicant to demonstrate lack of safety

Additional requirement: examination of the risks in relation to Article 3.

FOCUS: INVOCATION OF SPECIAL REGIMES

A cross-cutting challenge is the invocation of special legal regimes in border areas:

- Installing states of emergency
- Derogation from general legal rules
- Creation of zones where special rules apply

Challenges:

- Claim of non-permissible derogations
- The legal bases may be unclear or multiple
- They tend to operate outside the general rules on exceptions (e.g. use of AI5)
- Information on the provisions may even be hard to establish



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CONSEQUENCES

(Information from legal practitioners, border monitors, Treaty bodies etc)

1. A3 risks of multiple types come to pass (refoulement)
2. A3 violations in receiving country, limbo in receiving country
3. Limbo in sending county (see CJEU judgment v Greece)
4. Lack of faith in the authorities – expanded reliance on smugglers and other facilitation efforts
5. Better protection in receiving country?



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2) ACCESS TO JUSTICE

Access to justice challenges greater in the border context than inland

1. Severity of violations
2. Precarity of applicants
3. Lack of legal assistance
4. Remoteness and lack of access – lack of evidence
5. Repression of those assisting applicants and combined pressure on judiciary

In this context:

Importance of border monitoring of all types (by statutory oversight bodies, international organisations, Treaty bodies, civil society (including media, etc)).

Significant role played by execution of judgments and monitoring thereof.

EXECUTION, CASES OF INTEREST:

- [MK and others v Poland](#) on collective expulsions (we submitted a communication in 2022)
- [Shahzad and Ilias and Ahmed groups of cases v. Hungary](#) on collective expulsions and procedural obligation under A3 (we submitted an execution in 2021)
- [Kebe and others groups v Ukraine](#) group of cases - deficiencies in asylum procedures and border control procedures; inadequate assessment of risk (we submitted a communication last year)
- [JA and others groups v. Italy](#) - collective expulsions
- [Moustahi v. France](#) on removal of minors
- [MA v France](#) - organisation of removals (whether the way removals are carried out allows for risk assessment)
- [MSS and Rahimi v Greece](#) - asylum procedures quality and effectiveness (we submitted four communications between 2013 and 2016)
- [SH v Malta](#) - lack of procedural guarantees in accelerated procedures



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2023: AGREEMENT ON LEGAL TEXTS

1. Regulation on Asylum and Migration Migration (AMMR – RAMM)
2. Asylum Procedures Regulation (APR)
3. Qualification Regulation (QR)
4. Crisis and Force Majeure Regulation (with instrumentalisation included)
5. Reception Conditions Directive – recast (RCD)
6. Eurodac Regulation
7. Union Resettlement Framework (URF)
8. Screening Regulation
9. Return Border Procedures Regulation
10. Schengen Border Code Reform



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IMPLEMENTATION PHASE -TIMELINE

- **11 June 2024:** Entry into force
 - **12 June 2024:** EC Implementation plan presented (+ EUR 3.6 billion)
 - **End of June 2024:** Joint roadmap on implementation agreed by EUMS
 - **December 2024:** Member States establish their national plans
 - **12 June 2026:** Application and plans are fully implemented
- 2026**
- Pact instruments become applicable
 - Full annual migration governance cycle starts – expanded role of Commission, EUAA



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