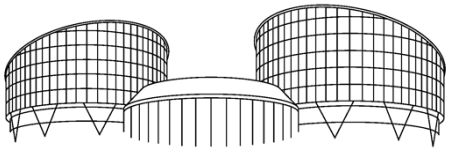

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF A.A. AND OTHERS v. NORTH MACEDONIA

(Applications nos. 55798/16 and 4 others)

JUDGMENT

Art 4 P4 • Prohibition of collective expulsion of aliens • Lack of individual removal decisions for migrants arriving in large groups, where genuine and effective legal entry procedures were circumvented without cogent reasons

Art 13 (+ Art 4 P4) • Effective remedy • Legal possibility to challenge deportation not available to applicants through their own unlawful conduct

STRASBOURG

5 April 2022

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of A.A. and Others v. North Macedonia,

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

Jon Fridrik Kjølbro, *President,*
Carlo Ranzoni,
Egidijus Kūris,
Branko Lubarda,
Jovan Ilievski,
Saadet Yüksel,
Diana Sârcu, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 55798/16 and four others) against the Republic of North Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by five Syrian nationals, two Iraqi nationals, and one Afghan national ("the applicants"), on the various dates indicated in the appended table;

the decision to give notice to the Government of North Macedonia ("the Government") of the complaints concerning the applicants' immediate return from the territory of the respondent State to Greece, and the alleged lack of an effective domestic remedy in that regard;

the decision not to have the applicants' names disclosed;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by the Macedonian Young Lawyers Association, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 15 March 2022,

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

INTRODUCTION

1. The present cases concern the applicants' complaints, under Article 4 of Protocol No. 4 to the Convention and Article 13 of the Convention, about their immediate return to Greece after having illegally crossed into the territory of North Macedonia in March 2016, and the alleged lack of an effective domestic remedy in that regard, respectively.

THE FACTS

2. A list of the applicants is set out in the appendix.
3. The Government were represented by their Agent, Ms D. Djonova.

I. THE CIRCUMSTANCES OF THE CASE

4. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Background information

5. In the course of 2014 there was a significant increase in the number of migrants, including from Afghanistan, Iraq and Syria, trying to reach various European Union countries. One of the routes used was the so-called "Balkan route", which included travelling from Turkey via Greece to the then former Yugoslav Republic of Macedonia[1] and then through Serbia to the European Union. Responding to the influx of refugees, countries along the route adopted a wave-through approach, by mostly permitting the migrants to pass through. By the second half of 2015, the continued and sustained irregular migrant flows became a concern, prompting the European Union ("EU") to address the situation.

6. 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 irregular flows of migrants along the Balkan route had come to an end.

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

B. Application no. 55798/16

8. The applicants are a Syrian family from Aleppo. They left Syria in late 2015, and on 24 February 2016 they arrived in Idomeni, Greece, a town situated on the border with the respondent State, where a camp had been set up for refugees. They alleged that on 14 March 2016 they joined a large group of refugees (around 1,500) in what became known as "the March of Hope", crossed the border wading across a river (the Suva Reka), and entered Macedonian territory. After a short walk, they reached a point where hundreds of refugees (at least 500) were allegedly surrounded by military personnel of North Macedonia. There were also Czech and Serbian soldiers. They spent the night in the open air. The applicants alleged that at 5 a.m. the next morning, soldiers of North Macedonia threatened the refugees, including the applicants, with violence unless they returned to Greece. The applicants walked for three to four hours and arrived back in Idomeni, Greece.

[1] For easier reading, all references to the former Yugoslav Republic of Macedonia and the Republic of North Macedonia will be to North Macedonia.

C. Applications nos. 55808/16, 55817/16, 55820/16 and 55823/16

9. The applicants are Afghan, Iraqi and Syrian nationals. They stated their personal circumstances including those that had made them leave their countries of origin. The applicants alleged that on 14 March 2016 they left the Idomeni camp, joined "the March of Hope", crossed a river (the Suva Reka) and entered the territory of the respondent State. The applicant in application no. 55817/16, who is reliant on a wheelchair, wheeled himself where possible and relied on others to carry him over muddy or rocky terrain, and across the river. In Moin, a small village in the respondent State, the applicants were intercepted and surrounded by soldiers of North Macedonia, who told those gathered that if they failed to turn off their cameras and phones, they would confiscate them. The soldiers then separated out and arrested activists, journalists and volunteers (who were accompanying the refugees on the march), which prevented the ensuing actions of the State officials from being documented. The soldiers allegedly ordered the applicants to board army trucks, and drove them back to the Greek border. Some of the applicants alleged that police officers from the respondent State had been standing guard at the border fence. Others alleged that soldiers had formed two lines and ordered the refugees to run between them. The soldiers had allegedly used sticks to beat the refugees as they ran to the fence. The applicants were ordered to cross the fence to the Greek side of the border. They passed through a hole in the fence or crawled under it. Soon afterwards they returned to the camp in Idomeni, Greece.

D. Other relevant facts

1. Other relevant facts related to the above events

10. The applicants submitted video footage of parts of the march and indicated themselves on the videos. The applicants in applications nos. 55798/16 and 55808/16 also provided copies of their identity documents to facilitate their identification.

11. One of the volunteers in the Idomeni camp, A.R.M., accompanied the migrants during the march. She submitted that the soldiers of North Macedonia had shouted at media representatives to turn off their cameras or they would confiscate them. She further stated that the soldiers had kept their guns pointed at them and, when they had reached the border (she had hidden among the migrants), the soldiers had formed two lines, had made the migrants get into columns, shouting at them to walk quickly, and had guided them between the fences until they had found a hole in them. The migrants had been made to crawl through the hole and under the fence back into Greece.

12. Foreign journalists, volunteers and the other non-migrants accompanying the march had been separated from migrants, identified, fined,

expelled, and banned from entering North Macedonia for six months. Two foreign journalists confirmed that their cameras had been confiscated.

13. On 15 March 2016 the Ministry of the Interior of North Macedonia informed the public that there had been an attempted illegal entry of migrants in the vicinity of the village of Moin. It confirmed that about 1,500 migrants had illegally crossed the State border with Greece, and that another group of about 600 people, intending to cross illegally, had also been intercepted at the border. There had been seventy-two foreign journalists with them, who had been secured and issued with travel orders, after which they had returned to Greece. The migrants who had crossed illegally had also been returned.

2. Other relevant facts

14. There are nineteen border crossing points and two airports in North Macedonia. The busiest border crossings are Bogorodica in the south, on the border with Greece and close to Idomeni, and Tabanovce in the north, on the border with Serbia.

15. The walking distance between Idomeni and the Bogorodica border crossing is approximately 7.6 km. The walk between the two would take approximately one hour and thirty minutes.

16. On 19 August 2015, because of the increased influx of migrants/refugees, the Government of North Macedonia declared a crisis situation on part of its territory, more precisely on the territory of Gevgelija (Bogorodica border crossing) and Kumanovo (Tabanovce border crossing). The Parliament later extended the crisis situation until 15 June 2016, and then until 30 June 2017.

17. A report by the Office of the United Nations High Commissioner for Refugees (UNHCR) issued in August 2015 indicated a number of challenges in the implementation of the relevant legislation in North Macedonia, such as a limited capacity of the border officials to identify people with international protection needs, including asylum-seekers, and a lack of interpretation. Between 18 June 2015 and the end of July 2015 the authorities registered 18,750 people as having expressed their intention to seek asylum in the country, with a steady trend of some 1,000 new arrivals every day. The report noted, however, that over 90 per cent of those who had applied for asylum had left the country before the interviews were held.

18. A Human Rights Watch report issued in September 2015 indicated that few asylum-seekers chose to apply for asylum in North Macedonia and those who did so often left the country before a decision on their application had been made.

19. On 3 December 2015 the *Večer* newspaper published that in the previous 24 hours at the Bogorodica border crossing centre, 2,797 certificates of an expressed intention to seek asylum had been issued to foreign citizens, refugees and migrants. That made a total of 300,420 certificates having been

issued – 177,130 to citizens of Syria, 72,752 to citizens of Afghanistan, and 29,100 to citizens of Iraq.

20. The Crisis Management Centre (CMC) issued a report for the period from 19 August to 31 December 2015. The report specified that in the reference period, about 640,000 migrants/refugees had entered the territory of North Macedonia. The report further noted that between 19 June and 31 December 2015, certificates of an expressed intention to apply for asylum had been issued to a total of 388,233 foreign citizens – 216,157 Syrians, 95,691 Afghans, and 54,944 Iraqis (and the rest to various other nationalities). In the same period the Sector for Asylum in the Ministry of the Interior had received eighty-six asylum applications (fifty-six from Syrians, thirteen from Afghans, and three from Iraqis).

21. The CMC report specified that the difference between the number of migrants/refugees who had entered the State and the number to whom certificates had been issued was due to a large influx of migrants/refugees on several occasions, where there had been more than 10,000 people entering daily from Greece, and the inability of the Ministry of the Interior to register all of the people because of the limited time during which they should be provided with transit to the northern border.

22. The report also noted, *inter alia*, that a reception and transit centre for refugees/migrants had been established and operated in Gevgelija (the closest town to the Bogorodica border crossing), and that a railway line for the transportation of migrants/refugees from this centre to the northern border at Tabanovce had also been arranged. It also specified that during the crisis situation, Red Cross teams and other domestic and international humanitarian and non-governmental organisations had been present at the centre and had actively participated in the distribution of humanitarian aid and the provision of basic medical services.

23. A report of the Ministry of the Interior indicated that between 1 January and 14 March 2016, certificates of an expressed intention to apply for asylum had been issued to another 89,628 migrants – 44,634 Syrians, 26,546 Afghans and 18,337 Iraqis. The report indicated that on 14 March 2016 no certificates had been issued and no asylum applications had been made.

24. Between 1 January and 17 March 2016, 283 applications for asylum were submitted on behalf of 314 persons.

25. On 15 March 2016 the European Commissioner for Migration and Home Affairs called the situation in Idomeni “a tragedy that must not be repeated”. In April 2016 Amnesty International described the conditions in the Idomeni camp as “squalid” and “appalling”, as people had been left to sleep outside of shelters, exposed to bad weather and lacking sufficient sanitary facilities. In May 2016 UNHCR described the conditions as “abysmal”.

26. In March 2016 the European Council on Refugees and Exiles (ECRE) and the International Commission of Jurists (ICJ), in a report to the Council of Europe Committee of Ministers, concluded that persisting obstacles to accessing the asylum procedure in Greece left asylum-seekers at serious risk of deportation without an individual assessment of their risk of being sent to a country where there were substantial grounds for believing that they would be subject to treatment contrary to Articles 2, 3, 5 or 6 of the Convention.

27. The Helsinki Committee for Human Rights in Skopje published information that between 8 and 20 March 2016 not a single certificate of an expression of intention to apply for asylum was issued, and that no refugee was registered between 21 and 27 March 2016. A UNHCR inter-agency operational update for the period between 4 and 31 March 2016 indicated that, according to the Ministry of the Interior, 979 refugees and migrants had crossed the border into North Macedonia in the reporting period, with the final arrivals on 7 March 2016.

28. Between 4 and 17 April 2016, a total of 1449 irregular border crossings in the south of North Macedonia were prevented.

29. Between 9 March and 31 December 2016, 477 people sought asylum, of whom 152 were Syrian nationals, 126 Afghans, and 60 Iraqis. In 2016 five people were granted asylum, one person was granted refugee status, eleven asylum requests were refused, and for 460 other requests the proceedings have been discontinued as the people who had submitted the requests had left the place where they were staying and had not attended the interview.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW

A. The Constitution

30. Article 29 of the Constitution (*Устав*, Official Gazette nos. 52/1991, 1/1992, 31/1998, 91/2001, 84/2003, 107/2005 and 3/2009) guarantees the right to asylum to foreigners and stateless persons persecuted for their democratic political beliefs and activities.

B. Asylum and Temporary Protection Act

31. The Asylum and Temporary Protection Act ("the Asylum Act", *Закон за азил и привремена заштита*; published in the Official Gazette nos. 49/2003, 66/2007, 142/2008, 146/2009, 166/2012, 101/2015, 152/2015, 55/2016 and 71/2016) sets out, *inter alia*, the conditions and procedure for the granting and termination of asylum to aliens or stateless persons, and the rights and duties of asylum-seekers. On 18 June 2015 the amendments thereto entered into force. Their implementation started from the next day.

32. Section 7 provides that the asylum-seeker, recognised refugee or person under subsidiary protection cannot be expelled, or in any manner whatsoever be forced to return to the frontiers of the state in which his life or freedom would be threatened on account of his race, religion, nationality, belonging to a particular social group or political affiliation, or where he would be subjected to torture, inhuman or degrading treatment or punishment.

33. Section 12 provides that the Ministry of the Interior, through its organisational unit in charge of asylum ("the Sector for Asylum"), is to implement the procedure for recognition of the right of asylum and make a decision in the first instance. Paragraph 2 of the same section provides that administrative-dispute proceedings may be initiated before the relevant court against the first-instance decision.

34. Section 14 provides that asylum-seekers have the right to legal assistance, and explanations as regards the conditions and procedure for the 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.

35. Section 16(1) provides that foreign nationals at the border crossing or inside Macedonian territory may orally or in writing express an intention to submit an application for recognition of the right of asylum before a police officer of the Ministry of the Interior. Pursuant to section 16(2) the police officer will record the personal data of such a foreign national, issue a copy of the certificate for the declared intention and direct the person to submit an application for recognition of the right of asylum within 72 hours before the relevant official in the office of the Sector for Asylum in the Reception Centre for Asylum-Seekers. Should the foreign national fail to proceed in accordance with that procedure, he or she will be processed in accordance with the provisions for foreign nationals.

36. Section 16-a provides that an asylum-seeker may apply for recognition of the right of asylum to the police at the border crossing point, the nearest police station, or at the office of the Sector for Asylum in the Reception Centre for Asylum-Seekers. If the application is submitted to the police at the border crossing point or at the nearest police station, the police officer shall escort the asylum-seeker to the Reception Centre for Asylum-Seekers. An asylum-seeker who resides within Macedonian territory shall submit an asylum application to the Sector for Asylum. In cases of family reunification, the application can be lodged in the diplomatic or consular mission of North Macedonia abroad.

37. Section 17 provides that an asylum-seeker who has illegally entered or has been illegally staying in Macedonian territory, and is coming directly from a state where his life or freedom have been at risk, shall not be punished, provided that he or she immediately applies for the recognition of the right of asylum to the Sector for Asylum or reports himself or herself at the nearest police station and gives explanations for his or her application for recognition of the right of asylum, and valid reasons for his or her illegal entry or stay. In

that case the police shall immediately escort the person to the Sector for Asylum.

C. Aliens Act

38. Section 3 of the Aliens Act (*Закон за странци*; Official Gazette no. 35/2006) stipulates, *inter alia*, that the provisions of that Act apply to all foreigners, except those who seek protection in accordance with the Asylum Act unless otherwise provided in the Aliens Act.

39. Section 9 provides that a foreigner may enter the State and leave its territory only at designated border crossing points, at hours and in a manner in accordance with the purpose of such a border crossing point.

40. Section 21 specifies that a foreigner's entry into the State will be deemed unauthorised, *inter alia*, when he or she crosses or attempts to cross the State border outside of the designated place, or outside of the hours and manner specified for border crossings, or if he or she avoids or attempts to avoid border controls.

41. Section 23 sets out when a foreigner may be denied entry into North Macedonia. This includes 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, or where there is a well-founded suspicion that he or she has no intention to stay in North Macedonia for the purpose indicated.

42. Section 25 provides that a foreigner cannot be denied entry on the basis of section 23 of the Act if, *inter alia*, he or she expresses an intention to apply for asylum in North Macedonia, or has lodged such an application.

43. Sections 101-113 set out details as regards expulsion and deportation. In particular, section 101 provides that a foreigner may be expelled if, *inter alia*, he or she stays illegally in North Macedonia. This provision does not, however, apply to a foreigner seeking the protection of the State in accordance with the Asylum Act. Section 103 provides that the Ministry of the Interior is responsible for issuing the relevant decisions. A decision will contain the time-limit within which the foreigner in question is obliged to leave the country, and will state that if the foreigner does not leave the country within the specified period on a voluntary basis, he or she will be deported. A foreigner has a right to lodge a complaint with the relevant commission within eight days from the date on which he or she received the decision. Administrative-dispute proceedings may be initiated against the decision of the relevant commission before a court which has jurisdiction in accordance with the Administrative Disputes Act. Section 107 provides that a foreigner may not be deported to a country where his or her life or freedom would be threatened on account of race, religion or nationality, belonging to a social group or political opinion, or where he or she would be subjected to torture, inhuman or degrading treatment or punishment.

44. Section 153 provides that a foreigner will be fined if he or she enters North Macedonia with no authorisation or illegally stays in the territory. A foreigner may also be expelled for these offences.

D. Border Control Act

45. Section 9 of the Border Control Act (*Закон за гранична контрола*, Official Gazette nos. 171/2010, 41/2014, 148/2015, 55/2016 and 64/2018) provides that a State border can be crossed only at border crossings during its opening and/or working hours.

46. Section 53 provides that the police will take measures and actions in the entire Macedonian territory with the aim of, *inter alia*, the discovery and suppression of illegal migration and illegal border crossing, and the prevention of cross-border crime.

II. RELEVANT INTERNATIONAL MATERIAL

47. UNHCR Observations on the situation of asylum-seekers and refugees in North Macedonia, published in August 2015, note that significant progress had been made to align the national legislation framework with international standards of asylum, but substantial shortcomings still persisted when it came to implementation. There were, *inter alia*, concerns about access to the territory and the asylum procedure, including the processing of claims; the quality of decision-making remained inadequate, there was a lack of effective legal remedies, and access to information and interpretation were not always ensured. It concluded that the country had not as yet met the international standards for the protection of refugees and did not qualify as a safe third country.

48. The Special Representative of the Secretary General of the Council of Europe on Migration and Refugees, Ambassador Tomáš Boček, had a fact-finding mission to the respondent State on 10 and 11 March 2016. He visited, *inter alia*, two camps, in which he reported he had been faced with very different situations. One camp near the Greek border (Gevgelija) was almost empty, while the other camp, near the Serbian border (Tabanovce), was seriously overcrowded. The population of these camps consisted of people who had been transiting through the country when the Balkan route had been closed. Very few wished to apply for asylum there. He also reported that the border with Greece was at the time policed by officers from the respondent State and other Council of Europe member States. Refugees and migrants from the other side of the border had quite regularly tried to enter Macedonian territory and there had been repeated reports of pushbacks, and even allegations of ill-treatment by border guards.

49. For other relevant international documents, see *N.D. and N.T. v. Spain* ([GC], nos. 8675/15 and 8697/15, §§ 53, 59-67, 13 February 2020).

THE LAW

I. JOINDER OF THE APPLICATIONS

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

II. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL NO. 4 TO THE CONVENTION

51. The applicants complained that their summary deportation by the authorities of the respondent State had amounted to collective expulsion, in violation of their rights under Article 4 of Protocol No. 4 to the Convention. The relevant Article reads as follows:

Article 4 of Protocol No. 4

"Collective expulsion of aliens is prohibited."

A. The preliminary issues

1. The applicants' participation in the events in question

52. The Government submitted that the applicants had failed to provide convincing *prima facie* evidence that they had been in the relevant groups and had been subjected to the expulsion. The videos enclosed were of poor quality, from which the people in the crowd could not be identified, and some of the applicants had not submitted any documents for their personal identification. Even if, therefore, the interviews had been conducted, the identity of each of them individually could not have been established with certainty.

53. The applicants contested the Government's objections. In particular, they contended that they had had no documents to prove their presence precisely because of the failure of the respondent State to issue documents to them.

54. The Court observes significant differences in the parties' accounts of the facts. According to the Court's 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 (see, 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 authorities of the respondent State in the present case, which has contributed to the difficulty experienced by the applicants in adducing evidence of their involvement in the events in issue, is at the very core of the

applicants' complaint. Accordingly, the Court will seek to ascertain whether the applicants have furnished *prima facie* evidence in support of their version of events. If that is the case, the burden of proof should shift to the Government (ibid., § 152; see also *Baka v. Hungary* [GC], no. 20261/12, § 149, 23 June 2016).

55. The Court notes that the applicants gave a coherent account of their individual circumstances, their countries of origin, the difficulties that had led them to Greece and their participation on 14 March 2016, with other migrants, in the march and illegal crossing of the land border between Greece and North Macedonia (see paragraphs 8 and 9 above), which illegal entry was immediately repelled by the respondent State's police and army personnel. In support of their assertions the applicants provided video footage showing the migrants marching as they had described, and on which they claimed to recognise themselves. The Court further observes that the Government did not deny the existence of the summary expulsions of 14 and 15 March 2016, in fact quite the contrary (see paragraph 13 above).

56. In such circumstances and in view of the background to the present case, the Court considers that the applicants have presented *prima facie* evidence of their participation in the march and illegal entry into the respondent State on 14 March 2016, which has not been convincingly refuted by the Government. Consequently, the Court dismisses the Government's preliminary objection in this regard, and will presume the account of the events presented by the applicants to be truthful (see, *mutatis mutandis*, *N.D. and N.T.*, cited above, §§ 85-88, 13 February 2020).

2. The issue of jurisdiction

57. The Government contested the argument that they had had exclusive jurisdiction in respect of the events. Firstly, it was unclear if the video footage submitted had been filmed in the respondent State or elsewhere, and, secondly, the authorities of North Macedonia had not been the only ones involved in the actions, given that police forces from other countries had also been involved. The Government submitted that a mass influx of migrants, who had transited through the respondent State on their way to the European Union, had created serious challenges to the State's border authorities, which had necessitated other countries' assistance. They maintained that violent and illegal actions by migrants should not suffice *per se* to establish a jurisdictional obligation on the State to ensure the alleged procedural right of each and every member of the group who was acting illicitly to have their cases examined. To hold that the illegal and violent attempt to cross the State border on 14 March 2016 automatically entailed the respondent State's jurisdiction to provide the alleged procedural right of illegal migrants to personalised examination of their case was tantamount to *de facto* praise of illicit behaviour by migrants, and indirectly rewarding those who had manipulated and incited such illegal mass influxes.

58. The applicants contested the Government's objections.

59. The relevant principles in this regard are set out in *N.D. and N.T.* (cited above, §§ 102-03). In particular, a State's jurisdictional competence under Article 1 is primarily territorial. It is presumed to be exercised normally throughout the State's territory. Only in exceptional circumstances may this presumption be limited, particularly where a State is prevented from exercising its authority in part of its territory (ibid., § 103).

60. As a State's jurisdiction is presumed to be exercised throughout its territory, the question to be addressed is whether the respondent State may, by invoking exceptional circumstances as it has done, alter or reduce the extent of its jurisdiction in part of its territory where the events in issue took place.

61. In that regard the Court observes at the outset that its case-law precludes territorial exclusions (see *Matthews v. the United Kingdom* [GC], no. 24833/94, § 29, ECHR 1999-I, and *Assanidze v. Georgia* [GC], no. 71503/01, § 140, ECHR 2004-II) other than in the instance referred to in Article 56 § 1 of the Convention (dependent territories), which is not applicable in the present case.

62. In the instant case the Government referred to the difficulty of managing illegal migration through the respondent State. However, they did not allege that this situation prevented them from exercising their full authority over the relevant part of the national territory. While the Government referred to the participation of police officers from other States, it is clear from the circumstances of the case that the respondent State has never ceded its jurisdiction over the area in question to any State, including those whose police officers had come to help the respondent Government. The Court also notes that the Ministry of the Interior of North Macedonia issued a press release confirming that two large groups of illegal migrants had been returned to Greece on 15 March 2016 (see paragraph 13 above), thereby assuming responsibility for the action in question and rendering irrelevant the issue of where exactly the video footage had been made.

63. Hence, the Court cannot discern any "constraining *de facto* situation" or "objective facts" capable of limiting the effective exercise of the respondent State's authority over its territory in this particular area and, consequently, of rebutting the "presumption of competence" in respect of the applicants (see *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, §§ 313 and 333, ECHR 2004-VII). Furthermore, the Court has previously stated that the special nature of the context as regards migration cannot justify an area outside the law where individuals are covered by no legal system capable of affording them enjoyment of the rights and guarantees protected by the Convention which the States have undertaken to secure to everyone within their jurisdiction (see, *mutatis mutandis*, *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 178, ECHR 2012). As a constitutional instrument of European public order (see *Loizidou v. Turkey* (preliminary

objections), 23 March 1995, § 75, Series A no. 310, and *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 141, ECHR 2011), the Convention cannot be selectively restricted to only parts of the territory of a State by means of an artificial reduction in the scope of its territorial jurisdiction. To conclude otherwise would amount to rendering the notion of effective human rights protection underpinning the entire Convention meaningless (see *Assanidze*, cited above, § 142).

64. Accordingly, the events giving rise to the alleged violations fall within the respondent State's jurisdiction within the meaning of Article 1 of the Convention. Consequently, the Court dismisses the Government's objection in this regard (see, *mutatis mutandis*, *N.D. and N.T.*, cited above, §§ 105-111, 13 February 2020).

B. Admissibility

1. The applicants' alleged loss of victim status

65. The Government submitted that, even assuming that the people visible in the video footage were indeed the applicants, the latter had ceased to have victim status, as at the time of lodging their applications they had all been residing in various safe EU countries.

66. The applicants maintained that they had preserved their victim status as there had been no acknowledgement of the violation or reparation of it. In any event, the fact that they had later reached EU countries was irrelevant for the complaint in question.

67. In the case of an alleged expulsion such as the present one, the Court has already taken the view that it could not take into consideration events that occurred following a separate crossing of the border (see *N.D. and N.T.*, cited above, § 114). Consequently, it dismisses the Government's objection in this regard.

2. Exhaustion of domestic remedies

68. The Government submitted that the applicants had failed to exhaust the effective domestic remedies. As they were all in EU countries, there was no legal or factual obstacle to their initiating adequate proceedings before the national courts of the respondent State. They could have: (a) lodged a criminal complaint against those who had secured the border, who had allegedly been involved in their expulsion; (b) claimed compensation for the damage caused by the alleged unlawful conduct, including against the Ministry of the Interior, as a legal entity that was liable for the damage caused by its bodies, which included the Border Police; (c) pursued of their own motion a criminal prosecution for coercion, all of which proceedings could still be taken by the applicants at the time when the Government submitted their observations.

69. The applicants submitted that the Government had failed to demonstrate the existence, effectiveness and availability of the suggested remedies. In any event, none of them appeared to be related to the violation complained of, that is the unlawfulness of the deportation and its summary character.

70. The Court observes that the Government have outlined the different procedures which, they maintain, were available to the applicants after they had been expelled from the respondent State territory. In the light of the applicants' complaint that they were subjected to a collective expulsion, the procedures proposed by the Government cannot be regarded as effective remedies in respect of the alleged violation. The Government's objection of non-exhaustion must therefore be dismissed too.

3. Six months

71. The Government maintained that the applications had been submitted outside the six-month time-limit, as the event in question had taken place on 14 March 2016, and the Court's stamps on the application forms were from 16 September to 19 September 2016.

72. The applicants contested the Government's argument.

73. The Court notes that date of the lodging of the application is the date of the postmark when the applicant has dispatched a duly completed application form to the Court (Rule 47 § 6 (a) of the Rules of Court; see also *Vasiliauskas v. Lithuania* [GC], no. 35343/05, §§ 115-17, ECHR 2015, and *Brežec v. Croatia*, no. 7177/10, § 29, 18 July 2013). In the present case all the applications were submitted on 12 September 2016, and therefore within six months. The Government's objection in this regard must also be dismissed.

4. Applicability of Article 4 of Protocol No. 4

(a) The parties' submissions

(i) The Government

74. The Government submitted that Article 4 of Protocol No. 4 was not applicable as the action in question had not been a collective expulsion, but the prevention of an illegal entry into the country. The officials in question had had a duty to protect the border from illegal crossings and to maintain the territorial integrity. The number of illegal entries had kept rising in 2014, reaching disturbing proportions by the end of 2015, with over 10,000 people on some days. To refrain from measures aimed at preventing illegal admission, thereby jeopardising its own and regional border management policy, that is, maintaining territorial integrity, would have in practice encouraged further illegal mass influxes at the critical time.

75. After the European Union had decided to address the situation, the respondent State had also taken steps to adjust its policy and prevent waves of illegal migrants. The measures taken were in line with national legislation and international standards and had been aimed at ensuring the effectiveness of border surveillance and control.

(ii) The applicants

76. The applicants contended that their return to Greece had constituted collective expulsion, which was defined by the absence of an individual basis for that expulsion, rather than the characteristics of the group.

(b) The Court's assessment

77. In order to determine whether Article 4 of Protocol No. 4 is applicable the Court must first establish whether the applicants were subjected to an "expulsion" within the meaning of that provision.

78. The relevant principles in that regard are set out in *N.D. and N.T.* (cited above, §§ 166-88).

79. Turning to the present case, the Court is in no doubt that the applicants were apprehended on Macedonian territory by the police and army of North Macedonia and were therefore within that State's jurisdiction within the meaning of Article 1 of the Convention. The Court refers in that regard to the considerations it outlined in reply to the Government's preliminary objection that the respondent State lacked jurisdiction in the present case (see paragraphs 62-64 above). Those considerations were based on the fact that a State may not unilaterally claim exemption from the Convention, or modify its effects, in respect of part of its territory, even for reasons it considers legitimate.

80. It is further beyond dispute that the applicants were removed from Macedonian territory and (forcibly) returned to Greece by members of the respondent State's police and army. There was therefore an "expulsion" within the meaning of Article 4 of Protocol No. 4. Accordingly, that provision is applicable in the present case. The Court therefore dismisses the Government's preliminary objection in this regard.

5. The Courts' conclusion

81. 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.

C. Merits

1. The parties' submissions

(a) The applicants

82. The applicants reaffirmed their complaint, including that they had not been given an opportunity to express their intention to seek asylum or to oppose their deportation, and contested the Government's submissions. They contested, in particular, that they had been told that they could not go on any further from North Macedonia and that, in view of that prospect, they had voluntarily returned to Greece. There had been no individual assessment of their case by the national authorities nor had they been issued with an administrative or court order for their deportation. This had amounted to a collective expulsion, without any procedure or remedy to oppose it. Through the characterisation of these deportations as illegal entries that had been prevented, the Government had allowed itself to suspend the application of the relevant national legal framework, and to justify summary expulsion. The right embodied in Article 4 of Protocol No. 4 applied irrespective of whether the individual had entered the country illegally or not.

83. They maintained that the amendments to the Asylum Act were aimed at facilitating transit through the respondent State and along the "humanitarian corridor". Those amendments allowed people who had illegally entered the territory to express an intention to make an asylum application or to transit through the territory. However, by the time the applicants were on Macedonian territory, that kind of transit was no longer possible, and yet the amendments in question were still in force.

84. The relevant legislation allowed for the registration of an asylum claim at the border crossing only as an alternative; the claim could also be registered at the nearest police station or at the premises of the Sector for Asylum, and the registration of an intention could be made at a border crossing or inside Macedonian territory. In any event, a possibility of claiming asylum elsewhere was irrelevant to the issue of whether they had been collectively expelled on 14 and 15 March 2016. In addition, neither denial of entry nor expulsion could apply to asylum-seekers, and when it did apply a written decision had to be issued, which could be challenged within eight days, even though the challenge did not have suspensive effect. In fact, neither the intention of the applicants nor the possibility of their applying for asylum elsewhere was relevant to the applicability of Article 4 of Protocol No. 4 to the Convention. Lastly, readmission from North Macedonia to Greece was governed by the 2008 Readmission Agreement, which provided for a written procedure for readmission, including the identification of the person to be readmitted. Although the Government had claimed that the present case was one of a denial of entry, none of the relevant procedure had been complied with.

85. The respondent State had itself submitted that these provisions had been intended to apply either to asylum-seekers present at the border crossing or to those who were already inside Macedonian territory after crossing the border illegally (see paragraph 102 *in fine* below). The relevant legislation in place at the relevant time therefore provided for the possibility of refugees and asylum-seekers entering Macedonian territory irregularly and registering their intention to claim asylum or making the asylum claim itself at the nearest police station. They submitted that the test of the culpability of their own conduct could not apply in situations where national law provided for the possibility of refugees and asylum-seekers being inside the territory after crossing irregularly. It would be against the principle of legal certainty and good faith to consider "culpable" a conduct provided for by law, which was the case in their situation. The Government's concept of an "inter-border zone" was legally unclear, and, in any event, the Government did not claim that the provisions concerning the denial of entry and/or expulsion had been suspended in the zone in question.

86. The applicants contended that there was no genuine and effective access to means of legal entry which they could have made use of and that that had originated from the respondent State only, and from its decision to actively impede asylum-seekers in accessing its national protection procedures. They maintained that the Government had provided no evidence to support the argument that it had indeed been possible for them to seek asylum at the Bogorodica border crossing at the time of their summary deportation, that is on or around 14 and 15 March 2016. Evidence that means of legal entry were never or extremely rarely used should be a strong indication of their unavailability in practice and that there was no realistic opportunity for the applicants to access them. In the present case no means of legal entry were accessible either in law or in practice. In particular, a decision was taken to close the State's border with Greece from 8 March 2016, "or more precisely to impede the entry and/or transit of migrants 'who did not meet the requirements for entry or did not seek asylum in ... North Macedonia'". Although this would seem to imply that it had still been possible to seek legal entry and asylum at the border crossing, it was clear from the relevant data that that had no longer been possible. In particular, any asylum-seeker attempting to legally enter the Macedonian territory would have been given a certificate of intention to claim asylum at the border crossing, but the relevant data confirmed that no such certificates had been issued from 8 March 2016 onwards (see paragraph 27 above), whereas more than 88,000 certificates had been issued between 1 January and 7 March 2016.

87. The officers' behaviour on that occasion had not been an isolated incident. There had been a pattern of summary unlawful deportations as early as November 2014, with a distinct increase in summary deportations from

8 March 2016. Foreign journalists, on the contrary, had been duly registered, fined and ordered to be removed.

88. The applicants submitted that the Government's allegation that they had been motivated by misinformation spread in the Idomeni camp was irrelevant, as it was unrelated to the complaint in question. As regards the latter argument, the Government had submitted no evidence in support of their claim, nor could they have known the applicants' individual motives, given that none of them had ever been questioned or interviewed.

89. The applicants submitted that another element of the test of the culpability of their own conduct was that they had "used force", which entailed the non-consensual administration of force to a person, either with direct bodily impact or through the use of weapons, and was characteristically of a violent nature, but that there was no evidence that the applicants or any of the participants in the march had been violent or even threatened to be violent. The conditions for the applicability of the test of the culpability of the applicants' own conduct had therefore not been fulfilled.

90. Although the law did indeed provide for a possibility of obtaining a visa on humanitarian grounds, that did not mean that such visas were available to people wishing to seek asylum in the respondent country. Asylum through diplomatic and consular missions was available only for family reunifications, which was not the applicants' situation. In addition, there were no embassy or consulates of North Macedonia in Greece until 2019, but only liaison offices.

91. Refugees in Greece were subjected to inadequate reception and accommodation conditions. In particular, conditions in the Idomeni camp, in which the applicants had lived before entering the respondent State and to which they had been returned, were appalling (see paragraph 25 above). The applicants referred to the Court's judgment in *M.S.S. v. Belgium and Greece* ([GC], no. 30696/09, ECHR 2011) and various reports, as regards the findings in respect of the Greek asylum system. It was unthinkable that the respondent State had been unaware of the situation of asylum-seekers in Greece at the time. There had, however, been no assessment of the risks to which the applicants would be exposed if they were returned to Greece. The risk to the applicants in the destination country had not been dismissed at any point in this case and was real at the time of their expulsion. They had been expelled despite either a factual or legal background which under national or international law could have justified their presence on Macedonian territory and precluded their removal.

(b) The Government

92. The Government maintained that the applicants' situation could be attributed to the culpability of their own conduct, specifically to their failure to use the official entry procedures. The applicants had not been treated as seekers of international protection primarily because of their own violent and

aggressive attempt at breaking through the territory of the respondent State instead of trying to enter legally.

93. The Government specified the number of border crossing points, and indicated that Bogorodica, which was situated near the Idomeni camp, was one of the two busiest (see paragraph 14 above). They further specified the exact number of certificates issued, both in total and at Bogorodica, and the number of asylum requests made between 19 June 2015 and 14 March 2016, including the nationalities of the migrants in question (see paragraphs 19-23 above). They submitted, in particular, that more than 300,000 certificates had been issued at the Bogorodica border crossing between 19 June and 31 December 2015. They also indicated that only about 0.1% of those who had expressed the intention to apply for asylum had actually done so.

94. The applicants therefore could have expressed their intention to apply for asylum at any border crossing, for example at Bogorodica, at any time either before or after the events of 14 and 15 March 2016, but had failed to do so by deciding to illegally cross the State border. Had the applicants legally crossed the border, they would have been able to follow the standard procedure for obtaining asylum. However, the area in which they had found themselves was an "inter-border" zone where it had been impossible to express the intention to apply for asylum.

95. The Government maintained that the domestic asylum system was fully in line with the EU standards, and that the migrants and/or the applicants had never been denied an opportunity to cross the border legally at an official border crossing and express their intention to apply for asylum at the border. Even after the closure of the Balkan route, the requirement under the decision of 8 March 2016 was to admit those who applied for asylum. However, the applicants had failed to show whether they had applied for asylum at any border crossing point before, on, or after 14 March 2016, or whether they had been personally affected by the situation complained of (by the decision of 8 March). The Government submitted that foreign citizens had the right to enter legally at any of the border crossings if they met the relevant criteria or if they sought asylum. However, they were not entitled to enter and exit illegally or to illegally transit through the country. Illegal aliens had been covered by section 17 of the Asylum Act, on the condition that they fulfilled the requisite criteria (see paragraph 37 above). These criteria, however, had not been met in the particular circumstances of the present case.

96. The Government also submitted that all the applicants were currently in EU States, and that it was obvious that their intention had not been to remain in the respondent State. The Government submitted that the vast majority of those entering the respondent State had no intention to seek asylum at all and referred to the relevant international reports in this regard (see paragraph 17 *in fine* and 18 above). The lack of interest on the part of the applicants in applying for asylum was not irrelevant, as acquiring the status

of an asylum-seeker had been the only way of legalising their by that time illegal stay in the country.

97. The actions of the police officers had been necessitated by the particular exigencies of the present case, such as the migrants' en masse illegal crossing of the border, and their failure to specifically seek asylum or a legal stay or residence under a valid ground, and thus protect themselves from non-admission. However, an illegal and violent attempt to enter a State is not a valid ground for such a stay or residence. The Government contested the applicants' interpretation of the term "use of force", and maintained that the applicants' use of force had been such as to create a clearly disruptive situation which had been difficult to control, and which had endangered public order and safety. The illegal entry and the march of around 1,000 illegal aliens was in itself a threat to public order, if not a threat to public security itself, and that the State had been bound to preserve both. They maintained that the applicants had belonged to a group which had been incited, motivated, prepared and determined at all costs to illegally cross the respondent State's border and, by travelling through its territory, to arrive at the northern border with Serbia.

98. The impugned action had been aimed exclusively at maintaining the territorial integrity of the state and ensuring public order and security through border control and surveillance in accordance with domestic legislation, international case law and EU guidelines. In addition, in the same period the State had had to deal with an extremely complex security situation at the national border with Greece, on account of continuous propaganda in the Idomeni camp that after crossing through specific illegal crossing points there had been trains and other means of transport waiting for migrants, enabling them to continue their journey north. The situation had been delicate, with nearly 10,000 migrants at the Greek border prepared to move quickly in the event of learning about the success or likely prospects of success of the groups of illegal migrants in being admitted into the respondent State. An additional challenge was the aggressive behaviour of many migrants, which had resulted in several incidents, in which around fifty police and army officers had been injured and some of their equipment damaged. They referred in particular to the incidents of 28 November 2015, and 10, 13 and 16 April 2016. The actions of the State's officials had not been unreasonable in the particular circumstances of the case.

99. The Government contested that there had been any use of threat or force against the migrants. The border police had explained to them that transit along the route was not allowed by any country, and that they could seek international protection in North Macedonia but that they would not be able to continue further to Western Europe. Once they had understood that they had been misled, most of them had agreed to return to Greece. For those who had been too exhausted from walking or who were vulnerable, transportation had been provided. None of them had stated that they feared

treatment contrary to Article 3 in Greece, and none of them had resisted or opposed the measures and actions taken. The authorities had remained ignorant at the critical time of the migrants' fear of facing ill-treatment or persecution as a result of their return to Greece and afterwards, as the applicants had failed to declare that risk to the authorities of the respondent State.

100. The applicants had been unable to indicate the slightest factual or legal ground which, under international or national law, could have justified their presence on Macedonian territory and precluded their removal. While it might be that the conditions in the Idomeni camp were inadequate, the respondent State could not be held accountable for that. Lastly, Greece was an EU State, which could be considered safe, and by returning there the applicants had not faced any risk of ill-treatment contrary to Article 3 of the Convention, or *refoulement* to unsafe countries, and thus could provide much more for the refugees than North Macedonia.

101. The statements of journalists and the alleged human rights activists had not been credible as they had been fined for their illegal entry, expelled and banned from re-entering North Macedonia in the following six-month period. They had therefore been biased. Aware of the delicate and vulnerable position of the migrants, the competent State authorities had spared them the fine provided for in cases of illegal entry.

102. The Government further submitted that deportations from North Macedonia to Greece could be conducted only under the General Readmission Agreement with the European Union. They also submitted that the respondent State had allowed the refugees illegally entering its territory to be informed of their right to seek asylum, thereby fully respecting the internationally accepted principle of *non-refoulement*.

103. The applicants' submission about the alleged ineffectiveness of the possibility of obtaining a visa on humanitarian grounds was unsubstantiated. In any event, the applicants had failed to show that they had attempted to obtain a visa on humanitarian grounds.

104. The Government concluded that the applicants could not be considered to be victims of collective expulsion in violation of Article 4 of Protocol No. 4.

2. Third-party intervention

(a) Third-party intervention (Macedonian Young Lawyers Association – "MYLA")

105. The third party is a non-profit civil society organisation which provides free legal aid to asylum-seekers in the respondent State, and monitors the reception and treatment of refugees and asylum-seekers.

106. MYLA lawyers confirmed that on 14 March 2016 there had been approximately 1000 people in a field near the village of Moin, surrounded by

the respondent State border police and army. They had not seen any physical force or threats used against the migrants. Every 20-30 minutes people had been instructed to get on board trucks and had been taken away. MYLA lawyers had not been allowed to approach them. They had not seen any other lawyers or interpreters or that the police or military officials had conducted any type of identification or registration of the people boarding the trucks.

107. They submitted that in the present case the relevant authorities had not used the prescribed procedures and had thus barred access to the protection and guarantees accorded to the applicants by law. The applicants had been returned to Greece without an adequate assessment of their individual situation and without access to an effective remedy with suspensive effect to challenge their expulsion. In view of the short time frame within which they had been returned, it had been impossible to examine the particular case of each individual, or to undergo any identification procedure. The automatic nature of the returns effectively prevented the people concerned from applying for asylum or having access to any other domestic procedure which would meet the requirements under Article 13.

108. MYLA also maintained that there had been a wide practice of systemic pushbacks between November 2015 and May 2017, carried out without an examination of people's individual situations, without expulsion decisions, and without the assistance of interpreters, legal assistance or remedies. Throughout 2016, migrants had not had effective access to the asylum procedure in the respondent State as the police had selectively registered asylum claims. MYLA acknowledged the pressure on the reception capacities and asylum system in the country.

(b) The Government's response to the third-party intervention

109. The Government considered the third party's submissions irrelevant, and contested their allegations about systemic pushbacks of refugees and migrants.

110. They reiterated that everyone who intended to seek asylum in the country was provided with access to an adequate legal procedure. It had been unclear why the group in question had not headed for a border crossing point where they could have both legally entered North Macedonia and applied for asylum. Foreigners had the right to enter the territory at any border crossing if they fulfilled the entry criteria or if they sought asylum, but they were not entitled to illegally enter, exit or transit.

111. The authorities had an obligation to carry out effective surveillance of State borders and prevent illegal movement to and from other countries. In any event, the return of the migrants in the present case had been necessary in the interests of national security and the prevention of disorder, having regard to the number of people continuously entering illegally. Moreover, it was justified in the light of the information produced by the international authorities and joint decisions issued by other European countries.

3. The Court's assessment

(a) The relevant principles

112. The relevant principles in this regard are set out in *N.D. and N.T.* (cited above, §§ 193-201). In particular, the decisive criterion in order for an expulsion to be characterised as "collective" is the absence of "a reasonable and objective examination of the particular case of each individual alien of the group" (ibid., § 195). Exceptions to this rule have been found in cases where the lack of an individual expulsion decision could be attributed to the applicant's own conduct (see *Shahzad v. Hungary*, no. 12625/17, § 59, 8 July 2021, and the authorities cited therein). In *N.D. and N.T.* (cited above, § 201), the Court considered that the exception absolving the responsibility of a State under Article 4 of Protocol no. 4 should also apply to situations in which the conduct of persons who crossed a land border in an unauthorised manner, deliberately taking advantage of their large numbers and using force, was such as to create a clearly disruptive situation which was difficult to control and endangered public safety. The Court added that in such situations, it should be taken into account whether in the circumstances of the particular case the respondent State provided genuine and effective access to means of legal entry, in particular border procedures, and if it did, whether there were cogent reasons for the applicants not to make use of it which were based on objective facts for which the respondent State was responsible (ibid.).

(b) Application of the principles to the present case

113. The Court notes that it has not been disputed by the respondent Government that the migrants were removed from the respondent State without being subjected to any identification procedure or examination of their personal situation by the authorities of North Macedonia. This should lead to the conclusion that their expulsion was of a collective nature, unless the lack of examination of their situation could be attributed to their own conduct (see *Shahzad*, cited above, § 60). The Court will therefore proceed to examine whether in the circumstances of the present case, and having regard to the principles developed in its case-law, in particular in its judgment in *N.D. and N.T.* (cited above, see paragraph 112 above), the lack of individual removal decisions can be justified by the applicants' own conduct.

114. It is clear from the case file that the applicants were indeed part of two large groups of migrants, who crossed the border of the respondent State in an unauthorised manner. However, there is no indication in the submitted video footage or in the witness statements that the applicants, or other people in the group, used any force or resisted the officers. Even the Government submitted that none of them had resisted or opposed the measures and actions taken (see paragraph 99 above). It is also noted that the incidents to which the Government referred had taken place on different dates and did not refer to the groups in which the applicants had been (see paragraph 98 *in fine* above).

The Court therefore considers that even though the present case can be compared to the circumstances in *N.D. and N.T.* (cited above, §§ 24-25, and 206), where the applicants were apprehended during an attempt to cross the land border *en masse* by storming the border fences, in the present case there has been no use of force. The Court will nevertheless proceed to examine whether, by crossing the border irregularly, the applicants circumvented an effective procedure for legal entry. Where the respondent State has provided genuine and effective access to means of legal entry, in particular border procedures, but an applicant did not make use of it, the Court will consider, in the context in issue and without prejudice to the application of Articles 2 and 3 of the Convention, whether there were cogent reasons not to do so which were based on objective facts for which the respondent State was responsible.

115. Where such arrangements exist and secure the right to request protection under the Convention, and in particular Article 3, in a genuine and effective manner, the Convention does not prevent States, in the fulfilment of their obligation to control borders, from requiring applications for such protection to be submitted at the existing border crossing points. Consequently, they may refuse entry to their territory to aliens, including potential asylum-seekers, who have failed, without cogent reasons, to comply with these arrangements by seeking to cross the border at a different location, especially, as happened in this case, by taking advantage of their large numbers.

116. The Court notes in this regard that Macedonian law afforded the applicants a possibility of entering the territory of the respondent State at border crossing points, if they fulfilled the entry criteria or, failing that, if they sought asylum or at least stated that they intended to apply for asylum (see paragraphs 39, 41-42, and 45 above; see also, *mutatis mutandis*, *N.D. and N.T.*, cited above, § 212; contrast *M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, §§ 296-97, 18 November 2021 (not yet final)). This entailed an examination of the individual circumstances of each claimant, and a decision on expulsion, if the circumstances warranted it, which decision could have been appealed (see paragraph 33 above).

117. Even though it was not explicitly invited to do so, the respondent State provided specific information as to how many certificates had been issued of an expressed intention to apply for asylum, and how many applications for asylum had been submitted, as well as specific information about the closest border crossing, the infrastructure available there, various organisations present on the spot, and information showing that intentions to apply for asylum had actually been expressed there (see paragraphs 19-23 above; contrast *M.H. and Others*, cited above, § 300). The Court notes, in particular, that 477,861 certificates of an expressed intention to apply for asylum were issued between 19 June 2015 and 8 March 2016, of which 456,309 certificates were issued to nationals of Syria, Afghanistan and Iraq,

that is the same nationalities as the applicants in the present case (contrast *M.H. and Others*, cited above, § 298). The Government submitted that the nearest border crossing to Idomeni camp was the Bogorodica border crossing, which was also one of the two busiest border crossings (see paragraph 93 above), at which more than 300,000 certificates had been issued by the end of December 2015 (see *N.D. and N.T.*, cited above, § 213; contrast *Shahzad*, cited above, §§ 63-64). The applicants and the third party did not challenge the accuracy of the statistics submitted by the Government on this issue. The Court therefore has no reason to doubt that there was not only a legal obligation to accept asylum applications and expressed intentions to apply for asylum at this border crossing point, but also an actual possibility of doing so (see *N.D. and N.T.*, cited above, § 214). While admittedly the Government did not provide specific information about the availability of interpreters, in view of the hundreds, and sometimes thousands, of certificates issued there on daily basis (see paragraph 19 above; contrast *Shahzad*, cited above, § 64), it is clear that some interpretation was available.

118. As noted above, the applicants did not challenge the accuracy of the statistics provided. They rather submitted that it had not been possible for them to seek asylum at the Bogorodica border crossing at the time of their summary deportation, that is on or around 14 and 15 March 2016, as the relevant data confirmed that no certificates of an expressed intention to apply for asylum had been issued at that time (see paragraph 86 above).

119. The Court notes in this regard that the higher number of certificates issued before 8 March 2016 would appear to be primarily the result of an increased number of requests for protection by nationals of Middle East countries wishing to transit through the respondent State on their way towards the European Union, rather than wishing to apply for asylum in North Macedonia. The Court notes in this regard that out of 477,861 people who expressed their intention to apply for asylum between 19 June 2015 and 8 March 2016, only 400 of them actually did apply for asylum (see paragraphs 20-24 above), which is less than 0.1 per cent. It is further observed that 90 per cent of those who did apply for asylum left the country before the interviews were held (see paragraphs 17 *in fine*, 18, 29 and 48 above). After 8 March 2016 transit was effectively no longer possible because of the European Union's different approach to the issue of the ever-increasing number of migrants and the consequent reaction of other countries along the Balkan route (see paragraph 5-7 above). However, there is nothing in the case file to indicate that it was no longer possible to claim asylum at the border crossing, which still entailed an examination of the individual circumstances of each claimant, and a decision on expulsion, if the circumstances warranted it, which decision could have been appealed.

120. Consequently, the uncontested fact that no certificates of an expressed intention to apply for asylum were issued at Bogorodica on 14 and 15 March 2016 does not call into question its accessibility (see, *mutatis*

mutandis, *N.D. and N.T.*, cited above, § 215), and it does not lead to the conclusion that the respondent State did not provide genuine and effective access to this border crossing point.

121. There is nothing in the case file to suggest that potential asylum-seekers were in any way prevented from approaching the legitimate border crossing points and lodging an asylum claim (contrast *Shahzad*, cited above, § 63) or that the applicants attempted to claim asylum at the border crossing and were returned. The applicants in the present case did not even allege that they had ever tried to enter Macedonian territory by legal means. Hence, the Court is not persuaded that the applicants had the required cogent reasons for not using the Bogorodica border crossing, or any other border crossing point, at the material time with a view to submitting reasons against their expulsion in a proper and lawful manner (see, *mutatis mutandis*, *N.D. and N.T.*, cited above, § 220). This would indicate that the applicants had indeed not been interested in applying for asylum in the respondent State, but had rather been interested only in transiting through it (see paragraph 83 above), which was no longer possible, and therefore opted for illegally crossing into it.

122. For the reasons set out above, in spite of some shortcomings in the asylum procedure and reported pushbacks (see paragraphs 17 *in limine*, 28, 47 and 48 above), the Court is not convinced that the respondent State failed to provide genuine and effective access to procedures for legal entry into North Macedonia, in particular by putting into place international protection at the border crossing points, especially with a view to claims for protection under Article 3, or that the applicants – assuming that they had a genuine wish to seek international protection in North Macedonia at all – had cogent reasons, based on objective facts for which the respondent State was responsible, not to make use of those procedures.

123. The Court considers that it was in fact the applicants who placed themselves in jeopardy by participating in the illegal entry onto Macedonian territory on 14 March 2016, taking advantage of the group's large numbers. They did not make use of the existing legal procedures for gaining lawful entry to Macedonian territory in accordance with the provisions of the relevant domestic law concerning the crossing of borders (see paragraphs 33-36 and 45 above). Consequently, in accordance with its settled case-law, the Court considers that the lack of individual removal decisions can be attributed to the fact that the applicants, if they indeed wished to assert rights under the Convention, did not make use of the official entry procedures existing for that purpose, and was thus a consequence of their own conduct. Accordingly, the Court considers that there has been no violation of Article 4 of Protocol No. 4 to the Convention (see, *mutatis mutandis*, *N.D. and N.T.*, cited above, § 231).

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

124. The applicants complained that they had had no effective remedy with suspensive effect by which to challenge their summary deportation to Greece. They relied on Article 13 of the Convention taken in conjunction with Article 4 of Protocol No. 4. 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."

125. The Government contested the applicants' complaint. Requiring the existence of such a remedy in the situation of a mass influx of migrants was unacceptable because it would mean imposing too large a burden on States that already faced serious challenges in their attempts to tackle migrant waves. In any event, the applicants had had at their disposal adequate remedies which they had not used.

126. The applicants reaffirmed their complaint. The respondent State's officers had been aware of the fact that they had apprehended migrants and that they were expelling them to Greece to conditions which *prima facie* put them at risk of a violation of Article 3 of the Convention. However, their immediate deportation had ensured that they would not have access to domestic remedies which could have been in theory available to them to challenge an expulsion or denial of entry, had any of the procedures and safeguards been applied.

A. Admissibility

127. The Court considers that this complaint raises complex issues of law and fact which cannot be determined without an examination of the merits. It follows that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. The Court further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible (see *N.D. and N.T.*, cited above, § 238).

B. Merits

128. Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured. The effect of that provision is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief.

129. In so far as the applicants complained of the lack of an effective remedy by which to challenge their expulsion on the grounds of its allegedly collective nature, the Court notes that, although Macedonian law provided

a possibility of appeal against removal orders (see paragraphs 33 and 43 above), the applicants themselves were also required to abide by the rules for submitting such an appeal against their removal.

130. As it stated previously in examining the complaint under Article 4 of Protocol No. 4 (see paragraph 123 above), the Court considers that the applicants placed themselves in an unlawful situation by deliberately attempting to enter North Macedonia by crossing the border on 14 March 2016 as part of two large groups and at an unauthorised location. They thus chose not to use the legal procedures which existed in order to enter the territory of the respondent State lawfully, thereby failing to abide by the relevant domestic legislation. In so far as the Court has found that the lack of an individualised procedure for their removal was the consequence of the applicants' own conduct in attempting to gain unauthorised entry (see paragraph 123 above), it cannot hold the respondent State responsible for not making available there a legal remedy against that same removal (see *N.D. and N.T.*, cited above, § 242).

131. It follows that the lack of a remedy in respect of the applicants' removal does not in itself constitute a violation of Article 13 of the Convention, in that the applicants' complaint regarding the risks that they were allegedly liable to face in the destination country was never raised before the competent authorities of the respondent State by way of the procedure provided for by the law.

132. Accordingly, there has been no violation of Article 13 of the Convention taken in conjunction with Article 4 of Protocol No. 4.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Dismisses* the Government's preliminary objection in respect of the applicants' participation in the events in question;

3. *Dismisses* the Government's preliminary objection of lack of jurisdiction;

4. *Declares* the applications admissible;

5. *Holds* that there has been no violation of Article 4 of Protocol No. 4 to the Convention;

6. *Holds* that there has been no violation of Article 13 of the Convention taken in conjunction with Article 4 of Protocol No. 4.

Done in English, and notified in writing on 5 April 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Deputy Registrar	Jon Fridrik Kjølbro President

APPENDIX

No.	App. no.	Lodged on	Applicants' initials	Nationality	Representative
1.	55798/16	12/09/2016	A.A. S.A. N.A. D.A.	Syrian	Carsten Gericke (Hamburg, Germany)
2.	55808/16	12/09/2016	D.R.	Afghan	Carsten Gericke
3.	55817/16	12/09/2016	H.O.	Iraqi	Carsten Gericke
4.	55820/16	12/09/2016	S.H.A.	Iraqi	Carsten Gericke
5.	55823/16	12/09/2016	I.A.	Syrian	Carsten Gericke