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La CEDU sull'espulsione di richiedenti asilo in Ungheria
(CEDU, sez. II, sent. 24 giugno 2025, ric. n. 46084/21, 40185/22 and 53952/22)

Con la decisione in esame, la Corte Edu si è pronunciata sulle domande proposte da tre ricorrenti, i quali lamentavano di essere stati espulsi dal territorio ungherese senza aver avuto modo di accedere alla protezione internazionale.

In primo luogo, la Corte ha rilevato una violazione dell'art. 4 del Protocollo n. 4. Sono state qualificate come "espulsioni collettive di stranieri", come tali vietate dal menzionato Protocollo, quelle che hanno coinvolto, in momenti diversi, i tre ricorrenti. Tanto in ragione del fatto che nessuno degli allontanamenti in questione è stato preceduto da un esame obiettivo del caso particolare e che il comportamento omissivo del Governo ungherese non è dipeso da specifiche condotte tenute dai ricorrenti. Secondo i Giudici, neppure il fatto che due dei ricorrenti avessero attraversato illegalmente il confine ungherese poteva essere addotto a valida giustificazione per la mancata valutazione individuale dei loro casi: dovendosi reputare la c.d. embassy procedure, prevista dalla legge ungherese, una procedura di ingresso del tutto inadeguata, non vi era infatti alcuna strada effettivamente percorribile dai cittadini stranieri per accedere al Paese in modo legale.

Non essendo stato offerto ai ricorrenti alcun rimedio efficace per opporsi all'espulsione, la Corte ha ravvisato altresì una violazione dell'articolo 13 della Convenzione, in combinato disposto con l'art. 4 del Protocollo n. 4.

I Giudici hanno rilevato infine, con riferimento a due dei ricorrenti, una violazione dell'art. 3, il Governo ungherese invero non ha provveduto valutare l'adeguatezza della procedura d'asilo attivabile in Serbia, Paese nel quale i ricorrenti sono stati trasferiti, esponendoli così al rischio di refoulement.

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

SECOND SECTION

CASE OF XXX AND OTHERS v. HUNGARY

(Application nos. 46084/21, 40185/22 and 53952/22)

JUDGMENT

STRASBOURG

24 June 2025

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

In the case of XXX and Others v. Hungary,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:
Arnfinn Bårdsen, *President,*
Saadet Yüksel,
Jovan Ilievski,
Péter Paczolay,
Oddný Mjöll Arnardóttir,
Gediminas Sagatys,
Juha Lavapuro, *judges,*
and Dorothee von Arnim, *Deputy Section Registrar,*
Having regard to:
the applications (nos. 46084/21, 40185/22 and 53952/22) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Afghan nationals, Mr H.Q. and Mr Z.A., and a Syrian national, Mr A.S.A. ("the applicants"), on 17 September 2021, 12 August 2022 and 17 November 2022 respectively;
the decision to give notice of the applications to the Hungarian Government ("the Government");
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 Office of the United Nations High Commissioner for Refugees (UNHCR), which was granted leave to intervene by the President of the Section in application no. 46084/21;
Having deliberated in private on 3 June 2025,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The present case concerns the removal of the three applicants from Hungary to Serbia and their alleged lack of effective access to the international protection procedure, which could be initiated only after a positive outcome of a preliminary procedure at the Hungarian embassy in Belgrade (the so-called "embassy procedure").

THE FACTS

2. The first applicant (H.Q.) was born in 1996 and lives in Austria. The second applicant (Z.A.) was born in 2006 and lives in Serbia. The third applicant (A.S.A.) was born in 2000 and lives in Germany. The first and second applicants were represented by Mr G. Győző, a lawyer of the Hungarian

Helsinki Committee. The third applicant was represented by Ms B. Pohárnok, a lawyer practising in Budapest.

3. The Government were represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice.

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

I. FACTS RELATED TO THE FIRST APPLICANT (H.Q.)

A. Events leading to the first applicant's removal

5. The first applicant (an Afghan national) entered Hungary in 2018 on the basis of a residence permit for study purposes. On 14 September 2021, following the expiry of his residence permit (in 2019 apparently), the first applicant lodged an asylum application with the National Directorate-General for Aliens Policing (*Országos Idegenrendészeti Főigazgatóság* – hereinafter "the NDGAP") on the grounds that he feared persecution by the Taliban owing to his father's position in the previous Afghan government.

6. On 17 September 2021 the NDGAP rejected his application without examining its merits. The decision was based on section 32/F(1)(b) of the Asylum Act (see paragraphs 40 and 41 below) and sections 268 and 271 of the 2020 Transitional Act (see paragraphs 47 and 48 below). It considered that the first applicant was pursuing an "impossible objective". The decision was served on the first applicant on the same day, in person.

7. Subsequently on that day, the NDGAP informed the Budapest District XI Police Department about the first applicant's illegal stay and instructed that he be removed in accordance with section 5(1b) of the State Border Act (see paragraph 42 below). On the same day the first applicant was arrested, handcuffed and taken to the police station. His personal data was recorded and he was searched. He handed over his passport, a copy of his visa application and his asylum application. It would appear from the case file that the police did not forward his asylum application to the NDGAP. At 1.40 p.m. he was escorted to the Airport Police, with a view to his removal being enforced.

8. Also on 17 September 2021, the first applicant was driven to the Serbian-Hungarian border (Tompa Transit Zone) and at 5.30 p.m. a police officer of the Kelebia Border Guard Department of the Bács-Kiskun County Police (hereinafter "the Kelebia Border Guard") ordered him to walk through a gate in the border fence, in the direction of Serbia, in accordance with section 5(1b) of the State Border Act, which he did. The first applicant stayed in the Belgrade Refugee Centre until 14 May 2022. He subsequently entered Austria and applied for asylum there.

B. Police complaint procedure concerning the first applicant's removal

9. The first applicant complained to the Airport Police and the Budapest District XI Police Department about their actions relating to his removal, under section 92 of the Police Act (see paragraph 44 below). They rejected those complaints and the first applicant used further remedies, which were ultimately unsuccessful.

10. As regards the complaint against the Airport Police, the appeal authority considered that the impugned measures could not be challenged by means of a complaint under section 92 of the Police Act (see paragraph 44 below). The first applicant subsequently lodged an action with the Budapest High Court, which initiated proceedings before the Constitutional Court, requesting that it strike down section 5(1b) of the State Border Act (see paragraph 42 below) on the basis that it was unconstitutional or did not comply with international law, and find that it did not apply to situations

such as that of the first applicant. On 18 April 2023 the Constitutional Court refused the Budapest High Court's request, finding that the first applicant's case did not require it to examine the constitutionality of section 5(1b) of the State Border Act. Afterwards, on 6 July 2023 the Budapest High Court dismissed the first applicant's action, taking the view that removal under section 5(1b) of the State Border Act could not be challenged by means of the complaint procedure provided for in the Police Act. It pointed out that the measure could be challenged directly before an administrative court.

11. As regards the complaint against the Budapest District XI Police Department, following the dismissal of the first applicant's appeal by the appeal authority, the Budapest High Court dismissed the first applicant's action, finding that the police department had not removed him under section 5(1b) of the State Border Act, but had taken him to the competent authority under section 33(1)(f) of the Police Act (see paragraph 45 below) and had therefore acted properly. Following the first applicant making a petition for judicial review, the *Kúria* upheld that judgment on 23 May 2024.

C. Administrative action concerning the first applicant's removal

12. On 18 October 2021 the first applicant's legal representative lodged an administrative action against the Airport Police, challenging the applicant's removal. He subsequently extended that action to include the NDGAP and the Kelebia Border Guard (see paragraph 8 above) as defendants. In his action, he argued, among other things, that section 5(1b) of the State Border Act (see paragraph 42 below) was contrary to both EU law and ECHR case-law (namely *Shahzad v. Hungary*, no. 12625/17, 8 July 2021).

13. On 26 May 2022 the Budapest High Court quashed the NDGAP's "administrative act" ordering the first applicant's removal (see paragraph 7 above) and ordered the Kelebia Border Guard to allow him to return to Hungary. The Budapest High Court held that the applicant's stay had been lawful by virtue of his pending asylum proceedings, therefore the conditions for removal, that is, unlawful stay, had not been met. Furthermore, relying on the judgment of the Court of Justice of the European Union (CJEU) adopted in case no. C-808/18 (see paragraph 64 below), it also held that the "administrative act" had been unlawful, since it had been carried out in the absence of a formal decision.

14. Following the NDGAP and the Kelebia Border Guard making petitions for judicial review, on 21 June 2023 the *Kúria* quashed the Budapest High Court's judgment of 26 May 2022 (see paragraph 13 above) and remitted the case for re-examination. It confirmed, by referring to ruling no. Kfv.III.37.126/2023/8. of 3 May 2023 of the *Kúria* (see paragraph 53 below), that removal carried out in accordance with section 5(1b) of the State Border Act was in itself an individual decision and thus an "administrative act" referred to in Article 4 §§ 1 and 3 (a) of the Code of Administrative Justice, and could therefore be the subject of an administrative dispute (see paragraph 46 below). As to the legality of the individual decision, the *Kúria* held that on the basis of the available information, it could not be established that it had been adopted by the NDGAP, since the authority, in an email sent to the Airport Police, had merely established that the first applicant's stay was unlawful. As a matter of principle, the *Kúria* noted that a decision by the police to remove a person staying illegally in the territory of Hungary fell within their discretionary power. However, it was the court's role to resolve disputes, such as the question of which body made the decision to remove the individual in

question. The *Kúria* also emphasised that in the case of an unlawful administrative decision, the situation of the person concerned should be remedied.

15. During the re-examination of his case, the applicant extended his action to include the Budapest District XI Police Department as a respondent. On 7 September 2023 the Budapest High Court held a hearing and on 21 November 2023 it quashed the "administrative act" pertaining to the removal, finding that it was indeed the NDGAP which had ordered the removal and had therefore acted outside its competence. However, it noted that the applicant had not indicated that there had been any adverse consequences, and found that his re-entry to Hungary was therefore no longer necessary.

16. Following the NDGAP making a petition for judicial review, on 23 May 2024, in ruling no. 11.K.702.553/2023/22, the *Kúria* upheld the Budapest High Court's judgment of 21 November 2023 (see paragraph 15 above). The *Kúria* rejected the NDGAP's arguments and held that the Budapest High Court had correctly established the facts and had identified and interpreted the relevant law. It agreed with the finding in the impugned judgment that the NDGAP had overstepped the limits of its competence by deciding to remove the first applicant. The *Kúria* held that the NDGAP, as the authority for aliens policing, had had no power to order the first applicant's removal, therefore its decision on his removal had been null and void within the meaning of the Code of Administrative Justice.

D. Administrative action and subsequent proceedings concerning the first applicant's asylum application

17. On 17 September 2021 the first applicant, *via* his legal representative, filed an administrative action against the NDGAP's decision dismissing his asylum application and requested that the effect of the NDGAP's decision (see paragraph 6 above), that is, his removal, be suspended. On the same day his legal representative informed the Airport Police of the pending legal action. On 24 September 2021 the Airport Police informed the first applicant's legal representative that the police had acted lawfully in implementing the impugned measure.

18. On 11 October 2021 the Budapest High Court granted the first applicant's request to suspend his removal (see paragraph 17 above) and held that there had been no legal basis for his removal pending the outcome of that request. On 13 October 2021 the Budapest High Court ruled that the return of the first applicant to Hungary should be facilitated, in line with the finding that his removal should have been suspended.

19. On 12 November 2021 the Budapest High Court quashed the NDGAP's decision rejecting the applicant's asylum application and remitted the case for re-examination. It held that the NDGAP's decision had breached the requirement of equal treatment, as another asylum-seeker, a Syrian national in a similar situation, had in fact been granted asylum. The court ordered the NDGAP to conduct the proceedings in accordance with the general rules of the Asylum Act, and ordered that the applicant's return be facilitated. The first applicant initiated enforcement proceedings regarding the decision to facilitate his return. During those proceedings, on 29 November 2022 the NDGAP submitted that it had informed the border authorities about the judgment of 12 November 2021, in the event that the first applicant arrived at the border in order to attend the hearing (see paragraph 20 below). Later on, after arriving in Austria, the first applicant asked for those proceedings to be terminated.

20. On 22 April 2022 the NDGAP summoned the applicant *via* his legal representative for a hearing in person. In turn, the applicant's legal representative informed the NDGAP of the applicant's address in Serbia (see paragraph 8 above). Ultimately, only the first applicant's representative attended the hearing, which took place on 2 May 2022. The representative explained that he had not been informed of any arrangements made by the authorities to allow the first applicant's entry into Hungary.

21. On 15 June 2022 the NDGAP terminated the asylum proceedings, relying on Article 19(2) of the Dublin III Regulation (see paragraph 63 below) and section 32/I(c) of the Asylum Act (see paragraph 41 below), holding that the first applicant had been outside the EU for more than three months and had subsequently requested asylum in Austria, and consequently Hungary's responsibility for the asylum procedure had ceased to exist.

II. FACTS RELATED TO THE SECOND APPLICANT (Z.A.)

22. The second applicant is an Afghan national. He submitted that, being 16 years old at the time, he arrived in Hungary on 16 February 2022 unaccompanied and clandestinely *via* the Serbian-Hungarian border. Subsequently, he was involved in a traffic accident while being transported by a smuggler in a van. He suffered severe injuries and was taken to a hospital in Szeged, where, according to the second applicant, his spleen and one of his kidneys were removed.

23. According to a medical report issued on 17 February 2022, the applicant was transferred to a hospital in Szeged by ambulance on 16 February 2022. The next day he was admitted to the intensive care unit of the traumatology department. Among his personal data, the report stated that his name was "injured man", his date of birth was "01/01/1990" and he was a Hungarian citizen. It also recorded that he had been admitted as the victim of a car accident, that he had said that he was 16 years old, and that he had communicated in English.

24. According to the applicant, a few days after undergoing surgery, he expressed to a doctor in the hospital that he wished to seek asylum in Hungary. Subsequently, two police officers arrived at the hospital, registered his personal data and informed him that he would be transferred to the Károlyi István Children's Centre in Fót once he had recovered.

25. On 14 April 2022 the final medical report on the second applicant's injuries was issued. He was prescribed medication and an X-ray examination four weeks later. He was also advised to avoid putting weight on his limbs. The personal data in the report were the same as those in the previous medical report (see paragraph 23 above). On what would appear to be the same day police officers took the second applicant out of the hospital barefoot and put him in a police vehicle without his belongings. He was given a pair of crutches so that he could move around. He was transported by van to the Serbian-Hungarian border fence. According to the second applicant, on several occasions during the journey to the border he repeated to the officers "Fót" (the name of the town where the children's centre was based – see paragraph 24 above) and said that he wanted to request asylum. In his submission, the police van stopped at the Tompa Transit Zone and he was ordered, together with about a dozen Arabic-speaking men, to leave Hungary through the transit zone exit in the direction of Serbia, which he did.

26. In Serbia, the second applicant was picked up by a passing car and taken to the reception centre in Subotica. There, he was advised to go to the asylum centre in Obrenovac, which he did after

spending a night in the forest. Subsequently, he had a medical checkup in Belgrade and received painkillers.

27. On 4 November 2022 the second applicant lodged a "declaration of intent" with the Hungarian embassy in Belgrade in order to be allowed entry into Hungary for the purposes of claiming asylum there (see paragraph 48 below). He submitted that he feared returning to Afghanistan, that he had been held in captivity by the Taliban for a few days before escaping the country, and that his father had been killed by the Taliban. On 16 December 2022 the NDGAP held a remote hearing with the second applicant.

28. On 10 January 2023, without giving a formal decision or providing any reasons, the NDGAP decided not to recommend that the second applicant be issued with a travel document. The following day the Hungarian embassy in Belgrade notified the second applicant and his legal representative of that decision *via* email. On 22 May 2023, following the second applicant lodging an administrative action, the Budapest High Court quashed the NDGAP's "administrative act" and remitted the case to that authority. The court had at its disposal an internal document prepared by the NDGAP, which stated that the second applicant had failed to apply for asylum in the countries in which he had previously stayed, namely Serbia and Bulgaria. That document had not been sent to the second applicant. The court ordered the NDGAP to adopt a formal decision taking into account the aim of the legislation, namely the prevention of the spread of COVID-19 infections, and to refrain from making any assessment of the admissibility or merits of the asylum application.

29. In the remitted proceedings, on 29 December 2023, in a formal decision, the NDGAP refused to issue the second applicant with a travel document. It referred to section 91 of the 2023 Extension Act (see paragraph 50 below) and found that the second applicant had stayed in a safe country for a long period of time before lodging a "declaration of intent". The second applicant filed an administrative action against that decision.

30. On 30 April 2024 the Budapest High Court quashed the NDGAP's decision. It found that the NDGAP had examined the admissibility of the asylum application by applying the "safe third country" clause, instead of following the instructions in its previous judgment (of 22 May 2023, see paragraph 28 above). Furthermore, the Budapest High Court referred to judgment no. C-823/21 of the CJEU and, in view of its findings (see paragraphs 65 to 69 below), refused to remit the case to the NDGAP on the basis that the CJEU had found that the "embassy procedure" was contrary to EU law.

III. FACTS RELATED TO THE THIRD APPLICANT (A.S.A.)

31. The third applicant (a Syrian national) claimed that he had fled Aleppo owing to the security situation, the threat of persecution and ill-treatment related to forced recruitment by the Kurdish military, to which one of his relatives had already fallen victim.

32. On 9 July 2022 the third applicant arrived in Hungary clandestinely *via* the Serbian-Hungarian border, together with another twelve Syrian nationals. After a smuggler had picked him up in a minibus, he was involved in a traffic accident. He was taken to a hospital in Budapest. He regained consciousness after being in a coma for six days. Police officers at the hospital contacted the Organisation of Muslims in Hungary for assistance. The organisation sent an Arabic-Hungarian man who assisted the third applicant with interpretation and directed him to the Hungarian Helsinki

Committee (HHC). On 17 July the third applicant contacted the HHC *via* email and asked for legal assistance in order to seek asylum in Hungary.

33. According to the third applicant, during his stay in the hospital he expressed his wish to seek asylum on at least three occasions to the police and to medical staff, including with the above-mentioned interpreter's assistance. On 18 July 2022 police officers informed him that he was to be returned to Serbia. In response, he again expressed his wish to stay in Hungary and seek asylum.

34. On 19 July 2022 at 11.45 a.m. two police officers arrived at the hospital. The third applicant repeated his request for asylum to them, explained that as a result of his email correspondence with the HHC, he was going to have a meeting with a lawyer from that organisation later that afternoon, and complained of his poor health. In the meantime, a medical report was given to him. He had been prescribed medication and further rehabilitation treatment, and was advised to return for a check-up after a week. According to the third applicant, at 12.45 p.m. on the same day two officers handcuffed him and restrained him by putting a leash around his wrists while he was still wearing a neck brace. They took him to the Budapest District XIII police station. His personal data was registered and his personal belongings were taken away. According to the third applicant, he showed his email correspondence with the HHC to a police officer there and expressed his wish to seek asylum.

35. On the same day the Budapest District XIII Police Department issued a report indicating that the third applicant was to be escorted to the Airport Police with a view to being removed in accordance with section 5(1b) of the State Border Act. Handcuffed and restrained by a leash, he was transported to the Airport Police. According to him, he complained of pain and repeated his wish not to be returned to Serbia. According to a reply sent by the Airport Police in response to an enquiry made by the third applicant's legal representative on 12 August 2022, the third applicant was considered to be a person who was staying in Hungary illegally and expressing his intention to lodge an asylum application. At 10 p.m. he was transferred to a so-called "collection point" at the Szigetszentmiklós police station of the Pest County Police Department, where he was kept handcuffed with other foreigners. Around midnight he was taken to the border fence and given back his belongings. He was photographed.

36. In the early hours of 20 July 2022, together with around forty other persons, the third applicant was ordered to walk through a gate in the border fence, in the direction of Serbia, in accordance with section 5(1b) of the State Border Act, which he did.

37. According to the third applicant, he had difficulty walking and after two hours was approached by a passing driver who called a taxi to take him to a reception centre in Sombor, Serbia. However, he was not admitted to the camp and had to stay in the forest. On 25 July 2022 doctors from Médecins Sans Frontières issued a medical report stating that he was still wearing the neck brace and had reported being in severe pain. The medical report also recorded that he had limited movement in his right arm. Two days later the third applicant was taken to Germany by a smuggler and lodged an asylum application there.

38. The third applicant instituted complaint proceedings in relation to the actions of the Budapest District XIII Police Department and the Airport Police, but to no avail, as the police and subsequently the courts considered that his complaint concerning the application of section 5(1b) of the State Border Act did not fall within the scope of the Police Act.

39. The third applicant also challenged his removal before the Budapest High Court. It appears that those proceedings are pending and no further information is available to the Court, apart from an argument raised by the third applicant that the remedy was in any event ineffective.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. The Asylum Act

40. As regards the concept of a safe third country, the relevant provisions of the Asylum Act, namely sections 51 and 51/A, were summarised in *S.S. and Others v. Hungary* (nos. 56417/19 and 44245/20, § 20, 12 October 2023). As regards *sur place* protection, the Asylum Act provides that a claim for international protection (for either refugee status or to be a beneficiary of subsidiary protection) can also be based on events that occurred after the foreigner in question left his or her country of origin, or on activities carried out by the foreigner after he or she left his or her country of origin (sections 6(2) and 12(2) of the Asylum Act).

41. The following relevant provisions allow the asylum authority to reject an asylum application without considering its merits:

Section 32/F

"(1) The asylum authority [shall] reject an [asylum] request by [issuing] a ruling without an examination on the merits if

...

(b) the request pertains to an objective that is manifestly impossible ..."

Section 32/I

"The asylum authority [shall] terminate the proceedings if

...

(c) the circumstances that gave rise to the continuation of the proceedings no longer exist ..."

B. The State Border Act

42. The relevant part of section 5(1) of Act no. LXXXIX of 2007 on State Border (hereinafter "the State Border Act"), as amended in 2016 (when subsection 1a was added) and 2017 (when subsection 1b was added), reads as follows:

"(1) In accordance with this [Act], it shall be possible to use, in Hungarian territory, a strip [of land] within 60 metres of the external borderline, as defined in Article 2(2) of the Schengen Borders Code, or of the signs demarcating the border, in order to build, establish or operate facilities for maintaining order at the border – including those referred to in section 15/A – and to carry out tasks relating to defence and national security, disaster management, border surveillance, asylum and immigration.

(1a) The police may, in Hungarian territory, apprehend foreign nationals [who are] staying in Hungarian territory illegally, on a strip [of land] within 8 kilometres of the external borderline, as defined in Article 2(2) of the Schengen Borders Code, or of the signs demarcating the border, and escort them through the gate of the nearest facility referred to in [subsection] 1, except where they are suspected of having committed an offence."

(1b) In a crisis situation caused by mass immigration, the police may, in Hungarian territory, apprehend foreign nationals [who are] staying in Hungarian territory illegally and escort them

beyond the gate of the nearest facility referred to in subsection 1, except where they are suspected of having committed an offence."

43. A "state of crisis due to mass migration" was declared in September 2015, and subsequently this has been continuously extended.

C. The Police Act

44. Section 92 of Hungary's Police Act (Act no. XXXIV of 1994 on the Police, hereinafter "the Police Act") outlines the procedures for individuals who believe that their fundamental rights have been infringed as a result of police actions or omissions. It provides two avenues for lodging complaints: a direct complaint to the police involved in the action or omission, and a request for an independent review conducted either by the National Police Headquarters, the directorate-general of the body performing internal crime prevention and crime investigation tasks, the body preventing terrorism, or that of the body responsible for aliens policing after the complaint was examined by the Commissioner for Fundamental Rights.

45. Section 33(1)(f) of the Police Act provides that the police may apprehend a person who is staying in the territory of the country illegally and hand him or her over to the competent authority with a view to further measures being taken.

D. The Code of Administrative Justice

46. The relevant provisions of Act no. I of 2017 on the Code of Administrative Justice (hereinafter "the Code of Administrative Justice") provide as follows:

Article 4

[Administrative legal disputes]

"(1) The lawfulness of an act by an administrative body governed by administrative law [which is] aimed at or result[s] in a change in the legal situation of the person concerned, or the lawfulness of a failure to carry out such an act (henceforth an "administrative act"), shall be the subject of an administrative legal dispute.

(2) A disputed act may be the subject of an administrative legal dispute if a party directly affected by the administrative act has exhausted the statutory administrative remedies against the disputed act, or [if] the lawsuit has been preceded by other administrative proceedings prescribed in a statutory provision.

(3) Administrative acts shall include

(a) individual decisions;

..."

Article 52

[Ordering suspensive effect]

"...

(2) No acts may be enforced from [the time] when the body carrying out the enforcement becomes aware of the application [to suspend an act] until [the time] when the application is decided, [or] until the expiry of the time-limit for adjudicating [the application] at the latest, unless the administrative body has declared its act to be immediately enforceable. Unless the court decides otherwise, acts [relating to] enforcement [which are] carried out before the body carrying out enforcement becomes aware of the application shall remain effective."

E. The 2020 Transitional Act

47. Act no. LVIII of 2020 on the Transitional Rules relating to the Termination of the State of Danger and on Epidemiological Preparedness (hereinafter "the 2020 Transitional Act") was adopted on 17 June 2020 and was in force from 18 June 2020 onwards, being extended on an annual basis.

48. The following provisions of the 2020 Transitional Act concerned the new system by which potential asylum-seekers were required to make a declaration of intent at a Hungarian embassy outside the EU in order to seek travel documents for Hungary for the purpose of making an asylum application there (so-called "embassy procedure"), and are relevant to the present case:

Section 268

"(1) The foreigner [in question] notifies the asylum authority of his or her wish to enter Hungary in order to lodge an asylum application by making a declaration of intent in person in respect of the lodging of an asylum application.

(2) The declaration of intent in respect of the lodging of an asylum application, in the form of a document addressed to the asylum authority, may be submitted to a diplomatic representation of Hungary ("an embassy") within the meaning of section 3(1)(a) of the Law on Diplomatic Representations and the Foreign Service, as defined in the Government Decree [see paragraph 51 below], [and] the content [of that document shall be] specified and published by the asylum authority.

(3) The asylum authority shall examine the declaration of intent and may conduct remote interviews with the foreigner in its embassies.

(4) The asylum authority, within 60 days, shall inform the embassy of the issue of a single-entry travel document for Hungary ("the travel document") for the purpose of making an asylum application.

(5) If, on the basis of the declaration of intent, the asylum authority does not propose to issue a travel document, it shall inform the foreigner through the embassy."

Section 269

"On the basis of the information provided by the asylum authority in accordance with section 268(4), the embassy of Hungary shall issue a travel document valid for 30 days if the foreigner does not have permission to enter the territory of Hungary."

Section 270

"(1) Except for section 271, an asylum application may be lodged after the procedures have been conducted in accordance with sections 268 and 269.

(2) A foreigner who holds a travel document shall inform the border guard of his or her intention to make an asylum application immediately after entering the country.

(3) The border guard shall present the foreigner to the asylum authority within a maximum period of 24 hours.

(4) A foreigner who has made an asylum application may exercise the rights conferred on him or her by the Asylum Act from the date on which his or her asylum application is made to the asylum authority.

(5) The asylum authority may [issue] a ruling assigning the asylum applicant accommodation in a closed reception centre. If four weeks have elapsed from the date of lodging the application and the conditions for detention have not been met, the asylum authority shall determine the place of accommodation in accordance with the general rules of the asylum procedure."

Section 271

"(1) The following persons [are not required] to make the declaration of intent referred to in section 268 [prior to] lodging an asylum application:

(a) a beneficiary of subsidiary protection staying in Hungary;

(b) a family member of a person recognised as a refugee or a beneficiary of subsidiary protection within the meaning of the Asylum Act, who was in Hungary at the time when the asylum application was lodged; and

(c) a person subject to a coercive measure, measure or punishment restricting individual liberty, unless he or she has crossed the borders of Hungary irregularly.

(2) If a foreigner who crosses the Hungarian border irregularly informs the police of his or her intention to lodge an asylum application, he or she shall be directed by the police to the Hungarian embassy in the neighbouring country of the place where the border was crossed.

(3) In relation to [the persons listed in] subsection 1, the asylum authority conducts the asylum procedure in accordance with the general rules."

Section 275

"(1) The Government has the power to draw up by decree a list of Hungarian embassies in which a declaration of intent may be lodged in respect of the lodging of an asylum application.

(2) The Minister for Immigration and Asylum is hereby authorised to establish by decree, with the agreement of the Minister for Foreign Affairs, the procedural arrangements necessary for the implementation of this Chapter."

49. Section 274 of the 2020 Transitional Act provided that the "embassy procedure" should apply to the examination of asylum applications made after 10 June 2020. The 2020 Transitional Act furthermore provided (under section 273) that sections 71/A-72 and sections 80/H-80/K of the Asylum Act, on border and airport procedures and the transit zone regime respectively (see, for the relevant provisions, *S.S. and Others*, cited above, § 21), were not applicable. In this connection, transit zones stopped operating in May 2020, following the judgment of the CJEU adopted in *FMS and Others v. Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság* (C-924/19 PPU and C-925/19 PPU) (see *R.R. and Others v. Hungary*, no. 36037/17, § 28, 2 March 2021). Furthermore, asylum applications could not be submitted at borders or at the airport, or from inside the country (except in the case of the exceptions specified in section 271 of the 2020 Transitional Act, cited above).

50. The last extension of the application of the "embassy procedure" – to last until 31 December 2024 – entered into force on 30 December 2023 by means of Act no. XCI of 2023 on Extending the Effect of the Application of the Embassy Procedure (hereinafter "the 2023 Extension Act"). The explanation concerning section 91 of the 2023 Extension Act, which accompanied the draft of that Act, read as follows:

"On the basis of the judgment of the Court of Justice of the European Union of 14 May 2020 in cases C-924/19 PPU and C-925/19 PPU, it became necessary to terminate the transit zone [regime], and at the same time the so-called "declaration of intent procedure" was introduced in connection with the asylum procedure. It remains essential that only those [people] who are truly in need of [asylum] and who cannot be guaranteed safe living conditions elsewhere apply for and receive asylum in the territory of the [European] Union. In order to ensure that the rules [governing asylum proceedings]

do not encourage masses to set off towards the Union, a solution is needed whereby asylum applications are filed and assessed before entry into the territory of the Union, as in the previous Hungarian system of transit zones.

The amendment is also justified by the prevention and limitation of mass and purposeful abuse, also encouraged by criminal groups of people smugglers. Under the current Fundamental Law of Hungary, it is justified and expedient to maintain the asylum application system currently in force, known as the declaration of intent system, because the framework it creates, in addition to the country's former epidemiological defence, acts to prevent and curb the bad faith behaviour of irregular migrants wishing to transit [who are] massively abusing our advanced asylum system, and [such behaviour on the part] of the networks of people smugglers that serve them."

51. At the material time, Government Decree no. 292/2020 of 17 June 2020 provided that a declaration of intent could be made to the Hungarian embassies in Belgrade (Serbia) and Kyiv (Ukraine). As of 1 January 2025, these embassies have been designated by Decree no. 23/2024 (XII. 30.) of the Minister of Foreign Affairs.

52. As of 1 January 2025, the provisions of the 2020 Transitional Act concerning the "embassy procedure" are no longer in force. Instead, the procedure is now governed by Government Decree no. 361/2024 (XI. 28.) on the Applicability of the Transitional Rules for Asylum Procedure, adopted on 28 November 2024 ("the 2024 Decree"). This Decree, in all aspects relevant to this case, contains provisions similar to those of the 2020 Transitional Act (see paragraphs 48 and 49 above). In accordance with the Decree, its provisions are applicable during the state of danger introduced by the Hungarian Government on account of the war in Ukraine (section 1 of the 2024 Decree).

F. Relevant case-law of the *Kúria*

53. Ruling no. Kfv.III.37.126/2023/8. of 3 May 2023 of the *Kúria* concerned the removal of a Moroccan national from Hungary on the basis of section 5(1b) of the State Border Act. The Moroccan national in question instituted administrative court proceedings against the police, arguing that they had failed to hand him over to the aliens policing authority so that immigration proceedings could be conducted. He argued that section 5(1b) of the State Border Act was contrary to EU law and the Court's judgment in *Shahzad* (cited above). The *Kúria* quashed a judgment of the Court of Appeal of 30 November 2022, which had found that such removal by the police could not be subject to administrative court proceedings, and remitted the case to the Court of Appeal for re-examination. The *Kúria* held that removal by the police carried out in accordance with section 5(1b) of the State Border Act could be characterised as an "administrative act" within the meaning of the Code of Administrative Justice. Consequently, under Article 4 § 3 (a) of the Code of Administrative Justice, it could be the subject of an administrative legal dispute (that is, administrative court proceedings).

54. A similar approach was taken by the *Kúria* in ruling no. Kfv.II.37.290/2023/4 of 21 June 2023, adopted in the domestic proceedings concerning the first applicant (see paragraph 14 above).

G. Statistics on removals

55. The Hungarian police reported that a total of 72,787 automatic forced removals from Hungary to Serbia had been carried out in 2021, and a total of 158,565 in 2022. The removals had primarily concerned Syrian and Afghan nationals.

II. INTERNATIONAL LAW AND OTHER RELEVANT MATERIAL

56. The relevant international law has been summarised in *N.D. and N.T. v. Spain* ([GC], nos. 8675/15 and 8697/15, §§ 53, 54, 59 and 62-67, 13 February 2020), *Shahzad* (cited above, §§ 21-24) and *S.S. and Others v. Hungary* (cited above, §§ 23-25 and 30-32). In addition, the following material is relevant to the present case.

A. European Union material

1. EU law

57. Article 258 of the Treaty on the Functioning of the European Union (TFEU) states as follows:

"If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union."

58. Article 18 of the Charter of Fundamental Rights of the European Union reads as follows:

Right to asylum

"The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union ..."

59. The relevant provisions of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) ("the Asylum Procedures Directive") state as follows (footnote omitted):

Article 6

Access to the procedure

"1. When a person makes an application for international protection to an authority competent under national law for registering such applications, the registration shall take place no later than three working days after the application is made.

If the application for international protection is made to other authorities which are likely to receive such applications, but not competent for the registration under national law, Member States shall ensure that the registration shall take place no later than six working days after the application is made.

Member States shall ensure that those other authorities which are likely to receive applications for international protection such as the police, border guards, immigration authorities and personnel of detention facilities have the relevant information and that their personnel receive the necessary level of training which is appropriate to their tasks and responsibilities and instructions to inform applicants as to where and how applications for international protection may be lodged.

2. Member States shall ensure that a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible. Where the applicant does not lodge his or her application, Member States may apply Article 28 accordingly.

3. Without prejudice to paragraph 2, Member States may require that applications for international protection be lodged in person and/or at a designated place.

4. Notwithstanding paragraph 3, an application for international protection shall be deemed to have been lodged once a form submitted by the applicant or, where provided for in national law, an official report, has reached the competent authorities of the Member State concerned.

5. Where simultaneous applications for international protection by a large number of third-country nationals or stateless persons make it very difficult in practice to respect the time limit laid down in paragraph 1, Member States may provide for that time limit to be extended to 10 working days."

Article 9

Right to remain in the Member State pending the examination of the application

"1. Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III. That right to remain shall not constitute an entitlement to a residence permit.

2. Member States may make an exception only where a person makes a subsequent application referred to in Article 41 or where they will surrender or extradite, as appropriate, a person either to another Member State pursuant to obligations in accordance with a European arrest warrant or otherwise, or to a third country or to international criminal courts or tribunals.

3. A Member State may extradite an applicant to a third country pursuant to paragraph 2 only where the competent authorities are satisfied that an extradition decision will not result in direct or indirect *refoulement* in violation of the international and Union obligations of that Member State."

60. The relevant provisions concerning the *sur place* international protection of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) ("the Qualification Directive") read as follows:

Article 5

International protection needs arising *sur place*

"1. A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on events which have taken place since the applicant left the country of origin.

2. A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on activities which the applicant has engaged in since he or she left the country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin.

3. Without prejudice to the Geneva Convention, Member States may determine that an applicant who files a subsequent application shall not normally be granted refugee status if the risk of persecution is based on circumstances which the applicant has created by his or her own decision since leaving the country of origin."

61. Article 2 (entitled "Scope") of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals ("the Return Directive") provides as follows, in so far as relevant:

"1. This Directive applies to third-country nationals staying illegally on the territory of a Member State.

2. Member States may decide not to apply this Directive to third-country nationals who:

(a) are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code, or who are apprehended or intercepted by the competent authorities in connection with the irregular

crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State;
(b) are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law, or who are the subject of extradition procedures."

62. Article 14 of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (codification) reads as follows, in so far as relevant:

Refusal of entry

"...

2. Entry may only be refused by a substantiated decision stating the precise reasons for the refusal. The decision shall be taken by an authority empowered by national law. It shall take effect immediately.

The substantiated decision stating the precise reasons for the refusal shall be given by means of a standard form, as set out in Annex V, Part B, filled in by the authority empowered by national law to refuse entry. The completed standard form shall be handed to the third-country national concerned, who shall acknowledge receipt of the decision to refuse entry by means of that form.

3. Persons refused entry shall have the right to appeal. Appeals shall be conducted in accordance with national law. A written indication of contact points able to provide information on representatives competent to act on behalf of the third-country national in accordance with national law shall also be given to the third-country national. Lodging such an appeal shall not have suspensive effect on a decision to refuse entry ..."

63. Article 19 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) ("the Dublin III Regulation") reads as follows:

Article 19

Cessation of responsibilities

"...

2. The obligations specified in Article 18(1) [to take back a third-country national], shall cease where the Member State responsible can establish, when requested to take charge of or take back an applicant or another person as referred to in Article 18(1)(c) or (d), that the person concerned has left the territory of the Member States for at least three months, unless the person concerned is in possession of a valid residence document issued by the Member State responsible.

..."

2. Relevant judgments of the CJEU concerning Hungary

(a) Judgment of the CJEU (Grand Chamber) of 17 December 2020 in *European Commission v.* Hungary *(Reception of applicants for international protection)*, C-808/18, EU:C:2020:1029 ("the 2020 *Commission v. Hungary* judgment")

64. In the case cited above, the CJEU addressed several key issues concerning Hungarian asylum and border legislation and the treatment of asylum-seekers in transit zones near the Serbian-Hungarian border with respect to the period up to 8 February 2018. It found that Hungary had failed to fulfil its obligations under EU law relating to access to the international protection procedure; to

the detention of applicants for international protection in the transit zones of Röszke and Tompa; to the removal of individuals staying illegally under section 5(1b) of the State Border Act; and to the right of applicants for international protection to remain in Hungarian territory until the time-limit for exercising their right to an effective remedy had expired and, when such a right had been exercised within the time-limit, pending the outcome of the remedy. Relevant findings from that judgment have been reproduced in *Shahzad* (cited above, § 25), and *S.S. and Others v. Hungary* (cited above, §§ 27 -28).

(b) Judgment of the CJEU (Fourth Chamber) of 22 June 2023 in *European Commission v. Hungary (Procedure for international protection)*, C-823/21, EU:C:2023:504 ("the 2023 *Commission v. Hungary* judgment")

65. On 22 December 2021 the European Commission ("the Commission") brought an action under Article 258 of the TFEU (see paragraph 57 above) against Hungary for failure to fulfil its obligations on account of the adoption of the 2020 Transitional Act. In the proceedings before the CJEU, the Hungarian Government submitted, among other things, that the 2020 Transitional Act did not apply to those who had been residing in Hungary for a long time because they did not present an epidemiological risk (paragraph 30 of the judgment). They also argued that the impugned legislation did not create a risk of *refoulement*, since Serbia (where a declaration of intent could be made at the Hungarian embassy) was a party to the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (United Nations Treaty Series, Vol. 189, p. 150, No 2545 (1954)), and a candidate country for accession to the EU, and therefore a safe country of origin (paragraph 36 of the judgment).

66. On 22 June 2023 the CJEU held that the new asylum procedure as set out in the 2020 Transitional Act fell under the scope of EU law, thus the Asylum Procedures Directive and the Charter of Fundamental Rights of the European Union applied. It made the following findings in this regard:

"48 In the present case, it should be noted that Articles 268 to 270 of the Law of 2020 [the 2020 Transitional Act] apply to third-country nationals and stateless persons who are present in the territory of Hungary or present themselves at its borders and who wish to express their intention to receive international protection in that Member State. It follows that, contrary to what Hungary maintains, those persons fall fully within the scope of that directive, as defined in Article 3(1) thereof.

49 The fact that those persons are required, under Hungarian law, to travel from the territory of Hungary or from the border of that Member State in order to lodge, in person, a prior declaration of intent at an embassy of that Member State, located in Serbia or Ukraine, cannot alter that conclusion. More specifically, contrary to what Hungary submits, it cannot follow from such an obligation that those persons should be regarded as having merely submitted an application for diplomatic or territorial asylum to the representations of the Member States, within the meaning of Article 3(2) of Directive 2013/32 [the Asylum Procedures Directive]."

67. The CJEU held that the 2020 Transitional Act ran counter to Article 6 of the Asylum Procedures Directive (see paragraph 59 above) by allowing certain third-country nationals or stateless persons present in the territory of Hungary or at the borders of that member State to make an application for international protection provided that they had already made a declaration of intent at a Hungarian embassy located in a third country and had had a travel document enabling them to enter Hungarian territory granted (paragraph 70 of the CJEU's judgment). Furthermore, because it obliged third-

country nationals wishing to seek asylum in Hungary to leave the territory of Hungary, the new procedure did not comply with their right to remain in the territory pending the outcome of the asylum proceedings, enshrined in Article 9 of the Asylum Procedures Directive (see paragraph 59 above). As regards the effect of the impugned legislation, the CJEU held as follows:

"50 Furthermore, as has been recalled in paragraph 37 of the present judgment, under Articles 268 to 270 of the Law of 2020, the competent Hungarian authorities can, in principle, consider that an application for international protection has been made, within the meaning of Article 6 of Directive 2013/32, only where the person concerned has previously lodged a declaration of intent at a Hungarian embassy in a third country and has obtained a travel document enabling him or her to enter Hungary.

51 However, such a condition is not laid down in Article 6 of Directive 2013/32 and runs counter to the objective, pursued by that directive and recalled in paragraph 46 above, of ensuring effective, easy and rapid access to the procedure for granting international protection.

52 Furthermore, the effect of the legislation complained of by the Commission is that, apart from the persons referred to in Article 271(1) of the Law of 2020, third-country nationals or stateless persons who are staying in the territory of Hungary or present themselves at the borders of that Member State, without undergoing the prior procedure imposed by that law, are deprived of the effective enjoyment of their right, as guaranteed by Article 18 of the Charter [of Fundamental Rights of the European Union], to seek asylum from that Member State."

68. As to the Government's argument concerning the public health grounds for the impugned Act, the CJEU held, *inter alia*, as follows:

"59 Forcing third-country nationals or stateless persons, who reside in Hungary or who present themselves at the borders of that Member State, to go to the embassy of that Member State in Belgrade or Kyiv in order to be able, subsequently, to return to Hungary in order to make an application for international protection there constitutes a manifestly disproportionate interference with the right of those persons to make an application for international protection upon their arrival at a Hungarian border, as enshrined in Article 6 of Directive 2013/32, and their right to be able, in principle, to remain in the territory of that Member State during the examination of their application, in accordance with Article 9(1) of that directive.

60 Furthermore, that constraint cannot achieve the objective of combating the spread of the COVID-19 pandemic in so far as it obliges third-country nationals or stateless persons to move, thereby potentially exposing them to that disease which they could subsequently spread in Hungary.

61 In addition, Hungary has not demonstrated, or even argued before the Court, that no other measure intended to combat the spread of the COVID-19 pandemic could adequately be adopted, in Hungarian territory, in respect of third-country nationals or stateless persons wishing to apply for international protection in Hungary."

69. The CJEU also addressed the Government's argument concerning public policy and the public security grounds for the impugned Act and held, *inter alia*, as follows:

"69 In the context of the present action, Hungary merely invoked, in a general manner, the risk of threats to public policy and internal security in order to justify the compatibility of the Law of 2020 with EU law, without demonstrating that it was necessary for it to derogate specifically from

the requirements arising from Article 6 of Directive 2013/32, in view of the situation prevailing in its territory on the expiry of the period laid down in the reasoned opinion."

(c) Judgment of the CJEU of 13 June 2024 in *European Commission v. Hungary*, C-123/22, following non-execution of judgment adopted in case no. C-808/18

70. On 21 February 2022 the Commission brought an action against Hungary for its failure to comply with the 2020 *Commission v. Hungary* judgment (see paragraph 64 above). By a judgment of 13 June 2024 in case C-123/22, the CJEU found that Hungary had failed to comply with the earlier judgment. Referring to, *inter alia*, the exceptionally serious infringements of EU law and Hungary's failure to cooperate in good faith in order to bring those infringements to an end, it ordered Hungary to pay a fine of 200 million euros (EUR), in addition to a daily penalty payment of EUR 1 million, owing to the systematic breach of EU legislation concerning the reception of applicants for international protection.

71. The CJEU found that "despite the closure of the transit zones of Röszke and Tompa, Hungary ha[d] not taken the measures necessary to comply with the 2020 *Commission v Hungary* judgment as regards several essential aspects of that judgment, namely access to the international protection procedure, the removal of illegally staying third-country nationals and the right of applicants for international protection to remain in Hungarian territory until the time limit for exercising their right to an effective remedy ha[d] expired and, when such a right ha[d] been exercised within the time limit, pending the outcome of the remedy" (paragraph 103 of the judgment). As regards access to the international protection procedure, the CJEU noted that compliance with the 2020 *Commission v. Hungary* judgment required Hungary to adopt all the measures necessary to ensure effective, easy and rapid access to that procedure (paragraphs 61-65 of the judgment). In this regard, it found as follows:

"67 ... [C]ontrary to what Hungary submits, the closure of the transit zones of Röszke and Tompa is not sufficient to guarantee effective, easy and rapid access to the international protection procedure. Indeed, it is common ground between the parties that, on the date of expiry of the period prescribed in the letter of formal notice, the regime applicable to access to the international protection procedure was that resulting from the [2020 Transitional Act].

68 In that regard, in point 1 of the operative part of the 2023 *Commission* v *Hungary* judgment, the Court held that, by making the possibility, for certain third-country nationals or stateless persons present in the territory of Hungary or at the borders of that Member State, of making an application for international protection subject to the prior lodging of a declaration of intent at a Hungarian embassy located in a third country and to the granting of a travel document enabling them to enter Hungarian territory, Hungary had failed to fulfil its obligations under Article 6 of Directive 2013/32.

69 It is apparent from paragraphs 8 to 13 and 37 of that judgment that that finding concerns the provisions of the [2020 Transitional Act] on access to the international protection procedure, the application of which cannot, therefore, be regarded as valid compliance with the 2020 *Commission* v *Hungary* judgment."

3. Other relevant EU material

72. According to Eurostat, between June 2020 and November 2022 Hungary registered only 95 asylum applications.

73. The EU Agency for Fundamental Rights (FRA), in its report entitled "Migration: Key fundamental rights concerns - Bulletin 3 - 2021" in relation to the period between 1 July 2021 and 30 September 2021, referred to the following information:

"In Hungary, the police apprehended 22 997 migrants in an irregular situation during the reporting period (mostly Afghan, Iraqi and Syrian nationals). This is the highest monthly number since 2017. Despite the December 2020 ruling of the Court of Justice of the EU, the police continued to escort all apprehended migrants back to the outer side of the fence at the southern border. Authorities do not fingerprint or register these individuals before escorting them back to the border, nor do they record them as new arrivals or asylum applicants in the official statistics. If they wish to ask for asylum, the police direct them to the designated Hungarian embassies in Belgrade (Serbia) and in Kyiv (Ukraine) to lodge their statement of intent to apply for asylum; this legal regime has been extended until 31 December 2021. ... Under the contested rules, only nine persons submitted asylum applications in the reporting period, according to data provided to FRA by the National Directorate-General for Aliens Policing."

B. Council of Europe material

74. In her report, "Pushed beyond the limits: Four areas for urgent action to end human rights violations at Europe's borders", published in April 2022, the Council of Europe Commissioner for Human Rights noted as follows:

"Hungary and Romania have also been reported to push people back to Serbia. In July 2016, Hungary introduced the so-called 'pushback measures', authorising collective returns by the police ... of all potential asylum seekers apprehended within 8 kilometers of the Serbian-Hungarian border. The measure was extended to the whole territory in March 2017. Since then, access to the asylum procedure is no longer possible at the border crossing points, nor within Hungary, but only in the Hungarian embassies in Kyiv and Belgrade. Any person in an irregular situation in Hungary will be escorted to Serbia, whether they have entered from there or not. This has systematically deprived persons seeking asylum from accessing it and has resulted in collective expulsions. According to the weekly statistics by the Hungarian police, from the introduction of these measures in July 2016 until December 2020, when the Court of Justice of the EU found these contrary to EU law, some 50,000 pushbacks took place on this basis. Since then, their number has increased significantly, with a further 71,470 pushbacks from Hungary to Serbia being carried out in 2021."

75. Interim Resolution CM/ResDH(2023)260, "Execution of the judgments of the European Court of Human Rights, Ilias and Ahmed group against Hungary", was adopted by the Committee of Ministers on 21 September 2023 at the 1475th meeting of the Ministers' Deputies. The Committee of Ministers, under the terms of Article 46 § 2 of the Convention, took note of the Hungarian authorities' information that the legislative presumption that Serbia was a "safe third country" had not been applied by the asylum authority or the domestic courts since 26 May 2020, and reiterated, *inter alia*, its grave concern that collective expulsions were reportedly not only continuing, but their numbers were increasing at a concerning rate. Its resolution also stated as follows:

"[The Committee of Ministers] INVITED the authorities to submit an undertaking that, in the absence of a thorough and up-to-date reassessment of the asylum situation in Serbia, they will refrain from again applying the legislative presumption of 'safe third country' to that country;

STRONGLY URGED the authorities to intensify their efforts in reforming the asylum system in order to afford effective access to means of legal entry, in particular border procedures in line with Hungary's international obligations, and invited them to establish a timeline for the legislative process, to present a draft legislative proposal and to keep the Committee informed of all relevant developments in the legislative process;

EXHORTED the authorities to terminate, without further delay, the practice of removing asylum-seekers to Serbia pursuant to section 5 of the State Borders Act without their identification or examination of their individual situation;

REITERATED its call on the authorities to introduce an effective remedy providing a person alleging that their expulsion procedure is 'collective' in nature with an effective possibility of challenging the expulsion decision by having a sufficiently thorough examination of their complaints carried out by an independent and impartial domestic forum, in line with the Court's case-law;

INVITED the authorities to submit an updated action plan, including information on all the above issues, by 30 June 2024, and decided to resume consideration of this group, in the light of the information received, at their DH meeting in September 2024;

ENVISAGED taking new action to ensure that Hungary abides by its obligations deriving from the Court's judgments in this group of cases, should no tangible progress be achieved by that meeting as regards the issues mentioned above."

C. United Nations material

76. The Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, authored by the Office of the United Nations High Commissioner for Refugees (UNHCR), included the following information on refugees *sur place*:

"94. The requirement that a person must be outside his country to be a refugee does not mean that he must necessarily have left that country illegally, or even that he must have left it on account of well-founded fear. He may have decided to ask for recognition of his refugee status after having already been abroad for some time. A person who was not a refugee when he left his country, but who becomes a refugee at a later date, is called a refugee 'sur place'.

95. A person becomes a refugee 'sur place' due to circumstances arising in his country of origin during his absence. Diplomats and other officials serving abroad, prisoners of war, students, migrant workers and others have applied for refugee status during their residence abroad and have been recognized as refugees."

III. Reports published in the Asylum Information Database (AIDA)

77. A report entitled "Country Report: Hungary – 2022 update" was published in the Asylum Information Database (AIDA), which is coordinated by the European Council on Refugees and Exiles. As regards "pushbacks", it noted the following:

"In 2021, 72,787 migrants and asylum seekers were pushed back and 47,323 were blocked entry. 63% of those pushed back were Syrian, whereas 19% were Afghan nationals. In 2022 there were 158,565 pushbacks carried out. 56 % of those pushed back were Syrian, whereas 16% were Afghan nationals."

78. As regards the "embassy procedure", the above-mentioned report noted the following:

"As regards the procedure at the embassy, the law does not clarify the criteria to be considered by the NDGAP [National Directorate-General for Aliens Policing] in deciding on such applications. Those wishing to submit their statement of intent must first secure an appointment at the embassy. There is no clear procedure on how this could and should be arranged. According to the HHC [Hungarian Helsinki Committee]'s knowledge, people are supposed to send an e-mail requesting an appointment. They are informed that they will be informed about the date of the appointment to lodge the intent (this implies that they are placed on an undefined 'waiting list'). The HHC is aware of several cases where applicants waited over 6 months to get an appointment, while some received a date within weeks. Some also miss the appointment, as they do not speak English and the information about the appointment is sent to them in English by e-mail, or they are not used to use emails, or they were not able to arrive to the appointment, as they couldn't arrange their travel, since they were placed in a reception centre further away from Belgrade. The 'statement of intent' form has to be filled out in English or Hungarian, for which no interpretation or legal assistance is provided. In 2020, 26, whereas in 2021, according to the NDGAP 53 and as per the Ministry of Trade and Foreign Affairs 55 statements of intent were submitted at the Embassy of Hungary in Belgrade. Similar issues on the Embassy procedure in Belgrade have been reported in the AIDA report on Serbia. In 2022, according to the NDGAP, 16 statements of intent were submitted at the Embassy of Hungary in Belgrade.

Only one family's 'statement of intent' was assessed positively in 2020 and the NDGAP granted them a single-entry permit in order to apply for asylum in Hungary, they were later granted refugee status. All other applications were rejected in an email, by one paragraph stating that the NDGAP decided not to suggest the issuance of a single-entry permit. The decision therefore bears no reasoning and the law does not foresee any remedy. This clearly denies asylum seekers access to a fair and efficient asylum procedure as it raises fundamental concerns over the possibility of a substantive assessment without appropriate procedural guarantees being in place as required by international and EU law. In 2021, 8 persons (4 persons in April and 4 in September) were granted a single-entry permit in order to apply for asylum in Hungary. In 2022 (December), 4 persons were granted a single-entry permit in order to apply for asylum in Hungary."

79. A report entitled "Country Report: Serbia – 2022 update", published in AIDA, made the following observations relevant to the present case:

"Smuggling activities: ... People pushed back from EU countries to Serbia are exposed to numerous risks, including those originating from organized criminal groups, life in destitute in places of informal gatherings in the border area, poor and unsafe living conditions in reception facilities and denial of access to the asylum procedure, which can also lead to chain-refoulement to third countries from which people had entered Serbia (mainly Bulgaria and North Macedonia).

...

1.5. Pushbacks towards Serbia and its consequences

Wide-spread pushbacks towards Serbia have been documented along the green border between ... Bosnia, Croatia, Hungary and Romania where refugees and asylum seekers are systematically denied access to the territory and the asylum procedure, and are often subjected to various forms of ill-treatment, some of which might amount to torture.

...

Simply, Serbia does not have the capacity to address basic needs of refugees, asylum seekers and migrants staying in border area, nor it has the capacity to establish the system which can handle hundreds of informal returns from Romania, Hungary and Croatia outside readmission or any other formal cooperation.

...

Thus, the consequences of pushbacks to Serbia with regards to persons who might be in need of international protection implies the potential risks of ill-treatment, particularly targeting ... [unaccompanied and separated children] and other vulnerable groups, and which can be materialised through:

Ill-treatment committed by trans-national organized criminal groups controlling the border area and reception facilities.

Poor, unhygienic and unsafe living conditions in the informal settlements

Poor and unsafe living conditions in reception facilities of RC [Reception Centre] Sombor, RC Subotica or RC Kikinda.

Excessive use of force by police and special forces of Serbia.

Acts of extreme right-wing groups who act against impunity."

80. As to access to the asylum procedure, the above-mentioned report noted the following:

"The lack of clarity with regard to access to the asylum procedure for people in need of international protection who are treated as irregular migrants (since they are issued with an expulsion order or penalised in the misdemeanour proceeding) gives reasons for concern. According to the Foreigners Act, they could be forcibly removed to a third country (in the vast majority of cases to Bulgaria and North Macedonia) or even to the country of origin in which they could be subjected to ill-treatment. Thus, it is very important to outline that the current practice of most police departments in Serbia regarding the issuance of expulsion decisions must be improved so that it includes procedural safeguards against refoulement. ... Moreover, the entire procedure is based on the simple delivery of the decision to a foreigner, decision drafted in a standard template that only contains different personal data, but no rigorous scrutiny of risks of refoulement is applied.

...

... foreigners issued with registration certificates, but also those who are not registered at all, but are accommodated in Asylum or Reception centres, are in legal limbo. They are not entitled to any of the rights, including the right to reside in reception facilities ..., but their stay has always been tolerated. Still, this indicates that the vast majority of persons in need of international protection lack legal certainty with regards to their status.

...

1.1.3. Access to the asylum procedure for persons expelled/returned from neighbouring States

It is important to reiterate that people expelled or returned from Hungary, Croatia and Romania informally or in line with the Readmission Agreement between the EU and the Republic of Serbia on the readmission of persons residing without authorisation can face obstacles in accessing the asylum procedure."

81. As to reception conditions in Serbia, the "Country Report: Serbia – 2022 update" stated the following:

"The reception centre in Sombor (380 places) was opened in 2015 in the warehouse of a military complex close to the border with Croatia. ... On 10 January 2021, 847 refugees and migrants were accommodated in RC [Reception Centre] Sombor whose official capacities are 120 persons. On 20 June 2021, 636 persons were accommodated in this RC. APC [Asylum Protection Center – a Serbian NGO] reported appalling conditions on several occasions. On 19 December 2021, overcrowding rate in this RC was 580%. On 26 September 2022, 768 persons was accommodated in this RC, while on 3 January 2023, this number was significantly reduced to 384. RC in Sombor is the facility known to be run by organised criminal groups involved in smuggling with dozens of security incidents, poor living conditions, lack of privacy and in general lack of necessary requirements for the respect of human dignity.

...

The reception centre in Subotica (220 places) was opened in 2015 at the height of the refugee and migrant movement into Hungary. The centre remained open. Like the other reception centres, it is inadequate for long-term residence. Beneficiaries are accommodated in group container rooms which do not guarantee privacy and the possibility to maintain hygiene. There were instances of attacks and stabbing reported by beneficiaries who resided there, as well as attacks from local population The RC Subotica was overcrowded throughout 2021 and 2022. In June 2021, it hosted 162 persons, while in September 2022, 431 persons."

THE LAW

I. JOINDER OF THE APPLICATIONS

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

II. OTHER PRELIMINARY issues

A. The first applicant's alleged lack of interest in pursuing the application

83. The Government argued that the first applicant and his legal representative had not been in contact, and therefore it might be that the first applicant did not wish to continue his case before the Court and that the application accordingly should be struck out of the Court's list of cases. They referred to the statement made by the first applicant's representative to the asylum authority, which had indicated that the first applicant was staying in a reception centre in Serbia at that time (see paragraph 20 above), although this had turned out not to be true.

84. The first applicant's representative submitted to the Court that the first applicant had indeed been staying in the reception centre in question, but had left for Austria afterwards, and he (the representative) might not have been aware of this when the asylum authority had made enquiries. The first applicant's representative enclosed a copy of a signed statement by the first applicant dated 21 February 2023 confirming that he wished to continue the proceedings before the Court and to continue to be represented by the same representative.

85. The Court does not consider that the matter relied on by the Government (see paragraph 83 above) raises doubts about the first applicant's wish to continue the proceedings before the Court and to continue to be represented by the representative referred to in paragraph 2 of the present judgment. It observes that that the first applicant stayed in the Belgrade Refugee Centre until 14 May

2022 and therefore the information provided by his representative to the Hungarian authorities seems to have been correct (see paragraphs 8 and 20 above). Having regard also to the statement signed by the first applicant (see paragraph 84 above), the Court finds no grounds to conclude that he does not intend to pursue his application and that the application should therefore be struck out of the Court's list of cases (Article 37 § 1 (a) of the Convention). The Government's argument must therefore be dismissed.

B. Establishment of the facts in relation to the second applicant

86. The Government argued that the second applicant had failed to prove that he personally had ever been subject to the measure complained of, namely the "apprehension and escort" measure under section 5(1b) of the State Border Act (see paragraph 42 above). In particular, he had failed to prove that he had entered Hungary and had subsequently been deported to the external side of the border fence at the Hungarian-Serbian border. They argued that it had not been established beyond doubt that the medical certificate issued in Hungary and submitted by the second applicant actually concerned him, since many persons had been involved in the traffic accident in question. They also submitted that "no data or facts relating to an unaccompanied minor [had been] found in the case of any of the injured foreigners".

87. The second applicant argued that it was possible that the hospital had not noted his data because he had not had any identification documents. He also submitted that the Government had not disputed that there had been a traffic accident on 16 February 2022. In his submission, in the absence of identification documents, he should have been presumed to be a minor or subjected to an age assessment. The fact that he had not been properly registered at the hospital should be attributed to the authorities, not to him.

88. 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 the context of the expulsion of migrants, the Court has previously stated that where the absence of identification and personalised treatment by the authorities of the respondent State is at the very core of an applicant's complaint, it is essential to ascertain whether the applicant has furnished prima facie evidence in support of his or her version of events. If that is the case, the burden of proof should shift to the Government (see *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 85, 13 February 2020).

89. The Court notes that the second applicant provided documents related to his alleged hospitalisation in Hungary, as well as documents related to the proceedings he initiated at the Hungarian embassy in Belgrade. It further notes that it has not been disputed that there was a traffic accident involving several individuals on 16 February 2022. Having regard to the above, and to the details provided by the second applicant regarding his removal, the Court considers that he furnished prima facie evidence in favour of his version of events. The burden of proving that the second applicant had not entered Hungary and had not been summarily returned to Serbia thus rested on the authorities (compare *M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, § 273, 18 November 2021).

90. In this connection, the Court notes that the Government argued that "no data or facts relating to an unaccompanied minor [had been] found in the case of any of the injured foreigners" (see paragraph 86 above). However, the medical report submitted by the second applicant was issued the day after the accident, refers to that accident as being the cause of the patient's injuries, and notes that the patient said that he was sixteen years old (see paragraph 23 above). This report and the one issued on 14 April 2022 indicate the patient's date of birth, which does not match his statement about his age (see paragraphs 23 and 25 above), yet no explanation is given for this inconsistency. In addition, the reports contain no name, and therefore the indication that the patient had Hungarian citizenship could not be considered to be one based on any proper verification. The reports cannot therefore be taken as evidence contradicting the second applicant's account of events. Had the Government had serious doubts regarding the second applicant's involvement in the accident in question, they would have been expected to provide relevant police records or any other official records identifying or describing those involved in the traffic accident, which, given its serious consequences, must have been the subject of an official inquiry of some sort. In the Court's view, there is nothing in the second applicant's submissions or his account of events that would call into question his credibility. Given the undocumented nature of the removal process – an issue which is central to this case and others like it – responsibility for the lack of evidence regarding the execution of that process rests primarily with the Government (compare *Shahzad v. Hungary*, no. 12625/17, §§ 32-37, 8 July 2021).

91. In conclusion, the Court finds it sufficiently established that the second applicant was deported to the external side of the border fence between Hungary and Serbia by Hungarian officials.

III. ALLEGED VIOLATION OF ARTICLE 4 of protocol no. 4 to THE CONVENTION

92. The applicants complained that they had been subject to a collective expulsion, in breach of Article 4 of Protocol No. 4 to the Convention, which reads as follows:

"Collective expulsion of aliens is prohibited."

A. Admissibility

93. The Government argued that the measure in question had not constituted an expulsion, because the applicants had been escorted under section 5(1b) of the State Border Act to the territory of Hungary, not Serbia. With respect to the first applicant, the Government further submitted that after being escorted through the gate of the border fence he had been able to go to the transit zone and apply for asylum there. The Government also argued that the first applicant's removal had not been accompanied by an entry ban, and that he had been able to file an asylum application after his temporary return to Serbia, which was common practice. In this connection, the Government referred to the procedure available in the transit zones. In the third applicant's case, they also argued that he had not been removed by force.

94. The applicants disputed the Government's arguments and referred to, *inter alia*, the Court's findings in *Shahzad* (cited above, §§ 45-53).

95. The Court notes that at the time of the events in question, the transit zones were no longer operational (see paragraphs 49, 50 and 71 above), and that the Government's arguments referring to the possibility of applying for asylum there are thus irrelevant. Be that as it may, the remaining arguments pertaining to the question of the applicability of Article 4 of Protocol No. 4 were addressed and dismissed in *Shahzad* (cited above, §§ 42 and 46-52) and *S.S. and Others v.*

Hungary (nos. 56417/19 and 44245/20, § 45, 12 October 2023). The measure applied to the applicants in the present case, that is to remove them to the external side of the Hungarian border fence with Serbia, was in all relevant aspects the same as that in the above-cited cases, and the Court therefore finds that their removal amounted to expulsion within the meaning of Article 4 of Protocol No. 4. Therefore, this provision is applicable, and the Government's objection is dismissed.

96. Since this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention, it must be declared admissible.

B. Merits

1. The applicants' submissions

97. The applicants argued that they had been collectively expelled from Hungary, and that the "embassy procedure", which offered the only means of legal entry, was ineffective.

98. The first applicant argued that the Government's reference to his alleged bad faith (see paragraph 102 below) was of no relevance in this case. Firstly, the protection of Article 4 of Protocol No. 4 applied irrespective of the lawfulness of a person's stay. Secondly, he had submitted his asylum application when he had become a person in need of international protection. He could not be blamed for the Taliban takeover and the consequences thereof. His claim was genuine and the Government's argument that only "deserving" migrants could benefit from the principle of *non-refoulement* was inherently incompatible with the Convention. The first applicant also argued that the 2020 Transitional Act could not be applied in his case. Firstly, he had arrived in Hungary lawfully and had not been in Serbia at any point before his removal. He had not been able to enter Serbia lawfully in order to access the Hungarian embassy in Belgrade to apply for asylum there. Secondly, he had been removed after his application had been processed and while his court appeal had been pending.

99. As regards the "embassy procedure", the second applicant submitted that the decision of the asylum authority had contained no reasoning, and he had merely been informed that he had been denied entry. He and the first applicant pointed out that the aim of the 2020 Transitional Act had been to prevent the spread of COVID-19, and this aim could not have been achieved by removing people who had applied for asylum in the territory of Hungary. The second applicant also maintained that the fact that a guardian could not be appointed for him when he had been applying for travel documents through the "embassy procedure" showed one of the many deficiencies in the system.

100. The third applicant argued that he had left for Hungary because he had had no opportunity to access the asylum procedure in Serbia from the camp in Sombor (Serbia), which was deplorable and unsafe. The status of those staying in Sombor was undocumented and they were exposed to arbitrary practices such as being denied entry to the camp or access to food, which had been well documented in the reports published in AIDA. The third applicant argued that owing to the lack of effective access to means of legal entry, he had only been able to enter Hungary irregularly. He also pointed out that the "embassy procedure" was in breach of EU law as established by the CJEU, and was unlawful *per se* and therefore could not constitute "genuine and effective access to means of legal entry". The Government failed to provide evidence as to the application of the procedure in practice, despite the Court making an explicit request in that regard.

2. The Government's submissions

101. The Government argued that the applicants had not been collectively expelled from Hungary and had been able to avail themselves of the "embassy procedure" provided for in the 2020 Transitional Act. They confirmed that a person staying in Hungary illegally had no way of applying for asylum directly in Hungary. Likewise, it was not possible to apply for asylum at a border crossing point. For those who had crossed the Hungarian border in an irregular manner, none of the exceptions provided for in the 2020 Transitional Act applied, and they had to use the "embassy procedure" with a view to possibly obtaining permission to enter Hungary.

102. As regards the first applicant, the Government also argued that he had acted in bad faith, since he had not tried to regularise his stay and had instead stayed in Hungary illegally. In their submission, the first applicant had not attempted to become a useful part of Hungarian society, but had requested asylum knowing that following the Taliban takeover, he would not be removed to Afghanistan. The Government further submitted that the first applicant's legal representative must have been aware that he could not submit an asylum application in Hungary within the Hungarian legal framework.

103. As regards the second applicant, the Government also submitted that the appointment of a guardian by the guardianship authority would have been possible only after his entry into the territory of Hungary. In this connection, the Government argued that the domestic authorities had not received any indication of his intention to apply for asylum prior to the submission of his declaration at the embassy.

3. The UNHCR's submissions

104. Intervening in application no. 46084/21, the UNHCR submitted that it and its partners had observed first-hand that people, including unaccompanied and separated children, were subject to automatic removal without any individualised assessment of their circumstances or specific needs. The legal framework providing for this measure had remained unchanged, despite the Court's judgment in *Shahzad* (cited above). The UNHCR further submitted that the "embassy procedure" provided for in the 2020 Transitional Act had not ensured effective and genuine access to the asylum procedure in Hungary. It argued that persons removed to Serbia found themselves in an undocumented situation; even if they applied for permission to travel to Hungary through the "embassy procedure", they did not enjoy any rights attached to their status as applicants for international protection. In the UNHCR's submission, the 2020 Transitional Act had imposed a blanket measure denying asylum-seekers access to procedures and admission in circumstances where there had been no evidence of a health risk. The operation of the "embassy procedure" was not properly regulated, including the manner in which appointments were made, and lacked any safeguards. Requests for appointments and statements of intent could only be submitted in Hungarian or English, and no translation support was provided. Information on refusals was sent *via* email and no details or reasons were given. The UNHCR noted that in several cases Hungarian courts had ruled that decisions issued in the context of the "embassy procedure" should be reasoned, but there was no indication that the applicants in those cases had ultimately managed to gain access to Hungary in order to submit an asylum application. The UNHCR pointed out that national authorities were not precluded from offering access to asylum through their embassies, but such a system could only complement access to the asylum procedure available at the border or inland, not replace it.

4. The Court's assessment

(a) Relevant case-law

105. The Court refers to the principles concerning the "collective" nature of an expulsion summarised in *N.D. and N.T. v. Spain* (cited above, §§ 193-201). It reiterates that 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). In line with this, in *Hirsi Jamaa and Others v. Italy* ([GC], no. 27765/09, § 185, ECHR 2012) the Court found a violation of Article 4 of Protocol No. 4 because the applicants, who had been intercepted on the high seas, had been returned to Libya without the Italian authorities carrying out any identification or examination of their individual circumstances.

106. Exceptions to the above rule have been found in cases where the lack of an individual expulsion decision could be attributed to the applicant's own conduct (see *Berisha and Haljiti v. the former Yugoslav Republic of Macedonia* (dec.), no. 18670/03, 16 June 2005, and *Dritsas v. Italy* (dec.), no. 2344/02, 1 February 2011). In *N.D. and N.T. v. Spain* (cited above), the Court considered that the exception absolving a State from responsibility 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 took advantage of their large numbers and used force, was such as to create a clearly disruptive situation which was difficult to control and endangered public safety (§ 201). The Court added that in such situations, it should be taken into account whether in the circumstances of the particular case the respondent State had provided genuine and effective access to means of legal entry, in particular border procedures, and, if it had, whether there had been cogent reasons for the applicants not to make use of it which had been based on objective facts for which the respondent State had been responsible (ibid.).

107. The Court has subsequently considered complaints of collective expulsion in several cases against Hungary, most notably in *Shahzad* (cited above) and *S.S. and Others v. Hungary* (cited above). In *Shahzad*, the applicant's removal to Serbia following his irregular entry into Hungary was based on section 5(1a) of the State Border Act, which authorised the immediate removal of foreign nationals staying illegally from an 8-km strip of land along the external border (ibid., §§ 17 and 60). In *S.S. and Others*, the removal of the applicants to Serbia after their arrival at Budapest Airport *via* Dubai was based on section 5(1b) of the State Border Act (ibid., §§ 22 and 47). That provision authorised the police to remove to Serbia foreign nationals staying illegally anywhere in Hungary (see paragraphs 42 and 43 above). In both cases, at the time of the applicants' removal, they could apply for asylum only in two transit zones situated at the border between Hungary and Serbia (see *Shahzad*, cited above, § 63, and *S.S. and Others*, cited above, § 63). In *Shahzad*, the Court considered whether the applicant, by crossing the border irregularly, had circumvented an effective procedure for legal entry, and concluded that the arrangement in place at the transit zones had not provided for such a procedure (§§ 61-65). In *S.S. and Others*, the Court did not rely on that line of reasoning and found as follows:

"49. It has not been disputed that the applicants expressed their wish to seek asylum in Hungary and cooperated with the authorities when they were apprehended. Instead of examining the applicants' arguments and the needs of the applicant children, who were in a particularly vulnerable position ..., the Hungarian authorities proceeded to immediately remove them to Serbia. In the

Court's view, the authorities' conduct could not be justified under Article 4 of Protocol No. 4. In this connection, it observes that the applicants arrived at an official border crossing point at Budapest Airport and presented themselves to the border officers. They were then removed to a country which they had not come from. The situation in the present case must thus be distinguished from a situation where aliens who had genuine and effective access to existing border crossing points decided to cross a land border at a different location in an unauthorised manner and were then returned to the country they had entered from (see, *mutatis mutandis*, *M.K. and Others v. Poland*, nos. 40503/17 and 2 others, § 207, 23 July 2020, and contrast *N.D. and N.T. v. Spain*, cited above, §§ 209-210 and 231)."

(b) Assessment of the present case

108. The present case concerns a system whereby foreigners who have entered or stayed in Hungary illegally are automatically removed from the country. This system has been in place in Hungary since 2016, and was initially used in relation to a strip of land close to the border (section 5(1a) of the State Border Act). In 2017, during the declared crisis of mass migration, the system was extended to be used throughout the territory of the State (section 5(1b) of the State Border Act, see paragraphs 42 and 43 above). A state of crisis remains in effect to this day, and automatic removals are still being carried out across the country (see paragraph 43 above). A foreigner whose presence in Hungary is irregular can be apprehended and transferred by the police to the border fence and made to leave Hungary in the absence of any formal decision.

109. The application of the system of automatic removals led the Court to find a violation of Article 4 of Protocol No. 4 in *Shahzad* (cited above) and a number of other cases against Hungary (for instance, *K.P. v. Hungary* [Committee], no. 82479/17, §§ 4-10, 18 January 2024, and *H.K. v. Hungary* [Committee], no. 18531/17, §§ 9-13, 22 September 2022). The CJEU also found that section 5(1b) of the State Border Act contravened Article 5, Article 6(1), Article 12(1) and Article 13(1) of Directive 2008/115 (see paragraph 64 above, and *S.S. and Others*, cited above, § 28). Despite those rulings, Hungary continues to maintain the system and its authorities relied on it when removing the present applicants in September 2021 and April and July 2022, respectively.

110. The Court notes that, unlike the applicants in previous cases against Hungary, the present applicants were not removed upon their arrival in Hungary, but had been in the country for various reasons prior to their removal. The first applicant had entered Hungary lawfully and had been in the country for more than two years and thus for a significant period of time prior to his removal. The second and third applicants, although they had entered Hungary irregularly, were removed after receiving hospital treatment following serious traffic accidents. All of them had either requested asylum or expressed their wish to make an asylum application prior to their removal (see paragraphs 5, 24, 25, 32-35 above, and paragraph 157 below). However, as confirmed by the Government (see paragraph 101 above), following the closure of the transit zones and the introduction of the transitional rules, they were required to make a declaration of intent at the Hungarian embassy in Belgrade or Kyiv in order to seek travel documents for Hungary for the purpose of making an asylum application there (the "embassy procedure", see paragraphs 47 to 51 and 71 above).

111. In the light of the different ways in which the applicants entered Hungary and the varying circumstances of their removal, the Court will examine their complaint under Article 4 of Protocol

No. 4 separately for the first applicant on the one hand and for the second and third applicants on the other.

(i) The first applicant

112. In determining whether the first applicant was subjected to a collective expulsion, the Court observes at the outset that this applicant appears to have been removed individually, that is, not together with other persons (contrast the situation of the second and third applicants – see paragraphs 25 and 36 above), although it remains unclear whether this was incidental or intentional. However, like the second and third applicants, he was removed under section 5(1b) of the State Borders Act (see paragraphs 8, 42 and 43 above), which applied to all foreigners who entered or stayed in Hungary illegally (compare *M.K. and Others v. Poland*, nos. 40503/17 and 2 others, § 210, 23 July 2020). The Court reiterates that the collective nature of an expulsion does not need to be determined by membership of a particular group or one defined by specific characteristics such as origin, nationality, beliefs or any other factor, in order for Article 4 of Protocol No. 4 to come into play (see *N.D. and N.T. v. Spain*, cited above, § 195). 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.).

113. Therefore, for the prohibition of collective expulsion to be practical and effective it cannot be contingent on the simultaneous removal of the members of the group in question (see, *mutatis mutandis*, *N.D. and N.T. v. Spain*, cited above, § 194). Even when a State expels one individual separately, the safeguard must still apply if he or she belongs to a broader group of foreigners subjected to expulsion. The Court would note in this regard that it is the nature of the measure, rather than the manner of its execution, that determines whether the expulsion is collective (see, for example, *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 239 and 252-254, 15 December 2016, and *Asady and Others v. Slovakia*, no. 24917/15, §§ 11, 60-71, 24 March 2020).

114. In the light of the foregoing, in particular the fact that by virtue of domestic law the measure in question applied automatically to a group of foreigners who have entered or stayed in Hungary illegally, the Court finds that the first applicant's situation falls within the protection of Article 4 of Protocol No. 4.

115. The Court next observes that, referring to the 2020 Transitional Act, which provided for the "embassy procedure" (see paragraphs 47 to 51 above), the Hungarian authorities refused to examine the merits of the first applicant's asylum request and proceeded to remove him to Serbia (see paragraphs 5-8 above). The Court finds nothing to suggest that the State authorities' refusal to entertain the first applicant's arguments (see paragraph 5 above) could be attributed to his own conduct (see paragraph 106 above). However, two points raised by the Government should be addressed in this regard. Firstly, the Government seem to have suggested that the applicants should have availed themselves of the "embassy procedure" provided for in the 2020 Transitional Act (see paragraph 101 above). However, even assuming that this Act applied to the first applicant's situation, this argument remains irrelevant when assessing the domestic authorities' compliance with Article 4 of Protocol No. 4. At the very least, this is because he entered Hungary in an authorised manner (see paragraph 5 above; for the general principles see *N.D. and N.T. v. Spain*, cited above, § 201, and paragraph 106 above; compare, *mutatis mutandis*, *Sherov and Others v. Poland*, nos. 54029/17 and 3 others, § 60, 4 April 2024, and *S.S. and Others*, cited above, § 49). Therefore, the

nature of the procedure provided for in the 2020 Transitional Act, which required the first applicant to leave the territory of Hungary, could not offer a genuine and effective possibility for the first applicant to submit the reasons against his removal. Secondly, the Court considers that the fact that the first applicant had previously held a valid residence permit and had subsequently stayed in Hungary illegally (see paragraph 102 above) cannot absolve the Hungarian authorities from their obligation under Article 4 of Protocol No. 4. This provision protects aliens from collective expulsion, even in a situation where their stay is illegal (see *N.D. and N.T. v. Spain*, cited above, §§ 185 and 186). It enshrines a fundamental right that must be safeguarded independently of any considerations of social utility, contrary to the suggestion made by the Government (see paragraph 102 above).

116. Considering the above, particularly the fact that no individual assessment of his situation was conducted before his expulsion by the Hungarian authorities, the Court concludes that the first applicant's removal was "collective" in nature and therefore constituted a violation of Article 4 of Protocol No. 4 (see *Čonka v. Belgium*, no. 51564/99, § 61, ECHR 2002-I).

(ii) The second and third applicants

117. As to whether the second and third applicants were subjected to a "collective" expulsion, the Court would point out that these two applicants were removed without any individual decision after entering Hungary in an unauthorised manner. Despite their fragile state of health, which should have prompted the authorities to assess the related risks that removal would pose for them (compare, for instance, *Khachaturov v. Armenia*, no. 59687/17, §§ 90-91 and 104, 24 June 2021), and notwithstanding that the second applicant claimed to be a minor and was unaccompanied (see paragraphs 23, 25, and 89 above), they were removed from a hospital in Hungary to a strip of land in Serbia. It is undisputed that the second and third applicants were not given an effective opportunity to submit arguments against their removal before being apprehended and taken through the border fence. This should lead to the conclusion that their expulsion was collective in nature, unless the failure to examine their situation could somehow be attributed to their own conduct (see *Shahzad*, cited above, § 60, and *A.A. and Others v. North Macedonia*, nos. 55798/16 and 4 others, § 113, 5 April 2022). In this connection the Court finds nothing to suggest that the second and third applicants failed to cooperate with the authorities either during their encounter at the hospital or afterwards (see *S.S. and Others*, cited above, § 46). It must however address the Government's argument that, instead of crossing the border unlawfully, they should have availed themselves of the "embassy procedure" provided for in the 2020 Transitional Act (see paragraph 101 above).

118. In this connection, the Court notes that under the 2020 Transitional Act, a person who wished to apply for international protection in Hungary was required to travel to the Hungarian embassy in Belgrade or Kyiv to submit a declaration of intent in person (see paragraphs 47-51 above). After examining this declaration, the competent Hungarian authorities could decide to issue a travel document, allowing the person concerned to enter Hungary to apply for international protection in the absence of any other permission to enter Hungarian territory (see paragraph 48 above). There were some limited exceptions to that rule (see section 271(1) of the 2020 Transitional Act cited in paragraph 48 above), but none of these exceptions appear to have been applicable to the second and third applicants.

119. At the time of the events in question, the aim of the "embassy procedure" appeared to be related to the epidemiological situation (see paragraphs 28, 47 and 50 above). However, when

individuals were removed from Hungary with a view to undergoing that procedure in Serbia, as was the case for the present applicants, the movements required by this measure were difficult to reconcile with the objective of preventing the spread of COVID-19 (see also the *2023 Commission v. Hungary* judgment, paragraph 68 above). The Court further notes that the subsequent extension of the "embassy procedure" under the 2023 Extension Act (see paragraph 50 above) was intended to constrain migratory flows by ensuring that "asylum applications [were] filed and assessed before entry into the territory of the Union, as in the previous Hungarian system of transit zones". Moreover, it was considered that the "embassy procedure" would "in addition to the country's former epidemiological defence, [act] to prevent and curb the bad faith behaviour of irregular migrants wishing to transit [who were] massively abusing [the] advanced asylum system, and [such behaviour on the part] of the networks of people smugglers that serve[d] them" (ibid).

120. While the Court notes that tackling abuse of the asylum system and combating migrant smuggling are indeed legitimate objectives, it reiterates, as it has on many occasions, that the problems which States may encounter in managing migratory flows or in the reception of asylum-seekers cannot justify recourse to practices which are not compatible with the Convention or the Protocols thereto (see *N.D. and N.T. v. Spain*, cited above, § 170, and *M.A. and Z.R. v. Cyprus*, no. 39090/20, § 113, 8 October 2024). It further emphasises that the transit zone system, which was replaced by the "embassy procedure", had been found by the Court not to provide an effective means of legal entry, owing to the limited access to the transit zones and to the absence of a formal procedure with appropriate safeguards governing the admission of individual migrants under such circumstances (see *Shahzad*, cited above, § 65). The Court reiterates in that context that in order to comply with the Convention, any system which a State has chosen to adopt in order to control entry into its territory should ensure access to legal entry and secure the right to request international protection in a genuine and effective manner, particularly protection requested on the basis of Article 3 of the Convention (see *Shahzad*, cited above, § 62).

121. In determining whether the "embassy procedure" secured the right to request international protection in a genuine and effective manner, the Court notes that the CJEU established, in its *2023 Commission v. Hungary* judgment (see paragraphs 65-69 above), that the 2020 Transitional Act introducing the "embassy procedure" was not in compliance with Article 6 of the Asylum Procedures Directive guaranteeing access to the procedure for granting international protection, and violated the right of people seeking international protection to remain in the country while awaiting asylum proceedings (as guaranteed by Article 9 of the Asylum Procedures Directive). In its subsequent judgment (the *2024 Commission v. Hungary* judgment, see paragraphs 70 and 71 above) regarding the failure to execute the *2020 Commission v. Hungary* judgment concerning, *inter alia*, the transit zones regime (see paragraph 64 above, and *Shahzad*, cited above, §§ 25, 49, 60-68), the CJEU found that the closure of the transit zones was not sufficient to guarantee effective, easy and rapid access to the international protection procedure. The CJEU considered that the "embassy procedure" under the 2020 Transitional Act, which did not comply with Article 6 of the Asylum Procedures Directive, could not be regarded as valid compliance with the *2020 Commission v. Hungary* judgment (see paragraphs 70 and 71 above).

122. The Court further notes that the "embassy procedure" – from the time when a declaration of intent is submitted to the time when a decision on entry is issued – is not clearly regulated and lacks

adequate safeguards, leading to uncertainty, a lack of transparency and, most importantly, the risk of arbitrary application. It observes that concerns in this regard were also raised in, *inter alia*, reports published in AIDA (see paragraphs 78 above) and by the UNHCR (see paragraph 104 above), and the Government did not submit any elements to refute them. The Court is particularly struck by the fact that there appears to be no requirement in domestic law for a decision refusing entry to Hungary in order to apply for asylum to be reasoned, and that the factors intended to determine the outcome of the process remain unclear, as demonstrated in the second applicant's case (see paragraphs 28-30 above). Moreover, it seems that no support is provided to applicants for international protection, including in the case of minors, such as the second applicant (see paragraphs 99 and 103 above, see also, as regards the availability of interpretation and legal assistance, *M.A. and Others v. Lithuania*, no. 59793/17, § 108, 11 December 2018, and *M.H. and Others v. Croatia*, cited above, § 300).

123. Beyond the above considerations, the Court notes that access to means of legal entry should in principle be provided at border crossings for those arriving at the border (see *N.D. and N.T. v. Spain*, cited above, §§ 209 and 222, and paragraph 75 above). It is undisputed that this was impossible in the present case because applications for international protection could no longer be made through the border procedure at border crossings with Hungary (see paragraphs 49 and 101 above). The Court further notes that while States may provide additional means of access to their territory through procedures available at their embassies and/or consular representations, this generally implies that the individual concerned is outside the State's jurisdiction (see *M.N. and Others v. Belgium* (dec.) [GC], no. 3599/18, §§ 110-126, 5 May 2020, and *N.D. and N.T. v. Spain*, cited above, § 222). Moreover, such procedures may not provide immediate protection for those claiming to be in need of it, as was the case with the present applicants.

124. In view of the foregoing considerations and in response to the Government's argument (see paragraph 101 above), the Court considers that the "embassy procedure" did not provide for "genuine and effective access to means of legal entry" (compare also *N.D. and N.T. v. Spain*, cited above, § 209). Given that this was the only means of entry for those seeking international protection in Hungary, the lack of an individual expulsion decision could not be attributable to the second and third applicants' own conduct (see paragraph 106 above). This finding renders it unnecessary to examine whether their expulsion would qualify as collective even if such access had been provided (see *N.D. and N.T. v. Spain*, cited above, §§ 166, 201, 206 and 231).

125. There has therefore been a violation of Article 4 of Protocol No. 4 to the Convention also in respect of the second and third applicants (see also paragraph 112 above).

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION in respect of THE FIRST AND THIRD APPLICANTS

126. The first and third applicants complained under Article 3 of the Convention that they had been expelled to Serbia without any assessment of the consequences of their removal for their right enshrined in Article 3, and thus in breach of the procedural obligations under this provision, which reads as follows:

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

A. Admissibility

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

B. Merits

1. The parties' submissions

128. The first and third applicants submitted that despite having expressed their wish to apply for asylum, the Hungarian authorities had removed them from the country without assessing the risk that they might be subjected to treatment contrary to Article 3 of the Convention, and in particular the risk that they might be denied access to an adequate asylum procedure protecting them against *refoulement*. There had been no prior arrangements with the Serbian authorities, a fact which had further exacerbated the risks. Both applicants submitted that they had suffered inhuman and degrading treatment immediately upon being removed to Serbia and had been at risk of chain *refoulement* owing to the shortcomings in the Serbian asylum system.

129. The first applicant pointed out that he had been removed despite the pending proceedings concerning his asylum claim. He had had a right to remain in the territory pending the outcome of the court proceedings, as established by the competent domestic court. Furthermore, he argued that he had submitted his asylum application when he had become a person in need of (*sur place*) international protection. He submitted that he could by no means be held responsible for the Taliban takeover and the consequences thereof. He also maintained that the principle of *non-refoulement* under Article 3 of the Convention was absolute. In this connection, he argued that he had had a genuine claim for international protection, and criticised the respondent Government for suggesting that only "deserving" migrants could benefit from protection against *refoulement*.

130. With respect to the first applicant, the Government did not put forward any specific arguments regarding the protection afforded by Article 3 of the Convention. However, they did submit, in the context of Article 4 of Protocol No. 4, that the first applicant had contacted the authorities only after the Taliban takeover. In this connection, they argued that at that time it had become common knowledge that the authorities of the Member States of the European Union were suspending the execution of expulsions to Afghanistan. The first applicant and his legal representative had thus insisted on submitting an application for refugee status instead of applying for a residence permit on other grounds.

131. In their observations regarding the third applicant, the Government argued that he had not been expelled or removed by force, and that it was therefore unnecessary to examine the prohibition of *refoulement* in his case. They further argued that in accordance with Government Decree no. 191/2015. (VII. 21.) on the definition of safe countries of origin and safe third countries, Serbia (as a candidate country for EU membership) could be considered a safe third country and a safe country of origin.

2. The Court's assessment

132. The Court has consistently acknowledged the importance of the principle of *non-refoulement* (see, for example, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 286, ECHR 2011, and *M.A. v. Cyprus*, no. 41872/10, § 133, ECHR 2013 (extracts)). It reiterates that the expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment breaching Article 3 in the destination country (see *O.M. and D.S. v. Ukraine*, no. 18603/12, § 81, 15 September 2022). The Court has indicated that where a Contracting State seeks to remove

an asylum-seeker to a third country without examining the asylum application on the merits, the main issue before the expelling authorities is whether or not the individual will have access to an adequate asylum procedure in that third country (see *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, § 131, 21 November 2019).

133. Further relevant principles concerning an expelling State's procedural duty under Article 3 of the Convention in cases of removal of an asylum-seeker to a third country without examination of the asylum claim on the merits have been summarised in *Ilias and Ahmed* (ibid., §§ 124-141).

134. In the present case, the Court has established in the context of Article 4 of Protocol No. 4 that the Hungarian authorities removed the first and third applicants to Serbia (see paragraph 95 above). The Court notes that both applicants applied, or expressed their wish to apply, to the Hungarian authorities for international protection before their removal (see paragraphs 5 and 35 above).

135. The Court observes at the outset that, prior to the first applicant's removal, the Hungarian authorities did not examine the merits of his asylum application related to his fear of persecution by Taliban (see paragraph 5 above), which had arisen while he had been staying in Hungary (*sur place*, see in this connection paragraphs 40, 60 and 76 above, and *Muminov v. Russia*, no. 42502/06, § 88, 11 December 2008). The Court further notes that the third applicant alleged that he would be at risk of ill-treatment in Aleppo (Syria) as a result of forced recruitment by Kurdish forces (see paragraph 31 above), and that this claim was equally not examined prior to his removal. Accordingly, the Hungarian authorities' decision to remove the first and third applicants was unrelated to the merits of their asylum claims, and thus it is not the Court's task to examine whether they did in fact risk ill-treatment in their countries of origin (see *Ilias and Ahmed*, cited above, § 145). It should instead examine whether their removal to Serbia was compatible with the respondent State's procedural obligations under Article 3 (ibid., and see *S.S. and Others v. Hungary*, cited above, § 63).

136. In this regard, the Court reiterates that in all cases of removal of an asylum-seeker from a Contracting State to a third country without examination of the asylum application on the merits, notwithstanding whether or not that third country is a State Party to the Convention, it is the duty of the removing State to examine thoroughly the question of whether or not there is a real risk of the asylum-seeker being denied access, in that third country, to an adequate asylum procedure protecting him or her against *refoulement*. If it is established that the existing guarantees in this regard are insufficient, Article 3 implies a duty that the asylum-seeker should not be removed to the third country concerned (see *Ilias and Ahmed*, cited above, § 134, and *S.S. and Others v. Hungary*, cited above, § 64).

137. In the present case, in their observations concerning the third applicant, the Government referred to Serbia being a safe third country (see paragraph 131 above). However, nothing suggests that this argument underpinned the third applicant's removal. As a matter of fact, no decision was issued with respect to his removal, as it was based directly on section 5(1b) of the State Border Act (contrast *Ilias and Ahmed*, cited above, § 156). Moreover, the Court notes that Interim Resolution CM/ResDH(2023)260 of the Committee of Minsters (see paragraph 75 above) took note of the Hungarian authorities' information that the legislative presumption that Serbia was a "safe third country" had not been applied by the asylum authority or the domestic courts since 26 May 2020. This further supports the conclusion that the third applicant's removal, which took place in 2022, was not based on the presumption that Serbia was a safe third country.

138. In any event, nothing has been put forward to show that the removal of the first or third applicant was underpinned by any – let alone any proper – assessment of access to the asylum procedure in Serbia and the adequacy of that procedure (see *Ilias and Ahmed*, cited above, §§ 148 and 152, and *M.A. and Z.R. v. Cyprus*, cited above, §§ 93 and 94), despite the worrying reports on this subject (see *S.S. and Others v. Hungary*, cited above, §§ 34, 35, 57-59, 65, and paragraphs 79-81 above). Such an assessment had to be conducted by the Hungarian authorities of their own motion, and on the basis of all relevant and up-to-date information (see *O.M. and D.S. v. Ukraine*, cited above, § 96, and *S.S. and Others v. Hungary*, cited above, § 65).

139. Moreover, the Court observes that as in the situation in *S.S. and Others v. Hungary*, which concerned the automatic removal to Serbia of migrants who had been instructed to apply for asylum in one of the transit zones after crossing Serbian territory (cited above, § 66), it appears that the applicants' removal in the present case was based on the premise that they would be able to apply for entry to Hungary at the Hungarian embassy in Belgrade. However, there is nothing to suggest that the domestic authorities satisfied themselves that the first and third applicants would be able to effectively access the asylum procedure at the embassy and, as the Court has found under Article 4 of Protocol No. 4, the "embassy procedure" did not afford the applicants an effective means of doing so (see paragraphs 118-122 above).

140. Be that as it may, the applicants in the present case, like those in *S.S. and Others v. Hungary*, were induced to enter and stay in Serbia illegally, and faced the predicament associated with such a stay (see *S.S. and Others v. Hungary*, cited above, §§ 32, 34, 35, and 57-59, and paragraphs 79, 81 and 104 above). In this connection, the Court reiterates that from the perspective of Article 3, a Contracting State cannot deny an asylum-seeker access to its territory or remove him or her, even on the assumption that that person might be able to return through some other means of entry, without a proper evaluation of the risks that such a denial or removal might have for his or her rights protected under that provision (see *S.S. and Others v. Hungary*, cited above, § 68).

141. Having regard to the above, the Court therefore concludes that the respondent State failed to discharge its procedural obligation under Article 3 of the Convention to examine whether the applicants would have access to an adequate asylum procedure in Serbia, the country to which they were removed. It is therefore unnecessary for the Court to examine whether Article 3 was breached on the additional grounds relied on by the applicants (see paragraphs 128 and 129 above, and *Ilias and Ahmed*, cited above, § 165).

142. There has accordingly been a violation of Article 3 of the Convention under its procedural limb as regards the first and third applicants.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION in conjuNction with Article 4 of Protocol No. 4 to the convention

143. The applicants complained, under Article 13 of the Convention, that they had had no remedy at their disposal with respect to their complaint under Article 4 of Protocol No. 4 to the Convention. Article 13 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."

A. Admissibility

144. In their observations concerning the first applicant, the Government argued that Article 13 of the Convention could not be applicable since the complaint fell outside the scope of Article 4 of Protocol No. 4. They also argued that Article 13 was inapplicable because it did not provide for the right to challenge a Contracting State's primary legislation before a national authority on the grounds that it was contrary to the Convention. Furthermore, they argued that this complaint was essentially the same as that under Article 4 of Protocol No. 4.

145. The applicants, to the extent that they commented, contested the Government's arguments.

146. The Court notes that it has found the complaint under Article 4 of Protocol No. 4 admissible and, moreover, has found a violation of this provision (see paragraphs 96, 116 and 125 above). The Government's argument that the complaint falls outside the scope of Article 4 of Protocol No. 4 and that the applicant thus had no arguable complaint for the purposes of Article 13 must therefore be dismissed. As regards the remaining arguments from the Government, they were dismissed in *Shahzad* (cited above, § 73) and the Court finds no reason to reach a different conclusion in the present case. It notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants' submissions

147. The applicants submitted that there had been no effective remedy in their case, and that to be effective, any remedy should have had suspensive effect. They argued that they had been removed immediately in the absence of any formal decision, despite having an arguable claim under Article 3.

148. The first applicant submitted that the Court, in its judgments in *Shahzad* (cited above), among other authorities, had already established that there was no domestic remedy against the measure of removal.

149. The first applicant also pointed out that notwithstanding the domestic courts' interim measure ordering that he be allowed to return to the country, he had never been provided with a document that would allow him to enter Hungary. In the absence of any assurances and practical arrangements, his return to Hungary had been practically impossible. After staying in Serbia in deplorable living conditions and being at risk of chain *refoulement* to his home country, the applicant had lost hope of ever returning to Hungary and had seized an opportunity to go and apply for asylum in Austria. The first applicant also maintained that the Hungarian authorities had referred to his absence from EU territory as a reason to refuse his asylum claim, even though this circumstance had been entirely attributable to them.

150. As regards the "apprehension and escort" measure under section 5(1b) of the State Border Act, the first applicant submitted that the remedy before the administrative court had not been provided for in any legal provision and had been endorsed for the first time in his case. However, the domestic courts' findings had in any event been limited to the fact that the NDGAP had not had jurisdiction to issue the removal decision in question, and had not referred to the violation of the Convention. The decision in his favour had had no suspensive effect. In this connection, the first applicant also submitted that the exception provided for by EU law regarding the suspensive effect of a remedy concerned irregular crossing and subsequent apprehension, not expulsion. He pointed out that the

CJEU had already found that section 5(1b) of the State Border Act contravened the procedures and safeguards laid down in Article 5, Article 6(1), Article 12(1) and Article 13(1) of the Return Directive.

151. The third applicant argued that he had not been informed that a remedy had been available whereby he could challenge his removal and that the *Kúria*'s decisions regarding the use of an administrative action to challenge a *de facto* decision on removal did not mean that such a review would be effective. He maintained that the approach to these cases was not established and that the *Kúria* had so far not considered whether section 5(1b) of the State Border Act complied with the Convention.

(b) The Government's submissions

152. The Government submitted that the Hungarian legal order did not explicitly provide for a legal remedy against removal under section 5(1b) of the State Border Act, but the current practice of Hungarian courts filled that gap because applications were accepted even where there was no legal basis for such a remedy. Removal under section 5(1b) of the State Border Act could be challenged by means of an administrative action, following decision no. Kfv.III.37.126/2023/8 of the *Kúria* finding that removal constituted an "individual decision" which could be subject to an administrative legal dispute (see paragraphs 53 and 54 above), and decision no. Kfv.II.37.610/2022/4 in which the *Kúria* had found that an individual decision resulting in a change in a person's legal situation could be challenged before an administrative court.

153. In their observations concerning the first applicant, the Government referred to Article 14(2) and (3) of the Schengen Borders Code (see paragraph 62 above) and claimed that there was no need for a remedy to have suspensive effect as regards refusal of entry. They also referred to Article 2(2)(a) of the Return Directive (see paragraph 61 above) and argued that a foreign national who fell within the scope of the exception excluding the application of the Return Directive could not claim that there had been a violation of his or her rights, and thus there was no obligation to provide a remedy.

2. The Court's assessment

154. The Court reiterates that the scope of the Contracting States' obligations under Article 13 varies depending on the nature of an applicant's complaint. However, the remedy required by that provision must be "effective" in practice as well as in law (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI). Where an applicant alleges that an expulsion procedure was "collective" in nature, he or she should have an effective possibility of challenging the expulsion decision by having a sufficiently thorough examination of his or her complaints carried out by an independent and impartial domestic forum (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 279, 15 December 2016). The Court has distinguished cases concerning Article 13 in conjunction with Article 4 of Protocol No. 4 on the basis of whether applicants alleged that the removal in question had exposed them to a risk of irreversible harm in the form of a violation of Articles 2 or 3 of the Convention. If applicants had made such allegations but had effectively been barred from seeking asylum and denied access to a remedy with automatic suspensive effect, the Court found that this constituted a violation of Article 13 in conjunction with Article 4 of Protocol No. 4 (see *M.K. and Others v. Poland*, cited above, §§ 143-144 and 219-220, and *Khlaifia and Others v. Italy*, cited above, §§ 279 and 281).

155. As regards the present case, the Court notes that the legislation provided no specific remedy by which to challenge removal under section 5(1b) of the State Border Act, as acknowledged by the

Government (see paragraph 152 above). The cases of the first and third applicants demonstrate that such removal could also not be effectively challenged in a complaint procedure under the Police Act (see paragraphs 9-11 and 38 above). With respect to lodging a legal action with an administrative court, the Court observes that there has been a positive development in domestic jurisprudence as regards "removal" being interpreted as an administrative act which can be challenged in such proceedings (see paragraphs 53 and 54 above). However, aside from the fact that the *Kúria*'s first decision to that effect was issued in 2023 (see paragraph 53 above), that is, after the removal of the applicants, the Court finds nothing in the relevant decisions of the *Kúria* to show that in an action before an administrative court, an affected migrant could effectively complain of a failure to examine his or her personal situation prior to his or her removal (see paragraphs 14-16 and 53 above, and contrast *Khlaifia and Others v. Italy*, cited above, § 272). In the absence of any established case-law to the contrary, it seems that such an examination is precluded by section 5(1b) of the State Border Act itself (see the *Kúria*'s finding in the first applicant's case that the removal of a foreigner who was staying illegally fell within the discretionary power of the police, paragraph 14 above).

156. It is further reiterated that, as shown in the present case, removal under section 5(1b) of the State Border Act is carried out immediately once law-enforcement officers consider that the person in question falls within the ambit of this provision. Therefore, even if remedies existed, they could not prevent removal, including in situations where the individuals concerned had expressed that they feared treatment contrary to Articles 2 or 3 of the Convention (see paragraph 154 above).

157. In the present case, it has been established that the first and third applicants expressed such fears and requested international protection (see paragraph 135 above). As regards the second applicant, he alleged that he had expressed his wish to request asylum to hospital staff and police officers in the course of his removal (see paragraphs 24 and 25 above). In this connection, the Court cannot hold the fact that there was no official record of his wish to apply for asylum (see paragraph 103 above) against the second applicant. In particular, it observes that he was not provided with any interpretation, let alone legal assistance, prior to his removal (see, for instance, *M.A. and Others v. Lithuania*, cited above, §§ 108 and 109, and *D v. Bulgaria*, no. 29447/17, § 125, 20 July 2021), despite the fact that he had stated that he was a minor and was unaccompanied. Moreover, the Government did not argue that the authorities who had been in contact with the second applicant had been obliged, under the Hungarian domestic law, to record a request for asylum. In fact, the Government confirmed that a person staying in Hungary illegally had no way of applying for asylum directly in Hungary (see paragraph 101 above).

158. Having regard to the foregoing and to the arguments which the second applicant subsequently submitted in his declaration of intent (see paragraph 27 above), as well as to the considerations underpinning the Court's findings in paragraphs 137 to 140 above, the Court finds that the authorities were required to provide all three applicants with a remedy with suspensive effect (see paragraph 154 above, see also *M.K. and Others v. Poland*, cited above, § 148, and *Sherov and Others v. Poland*, cited above, § 68). In the first applicant's case this same finding was reached by the Budapest High Court in the context of proceedings regarding his asylum request, but it did not result in any change in the first applicant's situation (see paragraphs 18-21, and 149 above).

159. Consequently, and in view of the above finding that the applicants had no effective access to a procedure for examining their personal situation (see paragraphs 118-122 above), the Court

considers that they did not have at their disposal any remedy which might satisfy the criteria under Article 13 of the Convention. As regards the Government's arguments referring to EU law (see paragraph 153 above), the Court limits itself to noting that the question of whether a disputed measure complies with EU law falls within the jurisdiction of the CJEU, and that the CJEU rejected the Government's arguments referring to the derogation from the Return Directive (see paragraph 61 above) in its *2020 Hungary v. Commission* judgment (see paragraph 64 above, and paragraphs 243–246 of that judgment). As regards the Government's reference to Article 14(2) and (3) of the Schengen Borders Code, the Court notes that those provisions pertain to "refusal of entry", and a substantiated decision is required even in such cases (see paragraph 62 above).

160. In view of the above considerations, the Court finds that there has been a violation of Article 13 of the Convention taken in conjunction with Article 4 of Protocol No. 4.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

161. The first applicant also complained of a violation of Article 13 taken together with Article 3 of the Convention. Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that there is no need to examine the admissibility and merits of this complaint (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, and *Sardar Babayev v. Azerbaijan*, nos. 34015/17 and 26896/18, §§ 53-54, 1 February 2024).

VII. APPLICATION OF ARTICLE 46 OF THE CONVENTION

162. The relevant parts of Article 46 of the Convention read as follows:

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution ..."

163. The Court reiterates that Article 46 of the Convention, as interpreted in the light of Article 1, imposes on the respondent States a legal obligation to apply, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to secure the applicants' rights which the Court found to be violated. Such measures must also be taken in respect of other persons in the applicants' position, notably by solving the problems that have led to the Court's findings (see *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 142, ECHR 2014).

164. The Convention violations which the Court has found in this case stem directly from the application of the domestic legislation (see paragraphs 42 and 43, and 47-51 above). The Court cannot overlook the fact that as a result of this, tens of thousands of individuals have been removed from Hungary in the past few years, with the number of removals increasing and amounting to more than 150,000 in 2022 (see paragraphs 73, 74, 75 and 77 above). Furthermore, although the relevant provisions of the 2020 Transitional Act are no longer in force, the 2024 Decree, adopted on 28 November 2024 (see paragraph 52 above), together with the State Border Act (see paragraphs 42 and 43 above), upholds the same system of collective expulsions and denial of access to the asylum procedure which is incompatible with the guarantees enshrined in the Convention. Reiterating its findings regarding the ongoing failure of the respondent State to comply with the Convention (see paragraphs 109, 120-124 and 135-142 above), the Court stresses the urgent need for the Hungarian

authorities to take immediate and appropriate measures to prevent any further instances of collective expulsions and ensure genuine and effective access to the international protection procedure for those seeking such protection.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

165. Article 41 of the Convention provides:

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

A. Damage

166. In respect of non-pecuniary damage, the first applicant claimed 15,000 euros (EUR), the second applicant claimed EUR 20,000 and the third applicant claimed EUR 5,000.

167. The Government disputed the claims.

168. In respect of non-pecuniary damage, in view of the particular circumstances of the present case and the nature of the violations found, the Court awards the first applicant EUR 10,000, the second applicant EUR 8,000 and the third applicant the full sum claimed, namely EUR 5,000, plus any tax that may be chargeable.

B. Costs and expenses

169. The first and second applicants also claimed EUR 4,600 each and the third applicant claimed EUR 4,400 for the costs and expenses incurred before the Court.

170. The Government disputed the claims.

171. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the first and second applicants, who had the same representative, the sum of EUR 5,000 jointly, and the third applicant EUR 3,000 for the proceedings before the Court, plus any tax that may be chargeable to them.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Rejects* the Government's request to strike application no. 46084/21 out of its list of cases;
3. *Declares* admissible the applicants' complaints under Article 4 of Protocol No. 4 to the Convention and Article 13 of the Convention taken together with Article 4 of Protocol No. 4, and the first and third applicants' complaints under the procedural limb of Article 3 of the Convention;
4. *Holds* that there has been a violation of Article 4 of Protocol No. 4 to the Convention with respect to all the applicants;
5. *Holds* that there has been a violation of Article 3 of the Convention in its procedural limb with respect to the first and third applicants;
6. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 4 of Protocol No. 4 to the Convention with respect to all the applicants;

7. *Holds* that there is no need to examine the admissibility and merits of the first applicant's complaint under Article 13 in conjunction with Article 3 of the Convention;
8. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 10,000 (ten thousand euros) to the first applicant, EUR 8,000 (eight thousand euros) to the second applicant and EUR 5,000 (five thousand euros) to the third applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 5,000 (five thousand euros) to the first and second applicants jointly, and EUR 3,000 (three thousand euros) to the third applicant, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

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

9. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 June 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar

Arnfinn Bårdsen President