

The ECtHR’s Article 3 Jurisprudence on Migration and Asylum

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Abstract

*Article traces the evolution of Article 3 of the European Convention on Human Rights in the context of migration and asylum, focusing on the European Court of Human Rights’ jurisprudential policy. It examines four core principles that structure the Court’s approach: non-refoulement, understood as an extension of Article 3 where removal exposes individuals to a real risk of inhuman or degrading treatment; the prohibition of collective expulsions and the correlative duty to conduct rigorous individual assessments; minimum standards for reception and administrative detention, with heightened safeguards for children and families; and the reach of State obligations at borders and in transit settings, including extraterritorial operations. Landmark judgments such as *Hirsi Jamaa v. Italy* and *M.S.S. v. Belgium and Greece* have consolidated a coherent protective architecture for migrants and asylum seekers, shaping national administrative practice and informing broader debates on the operation of the Dublin system within Europe’s human-rights framework. Building on Court materials and syntheses, the article systematizes positive and negative State duties — procedural screening, adequate material conditions, child-sensitive measures, effective remedies, and accountability over outsourced or extraterritorial actions — offering a practical compliance matrix for authorities operating in Greece, Spain, and other high-pressure transit zones.*

Keywords: migration, asylum, European Court of Human Rights, jurisprudence.

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1. Introduction

Around 1950–1953, when the European Convention on Human Rights began its historical development, the architecture of Article 3 ECHR — the prohibition of torture — started to take shape. At that time, an effort was made to delineate the most important concepts: torture, inhuman treatment, and degrading treatment. In 1978, in *Ireland v. the United Kingdom*², a clear distinction was established between torture, inhuman treatment, and degrading treatment. In that case, the authorities in Northern Ireland used five interrogation techniques: wall-standing, deprivation of sleep, food,

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² *European Court of Human Rights, Ireland v. The United Kingdom*, Application no. 5310/71, ECHR (18 January 1978).

and drink, subjection to noise, and hooding. The judges of the European Court of Human Rights classified those techniques as amounting to inhuman and degrading treatment, not as acts of torture³.

In 1989, in *Soering v. the United Kingdom*⁴, the Court applied Article 3 ECHR in cases of extradition or expulsion. In practice, before this judgment, a State was directly responsible for ill-treatment occurring on its territory under domestic governmental authority, whereas its extraterritorial responsibility was viewed more rigidly and was often avoided. The European Court of Human Rights held in *Soering v. the United Kingdom* that a Contracting State to the Convention incurs responsibility under Article 3 where it extradites or expels a person to a State in which there are “substantial grounds for believing” that the extradited person would face a “real risk” of torture or of inhuman or degrading treatment or punishment. That responsibility arises from the sending State’s act of transfer, even if the treatment contrary to Article 3 would be carried out by the authorities of a third State that is not a Party to the Convention. Article 3 remains applicable to the sending State and is an absolute right which admits no derogation, even where criminal interests or judicial cooperation are at stake⁵. The absolute prohibition of torture thus places human-rights protection above criminal-law measures by which an individual might be held accountable⁶.

2. From Extradition to the Principle of Non-Refoulement in the Field of Migration and Asylum

The case of *Soering v. the United Kingdom* (1989) established the terms “substantial grounds for believing” and “real risk” and held that the obligations imposed by Article 3 of the ECHR are engaged by the act of extradition. A State Party to the Convention will be responsible if it knows, or has reasonable grounds to believe, that Article 3 will not be respected in a third State and nevertheless decides to transfer a person to that State. Subsequently, the ECtHR dealt with similar situations in *Cruz Varas and Others v. Sweden* and *Vilvarajah and Others v. the United Kingdom*⁷ (both 1991). Those cases extended the Court’s application of non-refoulement in expulsion contexts and made clear that the assessment of a “real risk” must be individual and based on concrete circumstances. The absolute character of Article 3 was reinforced in *Chahal v.*

³ European Court of Human Rights, *Ireland v. The United Kingdom*, Application no. 5310/71, ECHR (18 January 1978) para. 165-169, [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-57506%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57506%22]}). Accessed on 25 October 2025.

⁴ *European Court of Human Rights, Case of Soering v. The United Kingdom*, Judgment of 7 July 1989, Ser. A No. 161, <https://hudoc.echr.coe.int/eng?i=001-57635>. Accessed on 25 October 2025.

⁵ M. Brick, E. Kiselica, „Detention: Legal Framework for the Care of Those in Detention and the Prohibition/Prevention of Torture, Cruel, Degrading or Inhuman Treatment,” in Jason Payne-James and Roger W. Byard (eds.), *Encyclopedia of Forensic and Legal Medicine*, second edition (Amsterdam: Elsevier, 2015), <https://doi.org/10.1016/B978-0-12-800034-2.00141-5>.

⁶ *Cruz and others v Sweden*, Application no 15576/89, European Court of Human Rights, <https://hudoc.echr.coe.int/eng?i=001-57674>. Accessed on 25 October 2025.

⁷ *Vilvarajah and Others v. the United Kingdom*, application no 13163/87, European Court of Human Rights, [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-57713%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-57713%22]}). Accessed on 25 October 2025.

the United Kingdom (1996): Article 3 continues to apply even where national security⁸ considerations arise, and it also covers cases involving severe medical vulnerability. In *D. v. the United Kingdom* (1997), the Court held that the expulsion of a person who is terminally ill and would lack minimal treatment in the receiving State engages Article 3, thereby placing responsibility on the sending State.

3. Context of Migration Flows within the European System for the Protection of Human Rights

At the beginning of the 2010s, owing to conflicts in the Middle East and Africa, the routes used by migrants to reach Europe through the primary transit States — Turkey, Greece, Italy, and Spain — intensified⁹. Turkey and Greece have been the main European States facing irregular border crossings. Consequently, these States have come under pressure from the European Union to adopt more advanced policies to curb irregular routes, both at sea and on land¹⁰. This is the principal reason why most of the cases before the European Court of Human Rights concerning asylum procedures originate from first-line transit States such as Greece, Italy, and Spain, as well as applications lodged by potential victims alleging violations of the rights and freedoms enshrined in the European Convention on Human Rights. Between 2013 and 2016, a refugee and migration crisis unfolded within Europe's protection system, generating new political tensions and legislative changes.

4. Sweden, Historically a Preferred Destination for Migrants and Refugees Seeking to Build a New Life

Sweden has been a safe destination for migrants and refugees since the 1940s, during the Second World War. At the end of the war, an impressive number of Finns seeking a better life in neighboring countries chose, for the most part, to settle in Sweden. Finland was at that time facing agricultural problems and limited resources¹¹. These developments were pivotal in putting Sweden on the map as one of the most diversified European states¹². Later, in 2015, Sweden again faced an acute crisis (160–

⁸ *A and others v United Kingdom*, no 35373/97, European Court of Human Rights, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-60822%22%5D%7D>. Accessed on 25 October 2025.

⁹ Simas Grigonis, „EU in the face of migrant crisis: Reasons for ineffective human rights protection”, *International Comparative Jurisprudence*, Volume 2, Issue 2, December 2016: 93-98. <https://doi.org/10.1016/j.icj.2017.01.003>.

¹⁰ Marieke Wissink, Franck Düvell, Valentina Mazzucato, „The evolution of migration trajectories of sub-Saharan African migrants in Turkey and Greece: The role of changing social networks and critical events,” *Geoforum*, Volume 116, November 2020: 282-291, <https://doi.org/10.1016/j.geoforum.2017.12.004>.

¹¹ Matthew Wallace & Sven Drefahl, „Against the grain: International migrants, the children of migrants and national life expectancy in Sweden, 1990–2019,” *SSM – Population Health*, Volume 28, December 2024, 101726, <https://doi.org/10.1016/j.ssmph.2024.101726>.

¹² Carl-Ulrik Schierup and Aleksandra Ålund, „The end of Swedish exceptionalism? Citizenship, neoliberalism and the politics of exclusion,” *Race & Class* 53, no. 1 (July 2011): 45–64, doi: 10.1177/0306396811406780.

165 thousand) of refugees and migrants, this time coming from less developed regions such as Asia. Of all migrants and refugees entering Sweden, 40% were minors, and half of those minors were unaccompanied. They sought protection and asylum, and the authorities attempted to integrate them by offering employment; nevertheless, the unemployment rate stood at 19.2%¹³. The principal route to arrive in the Nordic zone, and implicitly in Sweden, was Turkey, the Greek islands (Chios, Kos)¹⁴, mainland Greece and the Balkan states (Estonia, Lithuania), and, finally, the Nordic states¹⁵.

In 2015, Sweden had a total of 396 new applications to the European Court of Human Rights, most of them within the scope of Article 6 of the ECHR regarding the right to a fair trial (173 applications), and just two applications within the scope of Article 3 of the ECHR: *R.H. v. Sweden*¹⁶ and *J.K. and Others v. Sweden*¹⁷. Both cases were linked to the migration and asylum process in Sweden's protection system. In both cases, the Swedish Migration Agency (*Migrationsverket*) issued orders of removal/deportation to the applicants' countries of origin: Baghdad and Mogadishu. The ECtHR ordered interim measures under Rule 39 of the Rules of Court, thereby suspending immediate deportation pending a final decision. In *J.K.*, Article 3 of the Convention was at issue owing to business-related dealings that one of the applicants had had with United States agencies while in the country of origin, which could have exposed him to persecution upon return. The Grand Chamber confirmed the real risk to which he could have been subjected, finding in favor of the applicants. By contrast, in *R.H.*, a Somali woman argued that she could be a victim under Article 3 if returned to her country of origin, invoking gender-based persecution in the absence of male support. In its final decision, the Court held that Article 3 would not be breached, and removal could therefore proceed.

5. The Impact of Cause *M.S.S v Belgium and Greece* on Greek and Belgian Legislations

Between 2011 and 2013, the most extensive changes in migration and asylum policy were made. The case of *M.S.S. v. Belgium and Greece*¹⁸ had a devastating impact

¹³ European Commission, European Semester, Country Report Sweden 2017: Including an In-Depth Review on the Prevention and Correction of Macroeconomic Imbalances (Brussels: European Commission, 2017), 5–6, https://commission.europa.eu/document/download/f0b0058a-1a1e-4829-a1a8-3d12282fdc7f_en?filename=2017-european-semester-country-report-sweden-en.pdf. Accessed on 25 October 2025.

¹⁴ European Union, Consolidated version of the Treaty on the Functioning of the European Union, OJ C 202, 7 iunie 2016, 1–388, la 5–9, Eur-Lex, https://eur-lex.europa.eu/resource.html?uri=cellar:4737d90f-0796-11e6-b713-01aa75ed71a1.0018.02/DOC_1&format=PDF. Accessed on 25 October 2025.

¹⁵ European Parliament and Council, Regulation (EU) 2016/588 of 13 April 2016 amending Regulation (EC) oo 1060/2009 on credit rating agencies, OJ L 103, 19 April 2016, 20–25, la 2–6, Eur-Lex, https://eur-lex.europa.eu/resource.html?uri=cellar:89d2ce60-0164-11e6-b713-01aa75ed71a1.0016.02/DOC_1&format=PDF. Accessed on 25 October 2025.

¹⁶ *R.H. v. Sweden*, no. 4601/14, ECHR 2015, <https://hudoc.echr.coe.int/eng?i=001-157325>. Accessed on 25 October 2025.

¹⁷ *J.K. and Others v. Sweden*, no. 59166/12, Grand Chamber, ECHR 2016, <https://hudoc.echr.coe.int/eng?i=001-165442>. Accessed on 25 October 2025.

¹⁸ *M.S.S. v. Belgium and Greece*, no. 30696/09 (ECHR, 21 January 2011), HUDOC, <https://hudoc.echr.coe>.

both at the level of the States concerned and at the level of the European system for the protection of human rights¹⁹ — the adoption of the Dublin III Regulation²⁰ (2013). In the case, the Afghan applicant who had entered the European Union through Greece reached Belgium due to the primary conditions in the initial State. Belgium applied the Dublin II Regulation and transferred him to Greece without verifying the reception conditions and without granting him the right to an effective remedy against this measure. The ECtHR's decision was that both Greece and Belgium were responsible for the inadequate treatment of the Afghan national — a breach of the legislative provisions of Articles 3 and 13 of the Convention — and they were required to amend their legislative protection systems.

The most important measures taken by Greek legislation system in the areas: migrations and asylum were referring to: re-reformation of asylum system, improvement of primary condition and detention²¹. These measures even if were made immediately after the CEDO's decision, were hampered by economic crisis²² and the limited resources with the Greece state confront in that moment.

In the year of 2013, the Greek authorities created a civil organism specialized in asylum and migration politics to examine the applications²³ and an authority to deal with the identification and registration of vulnerable people²⁴. The European Union accorded in that time more money for the changes that occurred, especially from the Asylum, Migration and Integrity Fund – AMIF. Grece benefited from 5 milliard of euros, 450 experts and 100 linguistic interprets²⁵. Nevertheless, owing to the lack of

int/fre?i=001-103050. Accessed on 25 October 2025.

¹⁹ Victoria Oluwatobi Isa Daniel, Brid Ní Ghráinne, „Revisiting MSS v. Belgium and Greece and Interim Measures before the European Court of Human Rights,” *Refugee Survey Quarterly* 43, nr. 2 (2024): 127–143, <https://doi.org/10.1093/rsq/hdae001>.

²⁰ European Parliament and Council, 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) [Dublin III Regulation], 2013 O.J. (L 180) 31, EUR-Lex, <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013R0604>. Accessed on 25 October 2025.

²¹ UoHCR, Recommendations by the Office of the United Nations High Commissioner for Refugees: J.K. and Others v. Sweden (Application no. 59166/12) and M.S.S. v. Belgium and Greece (Application no. 30696/09) <https://www.refworld.org/jurisprudence/amicus/unhcr/2019/en/20419>. Accessed on 25 October 2025.

²² Sergio Carrera, „The Impact of the Treaty of Lisbon over EU Policies on Migration, Asylum and Borders: The Struggles over the Ownership of the Stockholm Programme,” in Elspeth Guild, Paul Minderhoud (eds.) *The First Decade of EU Migration and Asylum Law* (Leiden: Martinus Nijhof, 2012), 229–254, https://europeanunionufbootcamp.weebly.com/uploads/1/4/6/1/146151020/the_first_decade_of_eu_migration_and_asylum_law_elspeth_guild_paul_minderhoud_z-library_.pdf.

²³ Gina Clayton, „Asylum Seekers in Europe: M.S.S. v Belgium and Greece”, *Human Rights Law Review*, Volume 11, Issue 4, December 2011: 758–773, <https://doi.org/10.1093/hrlr/ngr037>.

²⁴ Franck Düvell, „Paths into Irregularity: The Legal and Political Construction of Irregular Migration”. *European Journal of Migration and Law*, 13(3), 275–295. <https://doi.org/10.1163/157181611X587856>.

²⁵ European Commission, *Communication from the Commission to the Council and the European Parliament on the status of migration management in mainland Greece* (Commission Decision No. 170 of 2025), <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52025DC0170>. Accessed on 25 October 2025.

experience and professionalism within the Greek public institutions, their absorption was diminished, especially during the migration crisis of 2015–2016²⁶. At present, the conditions in Greece regarding the asylum procedure and the primary reception conditions have improved, so transfers to Greece can be carried out as from any other Member State²⁷.

The impact of the case *M.S.S. v. Greece and Belgium* on Belgian legislation primarily involved the temporary limitation of transfers to Greece²⁸. Thus, the Belgian authorities pursued a more rigorous policy of monitoring and stricter evaluation of individual cases that were to be sent to Greece, as well as of the primary reception conditions²⁹. These swift changes helped improve the protection of vulnerable people (minors, the elderly, people with medical conditions).

At the level of domestic Belgian legislation, we find essential changes introduced in the Law of 15 December 1980³⁰ on the entry to Belgian territory, residence, settlement and removal of foreign nationals, having as a focus the revision of the appeal procedure, effective guarantees and effective judicial review³¹. The Council for Alien Law Litigation played a central role in asylum and migration policy, being able to annul transfer decisions where there are real considerations that, in the State to which the transfer would be made, the rights and freedoms provided for in the European Convention on Human Rights would not be respected³².

In 2019, Belgium registered 27,747 asylum applications; 34% of the decisions delivered concerned protection valid for a period of one year³³. People benefiting from

²⁶ Final Rule 9.2 MIT IHR ELA January <https://static1.squarespace.com/static/597473fe9de4bb2cc35c376a/t/679b74e6178dde25f3b10269/1738241266881/Final+Rule+9.2+MIT+IHR+ELA+January+25.pdf-1.pdf>. Accessed on 25 October 2025.

²⁷ European Commission, *Communication from the Commission to the Council and the European Parliament on the status of migration management in mainland Greece*.

²⁸ Valentin Henkinbrant, „Une porte ouverte vers une multiplication des transferts vers la Grèce ou slalom au cas par cas ?” *ADDE Newsletter 144* (juillet 2018), <https://www.adde.be/joomdoc/newsletters-2018/edito-juillet-2018-pdf/download>.

²⁹ CIRE, *Le Règlement Dublin - arrêt MSS contre Belgique et Grèce*, March 2011, PDF, 4–6, <https://www.cire.be/wp-content/uploads/2011/10/reglement-dublin-arret-mss-belgique-grece.pdf>. Accessed on 25 October 2025.

³⁰ Belgium, Law of December 15, 1980, on Access to the Territory, Residence, Settlement and Expulsion of Foreigners, art. 74/5, <https://www.ejustice.just.fgov.be/eli/loi/1980/12/15/1980121550/justel>. Accessed on 25 October 2025.

³¹ European Council on Refugees and Exiles (ECRE), *AIDA Country Report: Belgium*, 2024 Update (Brussels: ECRE, 2025), 70–75, https://asylumineurope.org/wp-content/uploads/2025/06/AIDA-BE_2024-Update.pdf. Accessed on 25 October 2025.

³² European Database of Asylum Law (EDAL)/European Council on Refugees and Exiles (ECRE), „Belgium: Council for Alien Law Litigation Rules that Dublin Transfers to Greece Require Case-by-Case Analysis and Individual Guarantees,” EDAL, 8 June 2018, <https://www.asylumlawdatabase.eu/en/content/belgium-council-alien-law-litigation-rules-dublin-transfers-greece-require-case-case>. Accessed on 25 October 2025.

³³ Katherine Whitehouse, Ella Lambe, Sofia Rodriguez, Umberto Pellicchia, Aurelie Ponthieu, Rafael Van den Bergh, Djoen Besselink, „A qualitative exploration of post-migration stressors and psychosocial well-being in two asylum reception centres in Belgium,” *International Journal of Migration, Health and Social Care* Volume 17, Issue 3, 13 July 2021: 241–258, <https://doi.org/10.1108/IJMHCSC-08-2020-0082>.

asylum frequently present psychological trauma and sometimes physical trauma. From the border stage, people seeking asylum can be detained for a period of 2 months, and in cases of national security the period of detention can be 5 months, extended month by month to a maximum of 8 months of detention³⁴. Since 4 April 2019, in Belgium vulnerable persons with minor children³⁵ can no longer be detained in closed facilities — prison-type spaces near airports — the Belgian authorities being responsible for identifying new forms of detention to be used when the return of a family with children to the country of origin is necessary³⁶.

6. Impact of the *M.S.S. v. Belgium and Greece* Case on Human Rights Protection Legislation

The impact of the *M.S.S. v. Belgium and Greece* case on the legislative system for the protection of human rights was profound, leading to multiple legislative improvements both at the domestic level in third States such as Spain and Italy, and across the entire European protection system through the changes brought about by the Dublin III Regulation.

First and foremost, States have a procedural obligation to conduct a serious and real individual assessment of the risk of a violation of Article 3 of the European Convention on Human Rights (ECHR) when faced with the expulsion of a person to another third State. A mere formal guarantee is no longer sufficient; States are directly responsible for verifying the actual implementation and effectiveness of these guarantees in order to eliminate the risk of non-application of Article 3 ECHR.

The importance of the *M.S.S. v. Greece and Belgium* case was reflected even in subsequent decisions issued by the European Court of Human Rights. In *Tarakhel v. Switzerland* (2014), the Court reiterated the need for a genuine observation of the risk of inhuman or degrading treatment in the country of return, especially when the return concerns families with minors or persons with various vulnerabilities. While the Court found that the conditions in Italy were not the same as in Greece, it nonetheless considered the situation of the conditions there to remain worrisome. Swiss authorities were required to request and obtain more information regarding the accommodation to be provided to the family with children, as well as other information ensuring the practical application of Article 3 ECHR.

The *M.S.S.* decision enshrined the principle that the sending State cannot

³⁴ Belgium, Law of December 15, 1980, on Access to the Territory, Residence, Settlement and Expulsion of Foreigners (Loi sur les étrangers), art. 74/5 (as amended).

³⁵ European Council on Refugees and Exiles (ECRE), *Belgium: Council of State rules to suspend Royal Decree permitting the detention of children*, Asylum Law Database, 4 April 2019, <https://www.asylumlawdatabase.eu/en/content/belgium-council-state-rules-suspend-royal-decree-permitting-detention-children>. Accessed on 25 October 2025.

³⁶ European Migration Network Belgium, *Annual Report on Migration and Asylum in Belgium 2019* (Brussels: Federal Public Service Home Affairs, 2020), 60–61, <https://emnbelgium.be/sites/default/files/publications/Belgian%20annual%20report%202019%20standalone%20finished.pdf>. Accessed on 25 October 2025.

automatically rely on “mutual trust.” On the contrary, the sending State must effectively verify the risks implied by the transfer, based on the positive obligations deriving from Articles 3 and 13 of the European Convention on Human Rights. Thus, the Tarakhel case further develops the jurisprudence — particularly when vulnerable persons or groups are concerned, especially families with minors — requiring the authorities of the sending State to obtain and verify individual, concrete, and real guarantees from the receiving State regarding reception and effective protection conditions, lacking such guarantees, the transfer risks violating Article 3 ECHR³⁷.

Therefore, M.S.S. and Tarakhel are interdependent: the former establishes the general framework by highlighting systemic deficiencies and imposing an obligation to verify, while the latter translates that framework into operative requirements for sensitive cases, turning the formula “mutual trust” into the practical principle “trust, but verify,” with priority given to the protection of children and families.

7. Legislative changes in third countries Germany and France

The impact of these cases was so great that several European States were compelled to adopt amendments to their domestic legislation. The German authorities introduced stricter checks before authorizing the transfer of a person to another Member State. Immediately after the judgment of the European Court of Human Rights, Germany, in general hosting migrants from Syria due to the armed conflicts that began in 1990³⁸, decided not to transfer a Syrian national to Greece under the Dublin Regulation; a final decision delivered in July 2019 by the Munich Tribunal considered that a referral to Greece could have amounted to chain refoulement³⁹. Greece was the first country in which the Syrian national lodged an asylum application and, in the hypothesis of a possible subsequent extradition to Turkey, the situation would most likely have led to the granting of temporary protection, not to the effective recognition of refugee status⁴⁰.

In general, France is a country preferred by Afghan migrants⁴¹ who often arrive

³⁷ European Court of Human Rights, „Factsheet: 'Dublin' Cases, 1–6, https://www.echr.coe.int/documents/d/echr/fs_dublin_eng.

³⁸ Prashant Bharadwaj, Daniel Graeber, Stephanie Khoury, Christian P.R. Schmid, „Asylum Seekers and Host Country Mental Health: Evidence from Germany and Switzerland,” *Journal of Development Economics*, Volume 178, January 2026, 103579, <https://doi.org/10.1016/j.jdeveco.2025.103579>.

³⁹ European Database of Asylum Law, *Germany: Suspended Dublin Transfer to Greece Due to Risk of Chain Refoulement to Turkey*, 17 July 2019, <https://www.asylumlawdatabase.eu/en/content/germany-suspended-dublin-transfer-greece-due-risk-chain-refoulement-turkey>. Accessed on 25 October 2025.

⁴⁰ Verwaltungsgericht München, Beschluss vom 17.07.2019, M 11 S 19.50772, cited in [“Eilrechtsschutz gegen im Grenzverfahren angeordnete Überstellung nach Griechenland: systemische Mängel im griechischen Asylverfahren wegen fehlerhafter Behandlung der Türkei als 'sicherer Drittstaat'"], Informationsverbund Asyl & Migration, <https://www.asyl.net/rsdb/M27449>. Accessed on 25 October 2025.

⁴¹ Saha Naseri, Valéry Ridde, Sara Naseri, Léna Bonin, Marie-Anne Durand, „Assessing Antenatal Care Access among Afghan Women Migrants, Refugees, and Asylum-Seekers in France: A Mixed Methods Study,” *SSM - Health Systems*, Volume 5, December 2025, 100128, <https://doi.org/10.1016/j.ssmhs.2025.100128>.

with psychological traumas and post-traumatic stress⁴². The French State was compelled to make an immediate legislative change, abandoning the principle of mutual trust from the Dublin Regulation. The *Conseil d'État* considered that the transfer of an asylum seeker can be considered unlawful if there are serious and real grounds of inhuman or degrading treatment of a person as soon as he or she would be transferred because of reception conditions. In these conditions, France suspended for an indefinite period transfer to Greece and sent militarized controls to the border between France and Italy due to the large number of migrants who were entering France illegally⁴³, revising national legislation.

French Law No. 2015-925⁴⁴ on asylum was revised by the French authorities to integrate the new European provisions and to expedite asylum applications in France⁴⁵. First, the law reduced the duration of examination of the asylum application from 12–18 months to 9 months; the procedure was also extended to persons who filed applications from safe countries of origin. An accelerated appeal procedure was created before the National Court of Asylum Law (*Cour nationale du droit d'asile* – CNDA)⁴⁶, by which a single judge is to decide the applications, with a time-limit of five weeks for issuing the judgment.

8. Conclusion

The ECtHR case law, in particular *M.S.S. v. Belgium and Greece* and *Tarakhel v. Switzerland*, strengthened the absolute character of the prohibition laid down by Article 3 of the European Convention on Human Rights. States were required to adapt their normative framework and practices in order to ensure individual and effective assessments of risk prior to any transfer under the Dublin Regulation. It placed increased attention on the fundamental rights of migrants and refugees.

At the same time, third States such as Germany and France introduced reforms and procedures to limit transfers when primary reception conditions are not guaranteed in the destination State. In practice, the application of the Dublin Regulation has been reformulated in line with ECtHR standards. The Dublin Regulation has integrated the individual verification of real guarantees for vulnerable people and the obligation to avoid exposure to risks contrary to Article 3 ECHR.

⁴² Jennifer Kurath et al., „The Roles of Attachment and Social Support in Post-traumatic Stress among Refugees and Asylum Seekers,” *Journal of Affective Disorders* volume 391, 15 December 2025, 119887, <https://doi.org/10.1016/j.jad.2025.119887>.

⁴³ France, Law No. 2015-925 of July 29, 2015, relating to the Reform of Asylum Law (Loi n° 2015-925 du 29 juillet 2015 relative à la réforme du droit d'asile), <https://www.legifrance.gouv.fr/loda/id/JORFTEXT00030949483/>. Accessed on 25 October 2025.

⁴⁴ France, Decree No. 2015-1166 of September 21, 2015, art. 1 (Décret n° 2015-1166 du 21 septembre 2015), <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000031194603>. Accessed on 25 October 2025.

⁴⁵ France, Decree No. 2015-1166 of September 21, 2015, Implementing Law No. 2015-925 of July 29, 2015, relating to the Reform of Asylum Law, art. 1, (Décret n° 2015-1166 du 21 septembre 2015), <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000031194603>. Accessed on 25 October 2025.

⁴⁶ Cour nationale du droit d'asile (CNDA), “Filing My Appeal,” <https://www.cnda.fr/vos-demarches/jesuis-un-demandeur/deposer-mon-recours>. Accessed on 25 October 2025.

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