

NEWS & NOTES

Developments in Refugee Politics and Law: July to December 2023¹

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Abstract

This is a compilation of news and notes of relevance for the field of migration.

1. Activities of the EU Institutions in favour of “Integrated European Border Management” and the “Reform” of the CEAS

1.1 Decisions of the EU Interior Ministers of 4 October 2023

On 4 October 2023, the EU interior ministers adopted the *Regulation on crisis and force majeure situations in the area of migration and asylum*. It is based on the draft of the New Pact on Asylum from September 2020 and further tightens the rules for asylum procedures at the external borders beyond those of the agreement reached in June. This includes the more flexible and far-reaching application of border procedures. Cases of "instrumentalisation" of migrants are also to be regulated by the regulation.

Some details: In the event of a crisis, asylum seekers can be accommodated in "detention-like" conditions for not just 12, but 20 weeks until a decision is made on their application.

It could be months before they are deported from the camp.

The group of people detained in the camps can be expanded in the event of a crisis: in "normal cases", asylum seekers from countries with a recognition rate of less than 20% are affected. This threshold can be increased to a recognition rate of up to 75%.

Extended grounds for detention:

- Presumption of immersion is sufficient.
- If migrants are "instrumentalised" by other states to weaken the EU, they can all be detained.

These "exceptional rules" are intended to be used in the event of a crisis in which an MS experiences an "exceptional" increase in migrants. Such a crisis cannot be declared by an individual state, but only by the EU Council of Ministers with a qualified majority. Before it decides, the "external border states" must prove that all measures they can take themselves have been exhausted.

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There is no exception for families with children. It was only agreed that their procedures at the external borders would be prioritised. Further deviations from the admission conditions in accordance with the EU Reception Directive are not possible. One German fear: exemptions could incentivise the transfer of large numbers of unregistered refugees to Germany.

German Federal Minister of the Interior Faeser saw a need for further changes but agreed to the compromise draft presented by the Spanish Presidency after an intervention by Chancellor Scholz.

Above all, the Italian government wanted to judge the work of private sea rescuers as "instrumentalisation" and punish them. It considers sea rescue to be a "pull factor" that encourages refugees to travel across the Mediterranean. Italian Foreign Minister Trajani said that although his country was not at war with sea rescuers, Italy should not be the country where all NGO ships bring people ashore. Until that point, Foreign Minister Baerbock was of the opinion that voluntary sea rescuers had a life-saving task in the Mediterranean and therefore deserved the support of the German government.

On 27 November 2023, the draft report on the legislative proposal on the "instrumentalisation of migrants" was discussed in the EP's Committee on Civil Liberties, Justice and Home Affairs (LIBE). The rapporteur Patryk Jaki explained that instrumentalisation could not only come from states, but also from non-state actors. Humanitarian aid operations should only be exempt if they are "not aimed at destabilising the EU or a MS". It remained unclear how often the determination of a situation of instrumentalisation and the procedural deviations based on it may be extended in favour of the MS.

On 3 October 2023, the European Parliamentary Research Service (EPRS) published an impact assessment on the proposed regulation on "instrumentalisation". In it, the proposal is criticised as incompatible with EU primary law, as the deviations from the (new) Asylum Procedures Regulation and the recast of the Reception Directive raise rule of law concerns. The concept of "instrumentalisation" lacks legal clarity, the planned deviations from the provisions of the Asylum Procedures Regulation and the Reception Directive represent serious interventions in the fundamental rights and procedural guarantees of applicants and the set goal of counteracting destabilisation of the MS through a special emergency procedure is not achieved by the proposal. The report was prepared at the request of the EU Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE), as the EU Commission had failed to include an impact assessment with its proposal.

The EU Council of Ministers was not prepared to make any concessions to the Parliament's negotiating position. A discussion paper from the Spanish Council Presidency dated 5 December entitled "Towards a final compromise on the Pact on Migration and Asylum" states that the core of the Council's mandates must be retained. It then lists several elements of the Council's general approaches that Parliament has agreed to. It is further argued that it was very difficult for the MS to reach an agreement; therefore, the Council's position must be accepted in its entirety. It was decided that there will be a screening regulation in which a binding procedure will be defined. The scope of the new monitoring mechanism should be limited to the screening procedure itself, which the Council is in favour of. The parliamentary proposal to extend the monitoring to the situation at the

borders in the broad sense was not adopted. Austria and the Czech Republic agreed to this, but are calling for further tightening. Bulgaria, Malta, Lithuania and Slovakia abstained from the vote for various reasons.

1.2 The “EU Summits” – 06/10, 14/12 and 15/12/2023

The meeting of the heads of government ended – like the one in June – without a joint declaration on migration policy. In Warsaw, MP Morawiecki and President Duda appeared before the cameras together the day before the summit to announce a "veto" by Poland. There is no such veto under European law, as journalists pointed out. It didn't matter. "We will defend our position and we will defend our borders," said Duda. The then head of government Morawiecki spoke of a "dictate from Berlin and Brussels". Hungary and Poland rejected the overall package. The Prime Minister of Hungary, Viktor Orbán, stated, "legally we are raped" by the majority decision of the Council of Ministers. The admission of refugees must remain voluntary and each MS must decide for itself how countries with high levels of migration are supported. In the future, only the consensus principle should apply to migration policy instead of decisions being made by majority vote. No further willingness to compromise on migration policy could be expected from Hungary or Poland.

The "official" EU summit on 14 and 15 December 2023 did not address migration issues.

1.3 “The Breakthrough” – On the Agreement in the “Trilogue” on 20/12/2023

The so-called "jumbo trilogue" (negotiations between the Council, Commission and Parliament on all elements of the asylum package) initially ended without result on 7 December 2023 and was postponed to 18 December 2023. Then it went "blow by blow":

- a) The Spanish Presidency said that it was time to finally clear up the issue of migration and asylum. So did the Council and the Commission. And the occasionally resistant EU Parliament caved in and went along with it. After all, the European elections in June 2024 are expected to bring a further shift to the right. Then – according to some parliamentarians – nothing will work or it will get even worse. After 18 hours of negotiations on 20 December 2023, EP President Metsola announced on X: "The EU has agreed on a groundbreaking agreement to regulate migration and asylum."

At the beginning of the trilogue, many MEPs gave the impression that the majority would not agree to asylum screening procedures under detention conditions at the external borders – but in the end they did. The extension of border procedures was rejected at the beginning of October and agreed to on 20 December. The EP demanded the age limit of 12 years for detention-type accommodation, but gave up the demand in the negotiations. Contrary to the EP's initial demand, there will be no mandatory distribution of migrants to the MS, even in a crisis. The EP demanded a mandatory, not just a "flexible" solidarity mechanism for the distribution of refugees. The MS, however, prevailed. The EP initially did not accept the concept of "instrumentalisation" due to - justified - significant fundamental rights concerns; but eventually it did. This agreement creates the basis for the adoption of future states of emergency at the external borders, including pushbacks.

- b) The state of affairs - in December 2023

Nothing will change for around 2½ years initially. The "trilogue" between the EU Council, EU Commission and EU Parliament was concluded with the political

agreement of 20 December 2023. The Council and Parliament still have to formally adopt this agreement in the spring. If this happens, the regulations will come into force 24 months later, i.e. in spring 2026.

The "centrepiece" of the changes is deterrence: from 2026, refugees from countries with an EU-wide protection rate of less than 20 % (currently e.g. Turkey, India, Tunisia) may in the future be detained at the EU's external border in so-called asylum centres for 12 weeks. The MS undertake to create 30,000 places in these centres according to a fixed key. As a standard procedure takes twelve weeks, up to 120,000 asylum seekers per year can go through this procedure. In total, they can be detained at the external borders for up to six months, as a new "border deportation procedure" will follow. If there is a "crisis-related mass influx", the asylum check in the border procedure may take up to 18 weeks; they may then be interned for the same length of time in order to "facilitate" their deportation. The required "protection quota" may increase to 50%, meaning that significantly more refugees will be affected. The MS can also apply the border procedure to refugees who have fled via "safe third countries".

The mechanism drafted by the Council remains that states either take on migrants according to a fixed key or pay EUR 20,000 per person into a fund (which does not yet exist) that is intended to benefit overburdened states. It is also possible, for example, to deploy border guards or make payments to third countries with which agreements exist to limit migration.

As a concession to the EP, asylum seekers are allowed to make use of free legal protection throughout the entire procedure. The eminently important practical question of who is able and willing to provide the necessary legal advice in the detention centres and under what conditions, so that around 120,000 people per year can receive legal protection, has not yet been answered. It is therefore unlikely that there will be fair asylum procedures at the external borders.

No exceptions apply to children with their families – because this could be a "pull factor". (However, no one has ever investigated whether this assumption is correct.) It was only stated that applications from families should be processed as a matter of priority and that the EU Commission would monitor compliance with fundamental rights standards. There is an exception for unaccompanied minors: "provided they do not pose a security risk", they may not be detained in camps.

Italy's demand to take action against NGOs and to classify sea rescue as a form of instrumentalization was limited to "hostile" foreign NGOs.

Following the agreement, significantly more non-European third countries can be categorised as "safe" with the aim of deporting refugees there. The 1951 Convention related to the Status of Refugees does not have to apply in the third country, nor does the entire country have to be "safe". If there is a corresponding agreement between the third country and the EU, "safety" should be assumed and thus enable MS to withdraw from refugee protection by classifying neighbouring countries or other states along the flight routes as "safe". People who have fled to Europe can then be deported there without their reasons for fleeing being examined – the EU-Turkey deal sends its regards!

The Dublin III Regulation will be replaced by the "Asylum and Migration Management" Regulation. In terms of content, this will change virtually nothing, as the external border states (Greece, Italy, Spain, etc.) will remain responsible for carrying out asylum (border) procedures. As a "solidarity measure", the reception of people seeking protection will be equated with the construction of fences at the EU's external borders or projects in third countries that serve to prevent flight. It is foreseeable that the system as a whole will become even more bureaucratic than the Dublin Regulation already is.

2 The Situation at the EU's External Borders – July to December 2023

2.1 On the "Outsourcing" of Italian Asylum Procedures to Albania

The Memorandum of Understanding between Italy and Albania, signed on 6 November, could lead to thousands of people rescued in the Mediterranean being transferred to asylum centres in Albania. The text contains very few details about the purpose of the proposed centres and the legal standards and procedures to be applied there. So far, there is only limited information on the scope of the centres and which categories of people will be covered. Statements made by Prime Minister Meloni to the media indicate that a screening process and asylum procedures at the border as well as return procedures will be carried out in the centres.

The establishment of asylum centres on Albanian territory under Italian jurisdiction – a model more akin to the "Australian model" than the agreement between the UK and Rwanda – would have numerous legal implications. The extraterritorial application of the screening process and asylum and return procedures at the border is not permitted. Compliance with procedural guarantees will not be possible. Automatic detention would not be lawful. The relocation of SAR operations to Albania will often constitute a violation of the International Law of the Sea (ILOS). Challenges could only be made under Albanian law, which will continue to apply.

On 13 November, Council of Europe Commissioner for Human Rights Mijatović said: "The Memorandum of Understanding is indicative of the efforts of Council of Europe MS to pursue various models of externalisation of asylum procedures as a possible 'quick fix' to the complex challenges posed by the arrival of refugees, asylum seekers and migrants. However, such measures increase the risk that refugees, asylum seekers and migrants are exposed to human rights violations. The shifting of responsibility across borders by some states incentivises others to do the same, creating the risk of a domino effect that could undermine the European and global system of international protection."

EU Commissioner for Home Affairs, Ylva Johansson, however, stated: "According to the preliminary assessment of our legal service, the memorandum does not violate EU law, but is outside EU law".

The signing of the MoU was criticised by MEPs, Italian NGOs and the political opposition, as well as Albanian experts and residents in the area where the facilities are to be located. An agreement between Albania and Italy must be approved by parliament before it comes into force. MEP Tineke Strik also reacted: "Without knowing the details, the Commissioner concludes that the agreement between Italy and Albania is outside EU law. This encourages all MS to relocate asylum seekers who fall under their responsibility to third countries."

In a press release dated 13 December 2023, the Albanian Constitutional Court announced that it had initiated proceedings to review the constitutionality of the migration deal that the Albanian government agreed to with Italy in November 2023. The agreement provides for Italy to set up reception centres in Albania and carry out asylum procedures there. The proceedings before the Constitutional Court were initiated by members of the Albanian parliament who claim that the provisions of the Albanian constitution were disregarded when the deal was signed. The Constitutional Court will carry out the proceedings in mid-January 2024; until then the ratification of the agreement is suspended.

The German Parliament's Research Service has published documentation on the topic of "Outsourcing asylum procedures": Elaboration of 6 November 2023 - WD 2 - 3000 - 076/23,
<https://www.bundestag.de/resource/blob/982464/c09a3517047f2043960c42bd04be192b/WD-2-076-23-pdf.pdf>

2.2 The Mediterranean Routes

According to the UNHCR, around 186,000 people had arrived in Europe via the Mediterranean by 20 October 2023 (an increase of 83% compared to 2022). More than 2,500 people had died or been reported missing on their way across the Mediterranean (an increase of almost 50% compared to 2022). The crossing is not the only risk: the land route to Libya is also extremely dangerous (see below).

2.2.1 Route Tunisia – Italy – “Partner State Tunisia”

Tunisia is currently the most important route for migrants and refugees in the central Mediterranean. According to the Tunisian National Guard, the Tunisian authorities intercepted almost 70,000 migrants attempting to cross the Mediterranean to Italy in 2023 – more than twice as many as in 2022. The number of departures from the country has risen sharply. The German government and other European countries are therefore trying to curb irregular migration via the transit country and are supporting Tunisia in this endeavour. Europe has pledged 105 million euros for border protection alone.

On 10 June 2023, President Saied ruled out Tunisia acting "as a border police force for Europe": "We cannot fulfil a role in which we guard their countries". On 11 June, EU Commission President, von der Leyen, travelled to Tunis with the Dutch and Italian heads of government, Rutte and Meloni, to offer President Saied the prospect of Tunisia's willingness to keep migrants away from Italy "through cooperation with the EU":

- Economic aid totalling 900 million euros;
- 105 million euros for border security (border, search and rescue operations, measures against smugglers and for the return of migrants);
- 150 million euros in budget support for the Tunisian state budget.

German Federal MI Faeser flew to Tunisia on 18 June with the French MI Darmanin and offered so-called "talent partnerships" in order to "offer young Tunisians professional opportunities in the EU".

On 16 July, von der Leyen, Meloni and Rutte signed a declaration of intent to support Tunisia, in which the above-mentioned figures form the basis. This declaration builds on the EU-Tunisia Association Agreement of 1998 and amendments of 29 March 2022,

which also refers to human rights. If an agreement is reached between Tunisia and the IMF, Italy wants to add a further 700 million euros. On 2 October, 60 million was transferred to Tunisia, with a further 67 million to follow.

On 3 October 2023, Saied rejected EU aid and transferred the 60 million euros back: Tunisia did not want handouts. There is speculation that he came under domestic political pressure after the French president declared that, in addition to money and material, the EU wanted to send its own experts to Tunisia to support the coastguard. The EU was thus displaying "colonialist behaviour", according to Tunisia.

Der Spiegel reported on 26 September 2023 that the German Federal Police had been training and supporting Tunisian border guards to a considerable extent for years, despite repeated criticism of their work (cf. Federal government response to a parliamentary question from MP Bünger). Since 2015, the Federal Police has trained a total of 3,395 members of the National Guard and border police – and deployed around 450 German officers for this purpose. More than 1.3 million euros have been spent on travel costs for the training programmes since 2015, around 400,000 euros in 2022 alone. In addition, almost 500,000 euros in support by the BKA (the German FBI) as well as contributions in kind such as boat engines, quads, inflatable boats and night vision devices have been funded since 2015.

At the same time, however, Tunis is being criticised because border guards are said to have abandoned migrants in the desert, with Libyan authorities reporting 27 deaths. In August, German newspapers reported that, in Tunisia, people from sub-Saharan countries had been sent into the desert by the authorities and left without help. There were also pogrom-like attacks after a speech by President Kasai. Refugees repeatedly report that Tunisian coastguards steal the engines of their boats. On 27 November, refugees in Libya published a video showing Tunisian border guards shooting at African migrants from sub-Saharan Africa whose only way to escape the violence is to jump into the sea. An article by Al Jazeera reported on the testimonies of migrants in Tunisia about the increasing violence of the Tunisian police against people staying overnight near Sfax.

The German government says it is monitoring the situation of refugees and migrants in Tunisia "with great concern". It has "condemned" the "abduction of refugees and migrants" to the border areas with Algeria and Libya and has called for these practices to be "stopped and clarified". Cooperation and dialogue were maintained with Tunisia "as a direct European neighbour". During a visit to Tunisia, the Minister of State at the Federal Foreign Office, Keul, urged that "general principles of the rule of law and democratic values" be upheld.

The EU is now stepping up its cooperation with Egyptian authorities. At the end of October, following the tragedies in Gaza, EU Commission President von der Leyen proposed increasing support for Cairo due to the number of migrants, hinting at an agreement that could be similar to the EU-Tunisia deal. The Vice President of the EU Commission, Mr Schinas, stated that the need to engage with Egypt was "even more urgent".

2.2.2 *The Situation in the Mediterranean*

Meanwhile, people continue to die and go missing in the Mediterranean. According to IOM, almost 3,200 people died or disappeared in the central Mediterranean in 2023.

On 12 November, Civil Fleet reported on the cooperation of numerous NGOs in the rescue of 290 people in the central Mediterranean in a series of rescue operations involving the sea rescue organisations Médecins Sans Frontières and SOS Mediterranee as well as a reconnaissance aircraft from Pilotes Volontaires in cooperation with the NGO hotline Alarm Phone. On 14 November, RESQSHIP reported that their vessel Nadir was escorting an overcrowded boat with 50 people, with one person falling overboard and being rescued by another survivor. The following day, the organisation reported the rescue of a further 50 and 39 people in two separate operations. Alarm Phone continues to report emergencies and declared on 15 November: "Many boats in distress in the Central Mediterranean!" Alarm Phone alerted the authorities to 11 boats. However, the authorities did not respond. On 27 December, Sea-Eye brought 106 shipwrecked people to Brindisi. On 28 December, Sea Watch brought 119 people to Marina di Carara/Tuscany.

2.2.3 Libya

The EU's do-no-harm policy in Libya has been shaken by recent revelations proving that the Libyan armed group Tarek Bin Ziyad (TBZ) carried out towbacks based on information shared by FRONTEX and the Maltese authorities. An investigation by Lighthouse Reports shows that the TBZ is led by Saddam Haftar, the son of eastern Libyan warlord Khalifa Haftar. It is accused of killings, torture, arbitrary detention and enslavement. TBZ has been operating a ship in the central Mediterranean since May 2023 and has since picked up more than 1,000 people off the coasts of Libya and Malta and brought them back to Libya. FRONTEX and the Maltese Armed Forces, who are aware of Haftar's human rights violations, work directly with TBZ by exchanging the coordinates of refugee boats to carry out repatriation operations and prevent arrivals on European shores. Malta and FRONTEX defended this by arguing that the sharing of coordinates was to "help people in distress", although analyses show that there were safer options in all emergencies, e.g. merchant vessels and NGO rescue ships. Refugees reported beatings, abuse and torture by the militia, as well as being shot at by the militia, resulting in deaths. On a boat boarded by the TBZ militia, passports and mobile phones were confiscated and the refugees were taken to a prison in the port, a large hall about 50 metres long, which was already overcrowded with about 600 people.

The attacks on people travelling in Libya continue. On 28 November, the Libyan authorities announced preparations for the deportation of a total of 250 migrants to Chad and Niger as part of the fight against "criminal smuggling networks" in the two African countries. The emergency hotline run by the organisation Refugees in Libya receives more than 100 calls a day from boats in distress as the organisation strives to meet the basic needs of refugees such as food, medicine, etc. IOM reported that the so-called "Libyan Coast Guard" intercepted a total of 105 migrants from 3 to 9 December 2023. According to IOM, 15,383 migrants, including 556 children, were intercepted and returned to Libya from the beginning of the year to the beginning of December 2023. On 16 November, the Italian authorities detained Ocean Viking for 20 days and fined it EUR 3,300 after SOS MEDITERRANEE rescued people in distress in the Libyan search and rescue region of responsibility (SRR). The Libyan authorities did not give any instructions or information about the people left at sea.

The Lighthouse Reports investigation is a blow to the EU Commission's "do no harm in Libya" policy, despite mounting evidence of offences by the so-called Libyan coastguard and claims by EU Home Affairs Commissioner Johansson that the Libyan coastguard is

infiltrated by criminals. Green MEP Tineke Strik said she had sent written questions to the Commissioner for Neighbourhood and Enlargement, Varhelyi, five months ago regarding EU funding for Libya, but he had not yet replied. The director of the Mixed Migration Centre, Bram Frouws, wrote on X that the findings "prove the EU's complicity in supporting illegal retreats of refugees and migrants by Libyan militias."

The organisation Refugees in Libya has published videos of severe torture of migrants held by militias to demand ransom. David Yambio, spokesperson and co-founder of Refugees in Libya, explains: "The videos were sent to us by the traffickers themselves. They use the victims' phones and contact us via our Whatsapp hotline. The traffickers don't use their own phones. They have realised that their captives have no family to turn to for help. That's how we received the first videos. They called us and filmed the torture sessions." A survivor who was rescued by the NGO EMERGENCY in the central Mediterranean explained: "I fled to Sudan and then to Libya, where I was detained for six months. Sometimes they hung us up by our feet or beat us with pipes and rods. While we were screaming, they called our families to send money for our release. My mother had to sell her flat to get me released."

2.2.4 The Situation in Greece (as of 08/12/2023)

The latest figures from the Greek Ministry of Migration show a 42.06% drop in arrivals in October 2023 compared to September. A total of 6,581 migrants arrived in Greece in October compared to 11,470 in the previous month. Greece has received the highest amount of funding for migration in 2023 from the EU Commission. A total of 258.9 million euros in extraordinary funding was disbursed to all MS. Greece received 42.4 million euros of this total amount.

The Greek Ministry of Migration praised its "comprehensive and multi-level strategy" to combat "irregular migration and human trafficking", which has led to the decrease in arrivals, which it also described as "remarkable compared to the increase of the phenomenon in other countries such as Italy, Croatia and also Spain." "Greece has managed to record fewer arrivals than most EU member states in the southern external area of the Schengen zone and to manage them efficiently and safely for asylum seekers and local communities within organised structures, in contrast to what happens in other countries."

In its latest report, MSF repeatedly raised the question of whether the declining number of arrivals is linked to the country's de facto and systematic pushback policy in the Evros and Aegean regions, as well as Greece's systematic refusal and failure to stop pushbacks and violence against migrants at its borders.

On 14 December, six months after the shipwreck off the coast of Pylos that killed more than 500, possibly even more than 700, people, NGOs (including Human Rights Watch [HRW], AI and Refugee Support Aegean) recalled that the Greek investigation into the Greek Coast Guard's response to the Pylos tragedy has made "little significant progress". Vassilis Papadopoulos from the Greek Refugee Council and Irini Gaitanou from Refugee Support Aegean (RSA) – both organisations that have filed a criminal complaint against the coastguard on behalf of more than 40 survivors – pointed to the authorities' attempts to cover up the tragedy and delay an investigation. It was only five months after the shipwreck that the Greek ombudsman launched an investigation into the actions of the Greek coastguard in connection with the accident. According to the 21 survivors

interviewed, the Greek authorities "failed to mobilise adequate resources for a rescue" in the first 15 hours after receiving the first report that the *Adriana* was in their search and rescue area. The survivors said that the authorities were clearly aware of signs of distress such as overcrowding and inadequate food and water supplies, as well as bodies on board and requests for rescue. The NGOs claim that FRONTEX "should have continued its surveillance of the *Adriana* and issued a distress call."

FRONTEX defended its actions by pointing out that "it is the responsibility of the national authorities to coordinate search and rescue measures." FRONTEX did not send out an emergency call because it did not see any "immediate danger to human life." In a BBC interview, Greek MP Mitsotakis responded to a question about the responsibility of the Greek coastguard for the *Pylos* shipwreck by saying that the authorities were investigating this aspect and that his country's coastguard had "saved tens of thousands of lives at sea" and that "we should be grateful for their work." The EP adopted a resolution calling on FRONTEX to suspend operational activities in Greece due to pushbacks and violence against migrants and refugees, calling on FRONTEX to "be more proactive in protecting fundamental rights" and recommending impact assessments before negotiations with third countries and full cooperation with the Ombudsman's investigation into the *Pylos* tragedy.

On 11 November, a boat carrying migrants capsized off the coast of Izmir, killing at least five people, according to the Turkish coastguard; a further six were rescued. On 13 November, Alarm Phone reported four people, including one person in urgent need of medical assistance, in distress on the Greek island of Kos. On the same day, another group of 20 people were reported to be in distress. "We immediately informed the Greek Coast Guard, but when we spoke to them on the phone, they refused to acknowledge receipt of the email and hung up," Alarm Phone said, adding, "we received confirmation from the Turkish Coast Guard that they had found the group and brought them back to Turkey." The Alarm Phone hotline reported several incidents of pushback and failure to assist by Greek authorities in early December, such as an incident on 5 December in which the coastguard let a group of 43 people, who were in distress at sea near Lesbos, drift until they reached Turkish waters. On 7 December, 22 people near Lesbos called for help and reported that a military boat was near them. Alarm Phone stated that the military boat "was not providing assistance and was pushing them further away from the coast," despite seeing water entering the refugees' boat. "Turkish authorities confirmed that they found the group, which was pushed back to Turkey. Already in the first week of December, the Greek Coast Guard pushed back 6 groups that had contacted Alarm Phone," the organisation continued. On 11 December, the Turkish Coast Guard announced in a press release that it had rescued a total of 122 migrants who had been pushed back into Turkish territorial waters by the Greek authorities. On 13 December, the hotline published an email sent by a group of 17 people who had been pushed back to Turkey: "We were captured by the Greek Coast Guard near the island of Kos, our boat was destroyed. We were left at sea and are begging for urgent help because we will die of cold."

A new report by Mobile Info Team and Refugee Legal Support documents 19 cases of the experiences of people who applied for asylum after the establishment of the Reception and Identification Services (RICs) in mainland Greece in September 2022. After analysing these experiences, the two organisations note that the new system for registering asylum applications imposes a blanket 25-day de facto detention on asylum seekers, denies them

protection under EU and Greek law and fails to identify those in need of protection. In a joint statement, 26 organisations raised the alarm over the "continued dysfunction of the Greek reception system, which denies asylum seekers and refugees access to rights and services." "On the islands, reception centres (CCACs) remain overcrowded, especially on Kos, where new arrivals are subjected to an informal detention regime until they are registered, without access to a doctor, after medical staff were withdrawn at the end of October. The situation is similar on Samos, where a military doctor was temporarily available to meet the needs of almost 4,000 residents," the press release states. The organisations are calling on the Greek state, with the help of the EU, to "immediately ensure that the needs of all those seeking protection are met and that the long-term sustainability of the reception system is guaranteed" and to end the alternative forms of reception.

The Council of Europe's Committee against Torture (CPT) paid an ad hoc visit to Greece from 21 November to 1 December 2023 to "investigate the treatment of foreign nationals deprived of their liberty under immigration laws." The delegation visited six of the seven detention centres and several police and border guard stations in various regions, as well as three closed controlled-access centres on the Aegean islands of Kos, Lesbos and Samos.

The Greek national news agency EYP described "illegal" migration as the "fourth consecutive threat to the country's security." This threat consists of the "instrumentalisation of the drama of thousands of people in search of a better fate by unscrupulous human traffickers and illegal organised crime rings acting with the connivance, encouragement or cooperation of third parties, both state and non-state," leading to "difficult-to-manage situations with a broader social and deeply human dimension."

On 12 December, 16 organisations, including Fenix Legal Humanitarian Aid and the Greek Refugee Council, sent an open letter to Greek politicians expressing their "deepest concern" about the systematic violations of the rights of people seeking international protection. The organisations called on the authorities to guarantee access to medical care, medication, psychological and psychosocial support and food.

After the "usual verbal disputes" of recent years, Turkish President Erdoğan paid a "landmark visit" to Athens on 7 December 2023. Both countries agreed to establish communication channels between the coastguards in order to tackle the problem of migration. While Greek Prime Minister Mitsotakis stated that the "significant reduction in migration flows in recent times" was the result of "systematic monitoring of sea and land borders" and better cooperation between the police and coast guards of both countries, President Erdoğan spoke of a "new era" in which there is "no problem that cannot be solved between nations," which could be "an example for the world." However, on 11 December, the Turkish coastguard once again accused the Greek coastguard of pushing back migrants.

2.2.5 *Atlantic Route and Spain*

Over 1,000 migrants reached the Canary Islands, which belong to Spain, in one day at the beginning of October. On the island of Hierro, 783 people arrived on a single wooden boat, according to the Red Cross. Almost 100 refugees were counted on Tenerife and 150 on Gran Canaria. This year, the Canary Islands received around 24,000 migrants leading up

to October. This corresponds to an increase of 80% compared to the same period last year. The Canary Islands are the main destination for migrants from Senegal and other African countries trying to reach Spain.

2.3 “Balkan Route”

The latest report by the European Border Violence Monitoring Network examines the development of interoperable biometric databases, similar to Eurodac, in the Western Balkans (“Balkandac” system) and their impact on migration policy and data sharing in the EU. It was noted that “a dangerous paradigm shift in the methods of processing new arrivals in the EU” undermines the right to asylum and increases the outsourcing of responsibility for processing applications to third countries. “The increasing overlap or linking of migration and criminal records databases has the potential to contribute to an increasing unjust criminalisation of people on the move – further exacerbating difficulties in accessing asylum and international protection.”

A new blog by the ASILE project sheds light on the changing landscape of security in Serbia since the presence of FRONTEX officers along the common borders with Hungary and Bulgaria increased. By April 2024, 140 FRONTEX officers will be deployed in Serbia together with other foreign officials, facilitated by bilateral and trilateral agreements with EU MS (including Austria and Germany). Mobile teams from Médecins Sans Frontières (MSF [Doctors Without Borders]) noted an increase in “security measures” aimed at preventing people from reaching the Hungarian border. Local and foreign law enforcement forces interrupted MSF activities providing humanitarian assistance to migrants in informal settlements in northern Serbia, and in one case conducted raids on the settlements that led to the displacement of migrants. According to MSF’s general monitoring data, at least 50 forced evictions took place in informal settlements along the Serbian-Hungarian border region between December 2022 and June 2023, involving the demolition of makeshift camps, the destruction of personal property and the use of violence, harassment and verbal humiliation. Mass evictions by Serbian authorities and harsh conditions in informal settlements have long been documented.

Nešić, Minister for Security, said that an agreement between Bosnia-Herzegovina and FRONTEX should be signed by the end of 2023 in order to achieve “more stability and control.” According to IOM, there were around 500 people in Bosnia-Herzegovina in two reception centres in the Una-Sana canton at the beginning of December 2023. More than 300 refugees are accommodated in the Lipa reception centre, and around 100- 150 more in the Borići centre in Bihać. According to IOM representatives, the centres are not yet at full capacity as most migrants do not stay in the country for long, but continue their journey quickly on their way to Western Europe.

Furthermore, EU Commissioner for Home Affairs, Johansson, confirmed her intention to integrate Bulgaria and Romania into the Schengen area. Austria spoke out against this: Schengen must become better, but not bigger. The Netherlands initially blocked Bulgaria’s accession due to questions about the rule of law. Nevertheless, the 23 Schengen MS then agreed at the end of December to lift checks on persons at air and sea borders for Bulgaria and Romania from the end of March 2024. A decision on the lifting of controls at land borders is to be taken “at a later date”. No date was given. Both countries have been waiting for accession since 2011.

2.4 EU Eastern Borders

In November 2023, the EU Commission allocated 259 million euros from the Border Management and Visa Instrument (BMVI) to projects to "strengthen migration management and security at the EU's external borders." According to the Commission's press release, 141 million euros will be used to install fibre optic cables and software in various member states, including Bulgaria, Lithuania and Hungary, in order to "improve the exchange and processing of data between border posts and command centres." Funds will also be used for the installation of electronic surveillance equipment at border crossings in Bulgaria, Latvia and Lithuania and for the deployment of mobile detection equipment in Bulgaria, Greece and Lithuania. As part of the Asylum, Migration and Integration Fund (AMIF), funds will be made available for the "expansion of reception facilities at the borders and the renovation of existing reception centres in Italy, Latvia, Lithuania and Poland."

Concerns remain about the ongoing pushback and violence against migrants attempting to cross the Belarus-Poland border. The Helsinki Human Rights Foundation in Poland stated that it had observed numerous cases of violence by uniformed officers, e.g., handcuffing people to the radiator of a police station, beating and kicking detained persons on the run.

Finnish Prime Minister Orpo announced on 12 December that Finland would reopen parts of its border with Russia. The announcement came two weeks after Finland closed the border because it accused Moscow of driving migrants and asylum seekers to the border in order to "sow discord" and "take revenge" for Finland's accession to NATO. Although most of the closures remained in place, the Vaalimaa and Niirala crossings were reopened from 14 December until 14 January. Prior to the decision to reopen the border, several organisations, including the UNHCR, had expressed concerns about the rights of migrants. On 11 December, the Council of Europe Commissioner for Human Rights, Mijatović, wrote to the Finnish Interior Minister: "It is crucial that Council of Europe member states respond in a way that fully complies with their human rights obligations, even in difficult situations at their borders." She called for a number of clarifications on measures taken to ensure the protection of human rights and to prevent a humanitarian crisis from developing in the context of deteriorating weather conditions at the border.

3 Children's Rights in the Asylum Procedure – From a Report by Terre des Hommes

On 29 November 2020, Terre des Hommes published the report *In Front of Walls and Behind Bars* on pushbacks and migration detention of children and young people. Taking Hungary, Greece, Bulgaria and Poland as examples, the report highlights the current development of pushbacks and migration detention practices that violate children's rights. The report refers to the experiences and information provided by civil society project partner organisations and points to the shared responsibility of the EU, whose institutions approve and support the behaviour of the member states. As a result of migration detention, which always violates the UN Convention on the Rights of the Child, children and young people often suffer from depression, post-traumatic stress disorder and anxiety. The experience of violence against themselves or relatives and friends in the context of pushbacks is also traumatising for children and young people and often stays with them for the rest of their lives. According to Terre des Hommes, the EU is partly

responsible for the violation of children's rights at Europe's external borders. Numerous examples can be found in the report, such as the European pilot project for border protection in Bulgaria, the EU funding of detention-like facilities in Greece and the role of FRONTEX. In view of the changes to the CEAS, it is to be feared that the existing abuses at the external borders will be further exacerbated by giving violations of the law a European framework. Terre des Hommes calls for "child welfare instead of detention and fair asylum procedures instead of accelerated border procedures."

4 Great Britain

News on the UK's "Rwanda deal" and the consequences of the Supreme Court ruling of 15 November 2023

In its judgment of 15 November 2023, the UK Supreme Court confirmed a decision by the Court of Appeal in which it declared the relocation of asylum procedures to Rwanda provided for in an agreement between the UK and Rwanda (Migration and Economic Development Partnership) to be incompatible with the prohibition of refoulement under the Refugee Convention and the ECHR. The agreement stipulates that asylum seekers who arrive in the UK after crossing the English Channel will be deported to Rwanda, where their asylum applications will be decided by the Rwandan authorities. In return, Rwanda will receive economic benefits based on the existing Migration and Economic Development Partnership (MEDP) between the two countries.

Initially, the Divisional Court of first instance had criticised the application of the agreement to individual cases, but considered the agreement to be lawful in principle. The Supreme Court then confirmed the factual findings of the Court of Appeal, which had relied on statements by the UNHCR on the practical realities of reception conditions and the asylum system in Rwanda, among other things. Based on the generally poor human rights situation in Rwanda and considerable procedural and substantive deficits in the application of the Refugee Convention, the Supreme Court also assumed that there are currently considerable indications that asylum seekers are at risk of violations of the prohibition of refoulement if they are transferred to the Republic of Rwanda.³

Very shortly after the legal defeat, the British government introduced a new bill on 11 December, which was initially approved in two readings: In order to deter migrants, people who have entered the country irregularly are to continue to be sent to Rwanda in the future, without their asylum application being examined and regardless of their origin, and apply for protection there. A return to the UK is not envisaged. Rwanda is defined by law as a safe third country. This contradicts the opinion of the Supreme Court. According to Home Secretary Cleverly, the new treaty with Rwanda, which he signed in early December, has addressed the shortcomings identified by the Supreme Court, with new guarantees and international monitoring for Rwandan asylum procedures. The new text defines Rwanda as a safe third country and prevents the deportation of migrants from Rwanda to countries of origin where they may face persecution. It also provides that legal recourse in the UK, and thus parts of British human rights protection, do not apply to deportation proceedings. To this end, the British Human Rights Act is to be declared inapplicable and not applied in the case of Rwanda. This will ensure "that our plan cannot be stopped," said

³ Read more about the Supreme Court's judgement here:
<https://www.supremecourt.uk/cases/docs/uksC-2023-0093-etC-judgment.pdf>

PM Sunak. "Hardliners" such as former Home Secretary Braverman are calling for further measures, such as withdrawal from the ECHR, in order to prevent legal action before international courts. With the 313 "Ayes", the bill went to the relevant parliamentary committee, where it will be debated and amendments tabled. The House of Lords will then give its opinion, after which it will go back to the House of Commons with or without amendments, where the proposed legislation and amendments will be discussed and voted on at the 3rd reading in January. So far, £240 million has been paid to Rwanda, with a further £50 million to be paid in 2024. 175,000 people are awaiting an initial decision on their application for asylum in the UK.