



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

FOURTH SECTION

DECISION

Application no. 22463/17
S.B. and Others
against Serbia

The European Court of Human Rights (Fourth Section), sitting on 21 May and 27 August 2024 as a Chamber composed of:

Gabriele Kucsko-Stadlmayer, *President*,
Branko Lubarda,
Armen Harutyunyan,
Anja Seibert-Fohr,
Ana Maria Guerra Martins,
Anne Louise Bormann,
Sebastian Rădulețu, *judges*,

and Andrea Tamietti, *Section Registrar*,

Having regard to the above application lodged on 8 February 2017,
Having regards to the decision not to have the applicants' names disclosed;
Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,
Having deliberated, decides as follows:

THE FACTS

1. The applicants are members of the same family. They were represented by Mr Tegebauer, a lawyer practising in Trier. The relevant applicants' details are provided in the appendix.
2. The Serbian Government ("the Government") were represented by their Agent, Ms Z. Jadrijević Mladar.
3. The facts of the case, as submitted by the parties, may be summarised as follows.
4. In 2016 the applicants fled Afghanistan with the intention of joining their relatives either in Germany or Switzerland. On 11 December 2016 they arrived at the reception centre in Preševo, Serbia, where they stayed until

30 May 2017. On 30 May 2017 the applicants were transferred to another reception centre in Vranje, Serbia.

5. On an unspecified date the applicants left Serbia. It appears that they have been residing in Switzerland since 2018.

A. Living conditions in the reception centre in Preševo

1. Description provided by the applicants

6. According to the applicants, upon arrival at the reception centre in Preševo, they had been provided with accommodation in a tent. The heating had malfunctioned on several occasions. On an unspecified date the applicants had been transferred to one of the dormitories located in the main building. At the end of March 2017 they had been transferred to an individual housing unit provided by UNHCR (the United Nations' refugee agency).

7. The dormitory had housed 200 people. It had been equipped with bunk beds, and the residents had had to hang blankets by way of partitions in order to ensure some privacy. The lighting in the dormitory had been switched on for most of the time. The residents had not been allowed to cook. They had received food from the centre; it had been of very poor quality. The first applicant (S.B.) had had to buy fresh produce for the second and third applicants (A.B. and M.B.), his wife and son, at the local market.

8. Access to the reception centre had been strictly controlled. The applicants had been allowed to leave the premises only with the administration's prior approval. When the second and third applicants had been in hospital, the first applicant had been allowed to visit them only once.

9. The first applicant had sustained an injury to his hand while in Afghanistan. He had not received any treatment for that injury while he had been in the reception centre. The sixth applicant, his brother Sh.B., had been suffering from depression and had been in need of a "corneal graft". The third applicant had had an artificial plastic left eye that had been causing excessive "secretions" from the tear duct. No medical assistance had been afforded to him in Preševo in that respect.

2. Description provided by the Government

10. According to the Government, the reception centre in Preševo had opened on 7 June 2015 in response to the European refugee crisis, which had been prompted by a dramatic increase in the flow of migrants as a result of war, ethnic conflicts and economic hardship in the Middle East and neighbouring countries. The Commissariat for Refugees and Migration had been in charge of the reception centre's management.

11. At the time when the applicants had been staying at the reception centre, it had been 80% full. Residents had been accommodated either in the main building (which had had eight communal dormitories equipped with 888

beds) or in individual housing units (which had had a total of 500 sleeping places). Residents assigned to the dormitories had been given plastic partitions, to be used to divide the communal area into relatively private sections. No tents had been in use at the reception centre (contrary to the applicants' assertions summarised in paragraph 6 above).

12. Residents at the reception centre had been provided with three meals a day and unlimited amounts of bottled water. The distribution of food had been carried out by NGOs. The amount and quality of the food provided had been in compliance with the relevant standards. The food had been adapted to comply with both religious beliefs and the particular needs of children. During the religious holiday of Ramadan (during which Muslims observe a fast during daylight hours), the meal distribution system had been adjusted and residents had had the possibility to visit a local mosque on Saturdays. The centre had provided residents with clothes, shoes and personal-hygiene items.

13. The living quarters had been heated for twenty-four hours a day during the cold season (from 1 October until 1 April). The reception centre had had an outpatient clinic, which had been open for twenty-four hours a day. Separate medical teams consisting of a general practitioner and a nurse had worked in shifts. In the event that a patient had required further medical assistance, he or she had been referred to one of nearby hospitals. Health care and medication had also been available from humanitarian organisations. Nursing mothers and mothers with small children had received special support. Baby food, diapers and various hygiene items had been made available to the centre's residents.

14. The applicants, who had not applied for asylum in Serbia, had been entitled to urgent medical care. Treatment for the medical problems referred to by the applicants (see paragraph 9 above) had not been available to them in view of their status – that is, they did not qualify to receive it because they had not applied for asylum in Serbia. The second and third applicants (a mother and her child) had received all necessary medical assistance; that fact was confirmed by the medical documentation provided by the outpatient clinic of the reception centre and the hospital in Vranje.

15. The reception centre had not been a closed facility. The residents had been free to leave the premises and to return there whenever they had wished; however, each time that they had left the centre, they had been required to report their departure in order for the administration to keep an accurate daily record of the number of sleeping places available. Certain restrictions on movement in and out of the centre had been introduced at the time of the applicants' arrival at the centre because of the epidemiological situation at the centre in 2016 (lice and scabies had been spreading among residents). Furthermore, the administration had imposed certain restrictions on the residents' access to the town of Preševo: they had been allowed to leave for Preševo (and remain absent from the centre) in groups of between twenty and fifty people – either between 10 a.m. and 1 p.m. or between 1 p.m. and 4 p.m.

On Saturdays 150 residents had been allowed to leave the centre in order to visit the local market. The said restrictions had been necessary in order to be able to ensure for both centre residents and local people adequate access to such services as the post office, banks and grocery shops in the small town of Preševo. It had also been necessary for safety and security reasons: conflicts and fights between residents from different countries had not been uncommon.

16. The applicants had not been restricted in any way in respect of their right to liberty. At no time had they been prevented from leaving the reception centre or Serbia.

B. The application to the Court

17. On 23 March 2017 the applicants' representative submitted, by fax, an application form to the Court. The application form was filled out in respect of the first applicant and signed by the representative. The reference to the five other applicants was made in the "Facts" and "Complaints" section of the application form. The representative also submitted hardly legible copies of four handwritten authority forms in respect of the first, second, fourth and fifth applicants.

18. On 19 November 2021 the Government were given notice of the application. The applicants' representative was also requested to inform the Court (1) whether he maintained contacts with the applicants, (2) of their whereabouts, (3) whether they wished to pursue the application, and (4) of any important factual developments.

19. On 24 November 2021 the applicants' representative confirmed that he was in contact with the applicants and their interest in pursuing the application, informing the Court of their relocation to Switzerland. No specific information regarding the applicants' whereabouts was provided.

20. On 14 February 2022 the applicants' representative was reminded of his obligation to inform the Court of any major developments in the case.

21. Both parties submitted written observations on the admissibility and merits of the case.

22. On 23 June 2022 the applicants' representative submitted copies of their Swiss residence permits. The permits in respect of the first, second and third applicant were due to expire on 2 October 2022. The permits in respect of the fourth, fifth and six applicants were no longer valid, having expired on 18 January 2022. No other identity documents were provided. According to the permits, in Switzerland the second, fourth, fifth and sixth applicants used last names different from those indicated in the application form. The dates of birth of the second and the fifth applicants also differed from those indicated in the application form. The applicants' representative did not provide any information regarding the addresses in Switzerland of the first, second and third applicants. According to the documents provided, the fourth,

fifth and sixth applicants had been “admitted provisionally” to Switzerland until 18 January 2022. No further update regarding applicants’ situation was ever received by the Court.

C. Reports on the reception centre in Preševo

23. The applicants submitted two reports concerning living conditions in the reception centre in Preševo. The relevant parts of the reports state as follows.

1. Report published on 18 November 2016 by Moving Europe (a “support and documentation project”)

“Until March this year, the camp in Preševo was the entry point for thousands of people from Macedonia into Serbia on their way North. Now, it turned into the opposite: the last stop in Serbia, before people are pushed back south, to Macedonia.

...

Preševo camp is currently completely closed, that means only registered NGOs, Police and the Commissariat are authorized to enter and exit. Until a few weeks ago, it was reported that around 50 people per day were still allowed to go out for a few hours. Also, some people have consistently managed to escape. Now, however, neither seems to be possible anymore. The camp is now well-guarded by police and army, surrounded by houses and private properties. People who tried to escape unsuccessfully, reported that they were caught in the surroundings and violently forced to return to the camp.

The large camp consists of an old industrial building and tents with currently hold around 700 people (families, minors and single men) but the number fluctuates a lot, depending on how many people are brought to Preševo from different parts of Serbia and on how many people are pushed-back. The accommodation inside the camp seems to be acceptable, people reported that is the best camp in Serbia they have ever been in, with good food, great medical supply, childcare, enough space and enough “non-food items ...”.

2. Country report on Serbia prepared by Asylum Information Database regarding the situation as at 31 December 2016

“2.2 Conditions in temporary reception facilities

The number of refugees and migrants arriving in Serbia fluctuated throughout 2016. The authorities started opening temporary reception facilities for these persons in order to provide basic accommodation and humanitarian support to persons who are likely in need of international protection, but are not interested in seeking asylum in Serbia. These are not asylum centres and are not meant for long-term stay.

The reception (‘one-stop’) centre in Preševo (1,500 places), close to the border with FYROM, was opened during the summer of 2015. Emergency support was initially provided by Red Cross Serbia and the local municipality, but the Government soon decided to have a local tobacco factory adapted and turned into a registration and accommodation facility. The centre has a reception capacity for several hundred persons at any given moment. There are numerous international and local organisations present in Preševo in order to provide relief to refugees, including UNHCR. Preševo is

the only reception centre in Serbia that allows for the recording of asylum seekers and the expression of the intent to seek asylum on its premises. The facilities were expanded in 2016, allowing for almost triple the maximum reception capacity the centre had previously possessed.

It is important to note that the reception centre in Preševo does not allow full freedom of movement to its tenants, who have to apply for daily leave of a maximum of three hours from the reception centre.”

COMPLAINTS

24. The applicants complained under Article 3 of the Convention about the living conditions in the reception centre in Preševo.

25. They further complained under Article 5 of the Convention that they had been deprived of their liberty while they had been at the reception centre in Preševo and that they not been informed of the reasons therefor.

26. Upon communication of the application, the Court requested the parties to also comment on whether the applicants had at their disposal a “remedy which would have enabled them to assert with a competent national authority their rights guaranteed by Articles 3 and 5 of the Convention, as required by Article 13 of the Convention”.

THE LAW

A. Preliminary remarks

27. The Court notes from the outset that an issue might arise as to validity of the application form and authority forms or as to existence of contact between the applicants and their representative. The Court cannot overlook the fact that at no time did it receive any original documents, the application form and authority forms having been sent by applicants’ representative by fax only. The Court also notes that, notwithstanding its express requests (see paragraphs 18 and 20 above), the applicants’ representative has not provided certain essential information concerning the applicants’ identity and whereabouts. In particular, after the applicants’ relocation to Switzerland, he has not informed the Court of the first three applicants’ new address(es). Following the expiry of their Swiss residence permits, no further update regarding their situation has been provided. As regards the remaining three applicants, at no time did the applicants’ representative submit any valid documents confirming their identity or whereabouts (see paragraph 22 above). However, the Court considers that it is not necessary to examine those issues, since the application is in any event inadmissible for the reasons stated below. Similarly, the Court will not examine the objections raised by the Government to the effect that the application amounted to an abuse of the right of application and that the applicants had failed to exhaust the available effective domestic remedies in respect of their complaints.

B. Complaint under Article 3 of the Convention

28. The applicants complained that the living conditions at the reception centre in Preševo had been inhumane. They relied on Article 3 of the Convention, which reads as follows:

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

1. The parties’ submissions

29. The Government argued that the living conditions at the reception centre during the applicants’ stay there had complied with the requirements of Article 3 of the Convention (see the description provided by the Government in paragraphs 10-16 above). The Government submitted copies of medical documentation confirming that medical assistance had been provided to the second and third applicants (see paragraph 14 above).

30. The applicants maintained their complaints.

2. The Court’s assessment

31. The general principles regarding the State’s obligations *vis-à-vis* refugees or migrants placed in designated zones or centres are well-developed in the Court’s case-law (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 158-69, 15 December 2016; *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, §§ 186-88, 21 November 2019; and *R.R. and Others v. Hungary*, no. 36037/17, §§ 48-50, 2 March 2021). The Court reiterates that allegations of treatment in contravention of Article 3 of the Convention must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV, with further references).

32. Having examined the applicants’ submissions, the Court finds them of a general character and lacking details pertaining to the applicants’ individual situation. It also notes that the reports prepared by NGO’s and submitted by the applicants’ (see paragraph 23 above) do not support the allegation that the living conditions in the reception centre reached the minimum level of severity, as set out in Article 3 of the Convention. There is nothing in the materials submitted to suggest that the number of refugees accommodated at the reception centre at the time the applicants stayed there exceeded its capacity or that the food provided was of unacceptable quality or insufficient. Nor was any evidence presented to support the applicants’ allegations of the denial of access to medical care.

33. Accordingly, the materials submitted do not constitute a sufficient evidentiary basis to enable the Court to find *prima facie* that, while at the reception centre in Preševo, the applicants were subjected to treatment proscribed by Article 3 of the Convention.

34. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Articles 35 §§ 3 and 4 of the Convention.

C. Complaint under Article 5 § 1 of the Convention

35. The applicants complained that they had been deprived of liberty while they had been at the reception centre in Preševo. They alleged a violation of Article 5 §§ 1 and 2 of the Convention, which, in so far as relevant, reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.”

36. The Government denied that the applicants had been deprived of their liberty (within the meaning of Article 5 of the Convention) during their stay at the reception centre in Preševo. The applicants had not been prevented at any time from leaving the reception centre and/or the country. They had entered the country and had stayed there of their own volition. The temporary restrictions on the freedom of residents to come and go from the reception centre and to make visits into the town of Preševo (see paragraph 15 above) had been introduced in order to ensure proper access to local services for both the centre’s residents and locals of the small town and in order to be able monitor any fluctuations in the reception centre’s occupancy rates.

37. The applicants maintained their complaints. They submitted that they had been *de facto* deprived of their liberty. When they had wished at any point during their stay at the Preševo reception centre to temporarily leave the centre’s premises they had been obliged to apply for permission to the centre’s administrative authorities.

38. Having regard to the material in its possession, the Court considers that the applicants have not substantiated their complaints. Their allegations are unsupported by any evidence. Their account of the relevant facts, lacking detail, does not facilitate an elucidation of the circumstances of their stay at the reception centre. The applicants did not provide any information

concerning the purpose and length of their stay in Serbia. Nor did they state when and on what grounds they had been able to leave the country.

39. The Court therefore concludes that applicants' complaint in this regard is manifestly ill-founded and must be rejected in accordance with Articles 35 §§ 3 and 4 of the Convention.

D. Remaining complaints

40. In the light of all the material in its possession and in so far as the matters complained of are within its competence, the Court considers that the complaints under Article 13 of the Convention (see paragraph 26 above) either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 September 2024.

Andrea Tamietti
Registrar

Gabriele Kucsko-Stadlmayer
President

Appendix

List of applicants:

Application no. 22463/17

No.	Applicant's Name	Gender	Year of birth	Nationality	Kinship, as claimed by the applicants
1.	S.B.	M	1991	Afghan	First applicant
2.	A.B.	F	1993	Afghan	First applicant's wife
3.	M.B.	M	2016	Afghan	First applicant's son
4.	E.B.	M	1961	Afghan	First applicant's father
5.	F.B.	F	1960	Afghan	First applicant's mother
6.	Sh.B.	M	1998	Afghan	First applicant's brother