



Border Violence Monitoring Network

October 2024

Salman Muhammad v.

Greece

Application no.34331/22

Third Party Intervention to the  
European Court of Human Rights



EUROPEAN COURT OF HUMAN RIGHTS

Council of Europe

67075 Strasbourg

Cedex France

BY POST AND FAX

29 October 2024

Application no. 34331/22

Salman Muhammad v. Greece

**Third party intervention on behalf of Border Violence Monitoring Network**

*Pursuant to the Registrar's notification dated 4 July 2022 that the President of the Section has granted leave, under Rule 44(3) of the Rules of the European Court of Human Rights*

## SUMMARY

1. BVMN is a network of non-governmental organisations situated along the Balkan and Greek migration route, whose purpose is to monitor, document and litigate human rights violations at European borders.<sup>1</sup> Since 2017, BVMN has collected more than 1,800 testimonies of pushbacks. With such evidence, BVMN produces comprehensive reports that trace and analyse patterns in border violence.<sup>2</sup> As well as coordinating grassroots participation in legal processes at national, regional and international levels, BVMN routinely files submissions to judicial and international bodies outlining rights violations during pushbacks, including legal briefings to Special Rapporteurs on states' use of torture during pushbacks.<sup>3</sup>
2. BVMN seeks to present the Court with substantial evidence and testimonies documenting pushback operations conducted by Greek authorities from Greece into Türkiye, specifically occurring at Evros/Meriç River and the Pazarkule/Kastanies checkpoint. This intervention highlights the involvement of Greek officials in actions that constitute violations under Article 2 of the European Convention on Human Rights (ECHR). BVMN aims to show that these pushback practices involved excessive use of force, including the use of firearms, by Greek authorities at the border with Türkiye.

### ***a) Legal Analysis of Article 2 of the European Convention on Human Rights (ECHR) - Negative Obligations***

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<sup>2</sup> See for example: BVMN. 2021. Annual Torture Report 2020. Available at: <https://www.borderviolence.eu/annual-torture-report-2020/>; BVMN. 2020. *Violations at the Greek Borders. Sea and Land Report (February/March)*. Available at <https://www.borderviolence.eu/new-report-on-violations-at-greek-borders/>; BVMN. 2020. *Special Report: COVID-19 and Border Violence along the Balkan Route*. Available at: <https://www.borderviolence.eu/special-report-covid-19-and-border-violence-along-the-balkan-route/>; Mobile Info Team (member of BVMN). 2019. *Illegal Pushbacks at the Border: Denying Refugees the Right to Claim Asylum*. Available at: <https://www.mobileinfoteam.org/pushbacks>.

<sup>3</sup> See for example: BVMN. 2022. Submission to the UN Committee on Enforced Disappearances. Report for the 22nd Session. Available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCED%2FNGO%2FGRC%2F48018&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCED%2FNGO%2FGRC%2F48018&Lang=en) and BVMN. 2021. Submission to the UN Rapporteur on Torture Regarding Greece. Available at: <https://www.borderviolence.eu/submission-to-the-un-special-rapporteur-on-torture-regarding-greece>

3. Article 2 of the European Convention on Human Rights (ECHR) protects the right to life as one of the most fundamental provisions, imposing both negative and positive obligations on the state.<sup>4</sup> The European Court of Human Rights (ECtHR) developed an extensive jurisprudence interpreting both the state's obligation to refrain from unlawful deprivation of life.<sup>5</sup>
4. The state has a negative obligation to refrain from the intentional deprivation of life, except in circumstances prescribed by law, such as lawful acts of war or the execution of a lawful sentence. The use of force must be no more than “absolutely necessary” and must be proportionate to the achievement of the aims set out in Article 2(2).<sup>6</sup> Article 2 allows for exceptions to the right to life only when it is “absolutely necessary”, a term indicating “that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is “necessary in a democratic society”.”<sup>7</sup>
5. Furthermore, the state is obliged to minimise the risk to human life during law enforcement operations, even when faced with violence or insurrection. The Court asserts as a general rule that if it is known that the person to be arrested does not pose a threat to anyone's life or safety, then there is no justification for using force that endangers life, even if it might be impossible to arrest the person otherwise. The necessity to protect life prevails over the need to arrest.<sup>8</sup>
6. In this regard, in order to determine whether the use of force was justified, the Court examines whether the State agents honestly and sincerely believed that it was necessary to use it.<sup>9</sup> To this end, the Court assesses the subjective reasonableness of the belief, taking full account of the circumstances in which the events took place. The Court considers that it is for the respondent Government to prove that the force used

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<sup>4</sup> Right to life is non-derogable, except in cases of deaths resulting from lawful acts of war under Article 15 of ECHR.

<sup>5</sup> *McCann and Others v United Kingdom*, (ECtHR, 27 September 1995) Application No. 18984/91

<sup>6</sup> *McCann and Others v United Kingdom*, (ECtHR, 27 September 1995) Application No. 18984/91, *Yukhymovych v. Ukraine*, (ECtHR, 17 December 2020) Application No. 11464/12.

<sup>7</sup> *McCann and Others v United Kingdom*, (ECtHR, 27 September 1995) Application No. 18984/91, *para* 149.

<sup>8</sup> *Nachova and Others v Bulgaria* [GC] (ECtHR, 6 July 2005) Application No. 43577/98 and 43579/98, *para.* 95 and 107.

<sup>9</sup> *Armani Da Silva v. the United Kingdom* [GC], (ECtHR, 30 March 2016) Application No. 5878/08.

by the State agents was justified, that it did not go beyond what was absolutely necessary and that it was strictly proportionate to the achievement of one or more of the aims set out in Article 2(2) of the Convention.<sup>10</sup>

7. Furthermore, the Court has emphasised that whenever it cannot determine the precise details of a case due to reasons that are objectively attributable to State authorities, it falls upon the respondent Government to provide a satisfactory and convincing sequence of the events, along with credible evidence that can challenge the applicant's claims.<sup>11</sup>

***b) Legal Analysis of Article 2 of the European Convention on Human Rights (ECHR) - Positive Obligations***

8. Article 2 imposes a positive obligation on states to take reasonable steps to protect individuals whose lives are at risk, particularly when the authorities know or should know about a real and immediate danger.<sup>12</sup> This duty requires states to implement regulatory frameworks, such as effective criminal law provisions and law enforcement mechanisms, to protect individuals from threats to their lives.<sup>13</sup>
9. The Court developed the “Osman test,” which examines whether authorities knew or ought to have known about a real and immediate risk to life and failed to take reasonable steps to prevent it. This test emphasizes two key components: (1) knowledge of the risk, and (2) whether reasonable steps were taken within the scope of the authorities' powers to mitigate it.<sup>14</sup>
10. Furthermore, the Court consistently held that the procedural aspect of Article 2 obligates states to conduct effective official investigations into deaths resulting from state force or occurring in suspicious circumstances.<sup>15</sup> It emphasised that the state

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<sup>10</sup> Ibid, para 248.

<sup>11</sup> *Mansuroğlu v. Turkey* (ECtHR, 26 February 2008) Application No.43443/98, para 80.

<sup>12</sup> *Osman v. the United Kingdom* (ECtHR, 28 October 1998), Application No. 23452/94.

<sup>13</sup> *McCann and Others v United Kingdom*, (ECtHR, 27 September 1995), Application No. 18984/91, *L.C.B. v. the United Kingdom* (ECtHR, 9 June 1998) Application no 23413/94, *Osman v. the United Kingdom* (ECtHR, 28 October 1998) Application No. 23452/94, *Opuz v. Turkey* (ECtHR, 9 June 2009) Application No. 33401/02.

<sup>14</sup> Ibid, para 116.

<sup>15</sup> *Opuz v. Turkey* (ECtHR, 9 June 2009) Application No. 33401/02.

must conduct a thorough and independent investigation into any death involving a violation or potential violation of Article 2. The failure to conduct such an investigation can itself constitute a violation of the Convention.<sup>16</sup>

11. Regarding deaths at the borders, the Court delivered its judgements In *M.H. and Others v. Croatia*<sup>17</sup> and *Alhowais v. Hungary*,<sup>18</sup> which found violations of the procedural limb of Articles 2 and 3 due to the failure of Croatian and Hungarian authorities to conduct effective investigations. In the former, a six-year-old Afghan girl died after allegedly being denied the chance to seek asylum and pushed back to Serbia via train tracks, while in the latter, a man drowned during a border control operation.

***b) Identifying a broader pattern of practices in violation of Article 2***

12. BVMN collected testimonies of people on the move who were pushed back from Greece to Türkiye from 1 January 2019 until 31 December 2021. In total, 164 testimonies of pushbacks were collected during this period, affecting 9351 people on the move.<sup>19</sup> In more than 95% of cases, people on the remove reported that violence was used during at least one stage of the pushback incident. In more than 80% of cases, people on the move were either beaten with batons, hands or other objects, and had their personal belongings, such as phone or money, stolen or destroyed by the Greek authorities.<sup>20</sup>
13. Testimonies collected by BVMN during the period 2019-2021 reference the use of guns amongst Greek officials during pushback events. In at least 37 of the testimonies collected, people on the move reported the use of guns, where they were either discharged, used as a weapon or used in a threatening way.<sup>21</sup> Among the 33 testimonies recorded within a 20km radius of the Pazarkule/Kastanies border

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<sup>16</sup> *Safi and Others v. Greece* (ECtHR, 7 July 2022) Application No. 5418/15, *Alkhatib and Others v. Greece*, (ECtHR, 16 January 2024) Application No. 3566/16.

<sup>17</sup> *M.H. and Others v. Croatia* (ECtHR, 18 November 2021) Applications nos. 15670/18 and 43115/18.

<sup>18</sup> *Alhowais v. Hungary* (ECtHR, 2 February 2023) Application no. 59435/17.

<sup>19</sup> Border Violence Monitoring Network (BVMN), 'Black Book of Pushbacks: Extended and Updated Edition' (December 2022) <<https://borderviolence.eu/black-book-of-pushbacks-2022/>> p. 2581.

<sup>20</sup> *Ibid.*

<sup>21</sup> Border Violence Monitoring Network (BVMN), 'Black Book of Pushbacks-Volume I' (December 2020) <<https://borderviolence.eu/black-book-of-pushbacks-2020/>> p.533 and 601.

crossing, 8 of them reported the presence and/or use of firearms against them during the pushback process.<sup>22</sup>

14. Regarding the year 2020 specifically, the BVMN documented 77 testimonies from people attempting to cross the Turkish-Greek border near Edirne. Of these, 73 accounts (95%) reported violent pushbacks in the Evros region, including instances of physical beatings, threats with firearms, and forced immersion in water.<sup>23</sup>
15. The Greek/Turkish border tensions intensified in February and March 2020, following Türkiye's decision to 'open the border' to Greece.<sup>24</sup> The Turkish government framed their decision as a humanitarian one in response to the further displacement of Syrian civilians from Idlib to Türkiye and the EU's failures to fully implement and fulfil its obligations under the EU-Turkey deal.<sup>25</sup> A few days after this announcement, thousands of people attempted to cross via land or sea into Greece.<sup>26</sup>
16. The Greek Authorities responded on 1st March 2020, when the Greek National Security Council announced the “*temporary suspension, for one month [...] of the lodging of asylum claims by all people entering the country illegally*” and their “*immediate deportation without registration, where possible, to their countries of origin or transit.*”<sup>27</sup> With this decision, Greek authorities began breaching the principle of *non-refoulement* and failing to comply with international law and

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<sup>22</sup> Border Violence Monitoring Network (BVMN), 'Black Book of Pusbacks: Extended and Updated Edition' <<https://borderviolence.eu/black-book-of-pushbacks-2022>> p. 2764, 2767, 2769, 2771, 2774, 2804, 2854, 2902, 2920, 2925, 2935, 2970, 2972, 2975.

<sup>23</sup> BVMN exported data 01.01.2020 - 31.12.2020 available at:

[https://docs.google.com/file/d/1BJaH\\_HP17ritKisyvyCuiX7Ro7myuXsU/edit?usp=doclist\\_api&filetype=msexce](https://docs.google.com/file/d/1BJaH_HP17ritKisyvyCuiX7Ro7myuXsU/edit?usp=doclist_api&filetype=msexce)

<sup>24</sup> Politico, Turkey Says It Will No Longer Stop Refugees from Entering Europe' (28 February 2020) <<https://www.politico.eu/article/turkey-says-it-will-no-longer-stop-refugees-from-entering-europe/>> accessed 24 October 2024.

<sup>25</sup> Border Violence Monitoring Network, Mobile Info Team, Mare Liberum, No Name Kitchen and Balkan Info Van, 'Violations at Greek Borders: Sea and Land Report-February/March 2020' <<https://borderviolence.eu/reports/new-report-on-violations-at-greek-borders/>> p.5.

<sup>26</sup> IOM Türkiye, 'More than 13,000 Migrants Reported Along the Turkish-Greek Border' (11 March 2020) <<https://turkiye.iom.int/news/more-13000-migrants-reported-along-turkish-greek-border>> accessed 25 October 2024.

<sup>27</sup> Human Rights Watch, 'Greece/EU: Allow new arrivals to claim asylum' (10 March 2020) <<https://www.hrw.org/news/2020/03/10/greece/eu-allow-new-arrivals-claim-asylum>> accessed 24 October 2024.

European law.<sup>28</sup> In addition, the authorities intensified violent practices along the Turkish/Greek land crossings around Evros river, including Pazarkule/Kastanies entry point.<sup>29</sup> A Syrian father who provided a testimony to the BVMN during this time stated “*We are cards and they are playing with us*”<sup>30</sup> to highlight that they were manipulated by Türkiye and forcefully hindered by Greece. It is estimated that between 10,000 and 20,000 people, many of whom were women and children, were stuck there as Greek authorities denied them the right to apply for asylum.<sup>31</sup>

17. During February and March 2020, the Greek authorities fired shots and used water cannons and tear gas to conduct pushbacks.<sup>32</sup> The attacks were regular in the first two weeks of March 2020, including firing shots to the Turkish side of the border. A 21-year-old male respondent from Iran arrived at the Türkiye-Greece border at Pazarkule crossing, where he joined other people on the move. They continuously attempted to cross to Greece but each attempt was met with tear gas and gunfire from Greek authorities, forcing them to return back. On March 4, 2020, the respondent assembled alongside hundreds of others to attempt to cross the border to claim asylum and once again, faced aggressive responses from the Greek authorities, including tear gas and gunfire.<sup>33</sup> He recounted how a fellow Iranian was injured by a tear gas canister and how they were forced to flee under continued fire. He stated “*They pointed their weapons at us (gesturing the shape of assault rifles)*”.<sup>34</sup> When they saw weapons

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<sup>28</sup> The Guardian, ‘Greece warned by EU it must uphold the right to asylum’ (12 March 2020) <<https://www.theguardian.com/world/2020/mar/12/greece-warned-by-eu-it-must-uphold-the-right-to-asylum>> accessed 24 October 2024, Info Migrants, Greece has 'no right' to suspend asylum applications, Info Migrants, <<https://www.infomigrants.net/en/post/23142/greece-has-no-right-to-suspend-asylum-applications-un>> (3 March 2020) accessed 24 October 2024.

<sup>29</sup> The Guardian, 'Turkey Deploys Special Forces as Tensions Rise Along Greek Border' (5 March 2020) <<https://www.theguardian.com/world/2020/mar/05/turkey-deploys-special-forces-as-tensions-rise-along-greek-border>> accessed 24 October 2024, Reuters 'Greece Rebuffs 963 Migrants in Border Standoff with Turkey' (9 March 2020) <<https://www.reuters.com/article/us-syria-security-greece/greece-rebuffs-963-migrants-in-border-standoff-with-turkey-idUSKBN20X1O6/>> accessed 24 October 2024.

<sup>30</sup> Border Violence Monitoring Network, Mobile Info Team, Mare Liberum, No Name Kitchen and Balkan Info Van, 'Violations at Greek Borders: Sea and Land Report-February/March 2020' <<https://borderviolence.eu/reports/new-report-on-violations-at-greek-borders/>> p.5.

<sup>31</sup> BBC, 'Greece suspends asylum applications as migrants seek to leave Turkey' (1 March 2020) <<https://www.bbc.com/news/world-europe-51695468>> accessed 24 October 2024.

<sup>32</sup> Border Violence Monitoring Network (BVMN), Mobile Info Team, Mare Liberum, No Name Kitchen and Balkan Info Van, 'Violations at Greek Borders: Sea and Land Report-February/March 2020' <<https://borderviolence.eu/reports/new-report-on-violations-at-greek-borders/>> p.5-8.

<sup>33</sup> Border Violence Monitoring Network (BVMN), 'They Shoot Me in the Arm' (4 March 2020) <[https://borderviolence.eu/app/uploads/March-4-2020-10\\_00---Near-Pazakule-BCP-Turkey---Border-Violence-Monitoring-Network.pdf](https://borderviolence.eu/app/uploads/March-4-2020-10_00---Near-Pazakule-BCP-Turkey---Border-Violence-Monitoring-Network.pdf)>

<sup>34</sup> Ibid.



directed towards them, they were afraid and tried to turn back. However, the Greek authorities began to shoot and as they ran they saw a man had fallen with a gunshot wound. He was bleeding from the ear and was shot on the ground. The respondent and his friends immediately came to the assistance of the man and helped him up off the ground. After having raised him, however, the officers from the Greek side fired further shots and one of them hit the respondent as he was holding the injured man. The bullet shell punctured his left forearm and he also received a shrapnel wound to the right calf.<sup>35</sup>

18. On the same day, 4th March 2020, gunshots were fired close to the Pazarkule/Kastanies crossing point which killed Muhammad Gulzar, a Pakistani citizen. These gunshots also wounded 6 other people.<sup>36</sup> A joint investigation analysed video footage from both sides of the border, photographs, testimonies and used geolocation to establish that live rounds of ammunition were fired that day and that it is highly probable that these shots were fired by Greek border guards.<sup>37</sup> On 12th May 2020, 100 MEP's called for the European Commission to investigate the shootings at the Greek -Turkish border on 4th May.<sup>38</sup>
19. Several days earlier on 2nd March 2020, on the Evros Meriç river delta close to Ipsala, 22 year old Muhammad Al-Arab, a Syrian national, was killed. A Forensic Architecture investigation supports testimonies that this young man was shot by Greek soldiers using automatic rifles. A pathology report indicates he was shot with 3 rubber bullets and one live round.<sup>39</sup>
20. In another testimony, a 26-year-old Syrian man, along with his wife and two young children, arrived at the Turkish-Greek border near Pazarkule on February 28, 2020,

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<sup>35</sup> Ibid.

<sup>36</sup> Forensic Architecture, 'The Killing of Muhammad Gulzar' (8 May 2020) <<https://forensic-architecture.org/investigation/the-killing-of-muhammad-gulzar>> accessed 24 October 2024.

<sup>37</sup> Ibid

<sup>38</sup> Please see the petition here: <<https://www.change.org/p/the-european-council-humanitarian-crisis-in-greece-europe-must-provide-protection-to-refugees>>, please see MEP Tineke Strik's announcement on the support of 100 MEPs: <[https://x.com/Tineke\\_Strik/status/1260177579815899137/photo/1](https://x.com/Tineke_Strik/status/1260177579815899137/photo/1)>

<sup>39</sup> Forensic Architecture, 'The Killing of Muhammad Al Arab' (3 July 2020) <<https://forensic-architecture.org/investigation/the-killing-of-muhammad-al-arab>> accessed 24 October 2024.

and joined the makeshift camp at the Kastanies border crossing.<sup>40</sup> The respondent reported that the camp was composed of approximately half women and children, and half men. They endured severe shortages of food, water, and protection from violent actions by Greek authorities. On March 7th, the situation intensified when the camp was filled with gas, impacting everyone, including children, while Greek authorities fired gas bombs and rubber bullets at those approaching the border. The respondent specifically mentioned the presence of a substance in the water being sprayed, which caused severe skin irritation and itching for at least two hours upon contact. Additionally, the Turkish military prevented people from leaving, confining them in dangerous conditions with no access to medical assistance.<sup>41</sup>

21. Another respondent reported that on the 20th of February 2020, he and around 40 other people on the move were also beaten by police officers and had their personal belongings stolen in the vicinity of the Pazarkule/Kastanies entry point.<sup>42</sup> In another testimony relating to a pushback in April 2020 at the Pazarkule/Kastanies entry point, the respondent reported that he and other people on the move, including two minors, were kicked by Greek policemen, hit in the head and back with police batons and had their phones, money, backpacks, sweaters and shoelaces forcibly removed.<sup>43</sup>
22. The collected testimonies of BVMN indicate a pattern of violence directed at people on the move during pushbacks by Greek authorities from Greece to Türkiye. These testimonies consistently highlight incidents involving the use or threat of firearms, highlighting the severe and systematic nature of this violence. Notably, the testimony concerning events on 4 March at the Pazarkule/Kastanies crossing point, alongside other testimonies from this location around the same time, illustrates the entrenched practice of violence against people on the move by Greek authorities.

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<sup>40</sup> Border Violence Monitoring Network (BVMN), 'No Place to Escape Inside' (7 March 2020) <[https://borderviolence.eu/app/uploads/March-7-2020-00\\_00---Pazakule-BCP-TUR---Border-Violence-Monitoring-Network.pdf](https://borderviolence.eu/app/uploads/March-7-2020-00_00---Pazakule-BCP-TUR---Border-Violence-Monitoring-Network.pdf)>

<sup>41</sup> Ibid.

<sup>42</sup> Ibid, p.658.

<sup>43</sup> Border Violence Monitoring Network (BVMN), 'Black Book of Pusbacks-Volume I' (December 2020) <<https://borderviolence.eu/black-book-of-pushbacks-2020/>> p.650.