

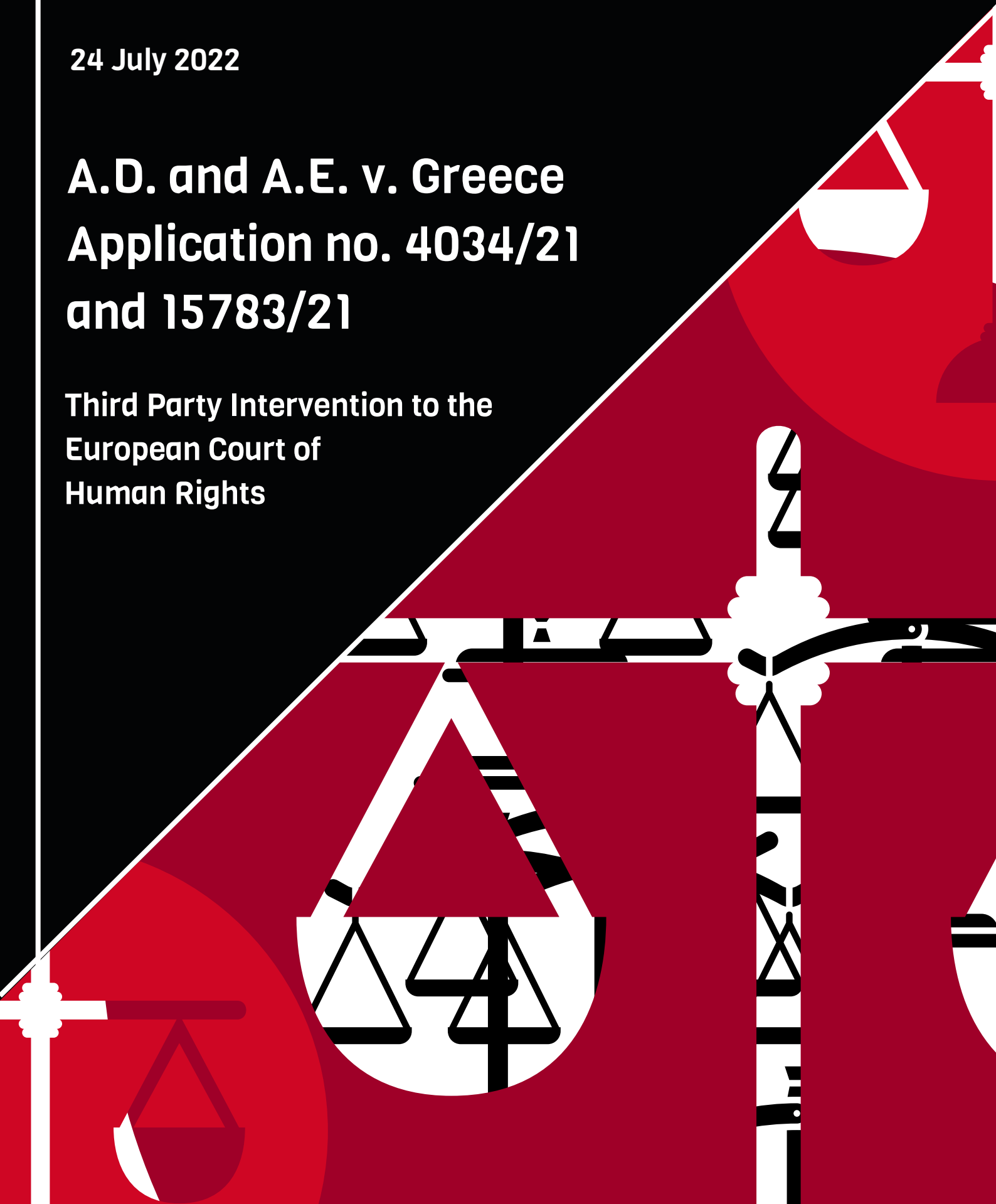


Border Violence Monitoring Network

24 July 2022

A.D. and A.E. v. Greece
Application no. 4034/21
and 15783/21

Third Party Intervention to the
European Court of
Human Rights





**Border Violence
Monitoring Network**

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EUROPEAN COURT OF HUMAN RIGHTS

Council of Europe

67075 Strasbourg

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BY POST AND FAX

24 July 2022

Application Nos. 4034/21 and 15783/21

A.D. and A.E. against 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. The intervenor, Border Violence Monitoring Network or BVMN, is a consortium of independent organisations based in Turkey, Greece and throughout the so-called Balkan migration route. BVMN bases its intervention on testimonies from survivors of pushbacks and other human rights violations. In this sense, BVMN will outline violations of the principle of non-refoulement of pushbacks or summary expulsions from Greece into Turkey. These acts are perpetrated across borders, at the countries' land and sea borders, sanctioned by the Greek state and implicating the responsibility of law enforcement officials and other public authorities.
2. In this context, BVMN strives to outline how the practices of summary expulsions from Greece to Turkey carried out by Greek authorities relate to violations of the right to be free from torture or cruel, inhuman or degrading treatment or punishment, the right to liberty and security and the right to an effective remedy as enshrined in Articles 3, 5 and 13 of the European Convention of Human Rights (ECHR). In this regard we submit in particular that the documented modus operandi of summary expulsions at land borders demonstrates that the above legal obligations of the States Parties to the Convention are routinely and widely violated.

A legal analysis on practices of Evros pushbacks or summary expulsions from Greece to Turkey carried out by the Greek authorities in relation to Articles 3, 5 and 13 of the Convention

3. The Greek-Turkish land border has been the site of pushbacks or summary expulsions for over three decades. The total number of people who have experienced a pushback across the Evros is challenging to gather, given the clandestine nature of such operations.¹ BVMN has had operatives on the field recording testimonies of pushback survivors since 2019. Up to the present date, 163 testimonies were gathered from victims subjected to pushbacks involving over 10,800 individuals². Reports gathered describe that people are more often pushed back in groups, and rarely individually.
4. The Court has consistently held that 'problems with [administering] migratory flows cannot justify recourse to practices which are not compatible with the State's obligations' (Hirsi Jamaa v. Italy 2012 paras 121,131,137, 156; M.S.S. v. Belgium and Greece 2011 paras 258-259,313,358-359,366-367).
5. Article 1 requires that '[t]he High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention' (ECHR 1950). To do so States must 'take measures designed to ensure that individuals within their jurisdiction are not subjected' to treatment contrary to Article 3 (A. v. the United Kingdom 1998 para 22). Where jurisdiction is established, a state may be held responsible for acts or omissions imputable to it when they produce an infringement of rights contained in the Convention (Catan and Others v. the Republic of Moldova and Russia 2012 para 103).

¹ Lena Karamanidou and Bernd Kasperek. *From Exception to Extra-Legal Normality: Pushbacks and Racist State Violence against People Crossing the Greek-Turkish Land Border*. State Crime Journal. Volume 1. Issue 11. pp.12. 18 June 2022. Available at: <https://www.scienceopen.com/hosted-document?doi=10.13169/statecrime.11.1.0012>

² Border Violence Monitoring Network. *Islets, Interim Measures, and Illegal Pushbacks: Erosion of Rule of Law in Greece*. 1 July 2022. Available at: <https://www.borderviolence.eu/20548-2/>

6. The *modus operandi* in operations of summary expulsions from Greece includes a well-established practice of removing personal belongings during the pushbacks, particularly recording devices like phones, obscuring accurate data and direct evidence collection³. This practice makes it challenging for victims to produce direct evidence to accompany their own account of pushbacks and other human rights violations perpetrated against them⁴.
7. Evidence has been compiled by civil-society organisations, national human rights structures and international organisations, as well as journalists, academics and other experts who have succeeded to document multiple incidents involving social media content, open-source technologies and situated testimonies creating a solid body of evidence concerning practices of pushbacks from Greece to Turkey against the Greek state's blank denials.
8. In this context and according to the Court's case-law, in all cases concerning summary expulsions where the applicants have furnished prima facie evidence in support of his or her version of events, the burden of proof should shift to the Government (see *N.D. and N.T. v. Spain* para 85 and *M.H. and others v. Croatia* para 268).

Pushbacks or summary expulsions involving acts amounting to violations of Article 3

9. Through systematically analysing reports collected in 2020, BVMN identified that approximately 90% of all Greek pushback testimonies contained one or more types of torture or ill-treatment as prescribed by the Article 3 of the Convention. Practices range from physical assault (including excessive force) to psychological violence, humiliation and threats (such as forced undressing) to brutality during detention or transportation⁵.
10. BVMN recorded the use of forced undressing as a persistent practice in pushback operations. This practice both constitutes degrading treatment having a profound psychological impact on the person. It also has a profound impact on the health and well-being of the victims when routinely people are forcibly undressed before being pushed back across the border, exposing them, for example, to the cold Evros/Meric river. The practice subjects the individuals to hardship and even life-threatening situations when weather conditions are harsh⁶. The Court held in its case-law that strip-searches may be necessary on occasions to ensure prison security or prevent disorder or crime if conducted in an appropriate manner (*Valašinas v. Lithuania* 2001, para 117). Practices of forced undressings in the context of illegal operations of pushbacks cannot be viewed to be in line with the Court's assessment.

³ BVMN. *Islets, Interim Measures, and Illegal Pushbacks: Erosion of Rule of Law in Greece*. 1 July 2022. Available at: <https://www.borderviolence.eu/20548-2/>

⁴ Amnesty International. *Greece: Violence, lies, and pushbacks – Refugees and migrants still denied safety and asylum at Europe's borders*. 23 June 2021. Index Number: EUR 25/4307/2021. Available at: <https://www.amnesty.org/en/documents/eur25/4307/2021/en/>

⁵ BVMN. *Annual Torture Report 2020*. 4 May 2021. Available at: <https://www.borderviolence.eu/annual-torture-report-2020/>

⁶ "I took off all my clothes. I stood in boxer naked and it was so cold. Then he started checking me even in sensitive places. He was looking at me and talking like 'you not hiding anything in here'". BVMN. "The officer asked if they knew the computer game PUBG and told him they would play it with them." 2 February 2021. Available at: <https://www.borderviolence.eu/violence-reports/february-4-2021-0000-soufli-umurca/>

11. The Court stated that ill-treatment must reach a minimum threshold of severity, taking into account the circumstances of the case (*Bouyid v. Belgium* 2015, paras 86-87, *Ireland v. the United Kingdom* 1978, para 162). Forced undressing of individuals in pushback situations, often followed by the confiscation of their clothing is a cruel act done with the intention to humiliate, degrade and intimidate victims. There are no practical requirements for law enforcement officials to remove people's clothing, especially considering that once expelled, people have to walk for hours to reach shelter, medical care, or support⁷.
12. In 89% of pushbacks recorded by BVMN in 2020, disproportionate and excessive force was used⁸. The use of force is permitted in certain circumstances under ECHR Article 3, yet "only if indispensable and must not be excessive" (*Anzhelo Georgiev and Others v. Bulgaria* 2016, para 66). Physical force which has not been made strictly necessary "diminishes human dignity and is in principle an infringement of the rights set forth in Article 3 of the Convention" (*Kop v. Turkey* 2009, para 27). The Court has adopted a "strict proportionality approach" (*Anzhelo Georgiev and Others v. Bulgaria* 2016, para 66).
13. In this sense the Court stated that the assessment of this minimum is relative considering all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (*Anzhelo Georgiev and Others v. Bulgaria* 2016, para 66). The proportionality test cannot be employed in summary expulsions as the violence is exercised in the context of clandestine, illegal operations against individuals removed from the protection of the law. Moreover, the Court stated that asylum seekers are "members of a particularly underprivileged and vulnerable population group in need of special protection" (*M.S.S. v. Belgium and Greece* 2011, para 251). Therefore, the use of violence constitutes an aggravating factor as it is perpetrated against vulnerable individuals, asylum seekers.
14. The use of force "to prevent persons from entering a State's territory generally cannot be regarded as lawful, necessary or proportionate, and may therefore well amount to ill-treatment or even torture"⁹. Violent punching, kicking and beating with police truncheons for the purposes of retaliation and humiliation has been seen to amount to a violation of ECHR Article 3 (*Cestaro v. Italy* 2015 para 170-190).
15. Throughout the extensive number of testimonies collected by BVMN, a pattern of making threats and using excessive force with a firearm against asylum seekers and migrants groups can be observed. BVMN has collected evidence that asserts the Greek law enforcement officers routinely use their fire-arm to unnecessarily threaten and terrify, even when personal safety of the police and compliance of the persons

⁷ "Once reunited they started to walk away from the border in their wet clothes and barefoot. After one hour they arrived at the village Karakasim. From there they followed the road leading to Edirne and walked for 7 hours taking short breaks every 30 minutes – "We were walking barefoot and I thought we were going to die because we were hungry and so thirsty"". BVMN. *Detained for 18 hours and pushed back via the Evros river*. 10 May 2022. Available at: <https://www.borderviolence.eu/violence-reports/may-10-2022-2200-palea-sagini-gr-to-karakasim-tr/>

⁸ BVMN. *Annual Torture Report 2020*. 4 May 2021. Available at: <https://www.borderviolence.eu/annual-torture-report-2020/>

⁹ United Nations Human Rights Council. (2018). Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/37/50, para. 55. Available at: https://www.ohchr.org/Documents/Issues/Torture/A_HRC_37_50_EN.pdf

has been established¹⁰. Respondents report fires being shot in the air for the purpose of intimidation and being held at gunpoint¹¹.

16. The threat or use of excessive force with a firearm is prohibited under international law. According to the UN Special Rapporteur on torture, any use of “an otherwise permissible weapon [...] in order to intentionally and purposefully inflict pain or suffering on a powerless person, always amounts to an aggravated form of cruel, inhuman or degrading treatment or punishment or even torture”¹².
17. Additionally, this treatment incorporates psychological harm since it has been established that Article 3 incorporates either physical or mental suffering. Reiterating that the Court stated in its case law that the severity of the suffering is relative and that it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, the use of firearms to intimidate victims of pushbacks in the context of clandestine and illegal operations, often times at night by law enforcement officials unidentified and/or masked¹³, while people have been removed from the protection of the law ought to be considered an aggravating element. Threats with a firearm are reported against groups of people, comprising vulnerable persons, women and children in an indiscriminate manner.

Non-refoulement in violation of Article 3

18. Article 3 is non-derogable and absolute, applying to all within the jurisdiction of Greece. The Soering test, requires the protection of non-refoulement apply ‘where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3’ (*Saadi v. Italy* 2008, para 125). If the removal has taken place, the Court assesses the risk ‘primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of removal’ (*Hirsi Jamaa and others v Italy* 2012, para 121; *Ilias and Ahmed v Hungary* 2019, para 105). The pertinent question is whether a real risk of treatment contrary to Article 3 is known, or ought to be known by Greece when pushing people back to Turkey over the Evros/Meric river.

¹⁰ BVMN. *Annual Torture Report 2020*. 4 May 2021. Available at:

<https://www.borderviolence.eu/annual-torture-report-2020/>

¹¹ Mobile Info Team. *Illegal Pushbacks at the Border: Denying Refugees the Right to Claim Asylum*. 15 November 2019. Available at: <https://www.mobileinfoteam.org/pushbacks>

BVMN. *Violent pushback of 100 people, including women and minors*. 17 May 2022. Available at:

<https://www.borderviolence.eu/violence-reports/may-17-2022-1800-rigio-greece-to-saclimusellim-turkey/>; BVMN.

Detained for 18 hours and pushed back via the Evros river. 10 May 2022. Available at:

<https://www.borderviolence.eu/violence-reports/may-10-2022-2200-palea-sagini-gr-to-karakasim-tr/>

BVMN. *A pushback of 80 people: “If you speak, you will get beaten”*. 20 April 2022. Available at:

<https://www.borderviolence.eu/violence-reports/april-20-2022-0000-kastaneai-gr-to-yenikaden-tr/>

¹² UN General Assembly. (2017). *Extra-custodial use of Force and the Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, A 72/178. Available:

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/223/15/PDF/N1722315.pdf?OpenElement>

¹³ Lighthouse Reports. *Masked Men*. 23 June 2020. Available at:

<https://www.lighthousereports.nl/investigation/masked-men/>

Lighthouse reports. *Unmasking Europe’s Shadow Armies*. 6 October 2021. Available at:

<https://www.lighthousereports.nl/investigation/unmasking-europes-shadow-armies/>

19. The appropriate standard of the burden of proof must be established to determine what ‘ought to be known’ by Greece. The Court has distinguished between two types of claims based on the nature of risk, clarifying how to apply the burden of proof in each (*F.G. v. Sweden* 2016).
20. While a State cannot be expected to discover individual grounds, when made aware that an individual may be exposed to a risk of ill-treatment upon return, Article 3 requires that states assess that risk and ‘dispel any doubts raised by it’ (*F.G. v. Sweden* 2016, para 127; *Saadi v. Italy* 2008, para 129). This applies when an applicant is ‘a member of a group systematically exposed to ... ill-treatment’ (*F.G. v. Sweden* 2016, para 127; *N. v. Sweden* 2010, para 53; *R.C. v. Sweden* 2010, para 50). In this way, the protection of Article 3 would be engaged when the authorities understand that the applicant is to be returned to his or her country of origin or transit, as there are ‘serious reasons to believe’ the existence of ill-treatment towards them.
21. It is common for people to express their wish to seek asylum to the authorities before being pushed back. Between 2019 and 2020 BVMN recorded that in 48% cases of pushbacks the intention to apply for asylum was expressed¹⁴. This often occurs in police stations in the Evros region. In reported cases people are unable to express the intent to seek asylum due to violence and explicit threats from law enforcement officials to keep silent¹⁵.
22. When they expressed the intention to apply for asylum, the burden of proof shifted to the Greek authorities ‘to ascertain and evaluate all the relevant facts’ (*F.G. v. Sweden* 2016, para 122). The Court has noted that the wish to apply for protection may be expressed by a formal application but also by ‘any conduct which signals clearly the wish of the person concerned to submit an application for protection’ (*N.D. and N.T. v. Spain* 2020, para 180). This is supported by *M.A. and Others v. Lithuania* (2018) where the Court accepted that the writing of ‘azul’, meaning asylum in Chechen, signalled the wish of the applicants to claim protection (at para 109 of the judgement).
23. Turkish and Kurdish people escaping oppression and seeking protection in Greece have been recorded since the 1990s. Illegal expulsions being perpetrated against the groups were recorded from the same period¹⁶. Recent reports continue documenting oppression of certain groups in Turkey, activists, journalists, ethnic Kurds, alongside asylum seekers¹⁷. Turkish nationals are among groups pushed back from Greece to Turkey¹⁸. Despite a readmission agreement existing since 31 January 2002, more often

¹⁴ BVMN. *The Black Book of Pushbacks*. Volume 1. P 532. 18 December 2020. Available at: <https://www.borderviolence.eu/launch-event-the-black-book-of-pushbacks/>

¹⁵ BVMN. “*People beaten nearly to death by the Greek police during a mass pushback across Evros/Meric river*”. 5 July 2020. Available at:

<https://www.borderviolence.eu/violence-reports/july-5-2020-2200-meric-river-near-meric-ipsala-turkey/>

BVMN. “*They were beating them with the stick when they passed near them you hear the sound of the electric gun*”. 25 April 2020. Available at: <https://www.borderviolence.eu/violence-reports/april-25-2020-0000-evros-delta/>

¹⁶ Lena Karamanidou and Bernd Kasperek. *From Exception to Extra-Legal Normality: Pushbacks and Racist State Violence against People Crossing the Greek–Turkish Land Border*. State Crime Journal. Volume 1. Issue 11. pp.12. 18 June 2022. Available at: <https://www.scienceopen.com/hosted-document?doi=10.13169/statecrime.11.1.0012>

¹⁷ Amnesty International. Country Report: Turkey 2021. Available at:

<https://www.amnesty.org/en/location/europe-and-central-asia/turkey/report-turkey/>

¹⁸ BVMN. “*If we [the Kurds] had a country, we would have gone there*”. 16 December 2020. Available at: <https://www.borderviolence.eu/violence-reports/december-16-2020-0000/> ;

Turkish nationals are being pushed back through illegal operations¹⁹, predominantly since March 2020 when Turkey suspended its implementation of the EU-Turkey Readmission Agreement²⁰

24. In addition, in 2002, the Greek National Commission for Human Rights issued an opinion expressing concerns at the implementation of the Greco-Turkish Agreement in Greek law of any express clauses pertaining to the effective protection of asylum seekers arriving in Greece from Turkey, indicating a long-standing lack of protection for Turkish asylum seekers²¹.
25. The Court has previously recognised the ill-treatment of Kurds at the hands of the Turkish authorities to be in violation of Article 3 in the case of *Ilhan v. Turkey*, where it was accepted that Abdullatif Ilhan, a Kurdish man, was “severely beaten by gendarmes when they apprehended him at his village and that he was not provided by them with the necessary medical treatment for his life-threatening injuries” (*Ilhan v Turkey* 200, para 3). “He suffered brain damage following at least one blow to the head with a rifle butt inflicted by gendarmes who had been ordered to apprehend him during an operation who kicked and beat him when they found him hiding in some bushes” (ibid, § 77). Furthermore, if imprisoned, Kurds are more likely to be ill-treated in Turkish detention centres in comparison to non-Kurds.
26. A state is presumed to ‘know or ought to know’ about risks a person could face if returned (*Hirsi Jamaa and others v Italy* 2012, para 128) and ‘it cannot be held against the applicant that he did not inform the ... authorities of the reasons why he did not wish to be transferred’ (*M.S.S. v. Belgium and Greece* 2011, para 366). Furthermore, in *M.A. and Others v. Lithuania* (2018) the Court required that the authorities clarify what was the reason – if not seeking asylum – for the applicants’ presence at the border without valid travel documents (at para 113 of the judgement). Additionally:

[...] neither the absence of an explicit request for asylum nor the lack of substantiation of the asylum application with sufficient evidence may absolve the State concerned of the non-refoulement obligation in regard to any alien in need of international protection (Judge Pinto De Albuquerque’s concurring opinion *Hirsi* 2012 at page 63 of the judgement).
27. In this way, Greece may well have its investigative duties engaged both by Applicants notifying them of her membership of a group subjected to ill-treatment and by having knowledge of a well-known and general risk in Turkey, Greece is obligated to assess the foreseeable consequences of someone’s removal to Turkey.

¹⁹ BVMN. ““Asylum is in Athens” [and not here]”. 17 October 2020. Available at: <https://www.borderviolence.eu/violence-reports/october-17-2021-0000-405633-8n-262108-2e/> ;

BVMN. “Witnessing torture in the Soufli Police Station”. 26 September 2020. Available at: <https://www.borderviolence.eu/violence-reports/september-26-2020-0000-411929-9n-262943-1e-2/>

BVMN. “The system is like this, come back tomorrow”. 126 September 2020/ Available at: <https://www.borderviolence.eu/violence-reports/september-26-2020-0000-411929-9n-262943-1e/>

²⁰ Meltem Ineli-Ciger and Orçun Ulusoy. *Why the EU-Turkey Statement should never serve as a blueprint*. Forum on the new EU Pact on Migration and Asylum in light of the UN GCR. 7 October 2020. Available at:

<https://www.asileproject.eu/why-the-eu-turkey-statement-should-never-serve-as-a-blueprint/>

²¹ Greek National Commission for Human Rights. Annual Report 2002. Available at: https://www.nchr.gr/images/English_Site/Ektheseis/eng2002.pdf

Violations of Article 3 and 13 with regards to thorough assessment of a person's asylum application in the context of summary expulsions or pushbacks

28. Having established that Greece is in violation of the substantive limb of Article 3, this section will address Greece's liability in relation to the procedural requirements of Article 3. In *M.A. and Others v. Lithuania* (2018) the central question to be answered by the Court was not the Soering test determining whether the applicants faced a real risk of ill-treatment, but whether the 'authorities carried out an adequate assessment' of the applicants' claim that they would be at a risk before returning them (at para 105 of the judgement). In removal cases the Court has stressed that Article 3 obligations are, 'fulfilled primarily through appropriate procedures allowing such examination to be carried out' (*M.A. and Others v. Lithuania* 2018, para 103).
29. It is a constant of ECtHR case-law that an assessment of risk of ill-treatment must be 'a rigorous one' (*Chahal* 1995, para 96; *Saadi v. Italy* 2008, para 128; *Sufi and Elmi v. UK* 2011, para 214). Crucially, 'a Contracting State may not surrender an individual unless satisfied that the conditions awaiting him in the country of destination are in full accord with each of the safeguards of the Convention' (*Soering* 1989, para 86).
30. Accepting that an Applicant may be removed without an individual evaluation of her claim, 'would be a hypocritical, self-defeating interpretation of the Convention' (Judge Pinto De Albuguerque concurring opinion in *M.A. and Others v Lithuania* 2018, para 29). Judge Pinto De Albuguerque, concurring in *Hirsi*, highlighted that:

The non-refoulement obligation has two procedural consequences: the duty to advise an alien of his or her rights to obtain international protection and the duty to provide for an individual, fair and effective refugee-status determination and assessment procedure. Discharging the non-refoulement obligation requires an evaluation of the personal risk of harm, which can only take place if aliens have access to a fair and effective procedure by which their cases are considered individually. The two aspects are so intertwined that one could say they are two sides of the same coin (at page 72 of the judgement).
31. Addressing these two procedural consequences in turn, the duty to advise Applicants of their right to obtain international protection would be fulfilled through providing them with access to information (*Hirsi Jamaa and others v Italy* 2012, para 204); clear communication between the police and the Applicants, including the provision of Turkish interpreters (*Hirsi 2012*, para 204; *M.S.S. v. Belgium and Greece* 2011, para 301) and the presence of legal advisors (*Hirsi 2012*, para 102). BVMN testimonies recorded that in 38 out of 77 cases, no translator was present.
32. The Court held in *D. v Bulgaria* that authorities have the obligation to adequately examine risks of the asylum seeker of being subjected to Article 3 violations if returned to his or her country of origin in a procedure in accordance with Article 13 requirements. The procedure must be independent, rigorous and suspend the removal decision. Corroborating its previous case-law, the Court reiterated the necessity of providing the person with sufficient information to access the asylum procedures in an effective manner to substantiate their complaints in line with "effective remedy" under Article 13. Even in the eventuality of failure to expressly request asylum in circumstances indicative of a situation of systematic failure to

respect human rights does not absolve the state from its obligations under Article 3 (*D. v Bulgaria* 2021, para. 116, *M.S.S. v Belgium and Greece* 2011, para. 204).

33. For assessment procedures to be individual, fair and effective, there must be systems for identifying people who require protection (*Hirsi* 2012, para 202). Judge De Albuquerque explains in *Hirsi* that such a system must necessarily have, as a minimum: a reasonable time limit to submit an application and to appeal against the first-instance decision; personal interviews; opportunities to submit evidence; a fully reasoned written decision by an independent body based on the protection-seeker's individual situation and not solely on a general evaluation of their country of origin; full and speedy judicial review of factual and legal grounds for first instance decision; free legal advice and linguist assistance if necessary (concurring opinion in *Hirsi* 2012, para 72).
34. The ECtHR's jurisprudence 'testifies to its insistence on a positive obligation to ensure access to status determination procedures in order to evaluate the consequences of the expulsion of an individual to the country of origin²²'. Pushbacks, in variance with Greek law, occur outside Greece's international protection procedures. This precluded the ability for pushback survivors to be issued with a decision, let alone appeal it. In sum, through its practice of pushbacks, Greece does not fulfil its duty to provide applicants with an individual, fair and effective assessment procedure.
35. For the protection of Article 13 to apply, the violation of Article 3 right must be 'arguable'. Having demonstrated that Greece routinely violates the substantive and procedural limb of Article 3, the 'arguable' threshold has been met. There is a multifaceted relationship between the procedural content of Article 3 and Article 13. Having addressed some elements of Article 13 previously under Article 3, this section will focus on the additional protections offered by Article 13, particularly the consequences that derive from the approach that requires the right to non-refoulement be 'practical and effective' not 'theoretical or illusory' (*Artico v. Italy* 1980, para 33).
36. The extent of the obligation under Article 13 'varies depending on the nature of the Convention rights relied on' (*Hasan and Chaush v. Bulgaria* 2000, para 98). The more significant the right, the more stringent the remedies required (*Klass and Others v. Germany* 1978, para 55). As Article 3 enshrines 'one of the fundamental values of democratic societies' it occupies a special place in the system of protection designed by the Convention (*Ireland v. UK* 1987, para 163; *Saadi v. Italy* 2008, para 127). Any complaint that a removal would constitute an act of refoulement 'must imperatively be subject to close scrutiny' (*Shamayev and Others v. Georgia and Russia* 2005, para 448; *Hirsi* 2012, para 198).
37. The Court has developed the requirement of effective remedies at the national level against the potential effects of a decision of expulsion in the light of Article 3. The principle of non-refoulement and the right to an effective remedy are closely linked. Since non-refoulement to torture can only be guaranteed if the persons concerned can claim access to official proceedings to investigate the circumstances of the case in

²² Giuffr , Mariagiulia. "Watered-Down Rights on the High Seas: *Hirsi Jamaa and others v Italy* (2012)". *International & Comparative Law Quarterly* , Volume 61 , Issue 3 , July 2012 , pp. 728 - 750. Cambridge University Press.

question, the right to an effective remedy can be considered implicit in Article 3 of the ECHR (*Hirsi* 2012, para 740).

38. A violation of Article 13 arises due to ‘the lack of an accessible remedy with suspensive effects, and the deprivation of the individual right to legally challenge the removal order’²³. Perhaps most importantly then, Article 13 requires that a remedy to an expulsion order must have the ‘possibility of suspending the implementation of the measure impugned’ (*Hirsi* 2012, para 198; see also Judge Pinto De Albuquerque concurring opinion in *M.A. and Others v. Lithuania* 2018, para 24). This is particularly so due to the ‘irreversible nature of the damage which may result if the risk of torture or ill-treatment materialises’ (*Hirsi* 2012, para 200).
39. The Court has found violations of Article 13 where: applicants were not provided with information regarding asylum (*Sharifi and Others v. Italy and Greece* 2014); ineffective judicial review proceedings (*M.A. v. Cyprus* 2013); where there has been a lack of interpreters and legal advisors (*Hirsi* 2012, para 202) and due to the lack of an appeal with an automatic suspensive effect (*M.A. and Others v. Lithuania* 2018, para 83). Accordingly, pushback survivors are deprived of any remedy enabling them to lodge their complaints under Article 3 and set out the reasons militating against their return with a competent authority capable of engaging in a rigorous assessment of their request.

Violations of Article 5 in the context of pushbacks or summary expulsions

40. Pushbacks at Evros systematically involve arbitrary detention by the Greek authorities, in violation of Article 5 of the ECHR. 52 of 77 testimonies collected by BVMN at the Evros border in 2020 involved detention with the sole purpose of summary expulsion to Turkey. Similarly, in their 2019 report, BVMN member Mobile Info Team noted that ‘detention and confiscation of personal property’ is typically integral to the ‘methodology of pushbacks’, which are ‘systematically repeated’, violating the right not to be unlawfully detained²⁴. Amnesty International documented 12 cases of detention that occurred in 21 documented pushback incidents and other abuses.²⁵ The report concludes that 12 cases ‘appear to have taken place outside of any formal procedure or legal framework’.
41. The Court held in its case law that detention in the sense of migration must be compatible with the overall purpose of Article 5, which is to safeguard the right to liberty and ensure that no-one should be dispossessed of his or her liberty in an arbitrary fashion (*Saadi v. the United Kingdom* 2008, para 64-66). The Court has expressed reservations as to the practice of the authorities to automatically place asylum seekers in detention without an individual assessment of their particular needs and that detention might be inappropriate in cases of vulnerable individuals (*Thimothawes v. Belgium* 2017, para 73; *Mahamed Jama v. Malta* 2016, para 146).

²³ Moreno-Lax, Violeta. "Solidarity's reach: Meaning, dimensions and implications for EU (external) asylum policy." *Maastricht Journal of European and Comparative Law* 24.5 (2017): 740-762.

²⁴ Mobile Info Team. *Illegal Pushbacks at the Border: Denying Refugees the Right to Claim Asylum*. 15 November 2019. Available at: <https://www.mobileinfoteam.org/pushbacks>

²⁵ <https://www.amnesty.org/en/documents/eur25/4307/2021/en/>

42. The conditions in which people are being detained may amount to inhuman and degrading treatment. In March 2020, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recorded in its report that in official detention places the conditions were abhorrent from lack of heating to sleeping places. The toilets were blocked and emitted a foul stench. Migrants were also not given hygiene products nor soap. The CPT concluded that conditions clearly amounted to inhuman and degrading treatment²⁶.
43. The CPT report noted that the Poros facility, located close to the Greek land border with Turkey, lacked evidence of the registration of migrants detained in the facility, where forms containing information on detainees “collected upon entry” were reportedly thrown away at the end of the day. The CPT notes that this practice “lends credence” to allegations that Poros detention facility “is used to hold persons arbitrarily” without any access to their rights and as “a staging post for pushbacks”²⁷, corroborating testimonies collected by BVMN, Forensic Architecture, and Mobile Info Team.

²⁶ Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 17 March 2020. CPT/Inf (2020).35. 19 November 2020. Available at: <https://rm.coe.int/1680a06a86>

²⁷ Ibidem