



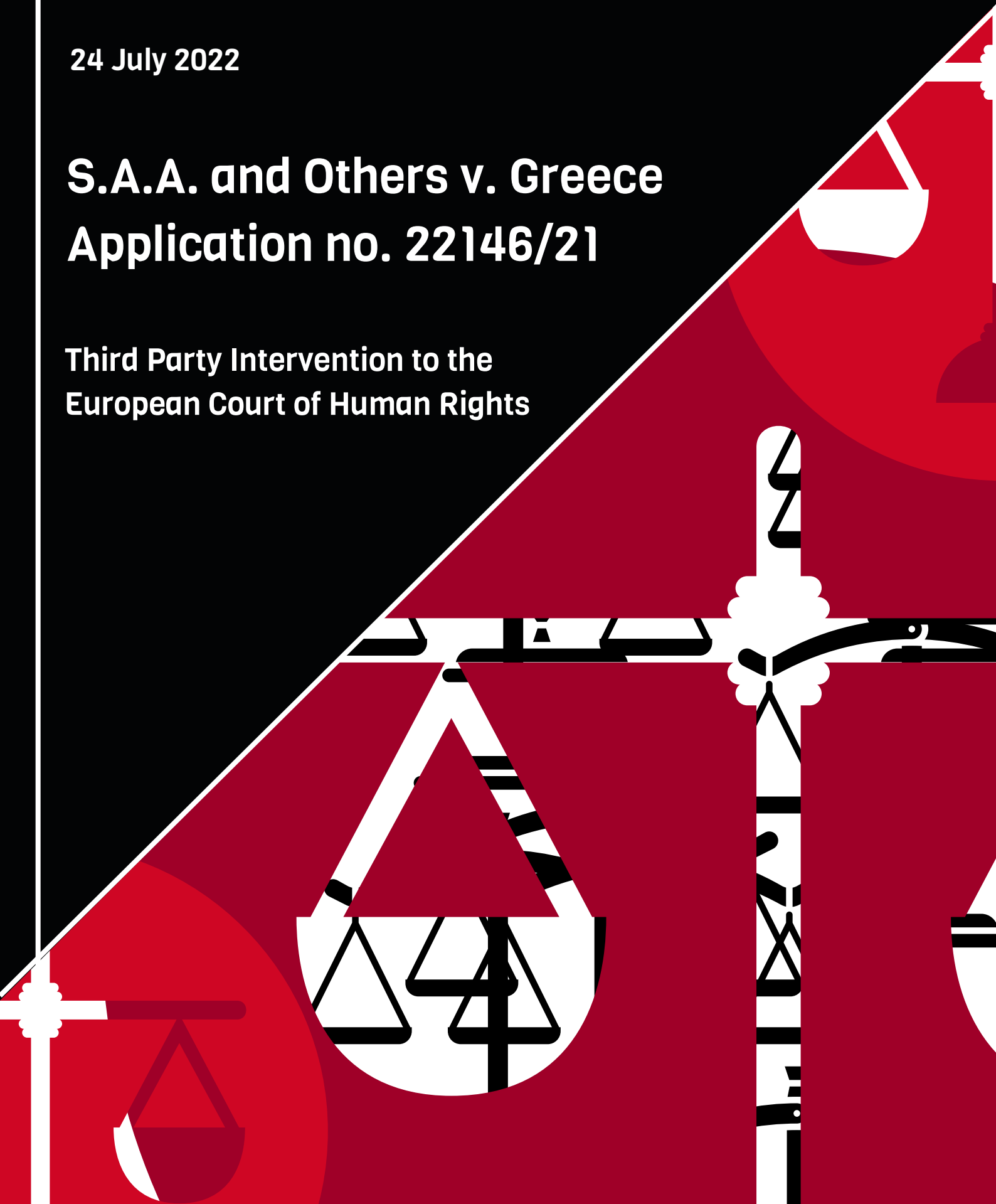
Border Violence Monitoring Network

24 July 2022

S.A.A. and Others v. Greece

Application no. 22146/21

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 No. 22146/21
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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 organizations based in Turkey, Greece and throughout the so-called Balkan migration route. BVMN bases its intervention on testimonies from survivors of pushbacks and other types of human rights violations in Greece and in Turkey collected by field reporters present on the ground, and member organizations with a presence in these relevant contexts.

2. BVMN seeks to bring to the Court's attention corroborating independent reports on violations of *non-refoulement* of pushbacks or summary expulsions from Greece into Turkey, occurring in the Aegean Sea, sanctioned by the Greek State and implicating the responsibility of law enforcement officials and other public authorities. In particular, BVMN highlights the *modus operandi* of expulsions from the territorial waters surrounding Crete to across/or near the maritime border with Turkey, and the practice of abandoning migrants at sea. In this context, BVMN strives to outline how these practices of maritime summary expulsion from Greece to Turkey carried out by Greek authorities relate to violations of the right to life, the right to be free from torture or cruel, inhuman or degrading treatment or punishment and the right to an effective remedy as enshrined in Articles 2, 3 and 13 of the European Convention of Human Rights (ECHR). We submit that the above-mentioned legal obligations of the States Parties to the Convention are routinely and widely violated by the documented *modus operandi* of summary expulsions at sea in the Aegean Sea.

1. A legal analysis on practices of maritime summary expulsions from Greece to Turkey carried out by the Greek authorities in relation to Articles 2, 3 and 13 of the Convention.

a. Maritime summary expulsions as a violation of the right to life

3. The documented *modus operandi* by various NGOs of summary expulsions in the Aegean Sea demonstrates flagrant violations of both the substantive and the procedural limb of the right to life enshrined in Article 2 of the Convention. The right to life constitutes a norm of international customary law and *ius cogens*, from which no derogation is permitted even in times of a public emergency, such as internal political instability as established by article 15 (2) of the ECHR.¹ It must be interpreted and applied, in accordance with the object and purpose of the ECHR, in a manner which enables its safeguards to be practical and effective.²

4. Substantial violations of the right to life arise, *inter alia*, from the excessive use of force not complying with the requirements of proportionality, necessity and use for a legitimate purpose as established by law.³ In such cases, when the use of force is excessive or disproportionate, the loss of life is considered arbitrary and a flagrant violation of Article 2 of the ECHR. In this context, international human rights mechanisms considered that the fact that migrants drowned off a Spanish enclave in North Africa after Spanish Guardia Civil officers fired rubber bullets at swimming migrants and used tear gas constituted a form of use of non-lethal force by border guards resulting in arbitrary deprivation of life.⁴ The United Nations special procedures mechanisms indicated that “‘Push-back` measures, in addition to violating the principle of `non-refoulement,` may also amount to excessive use of force whenever officials place refugees or migrants

¹ See also Article 4 ICCPR, A/RES/65/208.

² European Court of Human Rights, *McCann and Others v. the United Kingdom*, (27 September 1995), Appl no. 18984/91, paras. 146-47.

³ Basic Principles on the Use of Force and Firearms, principle 5; Code of Conduct for Law Enforcement Officials, art. 3; Code of Conduct for Law Enforcement Officials, art. 3 and commentary a) and b).

⁴ A/72/335, para. 32.

intentionally and knowingly in circumstances where they may be killed or their lives endangered because of the environment.”⁵

5. If State authorities are aware that a person’s life is at risk, they must take adequate and immediate measures to protect that person’s life.⁶ This is the case if persons are in an acute emergency situation at sea.⁷ For a positive obligation related to the procedural limb of the right to life to arise, “it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.”⁸ While this risk has to be specific,⁹ reports of a general situation of life-threatening circumstances towards a specific group of individuals¹⁰ a previous sequence of similar situations of the arbitrary deprivation of life,¹¹ complaints to relevant authorities of a specific risk towards a specific person or group of persons,¹² a geographical situation that repeatedly reported posed a risk to life,¹³ and the availability of practical information pointing out this threat¹⁴ should prompt the State to heightened vigilance towards potential infringements of the right to life.¹⁵ Bearing these elements in mind, the Court must therefore ascertain whether the authorities did all that could reasonably be expected of them in the circumstances of the case to prevent the materialisation of an immediate risk to life and therefore prevent that risk.¹⁶ This assessment should take in consideration that States hold the duty to take “special measures of protection towards persons in situation of vulnerability whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence” including “displaced persons, asylum seekers, refugees and stateless persons.”¹⁷ Furthermore, States must have an adequate legal protection framework in place that is effectively enforced, as well as prevention policies and practices that allow for an efficient response to reported patterns of violations of the right to life.¹⁸ **Where a State fails to take such steps, the interveners invite this Court to consider whether said reasonable measures would “have had a real prospect of altering the outcome or mitigating the harm”, therefore engaging responsibility under Article 2.**¹⁹

6. With regard to the abandonment of migrants on the high seas without particular attention to their health condition and basic needs, as a documented form of forcible expulsion of migrants in distress at sea, it should be borne in mind that geographical conditions and dangerous activities that potentially present a threat to life entail corresponding duties of care. In *Safi and Others v. Greece*, the European Court held that the Greek authorities had not done all that could reasonably have been expected of them to afford the applicants and their dependents the level of protection required by Article 2 of the ECHR, since, inter alia, no attempt was made to request additional assistance to save the lives of the migrants who were in an acute distress at sea, when State authorities had already learned of the distress at sea; the failure to distribute life-saving supplies such as life jackets; and the notification of surrounding boats and a state coordination

⁵ A/72/335 para. 33.

⁶ European Court of Human Rights, *Osman v United Kingdom*, (28 October 1998) Appl. No. 23452/94, para. 116.

⁷ European Court of Human Rights, *Safi and Others v Greece*, (7 July 2022), Appl. no. 5418/15, paras. 160-166.

⁸ *Osman v. United Kingdom*, para. 116. See also, European Court of Human Rights, *Kılıç v. Turkey*, (28 March 2000), Appl. no. 22492/93, para. 63.

⁹ *Osman v. United Kingdom*, para. 112.

¹⁰ European Court of Human Rights, *Cyprus v. Turkey* (10 May 2001) Appl. no. 25781/94, para. 132.

¹¹ European Court of Human Rights, *Mahmut Kaya v. Turkey*, (28 March 2000) Appl. no. 22535/93, para 67.

¹² *Kılıç v. Turkey*, para. 64.

¹³ European Court of Human Rights, *Budayeva and others v. Russia*, (20 March 2008) Appl. no. 15339/02, para. 24.

¹⁴ European Court of Human Rights, *Öneryıldız v. Turkey* (30 November 2004), Appl. no. 48939/99 para. 98.

¹⁵ European Court of Human Rights, *Nesibe Haran v. Turkey*, Application no. 28299/95, para. 74.

¹⁶ European Court of Human Rights, *Fernandes de Oliveira v. Portugal*, (31 January 2019) Appl. no. 78103/14, paras. 31, 125.

¹⁷ CCPR/C/GC/36, para. 23.

¹⁸ Inter-American Court of Human Rights, *González et al ("Cotton Field") v Mexico*, (16 November 2009) para. 258.

¹⁹ European Court of Human Rights, *Boychenko v. Russia*, (12 October 2021) Appl. no. 8663/08, para. 95.

centre with several hours' delay after authorities learned of the vessel's sinking.²⁰ In *Budayeva and others v. Russia* the European Court held the state liable for not complying with its duty to prevent natural disasters despite foreseeable risk caused by life-threatening geographical conditions, and the failure to investigate state responsibility in relation to the death that occurred as a result thereof.²¹ In *Öneryildiz v. Turkey*, the European Court found the availability of practical information pointing to a threat to the local population's physical integrity a decisive factor for the obligation to prevent.²² The lack of adequate "legal" protection to secure the right to life and deter similar life-threatening conduct in the future therefore constituted a violation of the right to life in its procedural aspect in the context of a fatal accident caused by a dangerous activity.²³ **We submit that, given the frequent reports of arbitrary loss of migrants' lives in the Aegean as a result of shipwrecks due to the unseaworthiness of vessels used, the Greek State has to exert a heightened duty of care and vigilance towards potentially similar situations in which migrants may find themselves in acute distress at sea in order to comply with its positive obligations within the scope of Article 2 of the ECHR.**

7. Given that the concept of primary protection, which guarantees the victim's substantive right ex post facto through investigation, a violation of the procedural limb of article 2 also arises from the failure to comply with the elements of the adequacy of the investigative measures, the promptness of the investigation, the participation of the deceased's family in the investigation and the independence of the investigation.²⁴ Due to overly delayed investigative proceedings and defects in the criminal proceedings, the State would also violate its procedural obligations.²⁵ A simple contribution to the investigative steps by international organizations active in the region cannot discharge the State from complying with these procedural obligations.²⁶ The persistence of widespread abuses has been considered evidence that the State is not doing enough to satisfy its obligations under the right to life.²⁷

b. Maritime summary expulsions as a violation of the prohibition of torture or cruel, inhuman or degrading treatment or punishment

8. Practices such as the beating with sticks, punches and kicks,²⁸ deprivation of sleep, food or water,²⁹ and strip-searching of individuals, as well as mental anguish for being abandoned at sea, has been considered a violation of the prohibition of torture or cruel, inhuman or degrading treatment or punishment.³⁰ Threats of violence may cause mental suffering that reaches the threshold of torture or ill-treatment.³¹ Confiscation and arbitrary destruction of property could constitute ill-treatment, as could the failure by public officials to prevent racially motivated attacks.³² Once a person is under the de facto control of a public official, the proportionality test, - if force used by public officials is necessary for the legitimate purpose and proportional to the threat - no longer applies because force is no longer necessary for the purpose of law enforcement, and infliction of pain or suffering in circumstances in which individuals or a group are already under the control of state authorities would amount to ill-treatment.³³

²⁰ *Safi and others v Greece*, paras. 160, 166 and 167.

²¹ *Budayeva and others v. Russia*, para. 108.

²² *Öneryildiz v. Turkey*, para. 98.

²³ *Ibid.* para. 87.

²⁴ *Safi and Others v Greece*, para 116.

²⁵ European Court of Human Rights, *Acar and others v. Turkey*, Appl. nos 36088/97 and 38417/97, para. 92-94.

²⁶ *Cyprus v. Turkey* para. 135.

²⁷ European Court of Human Rights, *Hakimi v Belgium*, (29 June 2010) Appl. no. 665/08 paras. 373–74.

²⁸ European Court of Human Rights, *Selmouni v France*, (28 July 1999), Appl. no. 25803/94, paras. 98-105.

²⁹ A/HRC/13/39/Add.5, paras. 31 and 55.

³⁰ A/HRC/13/39/Add.5, para. 188; See *Safi and Others v Greece*, para. 198.

³¹ A/56/156, para. 8

³² Communication No. 161/2000, *Dzemajl v Yugoslavia*, Views adopted by the Committee against Torture on 21 November 2002, para. 9.2; see also Committee against Torture, concluding observations: Bulgaria, CAT/C/BGR/CO/4-5, para. 28.

³³ A/HRC/13/39/Add.5, para. 38; see also UN Basic Principles on the Use of Force and Firearms by Law Officials.

9. In *Safi and Others v Greece*, the Court considered treatment to be “degrading” when it aimed to instill in its victims feelings of fear, anguish and inferiority likely to humiliate and degrade them.³⁴ Particularly, systematic full body and strip searches, not justified and not dictated by security requirements and in a situation in which authorities did not explain to the victims that other public policy considerations require the search, when no suspicion that the applicants were armed or that they posed a risk to the safety of law-enforcement officers or when no criminal procedure against the victims existed, which, as a result, create the feeling among the victims to be conducted in an arbitrary manner, was considered to amount to degrading treatment within the meaning of Article 3 of the ECHR.³⁵ In this context, the Court took into consideration the state of exhaustion, anxiety and shock that events in which migrants were in an acute state of distress in which family members may have been injured or died.³⁶ Moreover, the strip-searching of persons who were in an extremely vulnerable situation, having just survived a shipwreck, in front of other survivors and a group of soldiers – in this case at least 13 persons – was perceived as a practice which gave these persons a feeling of arbitrariness, inferiority and anguish, and a degree of humiliation that goes beyond the tolerable, because unavoidable, humiliation that a body search inevitably entails. This practice was thus considered to constitute a violation of Article 3 of the ECHR.³⁷

10. In cases that concerned pushbacks in the Mediterranean, by taking recourse to the repeated reporting of human rights violations in the country of origin or transit of the individuals in question, the European Court stressed that protection against the treatment prohibited by Article 3 imposes on States the obligation not to remove any person who, in the receiving country, would run the real risk of being subjected to such treatment.³⁸ Persons seeking international protection must be provided with safeguards against having to return to their country of origin before such time their allegations are thoroughly examined.³⁹ This obligation also includes the risk of onward removal, so called *chain refoulement*, to other countries where they would face such risks. The Court noted that if returned to their country of transit, “clandestine migrants were at risk of being returned to their countries of origin at any time and, if they managed to regain their freedom, were subjected to particularly precarious living conditions as a result of their irregular situation.”⁴⁰ Given the importance of the protection afforded by Article 3, the Court must be sufficiently flexible to address other contexts that might arise.⁴¹ The fact that a large number of irregular immigrants in a state of transition find themselves in the same situation as the applicants does also not make the risk concerned any less individual where it is sufficiently real and probable.⁴²

11. The procedural obligations attached to article 3 of the ECHR require States to undertake prompt, impartial effective and ex officio investigations wherever there is “reasonable ground to believe that an act of torture has been committed”.⁴³ Where such investigations are not initiated ex officio and carried out promptly and effectively this also constitutes a violation of Article 3 ECHR.

³⁴ *Safi and Others vs Greece*, para. 186.

³⁵ *Ibid.*, paras. 192, 195 and 198.

³⁶ *Ibid.*, para. 195.

³⁷ *Ibid.*, paras. 192, 194 and 198.

³⁸ European Court of Human Rights, *Hirsi Jamaa and Others v. Italy*, (23 February 2012), Appl. no. 27765/09, para. 123.

³⁹ European Court of Human Rights, *M.K. and Others v Poland*, (23 July 2020), Appl. nos. 40503/17, 42902/17, 43643/17, para. 179.

⁴⁰ European Court of Human Rights, *Sharifi and Others v. Italy and Greece*, (21 October 2014) Appl. no. 16643/09, paras. 125 and 166.

⁴¹ European Court of Human Rights, *D v United Kingdom*, (2 May 1997) Appl. no.30240/96, para. 49.

⁴² European Court of Human Rights, *Saadi v. Italy*, (28 February 2008), Appl. no. 37201/06, para. 132.

⁴³ Communication No. 1589/2007, *Gapirjanova v Uzbekistan*, Views adopted by the Human Rights Committee on 18 March 2010, para. 8.3.

c. Maritime summary expulsions as a violation of the right to an effective remedy

12. In accordance with Article 13 of the Convention, the applicants alleged the lack of an effective remedy as an accessory right barring them from complaining of a substantial violation of Articles 2 and 3 of the Convention. Article 13 provides that a remedy must be effective in practice as well as in law, meaning it should be accessible and capable of preventing or stopping the alleged violation or providing suitable redress.⁴⁴ The remedy must also include independent and rigorous scrutiny by a competent national authority of the complaints made and an automatic, not merely theoretical, suspensive effect,⁴⁵ meaning a procedure capable of reviewing and overturning the decision to expel.⁴⁶ In cases of summary expulsion, it has been established that Article 13 is violated because individuals were deported before they had a practical opportunity of accessing the remedy,⁴⁷ in situations when the legal deadlines for filing applications or appeals were too short,⁴⁸ when there was insufficient information on how to obtain effective access to the relevant procedures and remedies (for example in fast-track asylum procedures),⁴⁹ when there were obstacles to physical access to and/or communication with the competent authority,⁵⁰ when (free) legal assistance and access to a lawyer were not available or denied⁵¹ and when no interpreter was provided by state authorities.⁵² Interception at sea where legal assistance and an interpreter are not available were found to be contrary to Article 13 of the Convention.

13. Along those lines, summary expulsions constitute a removal of an individual not reached in accordance with the law⁵³ or after an individualized review⁵⁴ and therefore result in the denial of relevant procedural guarantees when facing expulsion, required under international law, such as a decision in a language the concerned individuals understand,⁵⁵ a decision in writing, if requested,⁵⁶ supported by the reason for the decision,⁵⁷ the right to challenge the decision before a court,⁵⁸ and the right to seek a stay of the decision pending review.⁵⁹ In its judgment in *M.K. and Others v Poland*, which concerned applications submitted by Russian nationals, who attempted to cross the border between Poland and Belarus, it was held that there had been a violation of Article 13 of the ECHR in conjunction with Article 3 and Article 4 of Protocol No 4 due to the fact that an appeal against a refusal of entry and a further appeal to the administrative courts were not effective remedies within the meaning of the ECHR because they did not have an automatic suspensive effect.⁶⁰

⁴⁴ Communication No. 731/1996, *Robinson v Jamaica*, Views adopted by the Human Rights Committee on 26 March 2000, para. 103.

⁴⁵ European Court of Human Rights, *A.M. v. the Netherlands*, (5 July 2016) Appl. no. 29094/09, para. 66.

⁴⁶ European Court of Human Rights, *Shamayev and Others v. Georgia and Russia*, (12 April 2005) Appl. no. 36378/02, para. 460.

⁴⁷ *Ibid.*, para. 460

⁴⁸ European Court of Human Rights, *I.M. v. France*, (14 December 2010), Appl. no. 9152/09, para. 144.

⁴⁹ *Hirsi Jamaa and Others v. Italy*, para. 204; See also *I.M. v. France*, 2012, paras.136-160.

⁵⁰ European Court of Human Rights, *M.S.S. v. Belgium and Greece* (21 January 2011), Appl. no. 30696/09, paras. 301-313.

⁵¹ *Ibid.* para. 319

⁵² *Hirsi Jamaa and Others v. Italy*, para. 202.

⁵³ Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, concluding observations: El Salvador, CMW/C/SLV/CO/1, para. 27.

⁵⁴ International Law Commission, *Draft articles on the expulsion of aliens*, art. 9(3).

⁵⁵ International Law Commission, *Draft articles on the expulsion of aliens*, Article 26(f).

⁵⁶ Communication No. 321/2007, *Kwami Mopongo and others v. Morocco*, Views adopted by the Committee Against Torture on 7 November 2014, para 11.3.

⁵⁷ European Court of Human Rights, *Conka v. Belgium*, Appl. no. 51564/99 (2002), para 61.

⁵⁸ Committee on the Elimination of Racial Discrimination, general comment 30, para. 25.

⁵⁹ Committee against Torture, concluding observations: Mexico, CAT/C/MEX/CO/4, para. 17; See also ICRMW art. 22(4); Protocol 7 to the European Convention on Human Rights art. 1.

⁶⁰ European Court of Human Rights, *Conka v. Belgium*, (5 February 2002), Appl. no. 51564/99, para. 79 and 291.

14. The obligation to refrain from refoulement applies to all persons under the “effective authority and control” of a state.⁶¹ States that detain or otherwise control a person outside their national borders must comply with this obligation.⁶² It is mandatory that a persons’ complaint that their removal to another state would place them at risk of treatment prohibited under Articles 2 and 3 of the Convention be thoroughly investigated and expeditiously processed by a “national authority”.⁶³ Although States are given some discretion, the competent authority must be able to examine the substance of the complaint and provide adequate reparation, in accordance with Article 13.⁶⁴ For instance, in *B.A.C. v. Greece*, a violation of Article 13 in relation to the risk of immediate return to Turkey without an ex nunc assessment of the applicant’s personal situation by the Greek authorities was found.

15. In relation to the fundamental importance of the right to life, the notion of an effective remedy for the purposes of Article 13 entails a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure.⁶⁵ Importantly, where the alleged violations engage the direct responsibility of State agents, the Court has found that the requirements of Article 13 are broader than the procedural obligation to investigate imposed on the Contracting States by Article 2 of the Convention.⁶⁶ Where a criminal investigation into the circumstances of an attack was ineffective due to delays or the premature closure of the case, amongst other, and where the effectiveness of any other remedy that may have existed, including the civil remedies suggested by the Government, was consequently undermined, the Court found that the State had not met its obligations under Article 13 of the Convention.⁶⁷

16. In *Hirsi Jamaa and Others v. Italy*, the Court found a violation of Article 13 in conjunction with Article 3 of the Convention and Article 4 of Protocol No. 4 due to the absence of remedies with suspensive effect that allowed migrants to complain to a competent authority and obtain a thorough and rigorous examination of their applications before the deportation measure was enforced. It was held that the verification of the individual situation of the applicants was not possible on board the military vessels that had apprehended them, inter alia, because there were no interpreters or legal advisers among the personnel.⁶⁸ In order to comply with the procedural safeguards of Article 3, the reasons for their removal and the procedure for challenging the decision must be communicated to the persons concerned in plain, non-technical language that they can understand.⁶⁹ The Court has also found that the applicants had no access to a procedure to identify them and to assess their personal circumstances before they were returned.⁷⁰ Moreover, in the context of expulsion cases, parties to the Convention are required, inter alia, to assess all evidence that forms the core of an application for non-refoulement,⁷¹ including obtaining such evidence, if necessary, ex officio; not to place an unrealistic burden of proof on applicants or require them to bear the entire burden of proof,⁷² to take into account all relevant information about the receiving State obtained from reliable and objective sources,⁷³ and to give effect to the principle of the benefit of the doubt in light of specific vulnerabilities of asylum-seekers.⁷⁴

⁶¹ CAT/C/USA/CO/2, para. 20.

⁶² UNHCR Advisory opinion on the extraterritorial application of non-refoulement obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 2007, paras. 20 and 35.

⁶³ *Shamayev and Others v. Georgia and Russia*, 2005, para. 448; *Hirsi Jamaa and Others v. Italy*, para. 198.

⁶⁴ *M.S.S. v. Belgium and Greece*, para 387.

⁶⁵ European Court of Human Rights, *Kaya v. Turkey*, 1998, para. 107

⁶⁶ *Kılıç v. Turkey*, 2000, para. 93; *Orhan v. Turkey*, 2002, para. 384; *Gongadze v. Ukraine*, 2005, para. 192; *Tagayeva and Others v. Russia*, 2017, para. 619.

⁶⁷ *Isayeva v. Russia*, 2005, para. 229.

⁶⁸ *Hirsi Jamaa and Others v. Italy*, paras. 201-207.

⁶⁹ European Court of Human Rights, *Khlaifia and Others v. Italy*, (15 December 2016), Appl. no. 16483/12, para. 115.

⁷⁰ *Hirsi Jamaa and Others v. Italy*, para. 202.

⁷¹ European Court of Human Rights, *Singh and Others v. Belgium*, (2 October 2012) Appl. no. 33210/11, para. 104.

⁷² *Hirsi Jamaa and Others v. Italy*, paras. 122-158.

⁷³ European Court of Human Rights, *Salah Sheekh v. the Netherlands*, para. 136.

⁷⁴ European Court of Human Rights, *M.A. v. Switzerland*, (18 November 2014), Appl. no. 52589/13, para. 55.

17. Another factor that was taken into account was that the intercepting authorities had not given the migrants any information about their whereabouts or destination and had provided them with adequate information in relation to the procedure to follow to seek asylum.⁷⁵ In this regard, it reiterates the importance of guaranteeing all persons affected by a deportation measure, the consequences of which may be irreversible, the right to receive sufficient information to enable them to have effective access to the relevant procedures and to substantiate their complaints. As the applicants were not given any information about such a procedure or the prospect of a suspensive effect of an existing procedure, the European Court considered that the applicants were deprived of any remedy that would have enabled them to lodge their complaints under Article 3 of the Convention.⁷⁶

18. As detailed in the second part of the submission, **we submit that the documented modus operandi of maritime summary expulsions in the Aegean Sea demonstrates that the above legal obligations of the States Parties to the Convention are routinely and widely violated.**

2. The persistence of illegal practices of Greek authorities which include violent pushbacks or summary expulsions of refugees and other migrants with specific reference to the violations of Articles 2, 3, and 13 of the Convention.

19. The methods of ongoing maritime summary expulsions used by Greek authorities and described by survivors encompass circling around the survivors' boats and raising waves to stir the course of dinghies, threats with guns and shooting at the dinghies in order to destroy them,⁷⁷ theft of petrol, destruction of engines,⁷⁸ the towing of boats back into Turkish waters where they were left adrift,⁷⁹ placing refugees on life rafts and abandoning them in Turkish waters,⁸⁰ Greek Coast Guard vessels ramming boats, and Greek officers shooting with live ammunition in the water or air⁸¹ as well as the confiscation and destruction of any relevant identity documents, money and/or electronic devices that would allow one to contact the outside world while abandoned at sea.⁸² These practices of pushbacks almost always involve minors and women and oftentimes collide with incidents of excessive use of force by state authorities by beating and kicking migrants, that result in those on board being in danger of drowning.⁸³ Greek officials reportedly made no attempt to save the lives of those who fell from the boat from drowning.⁸⁴ During the intervention, state authorities cover their faces by using black balaclavas.⁸⁵ Reportedly, no fingerprints or individual photographs were taken in any of these incidents, despite repeated requests to lodge an asylum application by those intercepted to seek asylum.⁸⁶

⁷⁵ *Hirsi Jamaa and Others v. Italy*, para. 203.

⁷⁶ *Hirsi Jamaa and Others v. Italy*, para. 205.

⁷⁷ See [borderviolence.eu/violence-reports/october-30-2020-2130-aegean-sea-between-rhodes-and-marmaris-mugla/](https://www.borderviolence.eu/violence-reports/october-30-2020-2130-aegean-sea-between-rhodes-and-marmaris-mugla/)

⁷⁸ See <https://www.borderviolence.eu/violence-reports/july-11-2020-0000-coast-off-lesvos/>

⁷⁹ Alarmphone, '51 People Pushed Back North-West of Samos'. 4 May 2019. Available at:

https://alarmphone.org/en/2019/05/04/people-refugees-push-back-samos-turkey-greece-coast-guard-refoul-alarm-phone-border-control/?post_type=release_type=post, last accessed on 18 April 2022.

⁸⁰ Ibid. ([borderviolence.eu/violence-reports/october-30-2020-2130-aegean-sea-between-rhodes-and-marmaris-mugla/](https://www.borderviolence.eu/violence-reports/october-30-2020-2130-aegean-sea-between-rhodes-and-marmaris-mugla/) ; <https://www.borderviolence.eu/violence-reports/august-24-2021-0530-in-the-aegean-sea-3-kilometres-from-samos-island/>; <https://www.borderviolence.eu/violence-reports/september-18-2021-1400-samos/>; <https://www.borderviolence.eu/violence-reports/november-10-2020-0100-south-of-mylene-left-at-sea-between-turkey-and-lesvos-39-043526-26-750051/>).

⁸¹ Alarmphone, 'Pushbacks: The New Old Routine in the Aegean Sea'. 14 May 2020. Available at:

https://alarmphone.org/en/2020/05/14/push-backs-the-new-old-routine-in-the-aegean-sea/?post_type=release_type=post

⁸² Border Violence Testimony Database, <https://www.borderviolence.eu/violence-reports/july-27-2020-0000-rhodos/>

⁸³ Ibid. A minor, who was blind, reportedly fell almost off the boat when a group of migrants were pushed onto a boat by Greek border control agents to be abandoned in Turkish waters.

⁸⁴ Ibid.

⁸⁵ <https://www.borderviolence.eu/violence-reports/august-24-2021-0530-in-the-aegean-sea-3-kilometres-from-samos-island/>

⁸⁶ Ibid.

20. During pushbacks, intercepted individuals, including women, pregnant women, and minors, are routinely subjected to physical violence by being beaten with wooden sticks until the intercepted migrants nearly lose consciousness, are held at gunpoint, kicked, and subjected to strip searches while under the custody of law enforcement officers, including of the opposite sex.⁸⁷ These practices are carried out while migrants are in an extremely stressful and vulnerable situation, either because they have just survived a shipwreck or are in acute distress at sea. During these expulsions, migrants frequently drown.⁸⁸ Frontex internal documents revealed the widespread practice by state actors in the Aegean Sea of stopping boats with migrants aboard with weapons, injuring or killing refugees in the process. The reports cover a 20-month period from May 2014, two months after the Chios shooting, to December 2015. Each case of firearm use - even if it resulted in a wounding - was described as part of the standard rules of engagement for stopping boats at sea.⁸⁹

21. In many cases, distress calls from migrants on an unseaworthy boat are not responded to with the diligence required by States to conduct a sea rescue operation and other supplementary aid is not called for.⁹⁰ Alarm Phone reports on an incident on September 28, 2019 that they had “alerted the Greek coastguard giving the location of the boat. The Greek coastguard insisted the boat in distress was behind the borderline on the Turkish side”. On October 29, 2019, another incident reported states that Alarm Phone alerted the Coast Guard: “When we passed them the GPS location, they stated it was in Turkish waters and urged us to call the Turkish coastguards. According to our map it was clear that they were in Greek waters”⁹¹.

22. In 2019, incidents documented by the NGO Alarm Phone revealed that one of the common tactics used by the Hellenic Coast Guard in the Aegean Sea is to pilot inflatable boats back into Turkish territorial waters by ordering people to follow the boat instead of initiating search and rescue operations.⁹² It is widely reported that inflatable boats often carry more people than their capacity allows and are generally unseaworthy resulting in putting their passengers in a life-threatening situation. It is also frequently reported that the life jackets sold by smugglers are unsafe and that the material, when soaked, does not float but becomes heavy and causes the wearer to sink.⁹³ The interception is reportedly carried out by unflagged speed-boats manned by masked people in black clothes.⁹⁴

23. It is documented that intercepting state authorities destroyed the engine of the dinghy of an uncooperative driver and beat him with batons. As other group members tried to protect the driver, they were also beaten with batons. The officers subsequently dragged them to Turkish waters and then left the group floating there with the broken engine.⁹⁵ After spending several more hours in the water, the Turkish Coast Guard arrived at

⁸⁷ Ibid.

⁸⁸ Ibid.; See also <https://www.borderviolence.eu/violence-reports/january-27-2021-2100-fener-adasi-turkey/>.

⁸⁹ Ibid.

⁹⁰ Refugee Support Aegean, ‘Agathonisi Tragedy: Investigation Must Shed Light On Circumstances Surrounding The Deaths Of Refugees Last March’. 3 July 2018. Available at: <https://rsaegean.org/en/agathonisipressrelease/>, last accessed on 19 April 2022.

⁹¹ Alarmphone, ‘Aegean Regional Analysis’. 3 February 2020. Available at: https://alarmphone.org/en/2020/02/03/aegean-regional-analysis/?post_type_release_type=post, last accessed on 19 April 2022.

⁹² Alarmphone, ‘Boat with 35 Migrant travelers in Distress Refouled to Turkey’. 15 April 2019. Available at: https://alarmphone.org/en/2019/04/15/refoulment-alarm-phone-migrants-distress-greece-turkey/?post_type_release_type=post, last accessed on 18 April 2022.

⁹³ Yiannis Papadopoulos. ‘Special Report. Fake life vests soak up chances of survival for shipwrecked refugees’. Kathimerini. 4 February 2016. Available at: <https://www.ekathimerini.com/in-depth/special-report/205666/fake-life-vests-soak-up-chances-of-survival-for-shipwrecked-refugees/>. Accessed 19 April 2022

⁹⁴ See <https://www.borderviolence.eu/violence-reports/june-5-2020-1000-aegean-sea-lesvos-turkey/>.

⁹⁵ See <https://www.borderviolence.eu/bvmn-investigations-analysis-of-video-footage-showing-involvement-of-hellenic-coast-guard-in-maritime-pushback/>.

the scene to rescue the passengers aboard the dingy. Mare Liberum, member organization of BVMN, sailing a monitoring boat in the Aegean Sea, confirmed that the Greek Coast Guards engage in the practice of removing engines of migrants' boats in 2020.⁹⁶ Testimonies recorded on the BVMN database as well as other media reports also describe a series of incidents where Hellenic Coast Guard [HCG] vessels approach boats carrying men, women and children in the Aegean between Turkey and Greece and variably drove them back, intimidated them, or destroyed and removed their engines. Several of these operations have been marked by direct physical violence at the hands of the HCG.⁹⁷ A more recent report from the New York Times referenced at least 1,072 asylum seekers being abandoned at sea by Greek officials in at least 31 separate expulsions since March.⁹⁸

24. Another tactic constitutes the use of inflatable motor-less life rafts⁹⁹ whereby the Greek authorities, such as the Hellenic Coast Guard, force migrants onto the rafts after an interception at sea, and place the rafts to drift into the Turkish territorial waters, where the Turkish Coast Guards rescues the migrants.¹⁰⁰

25. The fact that crossing the border through the Aegean and the illegal practices of the Greek Coast Guard put migrants in an allegedly life-threatening situation is also reflected in the high number of missing and dead migrants in the Aegean, 2,352 since 2014, which has been widely reported.¹⁰¹ In 2013, Refugee Support Aegean reported that due to barriers elevated at Greece's land border with Turkey, the migration route moved to the Aegean Sea, pushing people to take a more dangerous route. The report mentions that as early as 2012, illegal pushbacks in the Aegean sea and at Greece's land borders were systematic.¹⁰² Refugee Support Aegean estimated at the time that more than 2,000 had been pushed back, based on survivors' testimonies. Significantly, the report mentions that in most cases, "the pushed back refugees claim to have been left in life-threatening situations, when left adrift in unseaworthy boats". **We submit that according to the above legal norms, if a "real" risk is pointed out or known through increased reporting that migrants on the high seas are per se in life-threatening situations, a state's awareness must be heightened and therefore obligates the state to take appropriate operational measures to prevent arbitrary loss of life.**

⁹⁶ Niamh Keady-Tabbal and Itamar Man, 'Tents at Sea: How Greek Officials Use rescue Equipment for Illegal Deportations'. Just Security. 22 May 2020. Available at: <https://www.justsecurity.org/70309/tents-at-sea-how-greek-officials-use-rescue-equipment-for-illegal-deportations/>, last accessed on 18 April 2022.

⁹⁷ See <https://www.borderviolence.eu/violence-reports/june-5-2020-1000-aegean-sea-lesvos-turkey/>; See <https://www.borderviolence.eu/violence-reports/june-3-2020-0200-lesvos-greece/>; <https://www.bellingcat.com/news/uk-and-europe/2020/06/23/masked-men-on-a-hellenic-coast-guard-boat-involved-in-pushback-incident/>.

⁹⁸ See <https://www.nytimes.com/2020/08/14/world/europe/greece-migrants-abandoning-sea.html>.

⁹⁹ Border Violence Monitoring Network, Report, 30 October 2020. Available at: <https://www.borderviolence.eu/violence-reports/october-30-2020-2130-aegean-sea-between-rhodes-and-marmaris-mugla/>; Border Violence Monitoring Network, Report, 24 August 2021. Available at: <https://www.borderviolence.eu/violence-reports/august-24-2021-0530-in-the-aegean-sea-3-kilometres-from-samos-island/>.

¹⁰⁰ Legal Centre Lesbos, 'Collective Expulsions Documented in the Aegean Sea: March - June 2020'. 13 July 2020. Available at:

<http://legalcentresvos.org/wp-content/uploads/2020/07/Collective-Expulsions-in-the-Aegean-July-2020-LCL.pdf>; Giorgos Christides and Steffen Lüdtkke, 'Greece Suspected of Abandoning Refugees at Sea'. Der Spiegel. 16 June 2020. Available at:

<https://www.spiegel.de/international/europe/videos-and-eyewitness-accounts-greece-apparently-abandoning-refugees-at-sea-a-84c06c61-7f11-4e83-ae70-3905017b49d5>, last accessed on 18 April 2022; Deutsche Welle, 'Greece: Refugees attacked and pushed back in the Aegean'. Available at: <https://www.dw.com/en/greece-refugees-attacked-and-pushed-back-in-the-aegean/a-53977151>, last accessed on 18 April 2022.

¹⁰¹ International Organisation for Migration. Missing Migrants Project. Available at: <https://missingmigrants.iom.int/region/mediterranean>, last accessed on 18 April 2022.

¹⁰² See Refugee Support Aegean (Report 2013).

26. The procedural limb of articles 2 and 3, and in conjunction with article 13, are violated by the repeated failure to carry out an ex officio, prompt, impartial and effective investigation into allegations of violations of the right to life and to be free from torture resulting in the failure to provide an effective remedy for the victims. There are currently at least 33 cases of pushbacks or summary expulsions against Greece communicated by the European Court of Human Rights. Multiple reports and investigations carried out by independent reporters such as Bellingcat¹⁰³, BVMN¹⁰⁴ and media outlet der Spiegel¹⁰⁵ published evidence that identified the direct involvement of Greek officers. To our knowledge, none of the well-documented reports lead to an investigation. To the contrary, to date the Greek government denies the occurrence of these rights violations.¹⁰⁶ In the Aegean Sea, special units of the Greek coast guard were abandoning refugees in Turkish territorial waters. Refugee Support Aegean reports that these acts were occurring with impunity and that the “perpetrators of violence remained unpunished, and victims of state violence remain unprotected”.¹⁰⁷ Refugee Support Aegean included in its report an incident from August 2013, a case where Limnos Coast Guard pushed Syrian refugees back to Turkey. Despite the call for an investigation, neither the Hellenic Coast Guard nor the Office of the Prosecutor opened an inquiry. Moreso, the headquarters of the Hellenic Coast Guard announced that the public call made for an investigation concerned an “inaccurate announcement concerning illegal pushbacks of migrants”¹⁰⁸. Additionally, concerns were raised that part of the evidentiary material were the initial statements of the victims which were taken by Coast Guard officers, leading to doubts regarding the impartiality and the independence of those conducting the investigation. Another procedural guarantee that was raised with regards to the investigation was the fact that the persons appointed as interpreter did not speak any of the languages spoken by the victims¹⁰⁹. Pushbacks in the Aegean Sea have been reported on a daily basis.¹¹⁰

¹⁰³ Youri van der Weide and Bashar Deeb, ‘Samos and the Anatomy of a Maritime Push-Back’. Bellingcat. 20 May 2020. Available at: <https://www.bellingcat.com/news/uk-and-europe/2020/05/20/samos-and-the-anatomy-of-a-maritime-push-back/>, last accessed on 19 April 2022.

¹⁰⁴ Border Violence Monitoring Network, ‘BVMN Visual Investigation: Analysis of Video Footage Showing Involvement of Hellenic Coast Guard in Maritime Pushback’. 21 August 2020. Available at: <https://www.borderviolence.eu/bvmn-investigations-analysis-of-video-footage-showing-involvement-of-hellenic-coast-guard-in-maritime-pushback/>.

¹⁰⁵ Giorgos Christides, Emmanuel Freudenthal, Steffen Lüdke and Maximillian Popp, ‘EU Border Agency Frontex Complicit in Greek Refugee Pushback Campaign’. Der Spiegel. 23 October 2020. Available at: <https://www.spiegel.de/international/europe/eu-border-agency-frontex-complicit-in-greek-refugee-pushback-campaign-a-4b6cba29-35a3-4d8c-a49f-a12daad450d7>, last accessed on 19 April 2022.

¹⁰⁶ Refugee Support Aegean, ‘Official Reactions and Positions on Pushbacks: A Timeline’. 29 December 2020. Available at: <https://rsaegean.org/en/official-reactions-and-positions-on-push-backs-a-timeline/>, last accessed on 19 April 2022.

¹⁰⁷ Pro Asyl et. al., ‘The Truth May Be Bitter, But It Must Be Told’. October 2007. Available at: https://www.proasyl.de/wp-content/uploads/2015/12/PRO_ASYL_Report_Refugees_in_Greece_The_truth_may_be_bitter_but_it_must_be_told_Oct_2007.pdf.

¹⁰⁸ Ibid.

¹⁰⁹ Aikaterini Drakopoulou, Alexandros Konstantinos, and Dimitris Koros. ‘Border management at the external Schengen Borders. Border controls, return operations, and obstacles to effective remedies in Greece’. Routledge 2020. 1st Edition. p.178

¹¹⁰

<https://www.borderviolence.eu/bvmn-investigations-analysis-of-video-footage-showing-involvement-of-hellenic-coast-guard-in-maritime-pushback/>.