



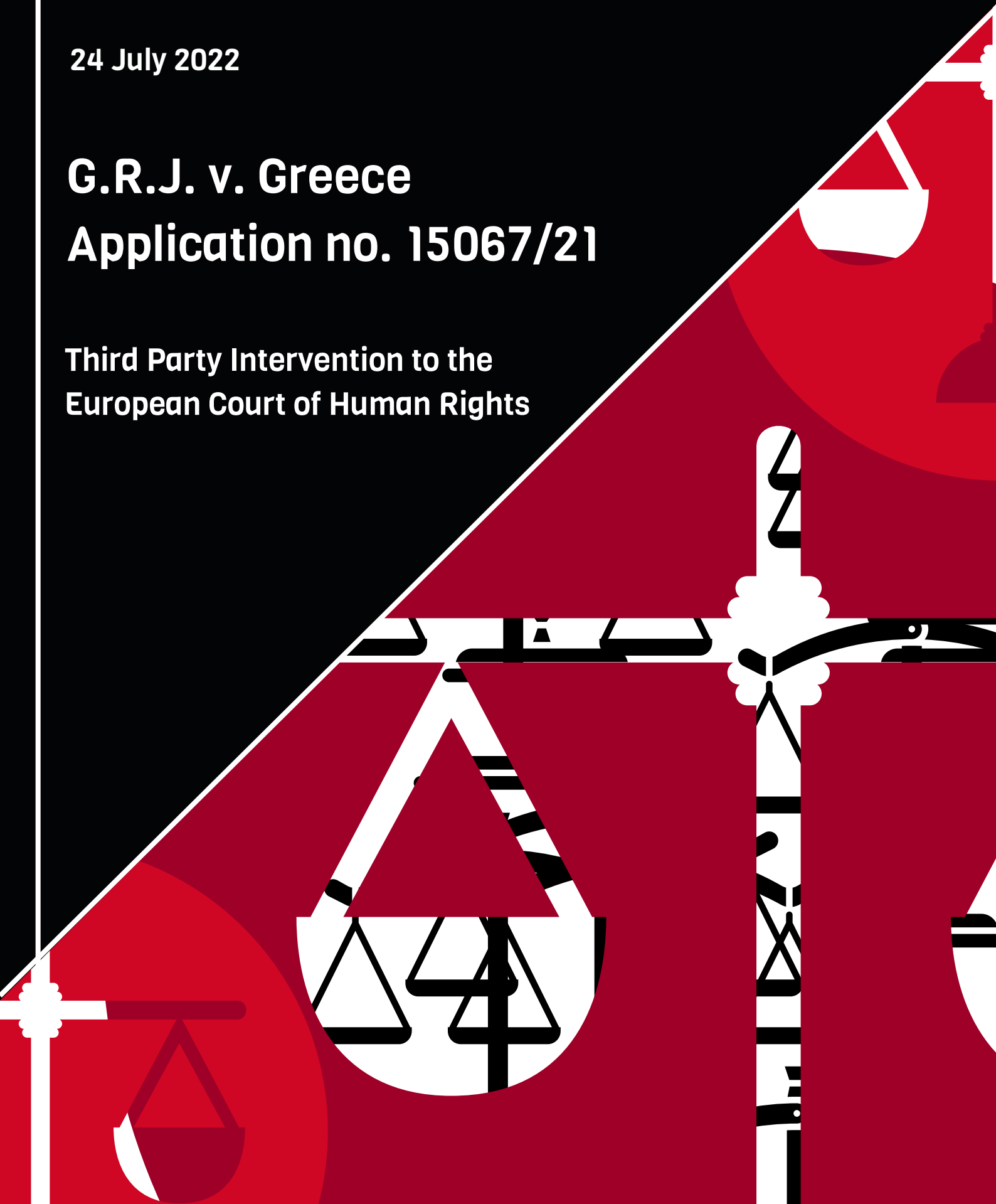
Border Violence Monitoring Network

24 July 2022

G.R.J. v. Greece

Application no. 15067/21

**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. 15067/21
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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 (hereinafter “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 human rights violations. In this sense, BVMN will outline violations of the principle of non-refoulement arising from 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.

2. In this context, BVMN aims to provide the Court with information regarding the specific methods employed by the Hellenic Coast Guards (hereinafter “HCG”) and other law enforcement officials while carrying out pushbacks. Furthermore, the intervenor demonstrates how these documented practices of pushbacks taking place in the Aegean Sea are conducted in an indiscriminate and systematic way, completely in contrast with the right to life and the right to be free from torture or cruel, inhumane and degrading treatment or punishment, as enshrined in Article 2 and 3 of the European Convention of Human Rights.

I. An analysis of the systematic practice and the methods employed to pushback asylum seekers to Turkey after they reached Greek territory occurring in the Aegean Sea

3. Since March 2020, several NGOs involved in the monitoring of human rights violations against people on the move have observed a general increase in the cases of collective pushbacks at sea following the entry of foreigners into the Greek territory¹.

4. From March 2020 until the end of December 2020 alone, BVMN member organization Mare Liberum counted 321 pushbacks in the Aegean Sea, in which 9,798 people were pushed back.² In 2021, Aegean Boat Report registered 629 pushback cases in the Aegean Sea, involving 15803 children, women and men who tried to reach safety in Europe. A third of them, 5220 people, had already arrived on the Greek Aegean islands, was arrested by police, forced back to sea and left drifting in life rafts, illegally expelled by the Greek Coast Guard. Almost 60% of all boats picked up by Turkish Coast Guard in 2021 had been pushed back by Greek authorities. 60% of all pushback cases registered happened around Lesbos and Samos.³

5. Concerns about the increase in the above mentioned practices have been expressed by international and regional human rights bodies. Specifically, the Special Rapporteur on Human Rights

¹ Human Rights Council. *Report on Means to Address the Human Rights Impact of Pushbacks of Migrants on Land and at Sea*. 12 May 2021, Available at:

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/106/33/PDF/G2110633.pdf?OpenElement>

² Mare Liberum. *Submission to the Special Rapporteur on Human Rights of Migrants: Pushbacks Practices and Their Impact on the Human Rights of Migrants by Mare Liberum*. 19 February 2021. Available at:

<https://mare-liberum.org/en/submission-to-the-special-rapporteur-on-the-human-rights-of-migrants-pushback-practicesand-their-impact-on-the-human-rights-of-migrants-by-mare-liberum/>

³ Aegean Boat Report. *Annual Report 2021*. January 2022. Available at:

<https://aegeanboatreport.files.wordpress.com/2022/01/abr-annual-report-2021-pdf.pdf>

has confirmed that pushbacks in the Aegean Sea have increased, from Greek territorial waters, as well as from the islands of Rhodes, Samos and Syros⁴. Similarly, the Council of Europe Commissioner for Human Rights stated that: “I am particularly concerned about an increase in reported instances in which migrants who have reached the Eastern Aegean islands from Turkey by boat, and have sometimes even been registered as asylum seekers, have been embarked on life-rafts by Greek officers and pushed back to Turkish waters.”⁵ She further added that “the mere fact of leaving them on boats on the Evros river or on life-rafts in the Aegean sea seriously endangers their right to life.”

6. In its submission to the Special Rapporteur on the Human Rights of migrants, Mare Liberum⁶ reported the case of 31 asylum seekers arriving on a boat in Samos in May 2020. There, the police, instead of moving them to a camp, brought them back to the shoreline, where the Hellenic Coast Guard put them in a dinghy and took them back to Turkish waters. During the execution of this pushback, a young Congolese man fell in the water and drowned, yet the HCG failed to report the incident, as well as the 31 new arrivals of that day in Samos. Later on, the Turkish Coast Guard expressly mentioned in its report 20 irregular migrants detected and rescued in Turkish waters, as well as a dead body of one person.

7. Another case refers to a group of 24 refugees who reached the Greek island of Lesbos in November 2020. After they reached the shore they went into hiding in the surrounding woods, in fear of being pushed back by the Greek authorities. The group contacted UNHCR. A UNHCR employee informed them over the phone that they would have to be picked up by the police, brought to a camp and registered as asylum seekers. Subsequently, the police put them in vans and drove them to the harbour, where they were put in “speedboats” of the HCG. The speedboats took them to a bigger vessel, where they were beaten by the crew. After about an one-hour drive towards Turkey, the HCG crew deployed one live raft and exerted violence against people in the group while forcing them into the life raft. The HCG vessel then left and abandoned the people on the life raft⁷.

8. Similarly, BVMN reported a case that took place in September 2021 on Samos with the same *modus operandi* of maritime summary expulsions as above, conducted by police officers: “The transit group was kept in the forest until late at night. After nightfall, a large boat with a Greek flag arrived. The transit group was taken aboard the large boat by a small blue speed boat [...] The group was then left at sea in life rafts⁸”.

9. In July 2021, BVMN reported a case on Rhodes where a group of 25 people including 15 children stayed in a detention centre for four days before being embarked on a boat. “After 3 and a

⁴ Human Rights Council. *Report on Means to Address the Human Rights Impact of Pushbacks of Migrants on Land and at Sea*. 12 May 2021, Available at:

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/106/33/PDF/G2110633.pdf?OpenElement>

⁵ The Commissioner for Human Rights. *Letters to the Ministers of Citizens’ Protection, of Migration and of Shipping and Island Policy*. 3 May 2021. Available at:

<https://rm.coe.int/letter-to-mr-michalis-chrysochoidis-minister-for-citizens-protection-o/1680a256ad>

⁶ Mare Liberum. *Submission to the Special Rapporteur on Human Rights of Migrants: Pushbacks Practices and Their Impact on the Human Rights of Migrants by Mare Liberum*. 19 February 2021. Available at:

<https://mare-liberum.org/en/submission-to-the-special-rapporteur-on-the-human-rights-of-migrants-pushback-practicesand-their-impact-on-the-human-rights-of-migrants-by-mare-liberum/>

⁷ *Ibid.*

⁸ BVMN, “*They Strip Searches Us Naked in the Forest*”. 18 September 2021. Available at:

<https://www.borderviolence.eu/violence-reports/september-18-2021-1400-samos/>

half hours, the group was transferred onto a floating platform and then abandoned at sea, drifting for five hours until 4 am. Water was coming in and they had to constantly pour it out with their hands⁹”.

10. During these summary maritime expulsions, the HCG were clearly identified as the authorities who apprehended the immigrants boat at sea before bringing them on the territory of one on the islands and then sending them back to Turkey abandoning people on a life raft. In cases in which the authorities encountered during the pushback could not be clearly identified as the HCG they were described as “police officers dressed in dark blue trousers and shirts, with green “military caps.” “and wearing pistols.” The boats that brought them back to the centre of the Aegean Sea on life raft were described as “a large boat with a Greek flag” or “HCG ribs/speed boats” that transported them “onto a small panther class coast guard vessel. The respondent recalls the last two numbers on the HCG vessel’s registration number being 18, suggesting that it could have been HCG vessel LS-618.”

11. The analysis of these commonplace practices reveals that pushbacks occur after people reach the Aegean Islands. Following their entry into the Greek territory, the asylum seekers are apprehended by the HCG, forced to onboard their vessels and then dropped in the middle of the sea, close to Turkish waters, on life rafts. The HCG threatens and uses physical violence to force people to go on unsafe embarkations. In some of these cases, people managed to make contact with civil society organizations to request to be rescued or to report their pushback.

II. A legal analysis on how maritime summary expulsions implicates potential violations of Article 2 of the Convention.

12. According to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, “ ‘pushback’ measures may also amount to excessive use of force whenever officials place refugees or migrants intentionally and knowingly in circumstances where they may be killed or their lives endangered because of the environment.”¹⁰In light of this, the Court has found that states must take appropriate steps to safeguard the lives of those within its jurisdiction under Article 2. This must apply in the context of any activities, whether public or not, in which the right to life may be at stake¹¹. The positive obligation to protect the right to life for individuals who are under the effective control of the state is exacerbated when the individual has been intercepted by state authorities just prior to a potential violation of the right to life.¹²

13. 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.¹³ For this obligation 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.”¹⁴ While this risk has to be specific,¹⁵ reports of a general situation of

⁹ BVMN. “My 11 year old son yelled at the Greek soldiers, begging them for mercy and humanity, convinced we would die in that moment”. 27 July 2020. Available at: <https://www.borderviolence.eu/violence-reports/july-27-2020-0000-rhodos/>

¹⁰ United Nations General Assembly. *Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions: Unlawful death of refugees and migrants*. 15 August 2017. A/72/335, §33.

¹¹ ECtHR, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* (Application No. 47848/08), [GC] ((17 July 2014), § 130

¹² ECtHR, *Rantsev v Cyprus & Russia* (Application No. 25965), Judgement (7 January 2010), § 325.

¹³ ECtHR, *Osman v United Kingdom* (Application No. 23452/94), Judgment (28 October 1998), §116.

¹⁴ ECtHR, *Osman v. United Kingdom* (Application No. 23452/94), Judgment (28 October 2010), §116.

¹⁵ *Ibid.*, §112.

life-threatening circumstances towards a specific group of individuals¹⁶ a previous sequence of similar situations of the arbitrary deprivation of life,¹⁷ complaints to relevant authorities of a specific risk towards a specific person or group of persons,¹⁸ a geographical situation that repeatedly reported posed a risk to life,¹⁹ and the availability of practical information pointing out this threat²⁰ should prompt the State to heightened vigilance towards potential infringements of the right to life.²¹

14. 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 a certain and immediate risk to life and therefore prevent that risk.²² 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.²³

15. Bearing this in mind, the responsibility of the Greek authorities to protect the right to life applies as soon as asylum-seekers entered the Greek territory, including Greek national waters, even more after being apprehended by the State authorities. Instead of protecting people under its jurisdiction, the HCG deliberately places people under its responsibility in the middle of the sea, in clearly unsafe embarkations and without any means of communication. Considering the amount of existing documentation of the death of people in the Mediterranean Sea and of related statements of international Human Rights bodies, it follows that the HCG is not in a position to argue that they were not aware of the risk to kill or endanger the lives of asylum-seekers when pushing them back in the sea.

III. A legal analysis of how maritime summary expulsions implicates potential violations of Article 3 of the Convention.

A. Physical violence and theft of belongings alongside the maritime summary expulsion

16. 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, being held at gunpoint, kicked, and subjected to naked strip searches while under the custody of law enforcement officers of the opposite sex.²⁴

¹⁶ ECtHR, *Cyprus v. Turkey* (Application no. 25781/94), [GC] (10 May 2001), §132.

¹⁷ ECtHR, *Mahmut Kaya v. Turkey* (Application no. 22535/93), Judgment (28 March 2000), §67.

¹⁸ ECtHR, *Kılıç v. Turkey* (Application no. 22492/93), Judgment (28 March 2000), §64.

¹⁹ ECtHR, *Budayeva and others v. Russia*, (Application No. 15339/02), (20 March 2008), §24.

²⁰ ECtHR, *Öneriyildiz v. Turkey*, (Application No. 48939/99,) (30 November 2004), §98.

²¹ ECtHR, *Nesibe Haran v. Turkey* (Application No. 28299/95), (6 October 2005), §74.

²² ECtHR, *Fernandes de Oliveira v. Portugal* (Application No. 78103/14), (31 January 2019), § 125.

²³ Inter-American Court of Human Rights, *González et al ("Cotton Field") v Mexico*, (16 November 2009), §258.

²⁴ BVMN. "The officers would beat them even more and tell them to stop screaming". 24 August 2021, Available at : <https://www.borderviolence.eu/violence-reports/august-24-2021-0530-in-the-aegean-sea-3-kilometres-from-samos-island/>; BVMN. "When they put us inside the vessel, they put us at gunpoint again". 10 November 2020. Available at : <https://www.borderviolence.eu/violence-reports/november-10-2020-0100-south-of-mytilene-left-at-sea-between-turkey-and-lesvos-39-043526-26-750051/>.

17. In the above mentioned cases²⁵, the victims describe confiscation of their belongings and identification documents²⁶ by the authorities, as well as the burning of their bags in front of them²⁷. Victims further allege that they have been subjected to physical violence. Accordingly: “*They started to brutalize us, they were beating us, kicking us. They put us at gunpoint.*” Such violence is perpetrated even against vulnerable people, such as pregnant women : “*The police didn’t even spare the highly pregnant woman in the group, who was pushed so hard, she fell to the ground.*”²⁸ In one of the cases reported by BVMN, the group was “*strip searched naked in the forest*” right after being apprehended on a Greek island: “*They first started searching the clothes, everywhere. They searched everything. Even if they found money they thought you have more money. You undress and they searched your private parts including your inners.*”²⁹

18. Under Article 3 of the Convention, the use of force is permitted in certain circumstances “only if indispensable and must not be excessive”.³⁰ The Court considers that 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”³¹.

19. Having adopted a “strict proportionality approach”, 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 victim³². 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. As asylum seekers are “members of a particularly underprivileged and vulnerable population group in need of special protection”³³, the use of violence constitutes an aggravating factor as it is perpetrated against vulnerable individuals.

B. The denial of the opportunity to seek asylum

20. In the cases previously listed by the intervenor, asylum-seekers who were summarily pushbacked to Turkey were denied the possibility to lodge an asylum application on the Greek territory, even after being in contact with the relevant stakeholders, such as UNHCR.

²⁵ Mare Liberum. *Submission to the Special Rapporteur on Human Rights of Migrants: Pushbacks Practices and Their Impact on the Human Rights of Migrants by Mare Liberum*. 19 February 2021. Available at: <https://mare-liberum.org/en/submission-to-the-special-rapporteur-on-the-human-rights-of-migrants-pushback-practicesand-their-impact-on-the-human-rights-of-migrants-by-mare-liberum/>

BVMN, “*They Strip Searches Us Naked in the Forest*”. 18 September 2021. Available at: <https://www.borderviolence.eu/violence-reports/september-18-2021-1400-samos/>

BVMN, “*My 11 Year Old Son Yelled at the Greek Soldiers, Begging Them for Mercy and Humanity, Convinced We Would Die in that Moment*”. 27 July 2020. Available at: <https://www.borderviolence.eu/violence-reports/july-27-2020-0000-rhodos/>

²⁶ Human Rights Watch. *Submission to the Committee on the Rights of the Child Concerning Greece*. 22 December 2021. Available at: <https://www.hrw.org/news/2021/12/22/submission-committee-rights-child-concerning-greece>

²⁷ Mare Liberum. *Submission to the Special Rapporteur on Human Rights of Migrants: Pushbacks Practices and Their Impact on the Human Rights of Migrants by Mare Liberum*. 19 February 2021. Available at: <https://mare-liberum.org/en/submission-to-the-special-rapporteur-on-the-human-rights-of-migrants-pushback-practicesand-their-impact-on-the-human-rights-of-migrants-by-mare-liberum/>

²⁸ *Ibid.*

²⁹ BVMN, “*They Strip Searches Us Naked in the Forest*”. 18 September 2021. Available at: <https://www.borderviolence.eu/violence-reports/september-18-2021-1400-samos/>

³⁰ ECtHR, *Anzhelo Georgiev and Others v. Bulgaria* (Application No. 51824/09), Judgement (30 December 2014), §66.

³¹ ECtHR, *Kop v. Turkey* (Application No. 12728/05), (20 October 2009), §27

³² ECtHR, *Anzhelo Georgiev and Others v. Bulgaria* (Application No. 51284/09), Judgement (30 December 2014), §66

³³ ECtHR, *M.S.S. v. Belgium and Greece* (Application No. 30696/09), [GC] (21 January 2011), §251

21. The Court has already found violations of Article 3, as well as of Article 13 taken in conjunction with Article 3 of the Convention, in cases where applicants were removed in a summary manner to the third country from which they had sought to enter the respondent State's territory, after seeking to lodge an asylum application and/or communicating fear for their safety at the border³⁴.

22. Where applicants can arguably claim that there is no guarantee that their asylum applications would be seriously examined by the authorities in the neighbouring third country and that their return to their country of origin could violate Article 3 of the Convention, the respondent State is obliged to allow the applicants to remain within its jurisdiction until the time their claims have been adequately reviewed by a competent domestic authority and cannot deny access to its territory to persons presenting themselves at a border checkpoint who allege that they may be subjected to ill-treatment if they remain on the territory of the neighbouring state, unless adequate measures are taken to eliminate such a risk (*M.K. and Others v. Poland*, §§ 178-179).³⁵

23. It is the Court's opinion that, in order to determine whether individuals sought to request asylum and/or communicated fear for their safety in the event of removal to the authorities of the respondent State, the following factors should be taken into consideration: the records of the border guards; the applicant's account; supporting documents and reports regarding the situation at the border, where these indicate the existence of a systemic practice of misrepresenting statements given by asylum-seekers in official notes and/or concerns regarding access to the territory and asylum procedure; the conditions prevailing in the country of origin and/or the third country^{36,37}.

24. On several occasions, the 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.⁴⁰ 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."⁴¹ With this regard, the CoE Commissioner of Human Rights considers that the guarantees afforded by Art. 3 apply to anyone, regardless of the way in which they arrive at member states' borders, including if this in an irregular manner.⁴²

³⁴ ECtHR, *Ilias and Ahmend v. Hungary* (Application No. 47287/15), [GC] (21 November 2019).

³⁵ ECtHR, *Guide on the case-law of the European Court of Human Rights*. 30 April 2022. Available at: https://www.echr.coe.int/Documents/Guide_Immigration_ENG.pdf

³⁶ ECtHR, *M.A. and Others v. Lithuania* (Application No. 59793/17), Judgement (11 December 2018), §§ 107- 113;

³⁷ ECtHR, *Guide on the case-law of the European Court of Human Rights*. 30 April 2022. Available at: https://www.echr.coe.int/Documents/Guide_Immigration_ENG.pdf

³⁸ ECtHR, *Hirsi Jamaa and others v. Italy* (Application No. 27765/09), [GC] (23 February 2012), §123.

³⁹ ECtHR, *M.K. and Others v Poland*, (Application Nos. 40503/17, 42902/17, 43643/17), Judgement (23 July 2020), § 179.

⁴⁰ ECtHR, *Sharifi and Others v. Italy and Greece* (Application No. 16643/09, Judgement (21 October 2014), §. 166.

⁴¹ *Ibid.*, § 125.

⁴² The Commissioner for Human Rights. *Letters to the Ministers of Citizens' Protection, of Migration and of Shipping and Island Policy*. 3 May 2021. Available at: <https://rm.coe.int/letter-to-mr-michalis-chrysochoidis-minister-for-citizens-protection-o/1680a256ad>

25. When proceeding with summary maritime expulsions, Greek authorities do not assess the individual situations of persons on the move, including their country of origin, their specific vulnerabilities and the risks of torture, inhuman and degrading treatments they might encounter if they are sent back to Turkey. In cases in which the willingness to lodge an asylum application is clearly expressed - especially in light of the precarious living conditions existing in Turkey for immigrants and the difficulties to have access to an adequate asylum procedure⁴³ - a breach of the Convention might be found under Art. 3.

III. Unaccompanied minors in pushbacks

26. In 2017, the UN Committees on the Rights of the Child and on Migrant Workers reiterated that States “shall not reject a child at a border”⁴⁴. On the contrary, reports and testimonies of forced returns against unaccompanied migrants from the Greek territory have been well-documented.

27. According to BVMN database, the totality of summary expulsions that took place in the Aegean Sea in 2020 involved minors⁴⁵, showing in this way the systematic and indiscriminate nature of these acts, which are carried out against vulnerable people like minors on a constant basis. Furthermore, the NGO Mare Liberum recently reported a group of 19 asylum seekers, including 5 children, being spotted in the Aegean Sea by a Greek military ship, subsequently taken on board and forced into 2 life rafts by the Hellenic Coast Guard. According to the testimonies, the two groups were discovered by the Turkish Coast Guard after about three hours, and later dragged to Turkish land⁴⁶.

28. Human Rights Watch interviewed six asylum seekers, including a 15-year-old unaccompanied girl from Syria, who described three incidents in March and April 2020 in which the HCG, police, and armed masked men in dark clothing coordinated and carried out pushbacks to Turkey from the Greek islands of Rhodes, Samos and Symi⁴⁷. All of them said they were apprehended on the islands soon after they landed, placed on larger HCG boats, and once they were back at the sea border, forced onto small inflatable rescue rafts, with no motor, and cast adrift near Turkish territorial waters.⁴⁸

29. The systematic nature of endangering children’s lives by pushing them back to Turkey by Greek authorities has been recently observed by the UN Committee on the Rights of the Child in its latest Concluding Observations on Greece. Specifically, while expressing its concerns about the

⁴³ Council of Europe. *Report of the fact-finding mission to Turkey by Ambassador Drahoslav Štefánek, Special Representative of the Secretary General on Migration and Refugees 15-26 March 2021*. 29 November 2020. § 24. Available at: <https://rm.coe.int/report-of-the-fact-finding-mission-to-turkey/1680a4b673>

⁴⁴ Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, 16 November 2017, para. 46

⁴⁵ BVMN database, Available at : https://www.borderviolence.eu/violence-reports/?ri-incident-date-range=2020-01-01%20to%202020-12-31&ri-incident-date-start=20200101&ri-incident-date-end=20201231&ri-incident-location-geo-radius=50&ri-pushback_from=Greece&ri-pushback_to=Turkey&ri-underage-involved=all&ri-intention-asylum-expressed=all&ri-page=1

⁴⁶ Mare Liberum. *Submission to the Special Rapporteur on Human Rights of Migrants: Pushbacks Practices and Their Impact on the Human Rights of Migrants by Mare Liberum*. 19 February 2021. Available at: <https://mare-liberum.org/en/submission-to-the-special-rapporteur-on-the-human-rights-of-migrants-pushback-practices-and-their-impact-on-the-human-rights-of-migrants-by-mare-liberum/>

⁴⁷ Human Rights Watch. *Submission to the Committee on the Rights of the Child Concerning Greece*. 22 December 2021. Available at:

<https://www.hrw.org/news/2021/12/22/submission-committee-rights-child-concerning-greece>

⁴⁸ *Ibid.*

reports of pushbacks of migrant families and children carried out by Greece, the Committee urged Greece to:

(a) End the practice of forced returns (“pushbacks”) of families and migrant children and ensure that they are individually identified, registered and protected against refoulement, including through effective access to asylum procedures, free legal and humanitarian assistance, in accordance with articles 6, 22 and 37 of the Convention; adopt binding codes of conduct for border officials and establish an independent border monitoring mechanism; conduct in depth investigations on reported pushback cases including the ones that have been identified in the European Anti-Fraud Office (OLAF) report, and hold accountable those responsible by prosecuting them; provide support, compensations and protection to child victims; [...]”.
(Emphasis added)

30. Pushing back or summarily expelling children without due process, without giving them an opportunity to apply for asylum or without child protection authorities conducting an assessment of each child’s best interests is, in addition, a child rights violation under Art. 3 and 22 of the Convention on the Rights of the Child, and puts children at risk of refoulement by being pushed back to situations of violence, trafficking, abuse or exploitation that may be life threatening and causing irreparable harm⁴⁹. The precondition to the return of any child – whether the child is unaccompanied, separated or within a family – is that return has been found to be in their best interests through an individual process aimed at identifying a sustainable solution, with the central involvement of child protection authorities. In practical terms, this means that even when they do not qualify for asylum, many children cannot and should not be returned, including due to child protection or family reunification considerations, among others⁵⁰.

31. Furthermore, States are obliged under Article 3 to protect and to take charge of unaccompanied children, which requires the authorities to identify them as such and to take measures to ensure their placement in adequate accommodation, even if the children do not lodge an asylum application in the respondent State, but intend to do so in another State, or to join family members⁵¹.

32. Therefore, the pushbacks carried out repeatedly by Greece against minors do not meet human rights standards, not only as migrants, but also as minors. Such acts not only show how Greek authorities are deliberately violating the human rights of children asylum seekers entering its territory - including the right to life, the right not to be refouled and the right to access asylum, enshrined in Art. 2 and 3 of the ECHR - but also how the recourse to these practices have become a common praxis.

⁴⁹ UNICEF. *Pushback Practices and their Impacts on the Human Rights of Migrants*. February 2021. Available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/pushback/UNICEFSubmission.pdf>

⁵⁰ *Ibid.*

⁵¹ ECtHR, *Khan v. France* (Application No. 12267/16), (28 February 2019). ECtHR, *Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia* (Application No. 141165/16), (13 June 2019).