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Application No: 38203/20 A. A. N. and others against Greece and 7 other applications

Third Party Intervention to the European Court of Human Rights Judge Marko Bošnjak President of the European Court, Grand Chamber European Court of Human Rights Council of Europe F-67075 Strasbourg CEDEX France By FAX and post

Application No: 38203/20 A. A. N. and others against Greece and 7 other applications

17 March 2025

Third party intervention on behalf of Border Violence Monitoring Network¹

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

¹ This submission was prepared by members of the Legal Working Group of the Border Violence Monitoring Network (BVMN): Agata Marchwicka, Daryl Invernizzi-Milne, Fezile Osum, Franz Valentin Neumann.

SUMMARY

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

Legal Anaylsis

3. Article 2 of the European Convention on Human Rights (ECHR) enshrines the right to life as one of the most fundamental provisions, imposing both negative and positive obligations on states. In particular, states must not arbitrarily deprive individuals of life, and they are further required to take reasonable and appropriate measures to safeguard the lives of individuals within their jurisdiction.⁴ The negative obligation requires the state to refrain from the intentional and unlawful deprivation of life,

² See for example: BVMN. 2021. Annual Torture Report 2020. Available at:

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https://www.borderviolence.eu/annual-torture-report-2020/; BVMN. 2020. Violations at the Greek Borders. Sea and Land Report (February/March). Available at https://www.borderviolence.eu/new-report-on-violationsat-greek-borders/; BVMN. 2020. Special Report: COVID-19 and Border Violence along the Balkan Route. Available at: https://www.borderviolence.eu/special-report-covid-19-and-border-violence-along-the-balkanroute/; Mobile Info Team (member of BVMN). 2019. Illegal Pushbacks at the Border: Denying Refugees the Right to Claim Asylum. Available at: https://www.mobileinfoteam.org/pushbacks.

³ See for example: BVMN. 2022. Submission to the UN Committee on Enforced Disappearances. Report for the 22nd Session. Available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCED%2FNGO %2FGRC%2F48018&Lang=en and BVMN. 2021. Submission to the UN Rapporteur on Torture Regarding Greece. Available at: https://www.borderviolence.eu/submission-to-the-un-special-rapporteur-on-tortureregarding-greece

⁴ Osman v. the United Kingdom (ECtHR, 28 October 1998), Application No. 23452/94.

except in strictly defined circumstances, such as lawful acts of war or the execution of a lawful sentence.⁵

- 4. Maritime summary expulsions, commonly referred to as "pushbacks", raise serious concerns regarding potential violations of Article 2. The UN Special Rapporteur on the human rights of migrants, previously described pushbacks as: "serious measures taken by States, sometimes involving third countries or non-State actors, which result in migrants, including asylum seekers, being summarily forced back, without an individual assessment of their human rights protection needs, to the country or territory, or to sea, whether it be territorial waters or international waters, from where they attempted to cross or crossed an international border".⁶ The UN Special Rapporteur on extrajudicial, summary, or arbitrary executions stated that pushback measures may be considered as an excessive use of force where state authorities knowingly place refugees and migrants in situations that expose them to life-threatening risks.
- 5. Pushbacks significantly increase the risk of maritime disasters, often leading to loss of life. Migrant women, girls, and boys face an even greater danger of drowning or hypothermia.⁷ Collective actions such as "turnbacks" and "takebacks," as well as "driftbacks", where migrants are left adrift in unseaworthy rafts and "pullbacks" carried out by State actors or their proxies, violate search and rescue obligations.⁸ Furthermore, these practices can also lead to serious human rights violations, including *refoulement*.
- 6. Where state authorities are aware, or ought to be aware, of a real and immediate risk to the life of an identified individual or group, they are required to take necessary and reasonable measures to avert such risk.⁹ Reports detailing general patterns of life-threatening dangers faced by specific groups, a history of similar rights violations, formal complaints indicating risk, and recurring geographical dangers all serve to put the state on heightened notice of potential infringements of the right to life. Consequently, the ECtHR has held that authorities must act with due diligence to prevent the materialization of such risks.¹⁰

⁵ Right to life is non-derogable, except in cases of deaths resulting from lawful acts of war under Article 15 of ECHR.

⁶ UN Special Rapporteur on the human rights of migrants 'Report on means to address the human rights impact of pushbacks of migrants on land and at sea' (21 June 2021) UNHRC 47th Session, UN Doc A/HRC/47/30, para.34.

⁷ Special Rapporteur on the human rights of migrants, 'Report on Means to Address the Human Rights Impact of Pushbacks of Migrants on Land and at Sea', UNHRC 47th Session, Agenda Item 3 (21 June–9 July 2021), UN Doc A/HRC/47/30, para.52.

⁸ Ibid.

 ⁹ McCann and Others v United Kingdom, (ECtHR, 27 September 1995), Application No. 18984/91, L.C.B. v. the United Kingdom (ECtHR, 9 June 1998) Application no 23413/94, Osman v. the United Kingdom (ECtHR, 28 October 1998) Application No. 23452/94, Opuz v. Turkey (ECtHR, 9 June 2009) Application No. 33401/02.
¹⁰ Osman v. the United Kingdom (ECtHR, 28 October 1998) Application No. 23452/94, para.116.

- 7. In light of these principles, maritime pushbacks conducted by the Hellenic Coast Guard (HCG) constitute a clear failure to uphold the obligations imposed by Article 2 of the ECHR. The practice of placing asylum-seekers on unseaworthy vessels without adequate means of communication, or abandoning them at sea after they have come under the control of Greek authorities, demonstrates a flagrant disregard for their right to life. Given the extensive documentation of deaths in the Mediterranean and the consistent statements of international human rights bodies, the Greek authorities cannot plausibly claim ignorance of the fatal risks associated with these expulsions.¹¹
- 8. Greek authorities, when conducting pushbacks, fail to assess the personal circumstances of those affected, including their country of origin, specific vulnerabilities, and the risk of torture, inhuman, or degrading treatment they may encounter if returned to Türkiye. Additionally, reports indicate that individuals detained upon arrival in Greece endure extremely poor detention conditions, lack proper access to their rights, and are subjected to violence. These patterns result in potential violations of Article 3 occur during pushbacks and also in detention spaces.
- 9. In Safi and Others v. Greece, the Court criticised the HCG's involvement in a rescue in the Aegean Sea. The applicant's boat was unseaworthy, overcrowded, and the weather conditions were poor. The coastguard's boat was unsuitable for the rescue, and despite the boat being in distress, no reinforcements were called, and life jackets were not provided to the migrants. The Greek government's justification that they were under increasing migration pressure was not accepted, nor was the argument that the migrants had put themselves at risk. The Court concluded that Greece did not do enough to protect the lives of the migrants, leading to a violation of both the procedural and substantive limbs of Article 2 of the ECHR.¹² The Court also faced difficulties with evidence, primarily due to shortcomings in the national investigation, but it relied on uncontested facts to identify the violations.¹³
- 10. In *A.R.E. v. Greece* (15783/21) and *G.R.J. v. Greece* (15067/21), the Court recognised Greece's ongoing practice of violently pushing back migrants at its borders. In the former case, after being sentenced to over six years in prison in Türkiye for political opposition, the applicant sought asylum in Greece in 2019. After being detained at two border guard stations, she was placed on a raft at the Evros riverbank and forcibly returned to Türkiye, where she was arrested. In *G.R.J. v. Greece*, an Afghan minor

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https://www.spiegel.de/international/globalsocieties/greece-videos-show-apparent-illegal-pushback-of-migrants-a-1301228.html,
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¹¹ UN CAT, Concluding observations to the seventh period report of Greece, 03.06.2019, https://undocs.org/CAT/C/GRC/CO/7, "16; CPT 2018 Visit Report, G. Christides & others, "Videos Show Apparent Illegal Pushback of Migrants," Der Spiegel, 13.12.2019, https://www.spiegel.de/international/globalsocieties/greece-videos-show-apparent-illegal-pushback-of-migran

¹² Safi and Others v. Greece, no. 5418/15, para. 123-128, para.159-167.

¹³ Ibid, para. 155-156.

was pushed back from Samos to Türkiye in 2020. After arriving by boat and seeking asylum, he was forced onto a HCG vessel, then abandoned in a raft in Turkish waters, a practice known as "drift-backs" conducted by Greek authorities since 2020. Notably, a number of BVMN's testimonies of pushbacks from Greek territorial waters to Türkiye between 1 January 2019 and 31 December 2021, which are further set out below, include numerous reports of actions by the HCG that also appear consistent with the practice of drift-backs.

Pushbacks from Greece to Türkiye: the *modus operandi* 1 January 2019 to 31 December 2021

- 11. Between 1 January 2019 and 31 December 2021, BVMN collected testimonies from individuals who were subjected to pushback incidents from Greece to Türkiye. During this period, 164 testimonies were documented, impacting a total of 9,351 individuals on the move.
- 12. These testimonies pertain to pushback incidents occurring at various locations along the Greece-Türkiye border and describe differing methods (*modus operandi*) employed by Greek authorities. The specific tactics used often varied depending on the geographic context. For instance, incidents in the Aegean Sea typically involved the collective expulsion of people on the move from Greek to Turkish territorial waters, in each case under conditions that posed a significant risk to life by drowning. Conversely, pushbacks from mainland Greece to Türkiye more typically involved elements of violence and arbitrary detention, with testimonies highlighting extremely poor detention conditions preceding the collective expulsions.
- 13. The subsequent analysis divides the testimonies into two primary categories: 1*modus operandi* of pushbacks at sea and potential breaches of Article 2 ECHR due to the high risk of death by drowning reported in these testimonies. 2- Broader examination of patterns in pushback practices from Greece to Türkiye with particular attention to instances of arbitrary detention, the conditions experienced by people on the move during such detention, as well as other identified widespread pushback practices that could amount to violations of the prohibition against torture and illtreatment under Article 3 of the ECHR, such as violence, beatings, forced strip searches and theft of personal belongings.

Modus operandi of pushbacks at sea

14. Out of the 164 testimonies collected by BVMN between 2019 and 2021, 13 testimonies specifically documented pushbacks by Greek authorities in the Aegean Sea. These pushbacks occurred around Greek islands, including near the island of Symi.

- 15. In some of the testimonies, people on the move were pushed back at sea by the HCG before arriving to Greece. The common *modus operandi* of these pushbacks included the HCG intercepting people on the move by blocking and towing their boats with ropes back toward Turkish waters, or otherwise chasing them to the territory of Türkiye, through intimidating and dangerous vessel maneuvers. For example, in a testimony collected near the island of Kos (very close to Symi), a group of people on the move including minors reported being approached by a ship that had been waiting in the dark after they had entered Greek waters. The people on the ship were wearing black clothing and balaclavas and attempted to cut holes in the group's dinghy by using a long stick with a knife attached to the end.¹⁴ The group managed to flee the attack by voluntarily turning back to Türkiye.
- 16. According to another testimony, the HCG intercepted people on the move and used a knife to cut a hole in their dinghy, as well as the fuel hose, before leaving. This caused the boat to start sinking, where people on the move were using their shoes and water bottles to scoop water out.¹⁵ Some group members jumped into the water and helped to push the boat towards Greek land. The respondent alleged that the HCG was observing the situation from a distance, before later returning and beating the respondent, as well as attacking other members of the group with a stick.
- 17. In the other Aegean Sea pushback testimonies, the *modus operandi* of the Greek authorities included destroying boats' engines once they were taken back to Turkish waters making it impossible for people on the move to steer their boat before leaving the boats adrift. In one testimony, the respondent claimed that the HCG entered the dinghy, destroyed and removed the engine, forced people on board to throw away life vests and rubber rings, before attaching a rope and towing the boat to Turkish waters, with water entering the dinghy.¹⁶ Afterwards, the HCG created waves, destabilising the boat before leaving it adrift and causing the group to become "*desperate and emotional. One of them was a woman with a small baby, who was unconscious on board for a few hours*".¹⁷ The respondent also reported that he and others in the group were beaten, and that he thought he was going to die.¹⁸
- 18. In a number of testimonies, people on the move managed to successfully reach Greece via the Aegean Sea but were later apprehended by Greek authorities and pushed back to territorial waters of Türkiye. Several testimonies included reports of people on the move being informed by Greek authorities that they would be transported to asylum camps or allowed to continue their journey to mainland Greece, only to be taken

¹⁷ Ibid, p. 252.

¹⁴ Border Violence Monitoring Network (BVMN), 'Black Book of Pusbacks: Extended and Updated Edition' <<u>https://borderviolence.eu/black-book-of-pushbacks-2022</u>>, p.284.

¹⁵ Ibid, p.254.

¹⁶ Ibid, p.251.

¹⁸ Ibid.

instead onto HCG vessels, forced into life rafts, and left adrift in the open sea in Turkish territorial waters.

- 19. A similar incident occurred a few months later near the island of Rhodes, located next to Symi.¹⁹ According to the testimony, the group included 15 children, among them an 11 year old blind boy. Upon arrival in Rhodes, they were apprehended by Greek police officers, who falsely informed them they would be taken to a camp for a few days before being transported to Athens. Instead, they were detained in a "prison-like" detention centre where they were denied food, water and medical assistance, including baby food and medication, before being taken onto a HCG vessel and transported at sea for three and a half hours. They were then transferred onto a floating platform in the middle of the water and left to drift for five hours in high waves. Without any means of steering, they were forced to take water out with their hands to prevent themselves from sinking.
- 20. The similarities in these accounts suggest an established pattern of forced expulsions, resulting in life risking circumstances and in particular the risk of drowning. In 12 of the testimonies, people on the move reported being left adrift at sea. In some of these cases, the HCG either forced people on the move into life rafts that had no engines, or alternatively destroyed the engines, leaving people on the move with no power or ability to navigate deep waters or withstand currents and waves. Further, as the boats were towed or pushed by the HCG before being left adrift, people on the move also had no information about their location or the direction of land or safety. In some cases, the HCG intentionally damaged the boats, causing them to start sinking.
- 21. The actions of Greek authorities reported in these testimonies have led to life threatening situations and thus appear inconsistent with the obligations set out under the right to life as per Article 2 of the ECHR. Being left in the middle of the sea in an intentionally damaged and overcrowded boat, at the mercy of the weather and water conditions and with no ability to steer, creates a real and high risk of sinking and drowning. All 13 of these testimonies either involved minors, pregnant women, vulnerable persons with injuries and/or those who could not swim.

Arbitrary detention, ill-treatment and other widespread pushback practices

22. In the vast majority of testimonies, it has been found that people on the move, before being pushed back, have faced one or more situations of detention. Testimonies collected by the BVMN and its partner organisations, compiled in the Black Book of pushbacks, indicate this occurred in 118 instances, representing 72% of pushback

¹⁹ Border Violence Monitoring Network (BVMN), 'Black Book of Pusbacks: Extended and Updated Edition' <<u>https://borderviolence.eu/black-book-of-pushbacks-2022</u>> p.279.

situations.²⁰ This pattern suggests a near-systematic practice on behalf of Greek authorities of detaining individuals before returning them to Türkiye. The analysis below examines the *modus operandi* of Greek authorities in their treatment of people on the move.

- 23. This detention, which in itself constitutes a violation of the right to liberty under Article 5 of the ECHR, often takes place in very poor conditions and is frequently accompanied by other forms of inhumane treatment, thus violating Article 3 of the ECHR.
- 24. In 88% of the concerned testimonies, personal belongings such as phones, power banks, clothes and papers - were taken from individuals either during or prior to detention. The belongings were never returned and, in some cases, were deliberately destroyed. Individuals were also frequently held in inadequate facilities, such as very small, dirty and overcrowded cells, very often with no place to sit or lie down (49%).

"The cell itself was described by the respondent as being "not very big", having no adequate space to sit or sleep, and with "a lot of dirty toilets" of which "water [was] coming out".²¹

"According to the respondent, the cell at the second detention site was "horrible". It was about 4-5 metres in size with a bed that smelled bad. The respondent explained that "you have to keep standing anyways because you don't have enough space to sit".²²

"The four men were taken to a cell that was allegedly around five by six meters and had a toilet inside ... They spent around eight or nine hours there, during which time small groups were brought in every half hour or so until more than 100 people were detained in the small cell."²³

25. There is an established pattern of denial of access to food and water, occurring in 84% of concerned testimonies. In some instances, individuals were forced to drink from toilets inside the cell when no other source of water was available.²⁴ Furthermore, 47% of testimonies reported that detainees had no access to toilets at all.²⁵

²⁰ BVMN, Black Book Volume 4 at 'Black Book of Pusbacks: Extended and Updated Edition'<<<u>https://borderviolence.eu/black-book-of-pushbacks-2022</u>> p. 195 to 604.

²¹ Ibid, p.298.

²² Ibid, p.426.

²³ Ibid, p.579.

²⁴ Ibid, pages 199, 220, 221, 239, 280, 293, 309, 323, 338, 393, 409, 512

²⁵ Ibid, pages195, 202, 224, 229, 232, 249, 259, 321, 336, 356, 352, 347, 382, 385, 387, 391, 395, 415, 417, 419, 421, 429, 432, 437, 454, 467, 475, 483, 487,495, 499, 502, 505, 512, 515, 522, 529, 536, 538, 556, 561, 574, 579, 588.

"... where he was eventually kept for about six hours, from 13:00 to 19:00, and reportedly denied food and water, despite asking for it."²⁶

"The respondent spent two days in the cell, during which time he was not provided with any food or water. He recalled, "In the toilet there was water. I didn't know where that water came from but I drank it because I was thirsty."²⁷

26. Detainees could not reach to healthcare too, was often withheld, even when urgently needed. In 20% of testimonies, despite medical needs and evident health conditions, detainees were denied medical assistance.²⁸ This practice not only violates Article 3 of the ECHR, but also violates Article 2, which safeguards the right to life, including access to medical treatment necessary to one's well being and, in some cases, survival.

"An hour or two later, at around 11:00 am, the respondent described that an Iranian lady in detainment began shaking, sweating, her heartbeat raised ... The respondent begged for an ambulance or medics or anyone who could help her. The officer replied: "Even if we had one, we would not bring him to see you."²⁹

*"The detainees repeatedly asked for medical support, but it was always denied."*³⁰

27. Additionally, detainees were systematically denied access to a lawyer or translator, preventing them from accessing or understanding their rights, making it impossible to request any form of international protection. This allowed Greek authorities to push people on the move back without any legal basis, on occasion even making them sign documentation which they could not read or understand, often under false representation that they were signing release papers or procedural forms:³¹

"Then the policemen brought some documents for him to sign. The documents were written in Greek and there was no interpreter present. The interviewee can only speak Greek, but not read or write it, so he did not know what he was signing. He was convinced by the policemen that these were release papers and a part of a regular procedure, so he signed them."³²

*"They then took fingerprints of the respondent as well as pictures and he also had to sign Greek documents without any translation provided."*³³

²⁶ Ibid, p.326.

²⁷ Ibid, p.514.

²⁸ Ibid, pages 205, 273, 275, 384, 391, 395, 403, 407, 412, 413, 417, 424, 429, 432, 450, 454, 467, 487, 499, 505, 519, 522, 526, 529, 533, 538, 545, 548, 588, 595, 602

²⁹ Ibid, p.274.

³⁰ Ibid, p.276.

³¹ Ibid, pages 210, 217, 225, 269, 307, 309, 318, 326, 424, 446

³² Ibid, p.269.

³³ Ibid, p.310.

"The police officers made the respondent and his two companions sign the forms, without explaining what their purpose was...".³⁴

28. This denial of access to translators (none being present in almost 50% of detentions) also hindered the possibility for individuals to understand why they were being detained. These detentions were therefore arbitrary and of no legal foundation, therefore violating Article 5 of the ECHR.

29. According to Article 5, in order to be legal, detention must be justified and foreseeable. This requires that authorities explain, in a manner understandable to the persons concerned, on what basis they are being arrested and detained, where and following what procedure (for how long, what the following steps will be, opportunity for review etc.). However, in most testimonies individuals were either given no explanation or they were arrested under false pretences, for instance that there was a problem with their papers or that papers will be issued to them.³⁵ Moreover, they most often did not know where and for what reason they were being taken, even when they requested this information from the authorities.³⁶

*"It was not explained to the respondent where he was being taken or why." "They never reply to you or speak with you."*³⁷

30. Vulnerable individuals were present in 74% of the testimonies, with women and minors being amongst them. Women were present in 68% of testimonies concerning detention and minors - often unaccompanied minors - were present in 67% of testimonies.

31. Unlike men and older unaccompanied minors, women and young children were often spared from such degrading treatment. However, several testimonies reported that women were subjected to sexual harassment or assault during detention, being strip searched intrusively by male officers.³⁸ Moreover, they almost always faced the same treatment in terms of theft of belongings and denial of access to food, water, healthcare or a translator.

"The respondent also recalls how the officers sexually harassed the women, male officers frequently conducting body searches and anyone who complained about it got beaten."³⁹

³⁴ Ibid, p.319.

³⁵ Ibid, pages 207, 211, 212, 215, 221, 224, 233, 256, 269, 278

³⁶ Ibid, pages 225, 246

³⁷ Ibid, p. 246.

³⁸ Ibid, pages 293, 336, 364, 367, 377, 380, 391, 398, 409, 412, 417, 437, 454, 495, 502, 509, 519, 548, 574

³⁹ Ibid, p.378.

*"A male officer also searched the woman. She was crying while he was reportedly touching her body, harassing her, as the respondent relates."*⁴⁰

31. People on the move reported experiencing inhumane treatment likely amounting to violations of Article 3 of the ECHR in detention but also more broadly throughout their pushbacks. Violence was a systematic practice of Greek authorities in their conduct of pushbacks and was observed in 95% of testimonies. This included beatings, kicking, use of electrical discharge weapons, strip searching and forced undressing by Greek authorities. The use of threats with guns or other such weapons was also a common practice, present in 40 testimonies observed during this time period.⁴¹

32. This violence not only represents an excessive use of force by Greek authorities in their conduct of pushbacks, but is also a coercive and intimidating method to prevent those on the move from requesting international protection. In many testimonies people on the move expressed they were too afraid to request asylum, in fear of potential violent retribution. According to some testimonies, when they did express this request, they were met with violence. Violence was therefore used by authorities as a deterrent, preventing people on the move from requesting international protection.

⁴⁰ Ibid, p.524.

⁴¹ Ibid, pages 212, 216, 225, 230, 261, 273, 291, 293, 299, 304, 315, 321, 323, 328, 336, 338, 345, 350, 352, 358, 374, 384, 385, 391, 403, 421, 427, 429, 437, 454, 460, 467, 487, 522, 527, 551, 561, 585, 588, 592.