



Judge Marko Bošnjak
President, First Section
European Court of Human Rights
Council of Europe
F-67075 Strasbourg Cedex
France

19 August 2022

Re: Joint Third Party Intervention in 31 applications v. Greece communicated on 2 December 2021

Dear Mr President,

Pursuant to Article 36 of the Convention and Rule 44 of the Rules of the Court, the Greek Council for Refugees (GCR), Hellenic League for Human Rights (HLHR), HumanRights360 and Equal Rights Beyond Borders respectfully present their written observations in 31 cases of alleged pushbacks communicated on 2 December 2021¹. Following a summary of the legal framework regarding irregular (illegal) entry and deportation, our organizations will present their observations regarding lack of effective legal remedies for victims to challenge illegal forced returns (*pushbacks*).

I. Legal framework regarding irregular (illegal) entry and deportation

Any third country national attempting to enter the country in an irregular way (without valid travelling documents or through a non-official and controlled border pass) is subject to reception and identification procedure which takes place in the established Reception and Identification Centres (RICs) in the Greek territory (currently in Evros region – Fylakio, as well as in 5 Eastern Aegean islands – Lesbos, Chios, Samos, Leros and Kos) according to art. 14 of law 4375/2016 and art. 39 of law 4636/2019 subsequently (codified under art. 38 of law 4939/2022 Code of Reception, International Protection of third country nationals and stateless and temporary protection in case of mass influx of displaced persons). According to the legislation in force, persons having entered Greece irregularly, must be immediately transferred to the responsible RICs by the competent police or coast guard authorities and are referred to the asylum procedure. “Making” an application for international protection even by the expression

¹ M.A. v. Greece, n°42429/21; H.T. and others v. Greece, n° 4177/21; S.A.A. and others v. Greece, n° 22146/21; K.K. v. Greece, n°1712/21; I.M. v. Greece, n° 2871/21; S.K. v. Greece, n° 3104/21; S.A. v. Greece, n° 3111/21; I.M. v. Greece, n° 3118/21; T.M. v. Greece, n° 4159/21; A.R. v. Greece, n° 16807/21; M.H. v. Greece, n° 16811/21; M.M. v. Greece, n° 16813/21; M.H. v. Greece, n° 16815/21; A.M. v. Greece, n° 16817/21; A.A. v. Greece, n° 16818/21; H.S. v. Greece, n° 16820/21; S.R. v. Greece, n° 16822/21; U.E. v. Greece, n° 16824/21; W.A. v. Greece, n° 16825/21; W.A. v. Greece, n° 16828/21; S.H. v. Greece, n° 16831/21; G.R.J. v. Greece, n°15067/21; A.A.J. and H.J. v. Greece, n° 24982/21; F.C. v. Greece, n° 10258/21; O.M. v. Greece, n° 10692/21; M.A. v. Greece, n° 12807/21; M.E. v. Greece, n° 12926/21; M.S. v. Greece, n° 13134/21; A.D. v. Greece, n° 4034/21; S.G. v. Greece, n° 6923/21 and S.R. v. Greece, n° 16802/21.

of their intention to seek international protection orally or in writing, subject to no administrative formality, means that they acquire asylum-seeker status and the corollary right to remain on Greek soil (cf. art. 2(b), art. 9 Asylum Procedures Directive 2013/32/EU). If their asylum application is rejected, they are subjected to return procedure according to law 3907/2011, which incorporated EU Return Directive 2008/115/EC. In the above procedure governed by law 4375/2016, subsequently law 4636/2019 (recently replaced by law 4939/2022), as well as law 3907/2011 the non-refoulement principle is explicitly codified domestically at almost any stage of the procedure.

While EU law describes one return procedure, the Greek legislation is more specific so that there is also a separate deportation procedure applying to EU citizens, as well as to third country nationals, when they are subject to a refusal of entry in accordance with art. 13 Schengen Borders Code, or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorization or a right to stay in that Member State (under art. 17 of law 3907/2011 which incorporated the reservation of art. 2 of Directive 2008/115/EC). In such case a deportation procedure could be followed under art. 76 et seq. of law 3386/2005, if the person concerned does not express the intention of making an application for international protection. Regarding the non-formality of the asylum application described above, there are few scenarios in which it would seem possible, that a protection seeker does not want to apply for asylum in this sense. Further, according to art. 78A law 3386/2005, no expulsion decision shall be issued in case the conditions of the principle of non-refoulement, as set out in art. 3 UN Convention against Torture, art. 7 International Covenant on Civil and Political Rights, art. 31 and 33 1951 Convention Relating to the Status of Refugees and art. 3 ECHR, are fulfilled.

It is to be noted that in any of the above procedures, persons concerned must be registered by the competent authorities and a written administrative decision concerning their deportation return or readmission must be issued, which has not allegedly taken place in the present cases submitted before the Court.

II. Non-Existence of appropriate legal remedies concerning violation of non-refoulement principle

While the principle of non-refoulement is a fundamental principle of international law, there is no legal remedy in the Greek domestic system concerning its violation at any stage before the registration of a third country national in the Greek territory. In the cases pending before the Court, applicants were allegedly not registered by any competent authority in Greece. Under art. 35 ECHR, the Court is subsidiary to the national systems safeguarding human rights and national courts should initially have the opportunity to determine questions regarding the compatibility of domestic law with the Convention (A, B and C v. Ireland [GC], § 142). The rationale for the exhaustion rule is to afford the national authorities, primarily the courts, the opportunity to prevent or put right the alleged violations of the Convention (see the summary of the principles in Gherghina v. Romania (dec.) [GC], §§ 84-89; Mocanu and Others v. Romania [GC], §§ 221 and seq.; Vučković and Others v. Serbia (preliminary objection) [GC], §§ 69-77, further: European Court of Human Rights, Practical Guide on Admissibility Criteria, Last update: 30.04.2022, references therein.).

Applicants are only obliged to exhaust domestic remedies which are available in theory and in practice and which they can directly institute themselves – that is to say, remedies that are accessible, capable of providing redress in respect of their complaints and offering reasonable prospects of success (Sejdovic v. Italy [GC], § 46; Paksas v. Lithuania [GC], § 75. Where an applicant seeks to prevent his removal from a Contracting State for an alleged risk of a violation of Articles 2 or 3 in a third State, a remedy will only be effective if it has suspensive effect (see, for Article 3 and Article 4 of Protocol No. 4 complaints, M.K. and Others v. Poland, §§ 142-148, and the references cited therein). The Court must examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (D.H. and Others v. the Czech Republic [GC], §§ 116-122).

A. Lack of an official decision to be challenged before administrative courts

In Greek administrative law, any legal remedy requires an official administrative decision in written or an omission to perform an obligatory act, to be challenged before an administrative Court. A conduct equivalent to an administrative act, such as the deportation, is not appealable without a written decision. In the present cases, no official decision was issued regarding the removal of the applicants. Furthermore, since they were allegedly summarily removed from the Greek territory upon their first encounter with the Greek authorities without their entry/presence being registered in any official record and were deprived of their right to receive legal assistance, had no available remedy to prevent their removal².

B. Compensation under art. 105 Introductory Law of the Civil Code

Deportation, return or readmission decisions may be challenged before the competent Administrative Courts under art. 15 law 3068/2002³. Illegal acts of the administrative authorities can be challenged only through an action for claiming compensation under art. 105 of the Introductory Law of the Civil Code, which provides the liability of the State to compensate any damages incurred including non – pecuniary damage to any person subject of any illegal act of the authorities. The breach of duty of the competent administrative authorities to follow the procedures prescribed by law certainly constitutes such an illegal act. It should be noted that under the relevant administrative legislation of the Code of Civil Servants, perpetrators are excluded from any liability and the State has the right to seek the compensation awarded from the responsible civil employees, police, or coast guard personnel, under certain conditions, only in cases of intention or gross negligence. Additionally, a mere violation of the non-refoulement principle, as established in European and international (human rights) law, including the possible exposing of a person to conditions that are not in line with art. 3 ECHR, is not a breach of domestic legislation which could substantiate such a claim. Compensation can only be claimed, when State agents directly violate their negative

²According to art. 45 Presidential Decree 18/1989, any omission to perform an act from the administration can be challenged only after the exhaustion of the relevant time limits (in case no time limit exists, after the lapse of a three months' time limit). In the present cases where a summary removal allegedly took place, it is obvious that no such time limit could be followed.

³ Law 3068/2002 transferred the relevant competence from the Council of State to the administrative courts. The Council of State retains, under art. 95 of the Greek Constitution, the review of any administrative decision at the appeal stage.

obligations, hence if the conditions of the removal amounted themselves to torture or inhuman or degrading treatment, which is an act punished by the penal legislation.

Furthermore, according to the well-established jurisprudence of the Court “*in cases of wilful ill-treatment the breach of Article 3 cannot be remedied only by an award of compensation to the victim. This is so because, if the authorities could confine their reaction to incidents of wilful ill-treatment by State agents to the mere payment of compensation, while not doing enough to prosecute and punish those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity, and the general legal prohibition of torture and inhuman and degrading treatment, despite its fundamental importance, would be ineffective in practice*” (Gäfgen v. Germany 1 June 2010 Application no. 22978/05, p. 119, Krastanov § 60; Çamdereli, § 29; and Vladimir Romanov, § 78, Shmorgunov and other v. Ukraine 21 Jan 2021, Applications nos. 15367/14 and 13 others p.397-401, Jeronovičs, § 116; Grecu v. the Republic of Moldova, no. 51099/10, § 21, 30 May 2017).

Therefore, a claim under art. 105 Introductory Law of the Civil Code in cases of persons already removed from the Greek territory who are now applying before the Court seeking their rights under art. 2 and 3 of the Convention, cannot be reasonably expected to be made by the applicants, since for the above reasons this legal remedy is deemed inappropriate. Furthermore, the amounts granted by domestic administrative courts, above from the excessive length of administrative proceedings, which continues to be a structural problem even after the reform of law 4055/2012, are rather symbolic and do not constitute a complete redress for the damages incurred to the victims whose fundamental rights were violated⁴.

Finally, art. 105 Introductory Law of the Civil Code does not have suspensive effect for preventing removal for an alleged risk of a violation of Articles 2 or 3 in a third State and in any case is not capable of providing redress in respect of applicants’ complaints.

Hence, there are no remedies to be exhausted in administrative or civil law as they are either non-existent or cannot be considered effective, so that an exhaustion is not needed to meet the criteria of Art. 35 ECHR.

C. Penal procedures

1. No Penal Provisions in Law

An act of refoulement which could result to the exposure of a person to the risk of life or to conditions that amount to torture or inhuman or degrading treatment taking place out of the Greek territory cannot be prosecuted, since any causal link of the domestic authorities’ responsibility is dissolved due to the territorial principle of the penal

⁴ In at least three decisions of the competent administrative courts (1093/2020 and 2965/2019 of the Court of Appeal of Athens and 7005/2018 of the Court of First Instance of Athens) the amounts awarded were even less than the minimum amount granted by the Court to applicants of the case with appl. n° 39089/2012 concerning torture made by police officers (7.000, 6.000 and 1.000 euros respectively for non – pecuniary damage). Also, in one case (decision 6286/2014 of the administrative court of Athens) the amount awarded was 1.897,41 euros (1.500 euros for non – pecuniary damage and 397,42 euros for loss of income for a period of 15 days illegal detention, while the applicant did not claim any just satisfaction from your Court which found a breach of art. 5 of the Convention – case with appl. n° 11919/2003).

legislation (art. 5 of Greek Penal Code). In addition, torture, or exposure to inhuman or degrading treatment performed in a third state do not constitute crimes that can be prosecuted under Greek penal legislation, under any extraterritorial jurisdiction provision, since they are not covered by art. 8 of Greek Penal Code or other international agreements or Conventions, that allows their prosecution.

The provisions of the Greek Penal Code (the previous one of 1951 and the current law 4619/2019 in force from 01/07/2019) which could be considered as relevant are: 137A Torture, 299 Murder, 302 Unintentional Murder, 306 Exposure to risk, 307 Failure of saving from risk of life, 308 et seq. Bodily harm, 322 Abduction, 325 Illegal retention, as well as other specific provisions of the Military Criminal Code or Public Maritime Law.⁵ Yet, even though one could consider them as appropriate and sufficient to fulfil the conditions of prosecution and punishment of acts that could amount to risk of life or torture or inhuman or degrading treatment, they are not available in practice as provided only in theory with minimum or almost insignificant application in practice.

According to the established database of domestic legal procedures in Greece (NOMOS database) with at least 17978 entries for penal cases, in a query with the word *refoulement* (*επαναπροώθηση*) only 31 entries are returned, among which the majority concerns extradition cases (14 cases), while the rest concern acts committed by foreigners (10 cases), 5 irrelevant acts (embezzlement, bribery, bodily harm, escape of a detainee), 1 irrelevant case (concerning administrative jurisdiction) and only one concerns conviction of coast guards at first instance for torture (365/2013 Navy court – *Ναυτοδικείο Πειραιά*). The latter decision has been overturned in the Appeal Court. Apart from this, even this case does not itself refer to a removal procedure, but rather to acts of direct torture or inhuman and degrading treatment of detainees by State agents upon their entry into Greece to receive information on the smuggling of persons at sea, and to intimidate the rest. Also, out of 591 entries concerning military penal code, at a same query, only 2 entries are returned (a same as above extradition case and the decision of the Navy Court referred to above).

A provision that could fit in the context of alleged violations that concerns the principle of non-refoulement, particularly without any registration of the people taken in custody and removed summarily from the Greek territory without any individualized formal procedure, are art. 4 et seq. Convention for the Protection of all Persons from Enforced Disappearance. It provides that the act of enforced disappearance should be punished under domestic penal law. The Convention was ratified by Greece with law 4268/2014. Yet, the provision has never been applied in practice.⁶ In the NOMOS database only one entry concerning this law exists, that as such does not concern an act of enforced disappearance. Finally, the provision was abolished by the new Penal Code 4619/2019 and is hence not in force anymore. Thus, currently the most relevant provision regarding respective acts remains art. 322 (abduction) which punishes anyone that deprives a person from the protection of the State. Yet, there is no implementation of this article against State agents.

⁵ Art. 82A Penal Code is not an autonomous penal provision but an aggravating circumstance, providing a higher range of penalties for crimes committed out of racist motive

⁶ In the Greek NOMOS database there is only one entry concerning this law, irrelevant itself of an act of enforced disappearance.

2. No (effective) investigations in practice

Thus, even at cases where a penal investigation is initiated, the current system of investigations into allegations of ill-treatment cannot be considered effective in law nor in practice.⁷ The CPT's findings confirm that investigations are still not carried out promptly or expeditiously and often lack thoroughness.⁸ Further, the criteria for deciding to investigate cases under the torture provision of Article 137 A Criminal Code are unclear. Consequently, most cases of alleged police ill-treatment are not criminally prosecuted and only very few result in criminal sentences or even disciplinary sanctions. This is underlined by the fact that none of the 21 outstanding cases of alleged serious police ill-treatment raised by the Internal Affairs Directorate of the Hellenic Police in April 2014, including two cases examined in extenso by the CPT in 2015, has resulted in a successful prosecution. These flaws in turn undermine any message of zero-tolerance and foster a culture of impunity. It is important that all allegations of ill-treatment by law enforcement officials are investigated effectively, and that the Greek criminal justice system adopts a firm attitude regarding torture and other forms of ill-treatment. Regrettably, the CPT's standards as regards procedural safeguards against ill-treatment are still not effectively implemented in Greece⁹.

3. No investigations against pushbacks in concreto

In addition, our organizations would also like to stress that Greece has never conducted an effective investigation regarding the numerous allegations, reports, testimonies, and criminal complaints on illegal pushbacks, neither at the level of the judicial system nor at the level of independent authorities or mechanisms. Our organizations have officially addressed these issues to the Greek judicial authorities. For instance, HLHR presented relevant cases to the Supreme Court of Greece, in 2017, receiving no answer. On 18 June 2019, GCR filed three complaints before the Public Prosecutor on behalf of five survivors of pushbacks regarding three different incidents. The first complaint was dismissed, the second was archived and the third was also dismissed. During 2021 three different applications, related to the above three cases, were submitted before the Court regarding the above-mentioned cases (A.E. v. Greece n° 15783/21, Turk and Others v. Greece n°56845/21, Akcay v. Greece n° 60702/21).

All applicants were Turkish citizens who fled their country for reasons provided by Article 1 A 2 1951 Geneva Convention. In 2019, they entered Greek territory after crossing the river Evros from Türkiye. Even though they explicitly expressed their wish to apply for asylum, the Greek authorities did not register their applications, therefore already making access to any effective remedy impossible, as shown above. Given the very few hours that they remained in Greece, restricted by the police and the accelerated and unofficial way under which their return took place, they did not have in practice any opportunity to initiate any procedure to challenge their unlawful summary return. The complaints were submitted to facilitate the identification and punishment of the

⁷ Cf. also extensively on this the Joint Third Intervention by the European Center of Constitutional and Human Rights, Refugee Support Aegean and Pro Asyl, https://www.ecchr.eu/fileadmin/user_upload/Joint_third_party_intervention_ECCHR_proasyl_RSA.pdf

⁸ *Ibid.*

⁹ Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 28 March to 9 April 2019 published on 9 Apr 2020, CPT/Inf (2020) 15, <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-report-on-greece-3>

perpetrators. In the complaint against any responsible person, GCR included the following breaches of the Greek Criminal Code (CC) indicatively: Abuse of power (a.239 CC), breach of duty (a.259 CC), unlawful retention (a.325 CC), failure redemption from life-threatening (a.307 CC), exposure to danger (a. 306 CC), simple bodily injury (a. 308 CC), unprovoked bodily injury (a. 308A), hazardous injury (a. 309 CC), causing damage by continuous harsh behaviour (a.312 CC), damage of a foreign ownership (a. 381 CC), torture and other infringements of human dignity (a. 137A CC). The Public Prosecutor of the First Instance Court of Orestiada initiated criminal proceedings after receiving the above *notitia criminis* (complaint), the information and the evidence that the criminal offences had been committed.

The three examples may demonstrate that Greece is not conducting effective investigations on alleged pushbacks.

a. In the first case (one applicant, A.E. v. Greece, application n° 15783/21), the Prosecutor of the First Instance Court of Orestiada dismissed the complaint in December 2019. According to the Prosecutor, the content of the complaint, the witness statement of the policeman and the documents that were included in the file did not provide any evidence that a criminal offence had been committed. Following the Prosecutor's order, an appeal against the dismissal was lodged before the Prosecutor of the Court of Appeal of Thrace in February 2020. The Prosecutor of the Court of Appeal of Thrace ordered the continuation of the preliminary examination. By his order, he called two out of the three witnesses from applicant's side, excluding the third one on the ground that he could not travel to Greece from his country of residency elsewhere in the EU and all the police officers in service in the border guard station of Orestiada the day that the refoulement took place. In September 2020, the Prosecutor dismissed the case on the grounds that there was no evidence against the police and that Greece, especially the Greek police, *never conducts pushbacks to Türkiye*. It should be noted that the Prosecutor considered the testimonies of the police officers (who were also possible offenders of the alleged crimes against the victim) to be more important than the other submitted evidence, which included testimonies of an eye-witness lawyer and a journalist, photos of the applicant in front of a Greek public service before being apprehended by the police and returned to Türkiye as well as many live locations shared by her, since their entry in Greece and before confiscation of her mobile phone.

b. In the second case (three applicants), the Prosecutor only investigated the incidents which took place on the day after the second entry of the applicants in Greece and not the incidents of the day when the pushback took place. The applicants mentioned 8 (unknown) perpetrators, however the investigation only included two police officers who were on duty on the wrong date. More precisely, the Prosecutor of Alexandroupolis, who was conducting the preliminary/pretrial investigation, adopted a partial "negative" decision and decided to transfer the case to the archive of unknown perpetrators. The legal form of a note on the case folder in February 2021 practically means that the investigation stopped, and no more investigations would take place until the end of the limitation period for the criminal offences (*παραγραφή εγκλημάτων*). In April 2021, GCR submitted an application before the Prosecutor of Alexandroupolis against the Prosecutor's above decision, underlining that:

- There was not a proper evaluation of evidence by the Greek judicial authorities.
- The Greek judicial authorities did not investigate the police officers in charge the time that the applicants submitted that the illegal acts were committed.

- No list of police officers / other authorities on duty was brought into the criminal investigation.
- There was a contrast between the testimonies of the two policemen, compared with the rest of the testimonies and the criminal folder.
- There was new evidence (detention decisions) which proved that the “official” detention of the applicants started two days after their second entry in Greece.
- The entire criminal investigation focused on a wrong date when the applicants were already officially present in Greece and placed under detention, which was two days after their alleged push back.

In May 2021 the Prosecutor of Alexandroupolis rejected the application justifying the refusal to remove the case from the archive of unknown perpetrators, on the basis that:

- There was no new and crucial evidence provided by the applicants, (particularly about the identity of the offenders).
- The applicants’ allegation that the time of the criminal acts differs to the time of the investigated incidents because two police documents displayed that there was no involvement-participation of the police in any incident with the applicants on the correct date and the witnesses suggested by the applicants did not testify about the identity of the offenders, would be unfounded.

c. In the third case (one applicant, victim of 5 consecutive pushbacks in May 2019), the Prosecutor’s office started a preliminary investigation. Following a request by the Prosecutor in August 2019, the internal affairs section of the Hellenic Police started a parallel investigation into possible criminal and disciplinary responsibility of policemen allegedly involved in the crimes against the applicant. During this procedure the applicant gave his detailed testimony and recognized three policemen on photos that were shown to him, who later were invited to provide an unsworn statement to the Prosecutor. All three recognized and admitted that they met the applicant on the Greek territory. Two of them said that they met him during a patrol at the border of river Evros and the third one on the Greek territory in front of a border guard station, but the applicant would have been run away spontaneously in fear of being arrested. This is contrary to the fact that he turned himself in to the police on his own initiative. The Prosecutor collected other evidence as well (documents, witness statements). In January 2021, the Vice-Prosecutor of first Instance of Alexandroupolis dismissed the applicant’s complaint against the three policemen that he had recognized, as they would have acted in compliance with their official duty and not in the manner described by the applicant. In February 2021, GCR submitted a written statement in support of the accusation, explaining the moral damage that had been caused to the applicant and asking compensation for the events under the criminal complaint. In March 2021, GCR lodged an appeal provided by art. 52 CCP against the Prosecutor’s order before the Prosecutor of the Court of Appeal with the following arguments:

- The order did not include any document or testimony except for the unsworn testimony of the three policemen.
- The Prosecutor did not evaluate the relevant evidence included in the case files and did not collect any additional evidence that should be collected by his order during the pre-trial examination.
- The order did not include testimonies from the other police officers and their on-duty commanders from the same dates and times of the alleged incidents.

- The Prosecutor did not transmit the case files for approval to the Prosecutor of the Court of Appeal before adopting a decision (which is mandatory under art. 43 par. 3 CCP).

In June 2021, the Prosecutor of Appeal of Thrace notified GCR of the rejection of the appeal. The reasons for the rejection were that the applicant did not submit additional evidence to the Court and that, in searching for witnesses and the vehicle used during the pushback, the criminal investigation reached a dead end because they could not locate the two witnesses suggested by the applicant and the car belonged to a civilian residing in Evros.

Thus, penal procedure does not provide any remedy with suspensive effect to prevent removal for an alleged risk of a violation of Articles 2 or 3 in a third State and remedies for violation of Penal Code's relevant articles do not offer reasonable prospects of success¹⁰.

III. Ineffectiveness of any proceedings (even if theoretically available)

Even at the case that the above procedures could be deemed as appropriate and effective legal remedies, which should be exhausted before the applicants submitting their applications before the Court, there would be special circumstances dispensing them from the obligation to avail themselves of the domestic remedies available (*Sejdovic v. Italy* [GC], § 55). This is so since an “administrative practice” consisting of a repetition of acts incompatible with the Convention and official tolerance by the State authorities has been shown to exist, and is of such a nature as to make proceedings futile or ineffective (*Aksoy v. Türkiye*, § 52; *Georgia v. Russia (I)* [GC], §§ 125-159; *Ukraine v. Russia (re Crimea) (dec.)* [GC], §§ 260-263, 363-368; *Georgia v. Russia (II)* [GC], §§ 98-99 and 220-221).

Concerning allegations on pushbacks the last 2,5 years the United Nations Special Rapporteur on the human rights of migrants recently stated that “In Greece, pushbacks at land and sea borders have become de facto general policy.”¹¹ Also, a wide array of authoritative European and International monitoring bodies corroborates these concerns and consistently denounce systemic breaches of fundamental rights at Greece's land and sea borders within the scope of their respective mandates. These include at least:

- The United Nations High Commissioner for Refugees (UNHCR);¹²
- The International Organisation for Migration (IOM);¹³
- The United Nations Committee on Enforced Disappearances (CED);¹⁴

¹⁰ It should be noted that there is no legal remedy against the rejection orders of the Prosecutor of the Court of Appeal.

¹¹ UN Special Rapporteur on the human rights of migrants, para 32, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F50%2F31&Language=E&DeviceType=Mobile&LangRequested=False>

¹² UNHCR, ‘UNHCR warns of increasing violence and human rights violations at European borders’, 21 February 2022, available at: <https://www.unhcr.org/news/press/2022/2/62137a284/news-comment-unhcr-warns-increasing-violence-human-rights-violations-european.html>

¹³ IOM, ‘IOM Alarmed over Reports of Pushbacks from Greece at EU Border with Turkey’, 11 June 2020, available at: <https://www.iom.int/news/iom-alarmed-over-reports-pushbacks-greece-eu-border-turkey>

¹⁴ CED, Concluding observations on the report submitted by Greece, CED/C/GRC/CO/1, 12 April 2022, paras 28-31, available at: <https://bit.ly.co/DtAq> https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CED/C/GRC/CO/1&Lang=en

- The United Nations Committee on the Rights of the Child (CRC);¹⁵
- The United Nations Human Rights Council;¹⁶
- The United Nations Working Group on Arbitrary Detention (WGAD);¹⁷
- The United Nations Special Rapporteur on the human rights of migrants;¹⁸
- The United Nations Special Rapporteur on human rights defenders;¹⁹
- The Council of Europe Commissioner for Human Rights;²⁰
- The European Committee for the Prevention of Torture (CPT)²¹.

Yet, despite these consistent and credible allegations, corroborated by all the above European and International monitoring bodies, no investigation has been launched from the Greek Government, which has remained totally passive in the face of serious allegations of misconduct or infliction of harm by State agents, such as the present cases, failing to undertake investigations or offer assistance. In that case it becomes incumbent on the Greek Government to show what it has done in response to the scale and seriousness of the matters complained of (*Demopoulos and Others v. Türkiye* (dec.) [GC], § 70).

Last to mention is that the Greek judicial system, where penal procedures have been initiated, even though cases have been brought before the attendance of prosecutors, either remained passive (up today there is no known penal procedure reaching beyond preliminary stage against state agents for the incidents at least of the last years), either followed a deficient and inadequate investigation, dismissing the allegations at a preliminary stage²².

¹⁵ CRC, ‘Experts of the Committee on the Rights of the Child Ask Greece about Roma Children and Push Backs of Refugees at the Border’, 4 May 2022, available at: <https://www.ohchr.org/en/press-releases/2022/05/experts-committee-rights-child-ask-greece-about-roma-children-and-push-backs>

¹⁶ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Greece, A/HRC/49/5, 6 January 2022, paras 130.96, 130.202, 130.204, 130.209, 130.214, 130.215, 130.216, 130.223, 130.226, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/002/15/PDF/G2200215.pdf?OpenElement>

¹⁷ WGAD, Report of visit to Greece, A/HRC/45/16/Add.1, 29/07/20, paras 87-88, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F45%2F16%2Fadd.1&Language=E&DeviceType=Desktop&LangRequested=False>

¹⁸ UN Special Rapporteur on the Human Rights of Migrants, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/328/57/PDF/G2232857.pdf?OpenElement>

¹⁹ UN Special Rapporteur on Human Rights defenders, ‘Statement on preliminary observations and recommendations following official visit to Greece’, 22 June 2022, <https://srdefenders.org/statement-on-preliminary-observations-and-recommendations-following-official-visit-to-greece/>

²⁰ Council of Europe Commissioner for Human Rights, ‘Greek authorities should investigate allegations of pushbacks and ill-treatment of migrants, ensure an enabling environment for NGOs and improve reception conditions’, 12 May 2021, <https://www.coe.int/en/web/commissioner/-/greek-authorities-should-investigate-allegations-of-pushbacks-and-ill-treatment-of-migrants-ensure-an-enabling-environment-for-ngos-and-improve-recept>

²¹ ‘Council of Europe’s anti-torture Committee calls on Greece to reform its immigration detention system and stop pushbacks’, 19 November 2020, <https://www.coe.int/en/web/cpt/-/council-of-europe-s-anti-torture-committee-calls-on-greece-to-reform-its-immigration-detention-system-and-stop-pushbacks>

²² In the recent decision of *Safi and others v. Greece* (appl. n° 5418/15) the Court, apart from other findings regarding shortcomings in the proceedings observed that: “*le procureur s’est limité à constater que « le refoulement comme procédure de renvoi ou de remorquage (...) vers les eaux territoriales turques n’existe pas en tant que pratique (...) ».* Il a ajouté qu’il serait « inutile et superflu » de prendre en compte les paramètres spécifiques des allégations des requérants en raison du fait que leur version des faits était basée sur l’hypothèse que leur bateau était remorqué vers les côtes turques, ce qui, selon l’évaluation et l’appréciation des preuves faites par le procureur, ne pouvait pas être le cas en l’espèce”

Administrative procedures that might be relevant such as the competence of the Ombudsman as the National Mechanism for the Investigation of Arbitrary incidents under law 4443/2016, the National Transparency Authority or the newly established under law 4960/2022 Protection Officer and the Special Committee for Conformity with Fundamental Rights within the Ministry of Migration and Asylum, apart from their ineffectiveness and therefore inappropriateness, anyway do not constitute legal remedies, since they lack competence for punishing acts that violate the Convention.

IV. Outcome

After all, due to the above shortcomings, both in law and in practice, there exists no appropriate, adequate, and effective legal remedy, in the notion of art. 35 ECHR, which an applicant should exhaust, before applying to the Court in cases of alleged pushbacks allegations in the Greek territory, especially in the last 2,5 years, where such practice has become a “de facto general policy”.

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(para 127), concluding that the national (judicial in that case) authorities had not carried out a thorough and effective investigation.