

Illicit Return Practices of Irregular Migrants from Greece to Turkey

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Abstract—Since 2011, in the name of ‘humanitarianism’ and deaths in the Mediterranean Sea, the legal and political justification delivered by Greece to manage the refugee crisis is pre-emptive interception. Although part of the EU, Greece adopted its own strategy. These practices have also created high risks for migrants generally resulting in non-rescue episodes and push-back practices having lethal consequences to the life of the irregular migrant. Thus, this article provides an analysis of the Greek ‘compassionate border work’ policy, a practice known as push-back. It is argued that these push-back practices violate international obligations, notably the ‘right to life’, the ‘duty to search and rescue’, the prohibition of inhuman or degrading treatment or punishment and the principle of *non-refoulement*.

Keywords—Greece, migrants, push-back policy, violation of international law.

I. THE SO-CALLED GREEK ‘COMPASSIONATE BORDER-WORK’ POLICY

SINCE 2011, irregular migrants have been victimised not only by the circumstances occurring in their countries of origin, but also by the Greek ‘compassionate border work’ policy, adopted to manage the influx. The legal and political justification delivered by Greece to manage the migrant crisis is pre-emptive interception at sea and active interception at land [1]. This is also justified in the name of humanitarianism and deaths in the Mediterranean Sea. This pre-emptive interception strategy can be summarised in the words of a European coast guard quoted in research conducted by Andersson: to avoid deaths at sea the strategy is ‘to prevent [migrants] from leaving’, that is, prevent them getting on a boat which leads to danger [2]. The Australian Prime Minister Tony Abbott described this approach as a compassionate policy, to ‘stop the boats’ in a determination to save lives [3]. Whereas in reality, through this active interception, Greek authorities ensure the timely interception of irregular migrants at Greek-Turkish borders and their forced push back to Turkish borders.

Since 2011 to 7 October 2018, Greece has received more than 1,258,403 irregular entries via the Eastern Mediterranean Route [4] out of which the majority had departed from Turkey. For 2011 to 7 October 2018 there were approximately 19,532 registered deaths in the Mediterranean and Aegean seas [5]. Although the number of first-time applications decreased in 2018, still Greece remains one of the three main countries of destination [6]. Moreover, in Greece in the first quarter of 2019, the number of asylum seekers increased by 3 000

compared with the same quarter of 2018 by becoming the second country – after Spain – with an increase number of asylum seekers between 2018 and 2019 [7]. Hence, in accordance with its ‘compassionate border-work’ policy, Greece interacts in relation to Turkey out of ‘compassion’, that is, it exercises active interception in order to prevent irregular migrants from departing on unseaworthy boats or to embark upon dangerous land routes and thus risking their lives. However, the underlying objective of this policy is to ensure that even if these individuals manage to depart, Greek coastguards will ensure their push-back [8]. During push-backs, irregular migrants claim that their lives have been endangered intentionally by Greek coastguards who have seized the boat engine, or have pierced holes in boats and subsequently abandoned them in Turkish territorial waters; these practices have contributed to irregular migrants’ boats capsizing and resulting in loss of life [9], [10]. Other practices at Greek-Turkish land borders have been to burn off their shoes, their personal assets and leaving them half naked in freezing weather conditions back to Turkish borders [11]. In addition, irregular migrants claim that violence has been used against them during push-backs [12].

The Greek push-back practices at sea appear to be similar to the strategy of smugglers in Libya, that of ‘self-induced distress’ [13]. Smugglers in Libya left irregular migrant boats stranded at sea without a boat engine and in unseaworthy conditions [14]. The smugglers however perceive the refugee crisis as a business opportunity; to them, the interception practices are part of a ‘border game’ [15]. All smugglers have to do is to ensure that the irregular migrants cross the territorial sea onto the high seas and then call the Greek Rescue Coordination Centre for assistance, taking advantage of the search and rescue legal framework. In response to this ‘border game’, Greece has adopted its own illicit strategy, that of informal forced returns known as push-backs: Upon interception, the boat in ‘distress’ is not offered immediate assistance in accordance with international obligations under the search and rescue legal framework [13], instead, coastguards take steps to ensure the immediate return of these individuals to their country of departure without examining their individual circumstances [16], [17].

In their fight against smugglers, organised crime and terrorism, Greece seeks to persuade the rest of the world that their interception practices are not directed against irregular migrants whom they purportedly see as ‘victims’, but against smugglers whom they consider to be the ‘cause’ of the migration outreach [18]. All these fall ‘under the rubric of compassionate border work’ [19] in which Greece purports to

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have developed measures such as interception and surveillance as lifesaving tools. Irregular migrants are indeed the victims of the declared war between the Member States and smugglers, but in their effort to fight smugglers, Greece has turned these 'victims' into 'targets'. It is argued that the fight against smugglers by no means justifies a policy resulting in violation of human rights law and other international obligations. However, in this paper it is argued that these measures are adopted as deterrent tools to irregular migration having as their main objective the circumvention of international responsibility contrary to international obligations and human rights laws. This paper also argues that through identifying these interception practices as necessary measures in the fight against smugglers, Greece risks adverse effects in the form of violations of international obligations and human rights law as unfortunate collateral damage [20]. This contribution is aligned with the recent national case-law of some EU Member States: on 17 July 2019, Germany [21] and the Netherlands [22] suspended the application of the "Dublin transfer" [23] to Greece due to risk of chain refoulement to Turkey. It cannot be precluded that the Greek authorities are exercising similar practices against irregular migrants' boats intercepted on the high seas, in Greek territorial waters or at land to avoid acquiring international responsibility in accordance with international human rights and refugee law. Indeed, in May 2019, Euronews reported push-back practice against 82 Turkish citizens, including children, linked to the Gulen Movement, that have sought political asylum in Greece [24]. This scientific work may contribute to shed the light in this recent media news.

This paper has the following structure: Section II exposes the main facts of push-back practices by arguing the violation of right to life and State duty to rescue. This section considers not only academic sources but also internet sources of important national and international bodies dealing with the protection of refugee rights. This method is used since the refugee crisis is an on-going issue. Section III analyses the case of ill-treatment that have been occurred during these push-back policies. Moreover, it updates the readers with the recent Greek violation of European Convention on Human Rights (ECHR) towards refugees. In the conclusions, this manuscript suggests some remedies also based on the critical analysis of some of the most recent case-law studies.

II. PUSH-BACK PRACTICES IN VIOLATION OF THE RIGHT TO LIFE

When conducting field operations, Greece claims to have fully respected applicable EU and international legal frameworks [25]. Nevertheless, the illegal practices conducted by Greek coastguards have been confirmed by the testimonies of irregular migrants during various studies conducted by Pro Asyl [17], HRW [10], Amnesty International [12], and Watch the Med [16]. The European Court of Human Rights (ECtHR) relied on similar reports produced by HRW and Amnesty International when it held that Greece were in violation of Article 3 ECHR [25]. The same form of documentation is now relied upon to prove that systematic push-backs are occurring

on the Eastern Mediterranean route (Greece to Turkey). For many years, NGOs have reported that Greece systematically pushes intercepted irregular migrants back from its territorial waters, on the high seas and/or through land to Turkey [17]. The pushed-back migrants were of Syrian, Somali, Afghan, or Eritrean nationality, identified by the United Nations High Commissioner for Refugees (UNHCR) as persons in need of international protection [26]. These individuals were given no opportunity to request international protection or challenge their forced return [13].

NGOs and even Frontex have confirmed practices of informal forced returns taking place from Greek territorial waters and/or on the high seas to Turkey [8]. In 2013, Frontex confirmed that it had received 18 reports alleging informal forced returns in the form of push-backs in groups [12]. The Greek authorities categorically denied such allegations, arguing they were isolated incidents [12]. It was the Council of Europe (CoE)'s Commissioner for Human Rights who reacted to the calls of NGOs in requesting an effective investigation addressing recorded incidents of unlawful practices in the form of push-backs [27]. In response to this investigation, the Greek government denied that there was a Greek policy of push-back in the Aegean Sea and confirmed their commitment to respect human rights. They stated that any allegations would be investigated, but that no such allegations had been received [28]. However, between November 2014 and August 2015, NGOs reported 11 incidents of push-back practices at Greek-Turkish land and sea borders [12], in which irregular migrants claimed violence was used against them [8]. In addition, these practices have contributed to irregular migrants' loss of life. It was only in October 2015 that the Prosecutor of the Thessaloniki Appeals Court ordered the Internal Affairs Directorate of the Police to commence a criminal investigation based on the reports of NGOs that push-backs were taking place in the Evros region [12]. However, no push-backs were found to have taken place [12].

The Greek practice of indiscriminate and systematic push back in Greek-Turkish borders and territorial waters continues to apply. Throughout 2017, the Greek Council for Refugees has reported allegations of systematic push backs at the Greek-Turkish Border of Evros [27]. The pattern used by Greek authorities has been similar: arbitrary arrest upon interception on Greek territory, *de facto* detention in police stations and transfer to Turkish borders through forced push back [27]. The UNHCR has reacted to these allegations by expressing its deep concern at reports of informal forced returns from Greece to Turkey [28]. The UNHCR has called upon Greek authorities to investigate such allegations however not only have the Greek authorities firmly denied these allegations throughout the years but also no proper investigation has taken place [29]. In June 2017, the Ombudsman decided to launch an *ex officio* investigation into the cases of alleged push backs [30]. It remains to be seen what the outcome of such investigation will be since until now no output has been published. On 7 June 2017, the CoE Commissioner for Human Rights expressed her concern about the 'reported expulsions

from Greece of asylum seeking Turkish nationals' [31]. Stockholm Center for Freedom has reported on 4 June 2017, that Greek security forces have pushed back by force Turkish nationals seeking asylum by escaping the purge of the country's political leadership [32]. These individuals seeking asylum were sent back by 'force, violence and threats' [32].

A Greek Refugee Rights Group reported in February 2018 that Greek authorities indiscriminately returned to Turkey 'families, pregnant women, torture victims and children' [11]. On 20 February 2018, the Greek Council for Refugees reported systematic illicit pushbacks of refugees in Evros for persons in need of international protection, asylum seekers and recognised refugees after being arrested on Greek territory, kept in detention and then pushed back to Turkey accompanied by the police [29]. On 6 July 2018, the Alarmphone reported 4 operations of push backs at the Greek-Turkish Land Border. The witnesses alleged to have been beaten during their transfer to Turkey [33]. Whereas, on 28 July 2018, the Greek newspaper Efimerida ton Syntakton was informed by other migrants that 14 refugees and migrants were pushed back to Turkey [11]. When pushed back by force the Greek authorities were reported to have burned their shoes, papers and other personal items [11]. All the testimonies of those returned had the following elements in common: 'transfer in crammed vans or overcrowded boats to Turkey under extremely poor hygiene conditions, the use of violence during transfer' in which their lives were exposed in danger [34]. In May 2019, Euronews reported push-back practice against 82 Turkish citizens, including children, linked to the Gulen Movement, that have sought political asylum in Greece [24].

During push-back practices, the most contentious incidents in violation of the 'right to life' were those occurring in Greek territorial waters on 20 January 2014, 25 October 2014 and 14 August 2015. These deaths have resulted as a direct consequence of these illicit returns. On 20 January 2014, a boat carrying 28 people sank 100 m from the Greek island of Farmakonisi during a search and rescue operation conducted by the Greek authorities [35]. Survivors told the UNHCR that immediately upon interception Greek coastguards towed the boat to Turkey. The coastguard vessel sped across the sea, flooding the irregular migrants' boat and causing it to capsize [26]. Survivors also claimed that once in the water, they tried to climb on board the Greek coastguard vessel but were beaten badly by the coastguards [36]. The migrants who managed to get on board were held at gunpoint [36]. The Greek coastguards categorically denied these allegations. They claimed that the boat capsized when being towed towards Greek territory and that weather conditions had not allowed the irregular migrants to board the Greek vessel [36].

Immediate reactions came from the EU and the CoE. The EU Commissioner for Home Affairs requested independent investigations [37]. The CoE's Commissioner for Human Rights commented that the incident appeared to be 'a case of failed collective expulsion' [38]. The Greek Minister of Shipping, Maritime Affairs and the Aegean was obliged to commence an investigation [39]. In August 2015, with the

approval of the Athens' Court of Review, the Prosecutor of Piraeus' Marine Court dropped the investigation holding the survivors' testimonies unfounded [35]. The investigation was argued by NGOs to have been conducted inadequately, not taking into consideration serious discrepancies in the evidence provided by the coastguard [36]. The termination of any investigation against Greek coastguards comes as no surprise when one considers the insistence of the Greek Foreign Minister that there had been no 'illegal repelling to Turkey' [40].

On 25 October 2014, Greek coastguards boarded a vessel, removed the engine's fuel tank, punctured the vessel and subsequently pushed the boat to Cesme, Turkey [41]. The boat was carrying migrants of Syrian nationality, including children and pregnant women [41]. On 5 August 2015, Watch the Med Alarm Phone reported four separate incidents of push-back practices (involving violence) from 26 July to 1 August 2015. It reported that 'masked special units of coastguard' had attacked boats of refugees between the Greek-Turkish islands [41]. According to the Alarm Phone, the boats were in distress as a result of Greek coastguards' attacks, and were left drifting at sea until they were rescued by Turkish coastguards. These allegations were confirmed by the Alarm Phone which was in direct contact with the irregular migrants straight after the attacks occurred. Furthermore, on 14 August 2015, Turkish fishermen claimed that a boat carrying 50 people was intentionally sunk by Greek authorities [42]. These fishermen supported their claim with a video [41]. On 15 June 2016, a further allegation of a push-back practice occurred between Chios, Greece and Cesme, Turkey [16]. On 22 August 2016, TheIntercept.com reports on the allegations of a female passenger to have been shot by the Greek patrol within the Frontex operational area [16]. Frontex documents the use of firearms against irregular migrant's boats targeting two shots to the outboard engine on the same date the allegation was made (24 November 2015). To date, no investigation has been undertaken by Greece to confirm or disprove these allegations.

On 7 December 2018, the Daily Sabah reported that four migrants were found dead near the Greek/Turkish borders after being suspected to have been 'pushed-back'. Turkish witnesses have accused the Turkish authorities to illicitly push back irregular migrants to Turkey in freezing weather, resulting in their deaths [43]. The migrants were found frozen to death in a Turkish village, near Edirne, bordering Greece. Despite the objections of the Greece Minister for Citizen Protection, Olga Gerovasili, the Anadolu Agency reports that in November alone there were 2,490 irregular migrants pushed back and 300 of them were subjected to ill-treatment by Greek authorities [43]. These events might be considered against international human rights: in particular, the 'right to life' and 'duty to rescue' since several international treaties – such as article 3 of the Universal Declaration of Human Rights, article 6 of the International Covenant on Civil and Political Rights, article 2 of the ECHR, and article 2 Charter of Fundamental Rights of the European Union – codify that 'no one shall be arbitrarily deprived of his life'. In the case of the maritime law, the 'right to life' is codified through the duty to render

assistance to persons in distress at sea and through the search and rescue obligations (article 10 of the International Convention on Salvage 1989, article 98(1) United Nations Convention on the Law of the Sea, and Article 2 ECHR). Article 2(2) ECHR describes the circumstances ‘where it is permitted to use force which may result as an unintended outcome in the deprivation of life’ [44]. Such use of force must not be ‘more than absolutely necessary’ [44] and in harmony with sub-paragraphs (a)-(c) of Article 2(2) ECHR. Furthermore, the Human Rights Committee emphasised the positive obligation of States to take measures within their ‘legal and administrative framework’ [45] to ensure that the lives of those persons within their jurisdiction are not lost (article 1 ECHR). The Greek authorities have a positive obligation to refrain from intentionally taking life since according to Palermo Protocols, Greece shall take ‘all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of smuggling as accorded under applicable international law, in particular the “right to life”’ [46].

As Greece is part of Operation *Poseidon* at sea in collaboration with Frontex, it is bound to follow the Frontex sea borders rules [47]. Irregular migrants are arriving on Greek shores in overcrowded, unseaworthy vessels controlled by unprofessional seamen. The deaths in the Mediterranean Sea and the arrivals on Greek shores are considered, according to the International Convention on Maritime Search and Rescue as ‘a real and immediate risk to the life of an individual’. Upon interception, the irregular migrants’ boats should be considered in a ‘distress phase’. As a result, Greece should make all the necessary actions to avoid any illicit practices leading to the capsizing of boats resulting in deaths [48]. It is the duty of the Greek coastguard’s captain to rescue these persons in distress, not to be the cause of their drowning [49].

Greece has a positive obligation to safeguard the lives of individuals within its jurisdiction and prevent loss of life [50]. This ‘causal relationship’ is established of interception [13] since there is no need to prove ‘effective control over its geographical surroundings’ [51]. Apart from establishing *de jure* and *de facto* control [52] to hold Greece accountable for the incidents of 20 January 2014, 25 October 2014 and 14 August 2015 it must also be proved that Greece ‘knew, or ought to have known, of any unlawful act perpetrated therein, or to have known the authors’ [53]. The Greek State has full command of its coastguards [54]. In addition, the reports produced by NGOs alleging push-back practices impute Greece with knowledge of unlawful acts perpetrated by its officials [17]. On the high seas, individuals have died as a direct result of Greek coastguards’ exercise of authority over irregular migrants’ boats [13]. In causing intentional damage to migrant boats and leaving them stranded at sea, it is argued that Greek officials are committing internationally wrongful acts (article 2 of the Responsibility of States for Internationally Wrongful Acts). These wrongful acts, in the form of push-back practices trigger international responsibility for Greece. In the Aegean Sea, the risk of death has

materialised but no action has been taken by Greece to adequately respond to such risk in accordance with its obligations under Article 2 ECHR [48].

The UNHCR deep concern for the alleged push-back and *refoulement* at the land border with Greece and Turkey has openly been expressed in a press release [55]. Due to the continuous reporting of alleged push-backs, the UNHCR representative in Greece, Philippe Leclerc, has strongly emphasised the importance that Greece authorities investigate into such allegations [55]. Therefore, in failing to conduct an effective investigation in respect of the 14 August 2015, 15 June 2016 and 7 December 2018 incidents, Greece is in breach of its procedural obligations under Articles 2 and 3 ECHR [48]. Greece has a positive duty imposed by the ECHR to commence investigations to identify those dying at sea and at land and punish those responsible for causing these deaths. Failure to commence investigations into alleged human rights violations constitutes an internationally wrongful act imputing Greece with international responsibility [13].

This paper shall also mention the coherence of ECtHR against illicit push-back practice. In the last decision of the ECtHR [56] regarding push-back practices held in January 2018, the ECtHR, found a violation of Article 4 of Protocol No. 4 (prohibition of collective expulsions of aliens) to the ECHR, and a violation of Article 13 (right to an effective remedy) taken together with Article 4 of Protocol No. 4. On February 2019, the UN Committee on the Rights of the Child condemned Spain for the same event [57]. It should be seen what the ECtHR will decide regarding the new application for this issue, which are currently pending [58].

III. IRREGULAR MIGRANTS SUBJECTED TO ILL-TREATMENT

Not only do Greek authorities have a positive duty to protect life at sea in the form of rescue but they also need to respect individuals and treat them humanely. During these push-backs, irregular migrants have alleged receiving ill-treatment of a severity which may amount to inhuman or degrading treatment or punishment. Irregular migrants interviewed by Pro Asyl alleged that they had been ‘slapped, beaten with batons, punched and kicked on their body, on their head and on their face’ by Greek officers during their apprehension and push-back [17]. Others alleged that Greek coastguards had forced them to come on board the Greek Coastguard vessel, where they were threatened with guns and made to ‘kneel down and keep their hands behind their neck’ whilst bodily searched; others said they were forced to take their clothes off [59]. There were allegations of theft of personal belongings, burning shoes, as well as the removal of identification documents [59]. NGOs have also reported that Greek border guards assaulted a pregnant woman [59]. If these allegations are true, it is argued that Greek authorities are committing inhuman acts or degrading treatment or punishment, also codified in article 15 of the ECHR and article 2 of the Convention against Torture (CAT). Thus, all States Parties are obliged to ‘eliminate any legal or other obstacles that impede the eradication of torture and ill-treatment’ and must take effective measures to ensure such

conduct does not re-occur. To distinguish torture from the other forms of ill-treatment, both the jurisprudence of the Committee against Torture and the ECtHR have moved towards the establishment of a special stigma for 'deliberate inhuman treatment causing very serious and cruel suffering' [60] and the 'difference in the intensity of the suffering inflicted' [61]. The minimum level of severity depends on the circumstances of the case such as treatment duration, physical and mental effects, sex, age and state of health of the victim [62]-[65].

It is argued that the acts conducted by Greek authorities such as slapping, beating with batons, and punching and kicking an irregular migrant's body, head and face amount to inhuman treatment (article 3 ECHR). These particular acts caused a deliberate actual bodily injury on the migrants concerned [65]. Similarly, the infliction of severe pain to a pregnant woman, and a series of intense blows to the entire body, is considered a heinous and violent intentional act, punishable by law [63]. The severity of the pain to the woman taken in conjunction with the consequences of such pain to the unborn child arguably amounts to torture. As the ECtHR has consistently held and as Article 2(2) of the CAT makes clear, the prohibition of torture is absolute [66]. No exceptional circumstances whatsoever can be invoked by way of justification [67]. There can be no derogation from the prohibition, even in the event of a public emergency threatening the life of the nation [68].

Recently, the ECtHR has condemned Greece. The case dealt with "protective custody" of unaccompanied minors in police stations was an unlawful measure of detention under Article 5 (1) f [69]. According to the Strasbourg court, this represents degrading treatment. In other words, the "protective custody" could have caused them to feel isolated from the outside world, with direct consequences for their physical and moral well-being. In addition, the "protective custody" is in violation of Article 3 of the Convention on the Rights of the Child if it leads to arbitrary situations of prolonged detention.

As to the acts of bodily search and forced removal of clothes on-board the vessel in front of coastguards and others they interfere with the irregular migrants' dignity, acting as a form of 'gross humiliation' and thus constituting degrading treatment [70]. The effect of these acts may result on breaking their physical or moral resistance' [71]. Although these acts were exercised for security reasons, any kind of inhuman or degrading treatment is prohibited, even in circumstances such as organised crime, security and terrorism [72].

For many years, NGOs and civil society groups have reported the Greek coastguards' practice of inflicting physical and mental violence causing severe pain and suffering to irregular migrants, however, the solidity of these allegations must be proved in court beyond reasonable doubt [73]. For Greece, the law on the burden and standard of proof in Article 3 ECHR cases is opportune. These irregular migrants are immediately returned to the country of departure, mainly Turkey. Upon return they face difficulties in obtaining supporting evidence of ill-treatment considering that Turkey faces massive inflows of irregular migrants [65]; they do not

receive adequate legal services such as interpreters and legal aid. Without legal advice, the victims of ill-treatment are not aware on the evidence they need to obtain in order to support a case of ill-treatment in court. Mindful of such difficulties, to avoid a situation where State authorities act with virtual impunity, the ECtHR has imposed upon States an obligation, similar to that in respect of the 'right to life', to carry out an effective investigation into allegations of ill-treatment on the basis of *prima facie* evidence provided by the victims [74]. In those situations when a person alleges injury under the control of State authorities, such as the police or coastguards, a strong presumption arises that the person concerned was subjected to ill-treatment [73]. Upon allegations of ill-treatment conducted under its jurisdiction, Greece has the burden of explaining the circumstances under a thorough investigation to determine the nature and circumstances of the event in which these irregular migrants were intercepted, treated and returned to country of departure [72].

NGOs and UNHCR have brought to the attention of the Greek government the fact that practices of torture and ill-treatment have taken place during push-backs, i.e. within its jurisdiction [8]. In its recently decided case *Sakir v Greece*, the ECtHR held that the Greek authorities were at fault for failing to consider the reports of various NGOs and other Greek institutions as relevant to the investigation [75]. Referring to alleged push-backs, the Greek Government has not commenced any investigations to secure evidence concerning the incidents [73]. Greece has an obligation to identify and punish the wrongdoers [76]. Such failure is likely to send a message of tolerance to the perpetrators of Article 3 ECHR and Article 16 CAT violations which is undesirable from EU perspective as it furthers incompliance with EU laws, values, and human rights. From Greek perspective, confronted with massive influxes of irregular migrants, the possibility of a case taken to the ECtHR is seen as permissible collateral damage when compared to the positive results produced by the illicit push-back practices acting as strategic deterrence tools. Nonetheless, Greece obtains responsibility for the wrongful actions committed by its coastguards during push-back practices and must commence adequate investigations to determine their nature and take appropriate measures against its perpetrators. The Greek authorities' failure to commence investigations against cogent allegations of ill-treatments violates Article 3 ECHR procedural aspect to conduct an effective official investigation.

IV. CONCLUSION

Prioritisation of border control has led Greece to exercise systemic push-back of persons in need of international protection in a desperate attempt to avoid its obligations under EU and international law. It is concluded that in exercising push-back practices Greece has violated its obligations under the ECHR, CAT, and the EU Charter. Infringement proceedings should be commenced against Greece by the Commission (article 258 TFEU) for the systematic push-back of irregular migrants at the Greek-Turkish borders without a prior assessment of their individual circumstances. Greece and

the EU have a positive obligation to stop these illicit interception practices leading to undesired side effects, that is, migrant deaths. At the same time, Greece has an obligation to respond to materialised risks to the 'right to life' by instituting an official investigation.

It is strongly recommended that Greek authorities take preventive measures against the practices of push backs. Stronger and effective rules of legal process at the border must be implemented at the Greek-Turkish land and sea borders. But most importantly, noticing the lack of official investigative procedures by Greek authorities, an independent monitoring mechanism must be put in place to ensure that Greek authorities do not exercise the practice of push backs. This suggestion is based also on three important facts. First, the ECtHR has constantly applied a uniform deny against push-back policies, not only towards Greece but also towards other EU Member States; i.e. in 2018, against Spain. Second, only during summer 2019, two EU Member States, founder of the EU, the Netherlands and Germany, have suspended the application of Dublin Regulation to Greece due to risk of chain refoulement to Turkey. Third, also during the first part of 2019, the ECtHR found Greece guilty for violating refugee human rights.

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REFERENCES

- [1] European Commission, The Global Approach to Migration and Mobility, COM (2011) 743 final, 6.
- [2] Andersson, Ruben. Europe's failed 'fight' against irregular migration: ethnographic notes on a counterproductive industry. *Journal of Ethnic and Migration Studies*, 2016, 42.7: 1055-1075.
- [3] Ackland. (2015). If Europe Listens to Tony Abbott, the Future for Refugees Will Be Cruel' (The Guardian, 21 April 2015) <https://www.theguardian.com/commentisfree/2015/apr/21/if-europe-listens-to-tony-abbott-the-future-for-refugees-will-be-cruel> accessed on 30 September 2019.
- [4] European Council, 2018, Eastern Mediterranean Route, <https://www.consilium.europa.eu/en/policies/migratory-pressures/eastern-mediterranean-route/#> accessed on 30 September 2019.
- [5] IOM 2018. Mediterranean Migrant Arrivals Reach 86,436 in 2018; Deaths Reach 1,783 <https://www.iom.int/news/mediterranean-migrant-arrivals-reach-86436-2018-deaths-reach-1783> accessed on 30 September 2019.
- [6] UNHCR, 2018 "Refugees/Migrants Emergency Response-Mediterranean, Deaths 3,151" <<http://data.unhcr.org/mediterranean/regional.php>> accessed on 30 September 2019
- [7] Eurostat, Asylum quarterly report, https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_quarterly_report#Main_trends_in_the_number_of_asylum_applicants accessed on 30 September 2019
- [8] Heller, Charles; Jones, Chris. Eurosur: Saving lives or reinforcing deadly borders. *Statewatch Journal*, 2014, 23.3/4: 9-11.
- [9] BBC, 'Migrant Crisis: Boat Sinking off Didim, Turkey Claims 25 lives' (6 March 2016) <http://www.bbc.com/news/world-europe-35739555> accessed on 30 September 2019.
- [10] HRW, 2015. 'Greece: Attacks on Boats Risk Migrant Lives, Masked Assaults Attack, Disable Boats, Abuse Passengers' 22 October 2015 <https://www.hrw.org/news/2015/10/22/greece-attacks-boats-risk-migrant-lives> accessed on 30 September 2019.
- [11] MEE 2018, Syrian migrants allege illegal Greek pushback to Turkey, <https://www.middleeasteye.net/news/syrian-migrants-allege-illegal-greek-pushback-turkey-1480060668> accessed on 30 September 2019.
- [12] Amnesty International, "The Human Cost of Fortress Europe, Human Rights Violations against Migrants and Refugees at Europe's Borders" (July 2014) 20 <https://www.amnesty.ch/de/themen/asyl-und-migration/festung-europa/dok/2015/die-kampagne-sos-europa/bericht-the-human-cost-of-fortress-Europe> accessed on 30 September 2019, 20;
- [13] Koka, Enkelejda; Veshi, Denard. Irregular Migration by Sea: Interception and Rescue Interventions in Light of International Law and the EU Sea Borders Regulation. *European Journal of Migration and Law*, 2019, 21.1: 26-52.
- [14] Van Liempt, Ilse; Sersli, Stephanie. State responses and migrant experiences with human smuggling: A reality check. *Antipode*, 2013, 45.4: 1029-1046.
- [15] Bigo, Didier. The (in) securitization practices of the three universes of EU border control: Military/Navy-border guards/police-database analysts. *Security Dialogue*, 2014, 45.3: 209-225.
- [16] Watch the Med Alarm Phone, "Illegal Push-Back Operation with Frontex Present" (15 June 2016) <https://alarmphone.org/en/2016/06/15/watchthemed-alarm-phone-denounces-illegal-push-back-operation-with-frontex-present/> accessed on 30 September 2019.
- [17] ASYL, Pro. Pushed back. *Systematic Human Rights Violations against Refugees in the Aegean Sea and at the Greek-Turkish Land Border*, 2013.
- [18] Pallister-Wilkins, Polly. The humanitarian politics of European border policing: Frontex and border police in Evros. *International Political Sociology*, 2015, 9.1: 53-69.
- [19] Little, Adrian; Vaughan-Williams, Nick. Stopping boats, saving lives, securing subjects: Humanitarian borders in Europe and Australia. *European Journal of International Relations*, 2017, 23.3: 533-556.
- [20] Ferrer-Gallardo, Xavier; Van Houtum, H. J. The deadly EU border control. 2014.
- [21] Administrative Court of Munich, 17 July 2019, M 11 S 19.50722, M 11 S 19.50759
- [22] Dutch Council of State, 17 July 2019, 201902302/1/V3
- [23] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person
- [24] Euronews, 2019, 'Masked men beat us with batons': Greece accused of violent asylum seeker pushbacks, <https://www.euronews.com/2019/05/11/masked-men-beat-us-with-batons-greece-accused-of-violent-asylum-seeker-pushbacks>
- [25] ECtHR, *Sharifi v Italy and Greece* Application no 16643/09.
- [26] UNHCR, 'UNHCR Urges Continued International Protection for Asylum-seekers from Somalia' (Dan Maclsaac, 28 January 2014) <http://www.unhcr.org/news/latest/2014/1/52e7adda9/unhcr-urges-continued-international-protection-asylum-seekers-somalia.html> accessed on 30 September 2019.
- [27] AIDA, Access to the Territory and Push Backs, 2017, <https://www.asylumineurope.org/reports/country/greece/asylum-procedure/access-procedure-and-registration/access-territory-and-push> accessed on 30 September 2019.
- [28] UNHCR 2017, UNHCR deeply concerned at reports of informal forced returns from Greece to Turkey, <https://www.unhcr.org/gr/en/6244-unhcr-deeply-concerned-reports-informal-forced-returns-greece-turkey.html> accessed on 30 September 2019.
- [29] Greek Council for Refugees, 2018 <https://www.asylumineurope.org/reports/country/greece/asylum-procedure/access-procedure-and-registration/access-territory-and-push> accessed on 30 September 2019.
- [30] Ombudsman Decision No. 105, 9 June 2017, <https://www.synigoros.gr/resources/20170609-apof-ayt-creyn-epanaprooth-2.pdf> accessed on 30 September 2019.
- [31] Commissioner for Human Rights, 2017 <https://twitter.com/CommissionerHR/status/872380520495280129>
- [32] Stockholm Center for Freedom, Greece has Adopted Illegal Border

- Push-Back for Erdogan Critics, 4 June 2017, <https://stockholmcf.org/greece-has-adopted-illegal-border-push-back-for-erdogan-critics/> accessed on 30 September 2019.
- [33] The Alarmphone, Statement: Four Push-Back Operations at the Greek-Turkish Land Border Witnessed by the Alarm Phone, 6 July 2018, <https://alarmphone.org/en/2018/07/06/four-push-back-operations-at-the-greek-turkish-land-border-witnessed-by-the-alarm-phone/> accessed on 30 September 2019.
- [34] Greek Council for Refugees, 2017, Reports of systematic pushbacks in the Evros region <https://www.gcr.gr/en/ekdoseis-media/reports/reports/item/790-reports-of-systematic-pushbacks-in-the-evros-region> accessed on 30 September 2019.
- [35] Amnesty International, 'Greece: Farmakonisi Migrant Tragedy – One Year on and Still no Justice for Victims' 20 January 2015 <https://www.amnesty.org/en/latest/news/2015/01/greece-farmakonisi-migrant-tragedy-one-year-and-still-no-justice-victims/> accessed on 30 September 2019
- [36] ECRE, '12 Refugees Die during Alleged Push-back Operation off Greek Island' (24 January 2014) <http://www.ecre.org/component/content/article/70-weekly-bulletin-articles/574-12-refugees-die-during-alleged-push-back-operation-off-greek-island.html> accessed on 30 September 2019.
- [37] The Guardian, 'Greek Minister: Migrant Survivors of Boat Accident Have Changed Stories' (24 January 2014) <http://www.theguardian.com/world/2014/jan/24/migrant-survivors-boat-sinking-changed-stories-marine-minister> accessed on 30 September 2019.
- [38] ENETENGLISH, "European Rights Watchdog 'Shocked and Distressed' at Migrant Drowning's: Nils Muižnieks says Government Must Stick to Promises to Stop Push-backs" (22 January 2014) <http://www.enetenglish.gr/?i=news.en.article&id=1722> accessed on 30 September 2019.
- [39] Ministry of Shipping and the Aegean changed to Ministry of Shipping and Island Policy from 23 September 2015 <https://www.yen.gr/> accessed on 30 September 2019.
- [40] Penna K, 'Farmakonisi Migrant Tragedy Sparks EU policy Debate' (Equal Times, 19 March 2014) <http://www.equaltimes.org/farmakonisi-migrant-tragedy-sparks-eu-policy-debate?lang=en#.VdXCtfmqHw> accessed on 30 September 2019.
- [41] Watch the Med, "They Want to See Us Drown" (Alarm Phone Investigation 25/26 October 2014) <http://watchthemed.net/reports/view/84> accessed on 30 September 2019.
- [42] Euronews, 2015, "Turkish Fisherman Claims Greek Officials Intentionally Sank Migrant Boat" <https://www.euronews.com/2015/08/14/turkish-fisherman-claims-greek-officials-intentionally-sank-migrant-boat> accessed on 30 September 2019.
- [43] Daily Sabah, Fourth Migrant Found Dead near Border, Greek 'Pushback' Suspected, 7 December 2018, <https://www.dailysabah.com/investigations/2018/12/07/fourth-migrant-found-dead-near-border-greek-pushback-suspected> accessed on 30 September 2019.
- [44] ECtHR, McCann and Others v. the United Kingdom (Application No. 18984/91)
- [45] UN Human Rights Committee, 2004, *General Comment No 31 The Nature of the General Legal Obligation Imposed on States Parties to the Covenant* 26 May 2004, CCPR/C/21/Rev.1/Add.13
- [46] UN General Assembly, 2000, Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime
- [47] Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
- [48] ECtHR, Nachova and Others v Bulgaria Application nos 43577/98 and 43579/98
- [49] Basaran, Tugba. The saved and the drowned: Governing indifference in the name of security. *Security Dialogue*, 2015, 46.3: 205-220.
- [50] Dijk, Pieter Van; Godefridus, JH Van Hoof; Heringa, A. W. Theory and Practice of the European Convention of Human Rights,(4. bs.). *UK: Intersentia*, 2006.
- [51] Sari, Aurel. Untangling extra-territorial jurisdiction from international responsibility in *Jaloud v. Netherlands: old problem, new solutions. Mil. & L. War Rev.*, 2014, 53: 287.
- [52] Ahlborn, Christiane. To share or not to share? The allocation of responsibility between international organizations and their member states. *Die Friedens-Warte*, 2013, 45-75.
- [53] ICJ, the Corfu case, judgement of 9 April 1949.
- [54] Mungianu, Roberta. *Frontex and non-refoulement: The international responsibility of the EU*. Cambridge University Press, 2016.
- [55] UNHCR 2017, UNHCR deeply concerned at reports of informal forced returns from Greece to Turkey, <https://www.unhcr.org/gr/en/6244-unhcr-deeply-concerned-reports-informal-forced-returns-greece-turkey.html> accessed on 30 September 2019.
- [56] ECtHR, applications nos. 8675/15 and 8697/15
- [57] Comité de los Derechos del Niño, 'Dictamen aprobado por el Comité en relación con el Protocolo Facultativo de la Convención sobre los Derechos del Niño relativo a un procedimiento de comunicaciones respecto de la Comunicación Núm. 4/2016, February 2019
- [58] ECtHR, Application no 55798/16 A.A. and Others against the former Yugoslav Republic of Macedonia and 4 other applications
- [59] FIDH, Migreurop, EMHRN, "Frontex between Greece and Turkey: at the Border of Denial" 17 July 2014, 29
- [60] ECtHR, Dikme v Turkey, Application no 20869, paragraph 93.
- [61] CAT, H.K. v Switzerland (2013) Communication no 432/2010, paragraph 7.4.
- [62] Mariño Menéndez, Fernando M. Recent jurisprudence of the United Nations Committee against Torture and the international protection of refugees. *Refugee Survey Quarterly*, 2015, 34.1: 61-78.
- [63] ECtHR, *Tekin v Turkey*, Application no 22496/93
- [64] ECtHR, *Selmouni v France*, Application no 25803/94
- [65] ECtHR, *Valašinas v Lithuania*, Application no 44558/98
- [66] ECtHR, *Labita v Italy*, Application no 26772/95
- [67] ECtHR, *Chahal v the United Kingdom*, Application no 45276/99
- [68] ECtHR, *The Greek case*, Applications nos. 3321, 3322, 3323, 3344
- [69] *International Tribunal for the Law of The Sea, M/V Saiga (No 2) (St Vincent and the Grenadines v Guinea)*
- [70] ECtHR, H.A. and others v. Greece, Application no. 19951/16.
- [71] ECtHR, *Tyler v UK, Application no. 5856/72*.
- [72] ECtHR, *Hurtado v Switzerland*, Application no 17549/90
- [73] ECtHR, *Tomasi v France*, Application no 12850/87
- [74] ECtHR, *Pruneanu v Moldova*, Application no 6888/03
- [75] ECtHR, *Assenov v Bulgaria*, Application no 24760/94,
- [76] ECtHR, *Sakir v Greece*, Application no 48475/09
- [77] Committee against Torture Communication No. 368/2008