
M.A v. Greece and 7 other applications

Joint Third Party Intervention (ECCHR, Pro Asyl & RSA)

1. This Third Party Intervention addresses the issue of availability of effective domestic remedies for non-citizen applicants for violations of article 3 of the Convention (“ECHR”) for ill-treatment and/or article 2 ECHR for risk to life by Greek law-enforcers during border operations (“pushbacks”).

I. LEGAL FRAMEWORK

A. Defined safeguards against ill-treatment by law-enforcers

2. The European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, which underpins the work of the Council of Europe (“CoE”)’s Committee for the Prevention of Torture (“CPT”), informs States’ positive obligations under articles 2 and 3 ECHR.¹ To diminish risks of ill-treatment by law-enforcers, the CPT has developed “*fundamental safeguards*,”² applicable during border operations³ and to coastguards.⁴

3. The CPT considers that the lack of **record-keeping** defeats the purpose of all other safeguards and impedes any “*accountability mechanisms which would allow for the prompt identification and review of the behaviour*” of the involved law-enforcers.⁵ A **single custody record for each person**⁶ should (i) contain, “*all aspects of his custody and action taken*,” such as detention grounds, rights notification, medical checks, food and drink provision, transfers and releases and (ii) be accessible to their lawyer. The person’s signature should appear for seized possessions and rights notifications, and any lack thereof explained.⁷ Non-recorded custody at the border, “*lends itself to abuse*” so authorities should register all migrants who enter – legally or not.⁸ **Recording officers’ identity and actions** – intervention times and outcomes, involved officers and apprehension means– is also a pre-requisite for any “*oversight*.”⁹ The CPT stresses that the concealing of officers’ identities by wearing face masks fosters ill-treatment.¹⁰

4. **The rights to contact third parties** (lawyer, doctor, family or alike) is the second fundamental safeguard for people in custody¹¹ and often dissuades law-

¹ *X and Others v. Bulgaria* [GC] (22457/16), 2021, §192.

² CPT, *Developments concerning CPT standards in respect of police custody*, 2002, §33; *2018 ad hoc visit report*, §77; *2020 ad hoc visit in Greece report*, §21.

³ CPT, *1997 visit in Greece report*, §94; *2020 ad hoc visit in Greece report*, §21.

⁴ CPT, *2001 visit in Greece report*, §10.

⁵ CPT, *2020 ad hoc visit in Greece report*, §§22, 24-5, 55.

⁶ CPT, 2001 visit report, §48; *2020 ad hoc visit in Greece report*, §25.

⁷ CPT, *Police Custody*, 1992, §40.

⁸ CPT, *2020 ad hoc visit in Greece report*, §63.

⁹ CPT, *2020 ad hoc visit in Croatia report*, §22.

¹⁰ CPT, *Preventing police torture and ill-treatment*, 2019, §64; *2018 Greece report*, §139.

¹¹ CPT, *1993 visit in Greece report*, §34.

enforcers from ill-treatment.¹² Effective implementation requires that authorities duly inform persons in their custody of these rights¹³ and provide adequate interpretation as necessary.¹⁴

B. Effective criminal proceedings under articles 2 and 3 ECHR

5. Under the converging principles of articles 2 and 3 ECHR,¹⁵ states must launch effective investigations¹⁶ on their own motion¹⁷ to clarify the circumstances of cases of death or ill-treatment.¹⁸ Deficiencies undermining the possibility to establish such circumstance and/or the identity of those responsible will not be effective.¹⁹ An effective investigation is independent, adequate and prompt.²⁰ **Independence** must be hierarchical, institutional²¹ and practical.²² An investigation is not independent when it excessively relies on officers' accounts;²³ the prosecutor requests assistance from officers under the same chain of command as the suspects;²⁴ the Ministry heading the investigation publically declares there was no ill-treatment before the investigation's conclusion.²⁵ An investigation is not **adequate** when authorities are passive despite credible allegations;²⁶ suspects identified by the applicant or part of the involved unit are not formally identified or charged;²⁷ the investigation relies primarily on officers' statements and/or records²⁸ or is closed on hasty or ill-founded conclusions.²⁹ Effectiveness may require exhausting all available possibilities to **obtain assistance from another state**.³⁰ **Promptness and reasonable expeditiousness**³¹ exclude unjustified delays,³² in particular in victims'³³ and witnesses'³⁴ identification and interviews.

¹² CPT, *Developments concerning CPT standards in respect of police custody*, 2002, §44.

¹³ CPT, *Preventing police torture and other forms of ill-treatment*, 2019, §66.

¹⁴ CPT, *2018 ad hoc visit in Greece report*, p.4.

¹⁵ *S.M. v. Croatia*, [GC] (60561/14), 2020, §311.

¹⁶ *McCann and Others v. the United Kingdom* (18984/91), 1995, §161 (art. 2); *El-Masri v. the former Yugoslav Republic of Macedonia* [GC] (39630/09), 2012, §182 (art. 3).

¹⁷ Once the matter has come to their attention: *Al-Skeini v. the United Kingdom* [GC] (55721/07), 2011, (art. 2); *Gldani Congregation of Jehovah's Witnesses v. Georgia* (71156/01), 2007, (art. 3).

¹⁸ *Lopes de Sousa Fernandes v. Portugal* [GC], 2017 (art. 2); *Labita v. Italy* [GC], 2000 (art. 3).

¹⁹ *S.M. v. Croatia* [GC] (*supra*), §318; *Nachova v. Bulgaria* [GC] (43577/98), 2005, §113.

²⁰ *Mustafa Tunç and Fecire Tunç v. Turkey* [GC] (24014/05), 2015.

²¹ Not if investigators from same force as suspects: *Ramsahai v. the Netherlands* [GC] (52391/99), 2007, §§ 335-341 (art. 2); *Najaflı v. Azerbaijan* (2594/07), 2012, §§52-4 (art. 3).

²² *Bouyid v. Belgium* [GC] (23380/09), 2015, §118. Failure to take steps as indicative of non-independence: *Oğur v. Turkey* [GC] (21594/93), 1999, §§90-1; *Đurđević v. Croatia* (52442/09), 2011, §§89-90 (complainants and witnesses not interviewed; art. 3).

²³ Art. 2: *Kaya v. Turkey* (158/1996/777/978), 1998, §89. Art. 3: *Virabyan v. Armenia* (40094/05), 02.10.2012, §§165-7; *Suleymanov v. Russia* (32501/11), 2013, §144.

²⁴ *Baranin and Vukčević v. Montenegro* (24655/18 and 24656/18), 2021, §144.

²⁵ *Emin Huseynov v. Azerbaijan* (59135/09), 2015, §74.

²⁶ *M.S. v. Croatia* (18419/13), 2015, §§81-4; *Hovhannisyan v. Armenia* (18419/13), 2018, §§58-9.

²⁷ *Barovov v. Russia* (9183/09), 2021, §39; *Hristovi v. Bulgaria* (42697/05), 2011, §91

(investigators failed to identify and question members of the involved specialised masked unit).

²⁸ *Özalp v. Turkey* (32457/96), 2004, §45 (art. 2); *M.F. v. Hungary* (45855/12), 2017, §55 (art. 3).

²⁹ *El-Masri* [GC] (*supra*), §183.

³⁰ *Güzelyurtlu v. Cyprus and Turkey* [GC] (36925/07), 2019, §§232-3 (art. 2); *X v. Bulgaria* [GC] (22457/16), 2021, §19 (art. 3).

1) Continuous ineffectiveness of criminal proceedings in Greece

6. Greece has been condemned consistently for ill-treatment by its police³⁵ and coastguards³⁶ and ineffective criminal investigations.³⁷ The European Court of Human Rights (“the Court”) has deemed investigations ineffective when: investigating officers or case prosecutor were not independent;³⁸ the investigation relied primarily on officers’ accounts to the detriment of civilians’;³⁹ investigators did not attempt to preserve material evidence, failed to identify all policemen involved or relied on a lack of records,⁴⁰ authorities’ failure to release recordings;⁴¹ authorities not properly involving the victims or their families.⁴²

7. The execution of general measures for these judgments is supervised since 2007 under the enhanced procedure of the CoE Committee of Ministers (“CoM”).⁴³ In 2021 the CoM noted a continuous failure to implement the CPT’s fundamental safeguards against ill-treatment; the lack of prompt, expeditious, and thorough investigations; the passive role of prosecuting and judicial authorities; and the ineffectiveness of disciplinary proceedings.⁴⁴ That these issues remain unaddressed is confirmed by new ECtHR applications⁴⁵ and recent CPT reports.⁴⁶

³¹ Art. 2: *Armani Da Silva v. UK* [GC], 2016; *Giuliani and Gaggio v. Italy* [GC], 2011.

³² *Jelić v. Croatia* (57856/11), 2014, §91 (art. 2).

³³ *M.B. and Others v. Slovakia* (45322/17), 2021, §§82-83.

³⁴ *Baranin and Vukčević* (supra), §142; *Mătăsarú and Savițchi v. Moldova* (38281/08), 2010, §88.

³⁵ *Bekos and Koutropoulos* (15250/02), 2005; *Alsayed Allaham* (25771/03), 2007; *Petropoulou-Tsakiris* (44803/04), 2007; *Zelilof* (17060/03), 2007; *Galotskin* (2945/07), 2010; *Stefanou* (2954/07), 2010.

³⁶ *Zontul* (12294/07), 2012.

³⁷ For art. 2: *Makaratzis* [GC] (50385/99), 2004; *Celniku* (21449/04), 2007; *Karagiannopoulos* (27850/03), 2007. For art. 3: *Bekos* (supra); *Petropoulou-Tsakiris* (supra); *Zelilof* (supra); *Galotskin* (supra); *Stefanou* (supra).

³⁸ *Stefanou* (supra) (investigators in same directorate as suspects). Cases where investigators colleagues of suspects: *Andersen v. Greece* (42660/11), 2018; *Petropoulou-Tsakiris* (supra); *Celniku* (supra). *Konstantinopoulos (No. 2)* (29543/15), 2018 (prosecutor also supervising detention place).

³⁹ Primary reliance on officers’ accounts: *Andersen* (supra); *Zelilof* (supra); *Galotskin* (supra); *Alsayed Allaham* (supra). See also *Petropoulou-Tsakiris* (supra) (civilian accounts not examined); *Zelilof* (supra) (officers’ accounts assessed with more leniency); *Sarwari* (supra) (civilian accounts taken collectively and without care as to the availability or adequacy of interpreters).

⁴⁰ No attempt to preserve evidence: *Sarwari* (supra); *Celniku* (supra). Failure to identify involved officers: *Konstantinopoulos (No. 2)* (supra). Reliance on lack of records: *Zontul* (supra); *Petropoulou-Tsakiris* (supra).

⁴¹ *Konstantinopoulos (No. 2)* (supra).

⁴² *Fountas* (50283/13), 2019; *Zontul* (supra) (family not informed in a timely manner).

⁴³ Greece’s request that these judgments be supervised under the standard procedure was rejected in 2021: CoM, Notes on 1411th meeting on 14-16 September 2021 in the H46-13 *Makaratzis group*.

⁴⁴ CoM Notes on 1411th meeting on 14-16 September 2021 in the H46-13 *Makaratzis group*.

⁴⁵ Many pending communicated cases concern border operations. In addition to the 8 cases for which we submit this TPI: *Alkhatib* (3566/16), communicated in 2019 (complaint on investigating force being suspected one, material evidence not preserved, inadequate hearing of complainants/witnesses); *Almukhlas and Al-Maliki* (22776/18), communicated in 2021; *FM* (17622/21), communicated in 2021 (complaint on forensic report, lack of ship location records and prosecutor’s over-reliance on informal testimonies).

⁴⁶ CPT, [2020 ad hoc visit in Greece report](#); [2018 ad hoc visit in Greece report](#).

2) **Criminal investigations in the context of border operations**

8. The Court recently considered criminal investigations under article 2 and 3 ECHR in the context of European border operations. In *M.H. and others v. Croatia*, the Court found an investigation into a child's death at the land border ineffective. It took issue with authorities' leniency towards the officers' accounts to the detriment of the migrants' and failure to consider translation adequacy; failure to verify police claims based on the unavailability of crucial recordings and the non-inspection of mobile phones and police car location signals; failure to notify the lawyer when applicants were heard and refusal to provide her information. The Court stressed that the adequate involvement of foreign complainants in criminal proceedings requires translation and legal representation.⁴⁷

9. In *Safi and others v. Greece*, the Court also found an investigation into migrant deaths during a Greek coastguards operation ineffective. The Court relied on the refusal to provide the applicants with relevant recordings (coastguards communications, signals and radars); the prosecutor's reliance on statements for which no translation was available and a simple claim that Greek authorities do not *refoul* towards Turkey to find in favour of officers.⁴⁸

II. **EFFECTIVE CRIMINAL INVESTIGATIONS FOR ILL-TREATMENT OF NON-CITIZENS IN BORDER OPERATIONS**

10. Reports confirm that Greece's failures to prevent and punish ill-treatment in custody is systemic. For border operations, ill-treatment is used for deterrence.

A. **Systemic impunity of law-enforcers for ill-treatment of non-citizens**

1) **Long-standing impunity for ill-treatment**

11. Over the years, the CPT has concluded that Greek authorities refuse⁴⁹ to acknowledge the scale of and tackle widespread⁵⁰ ill-treatment by law enforcers.⁵¹ The CPT's repeated recommendations have not been implemented.⁵² The CPT expressly linked such intentional failings to a climate of impunity that ensures continued widespread ill-treatment.⁵³

⁴⁷ *M.H. and others v. Croatia* (15670/18 and 43115/18), 18.11.2021, §§152-164.

⁴⁸ *Safi and others v. Greece* (5418/15), 07.07.2022, §§123-128.

⁴⁹ CPT, [2015 ad hoc visit report](#), §39.

⁵⁰ CPT, [1993 visit report](#), §25; [2001 visit report](#), §11; [2005 visit report](#), §§11- 12; [2007 visit report](#); [2008 ad hoc visit report](#); [2009 visit report](#); [2011 ad hoc visit report](#); [2013 visit report](#); [2015 ad hoc visit report](#); [2016 ad hoc visit report](#); [2018 ad hoc visit report](#); [2020 ad hoc visit report](#); p.10; UN Committee Against Torture ("CAT"), [2004 Conclusions and recommendations](#) (CAT/C/CR/33/2), §5; [2012 Concluding observations](#) (CAT/C/GRC/CO/5-6), §10.

⁵¹ CPT, [2001 visit report](#), §15; [2005 visit report](#), §16; [2007 visit report](#); §3; [2009 visit report](#), §§8, 16; [2013 visit report](#), §14; [2015 ad hoc visit report](#), §39; [2020 ad hoc visit report](#), p.6; Amnesty International ("AI"), [Police Violence in Greece: Not just 'isolated incidents'](#), 2012, p.23; **Greek Ministry of Interior**, [Letter to the CoE Commissioner](#), 15.05.2017, p.2.

⁵² CPT, [2005 visit report](#), §16; [2007 visit report](#), §3.

⁵³ CPT, [2015 ad hoc visit report](#), §24; [2020 ad hoc visit report](#), p.10; [2007 visit report](#), §3.

12. To address ill-treatment by law enforcers, **accountability** is crucial,⁵⁴ but the CPT considers Greek authorities unwilling to carry out effective investigations and prosecutions.⁵⁵ It directly witnessed cover-ups of deaths in custody⁵⁶ and false assurances as to recommended investigations,⁵⁷ including for border operations.⁵⁸ These investigations “do not satisfy basic requirements of effectiveness.”⁵⁹ Often, **investigators** are from the same service as suspects.⁶⁰ **Prosecuting authorities are reluctant and passive**,⁶¹ taking no action⁶² or summarily dismissing claims without examining their substance,⁶³ despite the issuing of a Circular by the Supreme Court Public Prosecutor to remedy the issue.⁶⁴ Further obstacles to accountability include the **limited availability of adequate forensic examinations** to corroborate allegations,⁶⁵ the **lack of protective measures for detainees** against retribution and **for officers** reporting colleagues’ ill-treatment;⁶⁶ the **prosecution of complainants** for defamation and perjury.⁶⁷ Though since 2017 disciplinary complaints can be filed to the **Arbitrary Incident Office**,⁶⁸ the CPT considers that the Office constitutes neither an effective investigative mechanism⁶⁹ nor an effective police complaint mechanism, as its mandate is limited to issuing recommendations to the suspects’ chain of command (ministers)⁷⁰ for disciplinary proceedings⁷¹ and it holds no investigative powers.

⁵⁴ CPT, [1993 visit report](#), §30; [1997 visit report](#), §16; [2001 visit report](#), §18; [2005 visit report](#), §18; [2011 ad hoc visit report](#), §15; [2015 ad hoc visit report](#), §24; [2018 ad hoc visit report](#), §76.

⁵⁵ CPT, [2009 visit report](#), §23; [2013 visit report](#), §14; [2015 ad hoc visit report](#), §§24, 39. Also AI, [Written statement to the HR Council](#), 2013, p.2; [Police Violence in Greece](#), 2012, p.18.

⁵⁶ CPT, [1993 visit report](#), §33.

⁵⁷ CPT, [2009 visit report](#), §22; [2015 ad hoc visit report](#), §32 (noting that from 2013 to 2015, “no concrete steps had been taken to investigate the very serious allegations of ill-treatment”).

⁵⁸ CPT, [2005 visit report](#), §20.

⁵⁹ CPT, [2015 ad hoc visit report](#), §26.

⁶⁰ CPT, *idem*, §§26-28; also [2020 ad hoc visit report](#), p.6,8, §86; [2009 visit report](#), §8; UN CAT, [2004 Conclusions and recommendations](#), §5.

⁶¹ CPT, [2011 ad hoc visit report](#), §§18-19; [2005 visit report](#), §18; [2009 visit report](#), §22; [2015 ad hoc visit report](#), §39; UN CAT, [2004 Conclusions and recommendations](#), §5; [2012 Concluding observations](#), §10; UN HRC, [2015 Concluding Observations](#), §15.

⁶² CPT, [1997 visit report](#), §18 (taking no action when receiving ill-treatment complaints); [2015 ad hoc visit report](#), §40 (no inquiry when detainees presenting with clearly visible injuries).

⁶³ CPT, [2009 visit report](#), §16; [2015 visit report](#), §40.

⁶⁴ CPT, [2013 visit report](#), §20 (observing that 2011 Circular had no effect).

⁶⁵ CPT, [2005 visit report](#), §§51-56 (reporting ill-treatment cover-ups by forensic doctors); [2013 visit report](#), §20 (noting the inadequacy of available forensic doctors); UN CAT, [2012 Concluding observations](#), §§10, 14 (observing that officers attended medical examinations and/or had access to medical records); GNCHR, [2019 Submission to the UN CAT](#), p.12.

⁶⁶ CPT, [2011 ad hoc visit report](#), §86 (for detainees); [2013 visit report](#), §25 (for officers).

⁶⁷ *Sakir v. Greece* (48475/09), 2016, §69. This happened to complainants of ill-treatment on Chios reported in ProAsyl, [Refugees in the Aegean and the practices of Greek coast guards](#), 2007, p.10.

⁶⁸ The Office’s first report covers 2017-2018, indicating that it was first operative during that period. **Greek Ombudsperson**, [Investigation of Arbitrary Incidents Report, 2017-2018](#); CPT, [2015 ad hoc visit report](#), §30 (observing the Office was inoperative).

⁶⁹ CPT, [2019 visit report](#), §§85-6.

⁷⁰ UN CAT, [2012 Concluding observations](#), §13; AI, [Police Violence in Greece](#), 2012, pp.46-8; CPT, [2013 visit report](#), §23; [2019 visit report](#), §§85-6.; CoE Commissioner, [Letter to Greek Mol and Ministry of Justice](#), 2016; [Letter to Greek Ministry of Justice and Mol](#), 2017.

⁷² As a result,⁷³ between 1984 and 2012 and despite the many reports of ill-treatment, there was only **one conviction for torture** against an officer (resulting in a fine).⁷⁴ Further, **no prosecution occurred under alternative charges** in 2018-2019,⁷⁵ confirming earlier trends flagged by the CPT⁷⁶ and CAT.⁷⁷

2) Impunity of law-enforcers for the ill-treatment of non-citizens

13. Since 1999, non-citizens in particular have been a target of Greek law-enforcers' ill-treatment,⁷⁸ with racist verbal abuse⁷⁹ and “*a strong message that they were not welcome in Greece.*”⁸⁰ Expressly racially-motivated violence has increased **since May 2011**⁸¹ fostered by a climate of impunity.⁸² By **2020** beatings were the most common complaint by non-citizens against law-enforcers.⁸³

14. Non-citizens victims of state ill-treatment encounter **specific obstacles** to justice: increased vulnerability and even less protection against **retaliation**;⁸⁴ non-involvement in criminal processes due to a lack of **lawyers** and/or **interpreters** and the **resources** to pay them;⁸⁵ **failure to locate and hear foreign victims and witnesses** in due time, “*mak[ing] the investigation ineffective from the beginning*”;⁸⁶ and **failure to seek cooperation with other EU states** for victims

⁷¹ CPT, [2019 visit report](#), §§85-6.

⁷² CPT, [2009 visit report](#), §30. In fact, until 2019, the ministries had no obligation to disclose disciplinary decisions to the Arbitrary Incidents Office. **Greek Ombudsperson**, [Investigation of Arbitrary Incidents Report](#), 2020, p.25.

⁷³ CPT, [2020 ad hoc visit report](#), p.7 (noting the causal link between these obstacles and the lack of successful investigations and prosecutions).

⁷⁴ **CoE Commissioner**, [Letter to Greek Ministry of Justice and MoI](#), 2017; **Redress**, [2019 Submission to CAT](#), §24; AI, [Police Violence in Greece](#), 2012, p.27. Since then, Greek authorities claim that there were 5 more findings between 2012 and 2018, but none in the context of border operations. In UN CAT, [2019 Concluding observations](#), §28.

⁷⁵ GNCHR, [2019 Submission to the UN CAT](#), p.33 (reporting data from the Hellenic Police).

⁷⁶ CPT, [2015 ad hoc visit report](#), §43 (in which the Greek Internal Affairs Directorate confirms that between 2009 and 2013, 140 cases were investigated, out of which only 30 were handed over to prosecutors. Of these 30, only 8 resulted in prosecutions on torture charges; of these, 4 were acquitted and 4 remained pending in 2015).

⁷⁷ UN CAT, [2012 Concluding observations](#), §10 (expressing concerns as to very low numbers of prosecutions and final convictions of law-enforcers for ill-treatment, and a lack of sanctions).

⁷⁸ CPT, [1999 ad hoc visit report](#), §13; [2005 visit report](#), §§51-57; [2020 ad hoc visit report](#), p.6; UN CAT, [2012 Concluding observations](#), §12; **CoE Commissioner**, [Report by Mr. Alvaro Gil-Robles on his 2022 visit](#), §31; [Follow-up report \(2002-2005\)](#), §§66 ff.

⁷⁹ CPT, [2018 ad hoc visit report](#), p.4, §74; [2020 ad hoc visit report](#), p.6

⁸⁰ CPT, [2013 visit report](#), §18.

⁸¹ AI, [Police Violence in Greece](#), 2012, p.20; **CoE Commissioner**, [Letter to Greek MoI and MoJ](#), 2016 (underlining specific ill-treatment of migrant detainees and evidence of racist motives within the police, with 37 hate crimes by law-enforcers recorded in 2014 and 2015); [Letter to Greek MoI and MoJ](#), 2017 (referring to 4 well-documented cases of severe beatings of migrant).

⁸² **UN SR on the HRs of Migrants**, [2013 Addendum to Mission to Greece](#), §71; **CoE Commissioner**, [Follow-up report \(2002-2005\)](#), §§66ff.

⁸³ Greek Ombudsperson, [Investigation of Arbitrary Incidents Report](#), 2020, p.30.

⁸⁴ *Ibid.* See also *Sakir v. Greece* (48475/09), 2016, §69 (migration detention as retaliation).

⁸⁵ CPT, [2013 visit report](#), §19 (highlighting complexity of procedure and lack of financial support to access lawyers and interpreters); UN CAT, [2012 Concluding observations](#), §12.

⁸⁶ Greek Ombudsperson, [Investigation of Arbitrary Incidents Report](#), 2020, p.30.

and witnesses residing outside of Greece.⁸⁷ Prosecutors' reluctance and tendency for summary dismissals are even greater, with "manifestly insufficient" examinations, even for "highly-specific allegations."⁸⁸ The lack of effective accountability mechanisms is more acute for non-citizens,⁸⁹ especially those detained,⁹⁰ even in cases of death in custody.⁹¹

B. Accrued obstacles for foreign victims of ill-treatment in the context of border operations

1) Creating an impossibility to oversee officers' actions at borders

15. The endangering of life and ill-treatment during border operations through physical and psychological violence and inhumane detention⁹² has been reported since 2006: in border guard stations,⁹³ during deportations and summary expulsions;⁹⁴ by coastguards⁹⁵ and masked officers;⁹⁶ to punish detainees' requests⁹⁷ or attempts to contact third parties to prevent summary expulsions;⁹⁸ or to force signatures.⁹⁹ To the CPT, officers have either attempted to cover-up ill-treatment or admitted to using threats of violence against migrant detainees.¹⁰⁰ Human rights institutions confirm the credibility of testimonies of ill-treatment,¹⁰¹ the existence of a state policy of pushbacks¹⁰² and the systematic use of ill-

⁸⁷ [Investigation of Arbitrary Incidents Report](#), 2020, p.59 (observing that residency in another EU state is unduly considered an insurmountable obstacle to interviews).

⁸⁸ CPT, [2015 ad hoc visit report](#), §37.

⁸⁹ CPT, [2018 ad hoc visit report](#), p.4 (considering it a matter to be addressed in priority); AI, [Written statement to the HR Council](#), 2013, p.3; RSA, [Submission to the CoE CoM in Sakir v. Greece](#), July 2020;

⁹⁰ CPT, [1997 visit report](#), §18; [1999 ad hoc visit report](#), §14; [2001 visit report](#), §21; [2007 visit report](#), §3; [2011 ad hoc visit report](#), §15; [2018 ad hoc visit report](#), §82.

⁹¹ CPT, [1993 visit report](#), §33.

⁹² CPT, [2011 ad hoc visit report](#), §§13, 21, 37; [2020 ad hoc visit report](#), §§12, 62.

⁹³ CPT, [2005 visit report](#), §§13-14 (kicks and slaps; forcing detainees to sit for 13 hours in front of an open window); [2013 visit report](#), §15; [2016 ad hoc visit report](#), §53 (kicks with steel-capped boots); [2018 ad hoc visit report](#), p.4 (blows with batons and wooden sticks).

⁹⁴ CPT, [2009 visit report](#), §21 (deportations); [2007 visit report](#), p.32 (summary expulsions).

⁹⁵ CPT, [2001 visit report](#), §11; AI, [Police Violence in Greece](#), 2012; ProAsyl et al., [The practices of Greek coast guards](#), 2007.

⁹⁶ CPT, [2013 visit report](#), §15; [2018 ad hoc visit report](#), p.5, §75 ("commandos" hitting heads with batons).

⁹⁷ CPT, [1999 ad hoc visit report](#), §13 (toilet access); [2016 ad hoc visit report](#), §53 (access to water, medication, or a mattress); [2008 ad hoc visit report](#), §11 (complaining about their situation or not understanding officers' instructions due to language barriers); [2016 ad hoc visit report](#), §53 (requesting information about their legal situation); GCR, [Systematic pushbacks in Evros](#), 2018, p.4 (intervening about the ill-treatment of detainees).

⁹⁸ AI, [Frontier Europe](#), p.14; [Frontier of hope and fear](#), p.19.

⁹⁹ CPT, [2005 visit report](#), §42.

¹⁰⁰ CPT, [idem](#) (admissions), §57; [2011 ad hoc visit report](#), §15 (cover-up by director).

¹⁰¹ UNHCR, [Greece as a country of asylum](#), 2014, p.8; UN HRC, [2015 Concluding Observations](#), §33; CPT, [2018 ad hoc visit report](#), p.4; UN CAT, [2019 Concluding observations](#), §16; CoE Commissioner, [2021 Letter to Greek Ministers](#).

¹⁰² ECCHR, [Analyzing Greek Pushbacks](#), 2021. **Finding coordinated actions from several state actors**: Greek Ombudsperson, [2020 Interim pushback report](#), p.20; AI, [Fear and Fences](#), 2015, pp.21, 65; HRW, [Greece: Violent Pushbacks at Turkey Border](#), 2018; **Identifying patterns**:

treatment.¹⁰³ However, Greek authorities continue to deny the existence of pushback practices,¹⁰⁴ including in answers to the media,¹⁰⁵ parliaments¹⁰⁶ and human rights institutions.¹⁰⁷

16. Isolation of those apprehended during pushbacks – through mobile phone seizure,¹⁰⁸ denial of notification rights,¹⁰⁹ *incommunicado* detention¹¹⁰ and targeting of civil society supporters¹¹¹ – is a powerful tool of secrecy and denial,¹¹² as is **the refusal to maintain any records**, despite repeated CPT recommendations. Thus, there still is no single-custody record,¹¹³ and no records at all for detainees at border stations,¹¹⁴ leading the CPT to conclude that claims of arbitrary detention and/or ill-treatment are credible;¹¹⁵ the lack of records is intentional to cover-up ill-treatment;¹¹⁶ and this aims to obstruct access to procedure, in particular registration.¹¹⁷ At sea, the actions and locations of coastguards are also not recorded.¹¹⁸ Further, **State agents at the border are**

HRW, *Stuck in a Revolving Door*, 2008, p.3; UN CAT, *2019 Concluding observations*, §16; CoE Commissioner, *2021 Letter to Greek Ministers*; CPT, *2018 ad hoc visit report*, §140; AI, *Frontier Europe*, 2013, p.12; GNCHR, *2020 Statement on push backs*, p.5; GCR, *Systematic pushbacks in Evros*, 2018, pp.2-3.

¹⁰³ AI reports that noted that “almost all” refugees and migrants interviewed about their pushbacks had either been subjected to or directly witnessed ill-treatment in the process: *Frontier Europe*, 2013, p.13; *Fear and Fences*, 2015, p.59; *Frontier of hope*, 2014, p.12. See also ProAsyl, *Pushed back*, 2013, pp.X-XI: “The majority of the interviewees claimed that they had been ill-treated.

¹⁰⁴ CoE Commissioner, *2021 Letter to Greek Ministers*; ProAsyl & RSA, *Official reactions and positions on push backs: a timeline*; Greek Minister of Migration & Asylum, *Letter to the Vice-President of the EC and the European Commissioner for Home Affairs*, 2021.

¹⁰⁵ *Der Spiegel*, *The Turkish Woman Who Fled Her Country Only To Get Sent Back*, 2020 (when faced with video evidence); *New York Times*, *E.U. interpreter says Greece expelled him to Turkey in migrant roundup*, 2021.

¹⁰⁶ Efsyn, *Mitarakis' voice on the revelations of the 'Ef.Syn' about the illegal pushbacks*, 2020 (Greek parliament); *European Parliament News*, *Investigate alleged pushbacks of asylum-seekers at the Greek-Turkish border, MEPs demand*, 2020 (LIBE Committee of the European Parliament).

¹⁰⁷ UNHCR, *Greece as a country of asylum*, 2014, pp.7-8; AI, *Frontier of hope*, 2014, p.5; Greek Ministers, *2021 Response to the CoE Commissioner*; *Response to the 2020 CPT visit report*.

¹⁰⁸ Greek Ombudsperson, *2020 Interim pushback report*, p.20; AI, *Fear and Fences*, 2015, p.59; CPT, *2008 ad hoc visit report*, §21.

¹⁰⁹ See below, footnote 123.

¹¹⁰ HRW, *Stuck in a Revolving Door*, 2008, p.3; *Greece: Violent Pushbacks at Turkey Border*, 2018; CoE Commissioner, *2021 Letter to Greek Ministers*; CPT, *2018 ad hoc visit report*, §140; UN WGAD, *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 2018, §45; RSA, *2019 Submissions to UN WGAD* (unpublished).

¹¹¹ SR on HRs of Migrants, *Migration policy having “suffocating effect” on HRs defenders*, 2022.

¹¹² Greek Ombudsperson, Letter to Minister of Mercantile Marine and Deputy MoI, 22.11.2007, p.2.

¹¹³ CPT, *2001 visit report*, §48; *2005 visit report*, §43; *2013 visit report*, §§14, 34 (recommendations ignored since 1993); *2020 ad hoc visit report*, §25 (recommending single custody record).

¹¹⁴ CPT, *1999 visit report*, §§45-6; *2018 visit report*, p.4, §81; *2020 ad hoc visit report*, §§24-5, 55.

¹¹⁵ CPT, *2020 ad hoc visit report*, §§24-5, 55.

¹¹⁶ CPT, *2009 visit report*, §§39, 55.

¹¹⁷ CPT, *1999 ad hoc visit report*, §46.

¹¹⁸ GNCHR, *2020 Report on human rights at borders*, p.23. This is part of the claims made in *F.M. v. Greece* (7622/21), communicated in 2021.

instructed to keep operations secret and off the radar, using private means of communication rather than official ones¹¹⁹ or misleading national investigations¹²⁰ and independent inter-state fact-finding visits.¹²¹ In addition, the Greek government has either ignored or vehemently rejected pleas for an independent border monitoring mechanism.¹²² Finally, Greek authorities **refuse to grant non-citizens handled in the context of border operations any third party notification rights**.¹²³ The non-implementation of these safeguards allows Greek authorities to keep denying the existence of pushbacks, to ignore Court decisions (interim measures)¹²⁴ and to ensure impunity, and thus the continuity of pushback practices.

2) Perpetuating impunity through the lack of effective investigations

17. Despite decades of reporting, these tactics have ensured that not a single trial for ill-treatment during border operations has ever taken place in Greece.¹²⁵ For years and until the present, Greek authorities have ignored calls for effective investigations of pushbacks.¹²⁶

18. Pushback victims face **specific obstacles to accountability**: the arbitrary and unrecorded character of their detention and handling results in greater vulnerability to **retaliation**.¹²⁷ It also results in the **non-recording** of operations times and locations¹²⁸ but also of complainants' identity and presence in Greek territory, weakening the evidence in their case and their chances of ever being

¹¹⁹ ProAsyl et al., *The practices of Greek coast guards*, 2007, p.15

¹²⁰ RSA, *#AgathonisiShipwreck: The case file*, 2018 (coastguards maintaining contacted later, until Der Spiegel published their communication with the person who signalled the boat to rescue).

¹²¹ AI, *Frontier of hope*, 2014, p.14 (Police Director initially denied pushback, but later changed his account because UNHCR had directly witnessed the group's presence in Greece); CPT, *2018 ad hoc visit report*, §6 (police officer in charge covering up overnight migrants' detention).

¹²² UNHCR, *UNHCR expresses its deep concern at reports of informal forced returns from Turkey*, 2017 (calling for monitoring mechanism); Newsroom Iefimerida, *There is no proposal by the European Commission for a border control mechanism*, 2021. To palliate, the GNCHR took the initiative of a Working Group on a mechanism to record pushbacks: GNCHR, *2020 Report on human rights at borders*, p.25.

¹²³ CPT, *2001 visit report*, §50, (border guards maintain notification rights inapplicable during border operations); *2007 visit report*, p.32; CPT, *2020 ad hoc visit report*, §11 (recommendations ignored for two decades).

¹²⁴ GCR, *Information note on interim measures regarding pushbacks*, July 2022; RSA, *Systemic breaches of the rule of law at Greece's land and sea borders*, June 2022.

¹²⁵ FRA, 2020 *Fundamental Rights at Borders*, pp.23-4; 2022 *Fundamental Rights Report*, pp.144-5.

¹²⁶ UNHCR, *UNHCR calls on Greece to investigate pushbacks at sea and land borders with Turkey*, 2020; IOM, *IOM alarmed over reports of pushbacks from Greece at EU border with Turkey*, 2020; UN WGAD, *Report on 2020 visit*, §87; CoE Commissioner, *2021 Letter to Greek Ministers*; HRW, *Stuck in a Revolving Door*, 2008, p.8; AI, "*Written statement to the HR Council*", 2013, p.4.

¹²⁷ HRW, *Greece: Unsafe and Unwelcoming Shores*, 2009; AI, *Police Violence in Greece*, 2012, p.35; *Frontier of hope*, 2014, pp.22-3; GNCHR, *2020 Report on human rights at borders*, p.25.

¹²⁸ ; *2021 Annual Report*, pp.88, 98.

identified, located and interviewed;¹²⁹ their **expulsion to Turkey** and the expulsion of foreign witnesses, furthering unlikelihood of possibility to instruct a Greek lawyer¹³⁰ and/or that of an interview through state cooperation. In handling pushback cases, investigating and prosecutorial authorities show **even more reluctance and passivity**, with standard letters as responses to complaints, obvious lines of inquiry not followed; the lack of records used to justify swift dismissals.¹³¹ Thus, despite several public announcements of “thorough” investigations and inquiries,¹³² none have resulted in any effective investigation – not even “the hearing of live evidence from alleged victims, witnesses and complainants”¹³³ – or accountability.¹³⁴

III. CONCLUSION

19. Long-standing systemic obstacles, as acknowledged by the Court and the CoM,¹³⁵ prevent effective investigations into the circumstances of law-enforcers’ actions in Greece, especially for border operations. This is due to their unrecorded, covert nature, which serves to deny any oversight or accountability, and the investigating and prosecuting authorities’ reluctance/obstruction. Finally, the expulsion of non-citizen complainants and civilian witnesses significantly decreases the likelihood of their involvement in any investigation.¹³⁶ Therefore, for applicants alleging violations of articles 2 and 3 ECHR during pushback operations, an effective investigation is not currently available.

¹²⁹ **Greek Ombudsperson**, *Investigation of Arbitrary Incidents Report*, 2020, p.59; *2021 Annual Report*, pp.88, 98.

¹³⁰ Article 42 Greek Criminal Code requires a certification of powers of attorney by a Greek authority or lawyer, making it difficult for non-Greek citizens to instruct a Greek lawyer from Turkey, especially if they are undocumented.

¹³¹ **Greek Ombudsman**, *2020 Interim pushback report*, pp.15-22, 88, 98 (on standard letters; dismissal due to no records or no investigation); **RSA**, *2022 Submissions to UN CED* (annexed).

¹³² In 2014, Greek authorities reported that over 21 disciplinary inquiries had been ordered under the Ministry of Public Order and at least 3 disciplinary inquiries took place under the Ministry of Shipping; **AI**, *Frontier of hope*, 2014, p.22; **Greek Ministers**, *2021 Response to the CoE Commissioner*, pp.1, 4; **CPT**, *2018 ad hoc visit report*, §143; **RSA et al.**, *2021 Joint statement on push backs*, p.3 (Orestiada Public Prosecutor’s launch of *ex officio* investigation).

¹³³ **UN CAT**, *2019 Concluding observations*, §16 (concerned investigations had not even “included the hearing of live evidence from alleged victims, witnesses and complainants”); **RSA et al.**, *2021 Joint statement on push backs*, p.7 (concluding no effective investigation into any pushback has ever been conducted); **Greek Ombudsperson**, *2020 Interim pushback report*, p.23.

¹³⁴ **UNHCR**, *Greece as a country of asylum*, 2014, p.8 (confirming that “no case ha[d] resulted in holding any officials accountable.”); **AI**, *Frontier of hope*, 2014, p.23: (reporting that “Greek authorities were unable to point to the concrete results of a single internal investigation into allegations of push-backs to date.”); **GNCHR**, *2020 Contribution to the UN SR on the HRs of Migrants*, p.3 (confirmed only a few official investigations open without outcome and no case reached a court); *2020 Report on human rights at borders*, p.25; **CPT**, *2020 ad hoc visit report*, (noting Greece provided no information on the announced investigations); **Greek Ombudsperson**, *2020 Interim pushback report*, p.18 (reporting that when a preliminary inquiry was launched, it was then closed as completed with no findings against any officers).

¹³⁵ See part I.

¹³⁶ See part II.