



**INTERDEPARTMENTAL POSTGRADUATE STUDIES PROGRAM IN HUMAN RIGHTS
AND MIGRATION STUDIES**

Master's Thesis

**HUMANITARIANISM AND SECURITY: THE CRITICAL CASE OF
FRONTEX AND GREECE**

by

Kougioumtzi Sevasti

Supervisor: Dr. Chrysoula Papalexatou

Thessaloniki
June 2023

Inscription

To my loved ones, both blood-related and those who have become family in their own special way.

Acknowledgments

I express my heartfelt gratitude to Dr. Chrysoula Papalexatou, my supervisor, for her unwavering trust, invaluable guidance, and insightful feedback throughout the challenging journey of this task. I am incredibly fortunate to have collaborated with her, and our connection and mutual respect developed over time are sources of great appreciation for me.

List of abbreviations used

BVMN (Border Violence Monitoring Network)

CF (Consultative Forum)

CLP (Contact Learning Phase)

CPT (The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment)

CSOs (Civil Society Organizations)

EASO (European Asylum Support Office)

ECJ (European Court of Justice)

EctHR (European Court of Human Rights)

EU (European Union)

EIBM (European Integrated Border Management)

FRA (Fundamental Rights Agency)

FR (Fundamental Rights)

FRMs (Fundamental Rights Monitors)

FSWG (Frontex Scrutiny Working Group of the European Parliament)

FRO (Frontex Return Office)

IOM (International Organization for Migration)

ILP (Independent Learning Phase)

MB (Management Board)

MEPs (Members of the European Parliament)

Mss (Member States)

NGOs (Non-Governmental Organizations)

OPLANs (Operational Plans)

OLAF (European Anti-Fraud Office)

OSCE/ODIHR (Organization for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights)

PDIT (Pre-Deployment Induction Training)

SIRs (Serious Incident Reports)

TFEU (Treaty on the Functioning of the European Union)

UNHCR (United Nations High Commissioner for Refugees)

Abstract

This dissertation explores EU's policies regarding the protection of refugees and migrants, specifically through Frontex. The 2015-2016 refugee crisis heightened the agency's security practices and expanded its role, resulting in increased border securitization that posed a threat to the human rights of migrants and refugees. Consequently, the agency implemented certain mechanisms to improve its consideration of fundamental rights at an operational level. However, an implementation gap exists between the theoretical introduction of these mechanisms and their practical effectiveness. The paper first analyzes and assesses the agency's mechanisms for protecting the fundamental rights of individuals on the move. This examination confirms the existence of an implementation gap, as certain regulations were not properly enforced, as indicated by the OLAF report. The second focus of the paper is Greece, where accusations of fundamental rights violations by national authorities led to a landmark ruling on July 7 by EctHR, highlighting Greece's illegal pushbacks to Turkey under Frontex's supervision. This analysis concludes that the primary responsibility for fundamental rights violations lies with the Greek authorities, as Frontex primarily serves as an advisory body without executive powers, an area of cooperation that requires enhancement. The findings are supported by primary and secondary data analysis. Primary data is obtained through qualitative research, specifically one-to-one interviews with six Frontex border guards. This dissertation aims to provide reflections and conclusions on EU policies, practices, and procedures related to the protection of fundamental rights for refugees and migrants through Frontex, as well as to propose necessary changes based on the research findings.

Key words: EU policies, Frontex, border securitization, fundamental rights, implementation gap, Greece

Table of Contents

Inscription.....	2
Acknowledgments.....	3
List of abbreviations used.....	4
Abstract.....	6
1. Introduction.....	9
2. Literature Review.....	12
3. Methodology.....	22
3.1. Data collection method.....	23
3.2. Research Sample.....	25
3.3. Code of Ethics and Research Limitations.....	27
4. Analysis.....	29
4.1. Legal Framework of Frontex’s Fundamental Rights Protection Mechanism.....	30
4.2. Enhancing Fundamental Rights Protection: Frontex's Training of Border Guards.....	34
4.3. Examining the Effectiveness of Frontex's Fundamental Rights Strategy in Operational Activities	42
4.4. Assessing the Code of Conduct: Aims, Implementation, and Violations.....	48
4.5. Strengthening the Consultative Forum on Fundamental Rights: Enhancing Effectiveness and Institutional Role	51
4.6. Examining the OLAF Report: Frontex, Greece, and Accountability for Human Rights Violations	58

5. Critical Assessment of Frontex’s Fundamental Rights Protection Mechanisms.....70

**6. Contributions, Future Research, and Recommendations for Defending Basic Rights in
Border Management.....73**

7. Conclusion.....79

Reference List.....82

Appendix 1.....87

Appendix 2.....88

1. Introduction

In recent times, the European Union (EU) has encountered a substantial surge of migrants and refugees seeking asylum within its borders. Due to a lack of coordination, the Member States were unable to manage the high migration flows. Consequently, migration flows were perceived as a threat to the EU and its citizens, and these socially constructed threats were employed to rationalize the enforcement of more stringent measures pertaining to migration policies and border control, resulting in the securitization of migration. In 2004, the EU established Frontex, the European Border and Coast Guard Agency, to aid Member States and Schengen-associated countries in regulating “the EU’s external borders and the fight against cross-border crime.”¹

Frontex's primary role is to safeguard the fundamental rights of migrants and refugees during border operations, in accordance with international and EU law. To strengthen its knowledge and accountability towards the protection of fundamental rights, the Agency has implemented certain mechanisms such as the Fundamental Rights Strategy, the Code of Conduct, the Consultative Forum on Fundamental Rights, and the Fundamental Rights Training of border guards.² Nonetheless, Frontex has faced accusations of inadequate protection of the fundamental rights of migrants and refugees, particularly in the context of migration and asylum. This has become a growing concern, given the increasing number of reports of fundamental rights violations associated with Frontex operations. The allegations leveled against Frontex regarding the protection of the fundamental rights of refugees and migrants have led to the supposition that EU employs institutional bilingualism in policies pertaining to the regulatory framework of such protection. This notion has given rise to apprehension regarding the potential presence of an implementation gap within the EU's migration policies.

1 Frontex, *Tasks & Mission*, frontex.europa.eu (n.d.)

2 *See id.*

Greece is one of the EU countries where Frontex is operational. Since the onset of the Syrian conflict in 2011, Greece, considered the gateway of Europe, has been severely impacted by the migration crisis. The country has been criticized for its handling of asylum applications and the conditions in its migrant detention centers. Numerous NGOs and international bodies have repeatedly accused Greece of committing fundamental rights violations and illegal pushbacks. In this regard, the EctHR delivered a historic ruling on July 7th, 2022, convicting Greece of fundamental rights violations in the *Safi and Others v. Greece* case.³ However, the Greek government has consistently denied these allegations and has denied any involvement in illegal acts.

Frontex has been collaborating with Greek authorities in joint operations aimed at managing the influx of refugees and migrants. Nonetheless, there have been concerns raised about the agency's potential role in fundamental rights abuses in Greece. In an effort to investigate this situation further, the European Anti-Fraud Office (OLAF) conducted an inquiry into Frontex's conduct and produced a report on its findings. The report highlights incidents of human rights violations in Greece committed by the Greek national forces, which were covered by Frontex.

The principal aim of this dissertation is to examine EU policies regarding the regulatory framework of fundamental rights protection for refugees and migrants, specifically focusing on the role played by Frontex, in ensuring the protection of the fundamental rights of refugees and migrants within the EU. The present study entails a two-tiered investigation, aimed at evaluating the efficacy of Frontex's mechanisms for safeguarding the fundamental rights of individuals seeking refuge in the EU. Firstly, an appraisal of the agency's regulatory framework will be conducted, assessing the extent to which its mechanisms ensure comprehensive protection of migrants' and refugees' fundamental rights. This evaluation will also shed light on the existence of an implementation gap in certain mechanisms. Secondly, the study will concentrate on the case of

³ European Council on Refugees and Exiles, "Greece: ECtHR Condemns Greece in Prominent Ruling, New Evidence of Pushbacks, Renewed EU Critique – Same Old Denials, Government Ignores European Courts and Continue Crack-Down on Solidarity," European Council on Refugees and Exiles (ECRE), 2022, accessed June 8, 2023, <https://ecre.org/greece-ecthr-condemns-greece-in-prominent-ruling-new-evidence-of-pushbacks-renewed-eu-critique-same-old-denials-government-ignores-european-courts-and-continue-crack-down-on-solidarity/>

Greece, which has been the subject of intense scrutiny and criticism for its human rights violations in relation to migration and asylum and illegal pushbacks, under the supervision of Frontex.

This research study employs a critical case approach to investigate the implementation gap of EU migration policies and fundamental rights protection. The study focuses on Frontex and Greece, and employs both primary and secondary data analysis. Primary data was collected via in-depth interviews with Frontex border guards to evaluate the efficacy of the Agency's fundamental rights training mechanisms. The Frontex Press Team also provided insights into the Agency's operations via email communication. Secondary data sources, including online search engines, contemporary data from governmental and non-governmental agencies, and commercial information sources, were used to investigate the implementation gap in these mechanisms during operational activities, with a specific focus on Greece. The study integrates the primary and secondary data to provide a comprehensive analysis of the research question.

The structure of this paper can be outlined as follows. Section 2 contextualizes Frontex's role in fundamental rights, highlighting the conflict between its tasks and the underlying securitization theory. Following that, the methodology section, section 3, outlines the critical case approach used and details the data collection methods and analysis techniques. Then, the analysis section, section 4, examines the implementation gap of Frontex's fundamental rights protection mechanisms, particularly in Greece, discussing their regulations and analyzing their implementation based on available data and the OLAF report. Following that, section 5 provides a critical assessment of the existing mechanisms. After that, section 6 refers to the contributions of the present study to the existing literature, identifies areas of further research and provides recommendations on safeguarding fundamental rights within the framework of border management and migration control. Finally, the discussion and conclusion section highlights key findings, draws conclusions, discusses implications and addresses limitations faced during the research.

2.Literature Review

This section situates Frontex within the existing literature and policy framework related to fundamental rights. It examines the securitization theory that underpins Frontex's establishment and identifies a contradiction between its main tasks and securitization. The section focuses on the implementation gap through Frontex's operations and the contributing factors, including weak governance and accountability mechanisms. It also presents conflicting views on Frontex's operations, with some praising and others accusing the agency of human rights violations, providing a holistic perspective. Finally, the section discusses Frontex's controversial operations in Greece, citing relevant studies and reports, enhancing the notion of the implementation gap. Examining these issues is crucial as it enables a comprehensive understanding of Frontex's role in relation to fundamental rights, highlights the implementation gap in EU migration policies, and assesses the potential human rights implications and governance challenges associated with Frontex's operations.

According to the Copenhagen School, securitization is the excursive procedure which transforms a social issue into a “threat” and creates the need to enforce unprecedented actions to tackle the threat.⁴ More specifically, it has been argued that “security threats” are “socially constructed” through the use of “speech acts” and the appropriate rhetoric.⁵ Moreover, according to the Paris School, securitization entails the “capacity to control borders, to manage threats, to define endangered identities, and to delineate the spheres of orders”.⁶ However, these socially constructed threats are used in order to justify the enforcement of more rigorous measures in relation to migration policies and border control. It is argued that the notion of security is employed in order to

4 Ioannis N. Grigoriadis & Esra Dilek, *Securitizing Migration in the European Union: Greece and the Evros Fence*, *Journal of Balkan and Near Eastern Studies*. 2 (2018).

5 Sarah Léonard & Christian Kaunert, *The securitisation of migration in the European Union: Frontex and its evolving security practices*, *Journal of Ethnic and Migration Studies*. 3 (2020).

6 See note 4, 3 (2018).

“legitimize contentious legislation, policies or practices that would otherwise not have been deemed legitimate”.⁷ These procedure establishes “urgent security issues or threats in order to mobilize opinion and constitute legitimacy and authority for the means of dealing with that threat”.⁸ Overall, the securitization of migration theory offers important insights into the political and social implications of framing migration as a security issue.

Greece has been a country deeply affected by the securitization of migration, as it has been a major point of entry for migrants and refugees into Europe. Feelings of suspicion and intimidation became present since the mid-1990s within the Greek society.⁹ However, in the beginning of 2000, the migrations flows were no longer considered “as an existential threat to the country, which led to the initiation of a desecuritisation process”.¹⁰ Nevertheless, in 2015, the refugee crisis was considered “an existential threat for the securitizing actors” again in Greece and the refugees arriving at the Greek borders.¹¹ The Greek government and media have often portrayed migration as a security threat, linking it to issues such as terrorism and crime. The fear of the unknown identity of a person matches the inadequacy “to predict future behavior” and, together, they enhance “the logic of worst-case scenarios that is embedded in governmentality of fear and unease”.¹² In the case of Greece, this fear was heightened “by the lack of reliable data and statistics on migrants” which led to the bias “among the government, political parties and security professionals to scapegoat, particularly Albanian and Eastern European migrants”.¹³ The securitization of migration has also contributed to the rise of far-right movements and anti-immigrant sentiment in Greece. However, there have also been civil society initiatives and grassroots movements that have challenged the securitization of migration and advocated for the rights of migrants and refugees.

7 Andrew W. Neal, *Securitization and Risk at the EU Border: the Origins of FRONTEX*, *JCMS: Journal of Common Market Studies*, 335 (2009)

8 *See id.*

9 Stamatia Chroni, *Securitization of Migration, the case of ‘Refugee Crisis’ in Greece*, Utrecht University, 15 (2021).

10 *See id.*

11 *See id.*

12 Gabriella Lazaridis and Dimitris Skleparis, *Securitization of Migration and the Far right: the Case of Greek Security Professionals*, *International Migration*, 54 (2), 178 (2015).

13 *See id.*

It has been argued that one of the products of securitization was the establishment of Frontex. The agency is a coordinator in relation to the operations and the cooperation between the Member States in order to strengthen “the security at the external borders of the EU Member States”.¹⁴ It is engaged to conduct six main tasks which are “(1) coordinating operational cooperation between Member States regarding the management of external borders; (2) assisting Member States in the training of national border guards, including establishing common training standards; (3) conducting risk analyses; (4) following up on developments in research relating to the control and surveillance of external borders; (5) assisting Member States when increased technical and operational assistance at external borders was required; and (6) assisting Member States in organizing joint return operations”.¹⁵ Consequently, Andrew W. Neal (2009) contradicts the statement mentioned above and claims that, since the agency follows these main tasks, it is proven that Frontex is “the opposite of securitization” since its goal is to coordinate and “harmonize the border practices” of the Member States “preventing the arbitrariness” and violation of human rights.¹⁶

Moreover, Marin (2011) argues that Frontex serves as a mutual settlement “between Commission, Council and Mss”, even though the Commission was in favor of a “supranational agency”, since they recognized the necessity to “increase cooperation, coordination, convergence and consistency between borders’ practitioners in the EU Mss”.¹⁷ The structure of Frontex represents this “compromise between supranationalism and intergovernmentalism” since it began as “a Community agency in the Treaty of Amsterdam era, with its consolidation of the Schengen acquis and the partial communitarisation of the former third pillar, in particular of migration and

14 Sarah Léonard & Christian Kaunert, *The securitisation of migration in the European Union: Frontex and its evolving security practices*, Journal of Ethnic and Migration Studies. 5 (2020).

15 *See id.*

16 Andrew W. Neal, *Securitization and Risk at the EU Border: the Origins of FRONTEX*, JCMS: Journal of Common Market Studies. 347 (2009).

17 Luisa Marin, *Policing the EU’s External Borders: a Challenge for the Rule of Law and Fundamental Rights in the Area of Freedom, Security and Justice? An Analysis of Frontex Joint Operations at the Southern Maritime Border*, Journal of Contemporary European Research, 7(4). 472 (2011).

visa policies”.¹⁸ However, the agency appears to have “intergovernmental features” since in the management board there are “two Commission officials and the heads of national border guard services”.¹⁹

Marin (2011) also claims that operations at “EU’s external maritime borders” by Frontex are actually a case of “venue shopping by MSs’ governments for the benefit of their police and quasi-military law enforcement actors”.²⁰ More specifically, the Member States use Frontex in their advantage in order to find “a more convenient venue”.²¹ Firstly, more emphasis is put on the operational dimension “enabled by linking police actors into cooperation networks”.²² Also, there is the participation of police actors who mainly have a “semi-military status”.²³ Last but not least, the author argues that MS are applying “venue shopping” in policing pre-borders areas “instead of policing migration within the borders”.²⁴

As previously indicated, EU has enacted policies with the objective of effectively managing migration flows and ensuring the protection of fundamental rights, encompassing the mandates and responsibilities assigned to Frontex in accordance with international and EU legal frameworks. However, a discernible disparity between policy intent and operational realities has become evident, particularly in the context of Frontex operations, notably in Greece. This discrepancy between theoretical foundations and practical implementation serves to accentuate the manifestation of an implementation gap within the EU policies.

The implementation gap refers to the “discrepancy” between the stated goals of policies and their actual implementation on the ground.²⁵ It is a common issue in many countries and is particularly pronounced in the area of migration policy. Policies may not be implemented due to

18 Luisa Marin, *Policing the EU’s External Borders: a Challenge for the Rule of Law and Fundamental Rights in the Area of Freedom, Security and Justice? An Analysis of Frontex Joint Operations at the Southern Maritime Border*, *Journal of Contemporary European Research*, 7(4). 472 (2011).

19 *See id.*

20 *Id.* at 486.

21 *See id.*

22 *See id.*

23 *See id.*

24 *See id.*

25 Mathias Czaika and Hein de Haas, *The Effectiveness of Immigration Policies*, *Population and Development Review*, 39 (3), 496 (2013).

“practical, planning, or budgetary constraints or as a consequence of corruption, ignorance, or subversion”.²⁶ This implementation gap can be considerable when the stated policies are “unrealistic or detached from concrete migration experiences” and it depends on five factors which are “the power and autonomy of the state bureaucracy; the number of immigrants; the degree to which political rights of citizens and noncitizens are constitutionally protected; the relative independence of the judiciary; and the existence of an immigration tradition”.²⁷

The implementation gap in Frontex's operations can be attributed to several factors, including the lack of resources and capacity, weak governance and accountability mechanisms. Addressing the implementation gap in Frontex requires strengthening its governance and accountability mechanisms, enhancing the transparency of its operations, and providing adequate resources and training to its staff. It also required a shift towards a more human rights-based approach that ensured the protection of migrants and refugees, rather than a purely security-oriented one. Thus, Frontex introduced in theory these mechanisms for the protection of the fundamental rights of people on the move.

The literature review shows that the opinions are greatly divided in relation to Frontex’s operations since some parties are in favor of the agency but some harshly judge its operations and accuse the agency of violations of human rights.

Andrew W. Neal (2009) argues that the agency serves a “regulatory” role which aims at the harmonization of the “external EU border management and control” by promoting “bureaucratic and technological means”.²⁸ Furthermore, he highlights its role as a “borders agency” which follows the commands of the Member States.²⁹ He underlines the agency’s competency for “risk analysis” in order to “manage and regulate both migration and the practices of Member State border security

26 Mathias Czaika and Hein de Haas, *The Effectiveness of Immigration Policies*, Population and Development Review, 39 (3), 496 (2013).

27 *See id.*

28 Mathias Czaika and Hein de Haas, *The Effectiveness of Immigration Policies*, Population and Development Review, 39 (3), 350 (2013).

29 *See id.*

apparatuses”.³⁰ Also, he considers it necessary to acknowledge the importance of Frontex among “the numerous other institutional, technical and legal tools being developed by the EU for the management of migration, security and indeed many other areas of policy”.³¹ This approach remains briefly addressed in the literature since the majority of the present studies available were focusing on the negative aspects of the agency, the absence of transparency, its incompetence to fulfill its main task appropriately and the human rights violations enforced by Frontex. This lack of resources in relation to the agency’s effective contribution to migration control may stand as a proof of its inability to fully comply with its responsibilities in relation to the protection of fundamental rights.

There exists a considerable body of literature on how Frontex’s policies lead to human rights violations. It is argued that the “border control operations” do not protect people in need and they raise the question of “the legality of these operations with regard to international obligations towards people seeking international protection”.³² Although the agency states that it has as its first concern the “sealing of borders”, it has been accused for violations of the right to asylum since migrants and refugees are “pushed out of European waters even before a detailed examination is carried out regarding whether they are entitled to remain in Europe or have the right to some form of international protection”.³³ It is illegal for an individual to be “pushed back” without having their case properly examined or being returned to a place where they could be victims of “inhuman or degrading treatment”.³⁴ However, there are accusations against Frontex for violations of the principle of non-refoulement since “boats of migrants are being pushed back from Greek waters towards the Turkish border”.³⁵

In June 2008, Frontex and the United Nations High Commissioner for Refugees (UNHCR) formed “a working agreement” regarding their partnership “on the training of border guards, on

30 Mathias Czaika and Hein de Haas, *The Effectiveness of Immigration Policies*, Population and Development Review, 39 (3), 353 (2013).

31 *See id.*

32 MIGREUROP, *Frontex between Greece and Turkey, at the Border of denial*, MIGREUROP, 6 (2014).

33 *See id.*

34 MIGREUROP, *Frontex between Greece and Turkey, at the Border of denial*, MIGREUROP, 7 (2014).

35 *See id.*

international refugee laws”.³⁶ The goal was to avert “conflicts between integrated border management and international human rights standards through training, practices and exchange of expertise”.³⁷ In October 2011, Regulation (EU) No 1168/2011 imposed that Frontex would have “stronger guarantees” towards the asylum-seekers’ fundamental rights.³⁸ This Regulation makes provision for the establishment of “the position of a Fundamental Rights Officer and a Consultative Forum on Fundamental Rights”.³⁹ In relation to the Consultative Forum on Fundamental Rights, certain European institutions, “international and civil society organizations” provide consultation to Frontex regarding human rights issues “the functioning of the complaints mechanism, the codes of conduct and the common training curricula”.⁴⁰ In relation to Fundamental Rights Officer, its responsibility is to control “Frontex’s implementation of its fundamental rights obligations in accordance with EU and international law” and to instruct “the Executive Director on fundamental rights-related issues”.⁴¹

Furthermore, according to Regulation (EU) 1168/2011, the Frontex Fundamental Rights Strategy and the role of the Fundamental Rights Officer (FRO) are adopted.⁴² This initiative presented different “principles” in order to guarantee the agency’s respect towards fundamental rights during its operations.⁴³ According to the Strategy, Frontex holds its role as a coordinator, even though “Member States remain primarily responsible for the actions of participating officers”.⁴⁴ Also, the text clearly states that the agency “remains fully accountable for all actions and decisions under its mandate.”⁴⁵ This statement proves that Frontex is actually “responsible” for everything that is happening under its authorization and now they can also “initiate” certain actions, not only

36 Luisa Marin, *Policing the EU’s External Borders: a Challenge for the Rule of Law and Fundamental Rights in the Area of Freedom, Security and Justice? An Analysis of Frontex Joint Operations at the Southern Maritime Border*, *Journal of Contemporary European Research*, 7(4). 483 (2011).

37 *See id.*

38 *See note 33*, 13(2014).

39 FRONTEX, *Fundamental Rights at Frontex*, frontex.europa.eu (n.d.).

40 FRONTEX, *Consultative Forum*, frontex.europa.eu (n.d.).

41 FRONTEX, *Fundamental Rights Officer*, frontex.europa.eu (n.d.).

42 OLAF Report, 12 (2021).

43 MIGREUROP, *Frontex between Greece and Turkey, at the Border of denial*, MIGREUROP. 44 (2014).

44 *See id.*

45 *See id.*

“coordinate” them.⁴⁶ Regarding FRO, according to Article 109 of the Regulation, his/her responsibilities are to supervise Frontex’s “compliance with fundamental rights”, conduct inspections. An other step taken by Frontex is the established of the Code of Conduct “which collects generally accepted standards of soft law and promotes professional values based on the principles of the rule of law and respect of fundamental rights”.⁴⁷ It contains two articles, four and five, regarding “the maintenance of fundamental rights and international protection”.⁴⁸

In 2019, the Regulation (EU) 2019/1896 reinforced Frontex’s priority towards fundamental rights. This Regulation envisages “the establishment of the fundamental rights monitors as statutory staff of Frontex”.⁴⁹ This staff is recruited “to the operational areas on behalf of the Fundamental Rights Officer”, they supervise and evaluate “the fundamental rights compliance of Frontex activities” and provide their consultation.⁵⁰ They inform the Fundamental Rights Officer regarding certain issues and they provide their support towards the “the training on fundamental rights” of the staff.⁵¹

Even though the agency has taken the above initiatives to prove that they prioritize fundamental rights during their operations, the literature explains that this is far from the truth. More specifically, the FRONTEXIT campaign criticizes the agency’s operations and argues that their authority does not respect the fundamental rights.⁵² FRONTEXIT argues that while the agency reassured the campaign that the principle of non-refoulement is respected, “disembarkation in a third country” was permitted during the Poseidon Sea 2012 operational plan which states that “if the operational plan does not state otherwise, priority is given to disembarkation in the third country from which the vessel originated”.⁵³ These assurances towards the principle of non-refoulement

46 MIGREUROP, *Frontex between Greece and Turkey, at the Border of denial*, MIGREUROP. 44 (2014).

47 Luisa Marin, *Policing the EU’s External Borders: a Challenge for the Rule of Law and Fundamental Rights in the Area of Freedom, Security and Justice? An Analysis of Frontex Joint Operations at the Southern Maritime Border*, *Journal of Contemporary European Research*, 7(4). 483 (2011).

48 Polly Pallister-Wilkins, *The Humanitarian Politics of European Border Policing: Frontex and Border Police in Evros*, *International Political Sociology*, 9(1). 60 (2015).

49 FRONTEX, *Fundamental Rights Monitors*, frontex.europa.eu (n.d.).

50 *See id.*

51 *See id.*

52 FRONTEXIT, *The Mandate of FRONTEX Is Incompatible with Human Rights*, frontexit.org. 5 (2014).

53 *Id.* at 8.

provide too much vigilance “to Member States, who have already violated the principle on several occasions”.⁵⁴ Regarding screening and debriefing, FRONTEXIT argues that, according to a migrant witness, migrants are not properly “informed of the objectives of the interview” or “the possibility to refuse participation in the interview”.⁵⁵

As it has been previously reported in the literature, Frontex is aware of the illegal pushbacks performed by the Member States but it is looking the other way. This is the case with Greece. The agency “deploys border guards from other EU Member States” who work together with “Greek patrols” on the Greek-Turkish borders.⁵⁶ Human Rights Watch (2022) reports incidents of violence towards migrants and refugees by the Greek police which stopped only during Frontex’s presence and while the agency knew about the situations, “it did nothing to ensure proper treatment at all times, respect for due process or access to asylum, or to prevent collective expulsion”.⁵⁷ It is reported that, since October 2020, Frontex obscures and approves the illegal pushbacks happening in the Greek-Turkish borders.⁵⁸ The agency proceeded with a “rapid border operation (RABIT) in Evros, in March 2020”, although there were multiple incidents of human rights violations by the Greek police, namely “suspending access to asylum, prosecuting asylum seekers for irregular entry, and violently forcing them back across the border”.⁵⁹

These accusations were confirmed by the European Anti-Fraud Office (OLAF) which conducted a “year-long investigation” against Frontex, which was ended in February 2022.⁶⁰ The OLAF report explains the agency was involved in “pushback operations in the Aegean Sea and allegedly covering up of illegal acts, including leaving of migrants adrift in engineless life rafts.”⁶¹ As a response, the agency stated that, in collaboration with the Greek forces, they have enforced “an

54 FRONTEXIT, *The Mandate of FRONTEX Is Incompatible with Human Rights*, frontexit.org. 11 (2014).

55 *Id.* at 13.

56 Human Rights Watch, “*Their Faces Were Covered*”: *Greece’s Use of Migrants as Police Auxiliaries in Pushbacks*, Human Rights Watch. 17 (2022).

57 *See id.*

58 *See id.*

59 Human Rights Watch, “*Their Faces Were Covered*”: *Greece’s Use of Migrants as Police Auxiliaries in Pushbacks*, Human Rights Watch. 18 (2022).

60 *See id.*

61 *See id.*

action plan” to improve the “past and present” mistakes, “to engage in Structured Dialogue, bringing the Fundamental Rights Officers on both sides to the table, while enabling interaction both the political and practitioner levels on operational issues.”⁶² The report verifies what the previous literature has been protesting about.

To summarize, the present literature review attests to the implementation gap with regard to migration and border control, as Frontex has failed to discharge its responsibility to safeguard the fundamental rights of migrants and refugees. Furthermore, this literature review exposes Greece's disregard for the fundamental rights of migrants by engaging in unlawful pushbacks to the Turkish borders, which infringes upon the principle of non-refoulement, the right to asylum, and the prohibition of degrading treatment. A more systematic and theoretical inquiry is imperative to evaluate the adequacy of the training provided to Frontex's coast guards on the protection of fundamental rights during the agency's border operations.

62 FRONTEX, *Statement of Frontex Executive Management following Publication of OLAF Report*, frontex.europa.eu (2022).

3. Methodology

This section outlines the methodology used in this research study, including the data collection methods employed such as interviews with Frontex border guards and secondary data analysis. The study used the critical case approach, focusing on Frontex and Greece, to examine the EU's policies on migration and fundamental rights protection. The section provides information on the research sample and data analysis methods used, specifically the qualitative data analysis techniques applied to primary and secondary research data. Finally, the section discusses the research's code of ethics and limitations encountered during data analysis.

In relation to the primary data, the most appropriate research method for the present dissertation is considered to be the qualitative research method. The qualitative approach is selected in order to “to answer questions about experience, meaning and perspective”, mainly from the point of view of the participant.⁶³ Moreover, this paper uses the secondary data analysis method which includes “the analysis of an existing dataset, which had previously been collected by another researcher, usually for a different research question”.⁶⁴ Finally, this paper utilizes the critical case approach and chooses as cases Frontex and Greece through which is explaining EU’s bilingualism in fundamental rights protection policies and their implementation gap during Frontex’s operations in Greece.

Regarding primary data, the qualitative analysis involves categorizing and comprehending “linguistic or visual material” to uncover “implicit and explicit dimensions of meaning-making” and representations.⁶⁵ In this study, qualitative analysis aims to explore “the subjective lived experiences” of Frontex border guards in relation to the fundamental rights training provided by the agency.⁶⁶ The research sample is determined based on the “purpose” of the study, seeking “in-depth

63 K. Hammarberg, M. Kirkman, and S. de Lacey, *Qualitative Research methods: When to Use Them and How to Judge Them*, Human Reproduction, 31(3), 499 (2016).

64 Robert L. Miller & John D. Brewer, *The A-Z of Social Research*, SAGE Publications, 285 (2003).

65 Esubalew Aman Mezmir, *Qualitative Data Analysis: An Overview of Data Reduction, Data Display and Interpretation*, Research on Humanities and Social Sciences, 10 (21), 15 (2020).

66 *See id.*

understanding” rather than strict representativeness.⁶⁷ Data collection methods may include “focus groups, unstructured or in-depth interviews”, and document reviews, with the data being “text-based” and “less generalizable” compared to quantitative data.⁶⁸

In secondary research data analysis, researchers must acquire and gain access to the relevant data for their study.⁶⁹ Subsequently, they engage in the interpretation and comprehensive understanding of the collected data.⁷⁰ It is important to note that secondary research involves repurposing data originally collected for other purposes, which may require adaptation to suit the researcher's needs.⁷¹ Furthermore, researchers should exercise caution regarding the quality of the acquired data, as some may not meet the necessary standards for their specific research objectives.⁷²

3.1. Data collection method

The current study involves interviews and the analysis of existing secondary data, to enhance our understanding of the fundamental rights training provided to Frontex's border guards as part of their basic training. The utilization of interviews is intended to elicit valuable insights and perspectives from key informants and experts, while the examination of secondary data enables us to effectively investigate the implementation gap related to the mechanisms introduced by the agency for the protection of fundamental rights during operational activities, with a particular emphasis on the situation in Greece.

This study used in-depth interviews with Frontex's border guards to gather information on their fundamental rights training, including course offerings, effectiveness, and suggestions for

67 Esubalew Aman Mezmir, *Qualitative Data Analysis: An Overview of Data Reduction, Data Display and Interpretation*, Research on Humanities and Social Sciences, 10 (21), 15 (2020).

68 *Id.* at 2831.

69 Robert L. Miller & John D. Brewer, *The A-Z of Social Research*, SAGE Publications, 28 (2003).

70 *See id.*

71 *See id.*

72 *See id.*

improvement. The limited availability of information on this topic necessitated interviews as a valuable source of data. The open-ended questionnaire allowed for participants' subjective opinions and provided data difficult to obtain using other methods. The questionnaire's structure addressed gaps in literature on Frontex's border guards' fundamental rights training.

The study aimed to investigate the quality and effectiveness of the fundamental rights training provided to Frontex's border guards and how it is implemented in practice. Open-ended questions were used to gather data on the border guards' professional background, tasks, Frontex's human rights training, instructors, and recommendations for improvement. The Frontex Press Team was also contacted to provide answers to the questions addressed to the border guards, and they forwarded the questions to the operational unit within Frontex and provided additional information on the training unit. This study employed standardized open-ended interviews with Frontex's border guards, allowing for personal opinions and experiences to be shared. The Frontex Press Team and the training unit's responses were also analyzed in conjunction with the collected data. The study aimed to provide a thorough comprehension of the effectiveness of Frontex's fundamental rights training program.

This research followed ethical considerations before conducting interviews. Participants were informed of the research objectives, their role, interview questions, and provided with a consent form via email. The consent form included a summary of the research project and their voluntary participation, and participants were required to sign it before the interview. Interviews were mostly conducted via video calls, lasted around 30 minutes, and were not recorded to ensure confidentiality and anonymity. Instead, the researcher transcribed the interviews using letters to replace names. The interview files are stored securely and will be destroyed after the completion of the study.

Finally, it employed online search engines as the data collection method for secondary research, which lasted six months. The gathered data were meticulously evaluated for credibility, relevance, and recency, with a focus on contemporary resources from the past five years due to the

numerous regulatory changes regarding the Agency. The selected sources included both primary and secondary sources from governmental and non-governmental agencies, commercial information sources, and newspapers. These sources were considered the most reliable and comprehensive for the study's subject matter, allowing for a comprehensive analysis of the implementation gap in fundamental rights protection during Agency operations, especially in Greece.

In conclusion, the present dissertation paper involves both primary and secondary research since it includes both original interviews and articles or reports in order to thoroughly examine the research question of the present study.

3.2. Research sample

In relation to the primary data, the research sample includes six Frontex's border guards of Category 1, namely standing corps, who have received the training on the protection of fundamental rights. The sample was collected through the non-probability sampling which is a method "in which the researcher selects samples based on the subjective judgment of the researcher rather than random selection".⁷³ The research sample was gathered through personal contacts and the snowball sampling, in which the participants of the research "provide referrals to recruit samples required for a research study".⁷⁴

The research sample consisted of male Category 1 border guards, with limited diversity in terms of nationality and gender. Most participants were new to the agency, with a range of roles including forced return and support officers, information officers, and debriefers. The majority had prior experience as police officers in Greece, while others had military experience. Despite efforts

⁷³ Dan Fleewood, *Non-Probability Sampling: Definition, Methods and Example*, QuestionPro (2018).

⁷⁴ Adi Bhat, *Snowball Sampling: Definition, Method, Advantages and Disadvantages*, QuestionPro (2018).

to ensure diversity, the availability of suitable candidates was limited. Recruiting border guards for the research proved challenging as some were uninterested or hesitant to participate, possibly due to fears of repercussions. Despite assurances of confidentiality and anonymity and conducting the research in a safe space, some never responded. This reluctance may be attributed to a lack of interest or privacy concerns. These circumstances highlighted the Agency's increased vigilance and caution following the release of the OLAF report.

In terms of the selection of sources for this study, the articles pertaining to the procedures, function, and fundamental rights mechanisms of the Agency were gathered primarily from peer-reviewed scientific journals and the official Frontex website, thus ensuring their reliability and credibility. Furthermore, various regulations related to the fundamental rights mechanisms within the Agency were reviewed to assess compliance with European and international laws. Additionally, the OLAF report was scrutinized to evaluate the extent to which the Agency adhered to the regulations imposed on it. Given that Greece is the case study for this dissertation, the selected articles predominantly consist of publications from reputable journals, non-governmental organizations, and newspapers which analyze the allegations of fundamental rights violations against Frontex and the national authorities, as well as the illicit pushbacks occurring at the Greek-Turkish borders.

The critical case approach was used in this paper, with Frontex and Greece chosen as case studies. Frontex, as an EU body established to support member states in managing migratory flows and protecting fundamental rights, was selected because it should follow EU regulations and conventions. However, as the literature shows, Frontex has been involved in human rights violations during its operations in various member states, revealing an implementation gap and demonstrating the EU's bilinguism towards protecting the fundamental rights of refugees and migrants. Greece was chosen as the second case study due to its association with Frontex's operations and the agency's involvement in illegal pushbacks by Greek authorities. Multiple

accounts from migrants, NGOs, and witnesses attest to fundamental rights violations in the Greek-Turkish borders and illegal pushbacks from Greece to Turkish waters, as documented in the literature.

3.3. Code of Ethics and Research Limitations

Qualitative research presents ethical challenges. Privacy protection is vital as focus group members may be identifiable, requiring the use of pseudonyms and concealing identifying information. Prior to the interviews, all participants received a consent form and were informed of their rights, including the ability to withdraw at any time and eliminate uncomfortable questions. They were also sent an email with all the questions to be asked. The researcher respected participants' rights throughout and informed them they could access the results of the interviews or dissertation. Overall, the research process was a unique and enjoyable experience for both the researcher and participants, with no unexpected surprises.

As previously stated, due to the lack of available resources on the fundamental rights training offered by Frontex, interviews with Frontex's border guards were conducted to gather additional information. Six one-to-one interviews were conducted to gather insights and opinions on the training, courses offered, instructors, effectiveness, and recommendations for improvement. This research is original and constructive in nature as it fills a gap in the literature and provides internal information on Frontex's fundamental rights training. Additionally, it highlights the gap between the theoretical initiatives of the Agency for the protection of fundamental rights and their application in practice. However, several limitations were encountered during the research that require further investigation.

In relation to sample representativeness, the small number of participants was concerning, six in total, since qualitative research include small groups of people. This number of participants can not be considered representative or generalizable, as it was mentioned earlier. Also, it was very

difficult to find participants who would be willing to participate in this researcher due to lack of time and interest or because they were concerned regarding the information that they could share. This research is not considered gender-inclusive since all the participants were male and I was not able to find female border guards due to my personal contacts.

Moreover, certain limitations were encountered in relation to the secondary research conducted. First of all, even though there was a wide variety of sources available regarding the agency, its operations, its regulations, its collaboration with the Greek authorities and the accusations against them, there was the issue of the credibility evaluation of the sources. Most articles recording the accusations against Frontex, its illegal activities and the illegal pushbacks occurring by the Greek authorities, were by NGOs and newspapers whose credibility was rather ambiguous for a dissertation paper, which led to a time-consuming process of evaluating their validity and finding more resources. Also, the agency's regulations are altered and updated frequently and, thus, certain sources found were not updated enough to accommodate the present study.

4. Analysis

This section aims to provide a comprehensive analysis of the fundamental rights protection mechanisms introduced by Frontex, with a particular focus on the implementation gap observed during the agency's operations, particularly in Greece. The legal basis for these mechanisms will be discussed, specifically highlighting the regulations that established the Fundamental Rights Training, Fundamental Rights Strategy, Code of Conduct, and Consultative Forum on Fundamental Rights. The implementation of these mechanisms will then be analyzed based on available data and the findings of the OLAF report.

The case of Greece will be examined in detail, with an assessment of the country's cooperation with Frontex on the borders and their involvement in fundamental rights violations and illegal pushbacks on the Greek-Turkish borders. This analysis will enable an evaluation of the implementation gap of Frontex policies during operations in Greece, particularly with regards to the protection of the fundamental rights of migrants and refugees. The findings of the OLAF report regarding the implementation gap of Frontex mechanisms and the agency's involvement in violations committed by Greece will also be referenced in this regard.

4.1. Legal Framework of Frontex's Fundamental Rights Protection Mechanisms

For the purpose of this dissertation paper, I am going to mainly focus and analyze three regulations which are considered to be integral for the agency's operation in respect of fundamental rights according to international and EU law. Namely, these regulations are Regulation (EU) No 1168/2011, Regulation (EU) 2016/1624 and Regulation (EU) 2019/1896 which introduce different mechanisms to the Agency in order to guarantee its proper functioning and the staff's adherence to the protection of fundamental rights of migrants and refugees.

The reference to fundamental rights was not so evident in Frontex's operations until the Regulation (EU) No 1168/2011, where "fundamental rights" are mentioned in the regulation 34

times. This Regulation clearly states that it follows the principles “recognized by TFEU and the Charter of Fundamental Rights” which the agency and the Member States must respect accordingly.⁷⁵ According to this regulation, the aim of the Agency’s operations should be amended and enhanced in order to be in full compliance with the “fundamental rights and the rights of refugees and asylum seekers”, especially the principle of non-refoulement.⁷⁶ Furthermore, it is underlined that the agency’s staff and the “national border guards of the Member States” must be offered a training⁷⁷ and develop a “common core curricula” regarding “fundamental rights, access to international protection and access to asylum procedures”,⁷⁸ which is vital for the protection of migrants and refugees as we are going to see later on.

Regulation (EU) No 1168/2011 introduces different mechanisms for the protection of the fundamental rights. First of all, according to the Regulation, Frontex should establish a Code of Conduct for all of its operations which will dictate “procedures intended to guarantee the principles of the rule of law and respect for fundamental rights”.⁷⁹ The Code of Conduct must apply to everyone who performs the Agency’s activities.⁸⁰ Moreover, the Regulation establishes the Fundamental Rights Strategy, which is a competent method to control if the fundamental rights are protected in Frontex’s operations.⁸¹ It also introduces the creation of the Consultative Forum. The Consultative Forum should be considered “on the further development and implementation of the Fundamental Rights Strategy, Code of Conduct and common core curricula”.⁸² Furthermore, the Management Board must assign a Fundamental Rights Officer (FRO) who must be experienced and competent with regards to fundamental rights.⁸³ It is very crucial that both the FRO and the

75 Regulation (EU) No 1168/2011,3 (2011).

76 Regulation (EU) No 1168/2011, 2 (2011).

77 *See id.*

78 *Id.* At 10.

79 *Id.* at 6.

80 *See id.*

81 Regulation (EU) No 1168/2011,17 (2011).

82 *See id.*

83 *See id.*

Consultative Forum must “have access to all information concerning respect for fundamental rights, in relation to all the activities of the Agency”.⁸⁴

In 2016, Regulation (EU) 2016/1624 enhances the Agency’s attention towards the protection of fundamental rights, since “fundamental rights” are mentioned 93 times in the regulation. More specifically, the Regulation underlines that “the extended tasks and competence of the Agency should be balanced with strengthened fundamental rights safeguards and increased accountability”.⁸⁵ Furthermore, it strengthens FRO’s role as it states that the FRO must be offered enough “resources and staff corresponding to its mandate and size” and admission to all essential information.⁸⁶ Frontex should encourage “the application of the Union acquis” in relation to the “management of the external borders, including with regard to respect for fundamental rights and international protection”.⁸⁷

Regulation (EU) 2016/1624 introduces a complaints mechanism to ensure “the respect for fundamental rights in all the activities” of Frontex.⁸⁸ The Fundamental Rights Officer (FRO) is responsible for examining “the admissibility of complaints, registering admissible complaints, and forwarding” them to the executive director or home Member State for follow-up.⁸⁹ The regulation also requires Frontex to document its actions towards the complaints mechanism in its annual report, including the number and types of complaints received, and “follow-up measures taken”.⁹⁰ In case of a complaint regarding “a border guard of a host Member State”, the home Member State must take appropriate measures and “report back to the FRO within a determined time period”.⁹¹

Regulation (EU) 2016/1624 refers also to previously mentioned training of Frontex’s border guards and provides more information. More specifically, the Regulation requires that every

84 Regulation (EU) No 1168/2011,17 (2011).

85 Regulation (EU) 2016/1624, 3 (2016).

86 *Id.* at 7.

87 *See id.*

88 *See id.*

89 *See id.*

90 *See id.*

91 *Id.* at 56.

member of Frontex’s activities, such as “all border guards and other relevant staff of the Member States” and Frontex’s staff, must receive training “in relevant Union and international law, including on fundamental rights, access to international protection and where appropriate search and rescue, prior to their participation in operational activities organized by the Agency”.⁹² This training’s common core curricula must include education regarding “fundamental rights, access to international protection and relevant maritime law”.⁹³ It must be formulated with the assistance of the consultative forum and the fundamental rights officer.⁹⁴

Last but not least, Regulation (EU) 2019/1896 is the most recent one and has as its priority to emphasize the protection of fundamental rights, which are mentioned 222 times in the Regulation. First of all, this Regulation introduces the initiative of Fundamental Rights Monitors. According to Article 110, the duties of the Fundamental Rights Monitors are to evaluate if Frontex’s operations follow the human rights law, consult and help “in that regard” and elevate the protection of fundamental rights “as part of European integrated border management”.⁹⁵ Also, the Fundamental Rights Monitors must examine if the operations respect fundamental rights, provide their suggestions and help on fundamental rights issues and assess the operations to which they have been assigned by the FRO.⁹⁶ Furthermore, they are considered as “forced-return monitors” and also assist in “the training activities of the Agency on fundamental rights as provided for in Article 62, including by providing training on fundamental rights”.⁹⁷ According to the Regulation, by December 5th 2020, 40 Fundamental Rights Monitors must have been recruited and the executive director, along with FRO, will decide in his/her annual report about the recruitment of more, depending on operational needs”.⁹⁸ However, this request was not fulfilled as it was revealed in the OLAF report, which I am going to analyze later on.

92Regulation (EU) 2016/1624, 34 (2016).

93 *See id.*

94 *See id.*

95Regulation (EU) 2019/1896, 91 (2019).

96 *See id.*

97 *See id.*

98 *See id.*

Moreover, Regulation (EU) 2019/1896 refers to previously mentioned Frontex mechanisms for the protection of fundamental rights and strengthens their capabilities. First of all, regarding the Consultative Forum, according to Article 108, this Regulation gives to the Forum the competence to perform “on-the-spot visits to joint operations or rapid border interventions subject to the agreement of the host Member State or the third country, as applicable, to hotspot areas and to return operations and return interventions, including in third countries”.⁹⁹ Also, in relation to FRO’s duties, Article 109 underlines that FRO must support “the Agency's fundamental rights strategy”, make the necessary propositions for its improvement, ensure the operations’ conformity with human rights law but, most importantly, recruit and supervise the Fundamental Rights Monitors.¹⁰⁰ Last but not least, the Regulation refers to the Complaints Mechanism but it does not make important amendments.

4.2. Enhancing Fundamental Rights Protection: Frontex's Training of Border Guards

As I have mentioned earlier, the main focus of this dissertation paper is the attention that Frontex pays to the fundamental rights of refugees and migrants and the mechanisms which the Agency initiated in order to protect them in an operational level. One of the most important methods in order to guarantee the protection of the refugees’ and migrants’ fundamental rights during the Agency’s operations is the training of border guards, more specifically the standing corps, on fundamental rights according to the international and European law.

The Common Core Curriculum for Border and Coast Guard Basic Training in the EU is responsible for organizing “the core learning standards on the operational level of border guarding in the European Union Member States”.¹⁰¹ The Curriculum is continuously updated in cooperation

⁹⁹Regulation (EU) 2019/1896, 90 (2019).

¹⁰⁰ See *id.*

¹⁰¹ Frontex, *Common Core curriculum: for Border and Coast Guard Basic Training in the EU : a Guide to the Modifications from the CCC 2012 to the CCC 2017*, Frontex, 4 (2019).

with “experts from Member States, fundamental rights organizations and operations”.¹⁰² In the 2017 updated form, “fundamental rights-related matters” were incorporated in the Curriculum and it concentrated on the threats “in border security and management in and around the Europe”.¹⁰³

The interview questions mainly focused on the border guards’ main tasks, their professional background, Frontex’s human rights training, their instructors and their recommendations in relation to the training. Regarding their main tasks, according to Frontex Press Team, border guards help “EU Member States in migration management, especially border patrolling and border checks, as well as fighting cross-border crime” in collaboration with the national authorities of the Member State. Border guard 1 mentioned that every border guard is assigned tasks according to their professional background. More specifically, the interviewees were mainly forced return and support officers, information officers and debriefers.

The second question of the interview was about the previous professional background of the border guards and if they had received a training regarding fundamental rights before. The Frontex Press Team underlined that fundamental rights are the key in all the agency’s activities and that they are incorporated into the Frontex Codes of Conduct, the Common Core Curricula for border guards and specialized training for border surveillance officers.

“The Code of Conduct obliges every officer who has a reason to believe fundamental rights of any person were violated, either by witnessing such violation directly, or by hearing about it, to report this immediately to Frontex in form of a Serious Incident Report. Fundamental rights are always included in operational briefings for standing corps officers deployed by Frontex. In addition, safeguards and obligations for reporting potential violations of fundamental rights are integrated into all operational plans.”

102 Frontex, *Common Core curriculum: for Border and Coast Guard Basic Training in the EU : a Guide to the Modifications from the CCC 2012 to the CCC 2017*, Frontex, 4 (2019).

103 See *id.*

In relation to the professional backgrounds of the interviewees, it is evident that they came from diverse occupational positions. Most of the interviewees held previous roles as police officers in Greece, while border guard 2 was a member of the air force, and border guard 6 held a senior officer position. The majority of interviewees reported that they had not received any training on fundamental rights while working as police officers in Greece prior to their employment at Frontex. This lack of training on fundamental rights in the Greek police force is concerning and may contribute to the multiple violations of fundamental rights committed by Greek authorities at the borders. One interviewee, border guard 3, took it upon himself to expand his knowledge on fundamental rights by attending a seminar at his own expense before applying for a job at Frontex. In contrast, border guard 2 received training on fundamental rights during his time in the Greek air force, border guard 4 was an instructor in a fundamental rights training delivered to the police force, and border guard 6 had previous education on fundamental rights as a senior officer. The Agency provided opportunities for its personnel to acquire the appropriate knowledge related to fundamental rights, which is essential for professionals working with refugees and migrants. Thus, it is alarming that the Greek police does not provide similar training to its police officers.

According to the official website of Frontex, all “border guards and members of other relevant authorities from Member States participating in Frontex operations” are trained on “fundamental rights, access to international protection, including the respect for the principle of non-refoulement, and, where appropriate, search and rescue”.¹⁰⁴ The Frontex Press Team has added to this statement that the goal of this training is to guarantee that “the standing corps have the necessary theoretical and practical competences, including in relation to the prevention of violence and use of force, to operate in a unitary manner in any particular operational area, fully enforcing the provisions of the Schengen Borders Code at the same time respecting fundamental rights in all actions”.

¹⁰⁴ FRONTEX, *Fundamental Rights at Frontex*, frontex.europa.eu (n.d.).

According to the Common Core Curriculum, the courses offered to border guards within the framework of fundamental rights training were mainly theoretical. Namely, these courses are “Fundamental rights in relation to border guarding”, “International fundamental rights framework”, “The 1950 European Convention on Human Rights and Fundamental Freedoms and its Protocols”, “The 1951 Convention relating to the Status of Refugees and its 1967 Protocol (1951 Geneva Convention, 1967 Protocol)”, “The 1954 Convention relating to the Status of Stateless Persons”, “The Charter of Fundamental Rights of the European Union”, “Access to international protection and the asylum procedure and the principle of non-refoulement”, “Identification and referral of victims of trafficking and other vulnerable groups and Protection of children”.¹⁰⁵ However, I was unable to find more information regarding these courses and the interviews managed to fill in the gap in the literature.

Border guard 1 reports having undergone a six-month training program, which included a course on fundamental rights. The training program comprised 16 hours of lifelong learning, featuring videos, presentations, and documents, which were tested. He notes that the syllabus briefly introduced them to international and EU law conventions but mostly emphasized the Charter of Fundamental Rights and the Code of Conduct Curriculum during operational activities. Similarly, Border guard 5 adds that the first month of training was focused on fundamental rights in a theoretical framework, and the following months' courses were adapted accordingly. For instance, they were taught that every action, even manual braking, must adhere to the principle of proportionality. Additionally, Border guard 6 posits that the Agency's goal is to demonstrate these principles, and border guards must understand that these principles are "be all-end all" at an operational level, with other responsibilities resting with national authorities. Border guard 2 specifies that, during their training, they examined case studies in a more practical setting, drew lessons from previous incidents and breaches of fundamental rights protection, and learned how to

¹⁰⁵ Frontex, *Common Core curriculum: for Border and Coast Guard Basic Training in the EU : a Guide to the Modifications from the CCC 2012 to the CCC 2017*, Frontex, 4 (2019).

write reports regarding fundamental rights violations during operational activities or cases of non-adherence by colleagues. Lastly, Border guard 5 notes that after the basic training, they also attended seminars and further training on fundamental rights to maintain their knowledge. The interviewees expressed satisfaction with the training and emphasized the Agency's focus on fundamental rights.

According to the Frontex Press Team, “the courses are delivered by experienced staff from the Fundamental Rights Office in conjunction with other business entities and adjusted to the specific needs of the trainees attending the training, also based on training material developed. All the trainers have solid experience in fundamental rights and international law”. The majority of the interviewees had difficulty in recalling the professions of their instructors. However, border guard 5 mentioned that their instructors were Frontex employees, members of the law enforcement of the national authorities or lawyers. Not all of them had working experience at the borders but the lawyers paid visits at the borders and they were aware of the conditions. Border guard 6 added that the instructors were mostly lawyers and independent contractors with specialization in the EU and international law who were teaching them how to apply their theoretical knowledge in practice. There was a pluralism among the instructors both in a theoretical and a practical level. The interviewees did not make any comment regarding their instructors or show any kind of dissatisfaction.

In order for the Agency to evaluate the training, it asks the participants for their feedback twice, “one shortly after the training and the other a few months after the training”, so that they have the necessary time to put into use the acquired knowledge and assess the training’s effectiveness.¹⁰⁶ The fifth inquiry of the interview aimed to explore whether the interviewees believed that the training provided to them was sufficient for them to have a comprehensive understanding of the importance of protecting fundamental rights during operational activities.

¹⁰⁶ Satoko Horii, *It Is about More than Just Training: the Effect of Frontex Border Guard Training*, *Refugee Survey Quarterly*, 31(4), 175 (2012).

According to the responses, the interviewees seemed content with the training procedures followed and believed that it was adequate for them to grasp the essence of safeguarding the fundamental rights of refugees and migrants. In particular, border guard 2 stated that merely providing training was insufficient, and it was equally essential to maintain the acquired knowledge. This approach is pursued by the Agency, which offers ad hoc training, maintenance training, and use-of-force training. Furthermore, border guard 5 reported that the training received was of better quality than the training provided by the Greek police and that it had aided in his professional growth. He also affirmed that their education is continuous since they are given maintenance training every six months, focusing on a more practical level, such as analyzing scenarios for an arrest.

Border guard 3 expressed the opinion that the training on fundamental rights provided to them was sufficient on a theoretical level, but on a practical level, it may be different due to the border guards' lack of executive powers during operational activities. In such cases, the border guards should only intervene but not appear superior to the national authorities. Similarly, border guard 6 stated that the training was adequate but also emphasized that a border guard should not rely solely on the Agency to teach them how to behave appropriately and lawfully towards people, especially vulnerable individuals. Furthermore, some interviewees mentioned the important role of fundamental rights monitors and FRO who regularly visit the border and provide continuous consultation on fundamental rights issues. This suggests that ongoing training and consultation are necessary to ensure that border guards remain up-to-date on fundamental rights and are able to address complex and changing situations in a manner that respects the rights of refugees and migrants.

The final question was if the border guards had any recommendations regarding the improvement of the border guards' fundamental rights training. The Frontex Press Team pointed out that the Agency is continuously establishing "new procedures and reforming existing ones". They referred to the recruitment of the Fundamental Rights Officer and the Fundamental Rights Monitors

which “filled a long-standing fundamental rights monitoring gap”. However, it is very important to “closely observe their implementation to ensure that allegations of fundamental rights violations be substantiated and adequately addressed”. The Team mentions that in October 2021, “Frontex Consultative Forum on Fundamental Rights published its ninth annual report for the year 2021”. where they consulted the Agency in order to “establish solid procedures to ensure effective and transparent reporting of alleged incidents, in compliance with key recommendations including from institutional actors such as the European Parliament”.

In regards to the border guards' perceptions, it appears that their expectations have been met. Border guard 2 suggested that the Agency should further analyze the environment in which the border guards operate and customize the case studies to be more targeted. On the other hand, border guard 3 expressed that he tended to avoid attending webinars on fundamental rights since they repeated the same information, and therefore recommends that they should become mandatory. Additionally, he proposed that local coordinators should partake in the training to improve cooperation between them and the border guards. For instance, the Agency could invite local coordinators to attend workshops in Warsaw on the Agency's procedures, which they can then disseminate to local authorities. Border guard 4 noted that while the Agency is committed to protecting fundamental rights, it should invest more in "tailored training" to better cater to the recipients' needs. Finally, border guard 6 opined that the current training on fundamental rights was sufficient for him, but acknowledged that adjustments may need to be made if new data and requirements emerge.

The Frontex Press Team was generous enough to offer me some additional information regarding the fundamental rights training, aside from the questions sent, which facilitates the understanding of the procedures followed. According to the Team, since the Regulation (EU) 2019/1896 introduced new importance of training and new obligations to FRONTEX, the Frontex

Training Unit proposed new measures towards “enhancement and/or development of fundamental rights (FR) components tailored to different profile-related advance specialisation trainings”.

For this reason, “experts nominated by the Member States”, “highly specialized FR expertise provided by an external FR experts and colleagues from the Fundamental Rights Office”, based on “recommendations presented by the Frontex Consultative Forum on Fundamental Rights”, formed “tailored FR online modules and contact sessions” which are an essential piece of advanced operational courses. These include trainings for profiles such as: Debriefing Officer, Information Officer, Advanced Level Document Officer, Coast Guard Function Officer, Frontex Tactical Support Officer, Motor Vehicle Crime Detection Officer, Cross-Border Crime Detection Officer, Return Specialist. The aim of these professionals to guarantee that “FR have been adequately mainstreamed and that FR aspects have been duly reflected” is fulfilled and it is acknowledged in “in course learning outcomes and in a variety of materials and training tools”. This specialized training on fundamental rights educates and offers “harmonised guidelines on respecting and promoting FR while performing duties of different border control stages and within the scope of various profiles”.

Moreover, the Frontex Press Team referred to Pre-Deployment Induction Training (PDIT). PDIT is “a course targeting all border and coast guards deployed by Frontex”, mainly standing corps. This training is mandatory for all border guards and it consists of “FR-related modules of four hours in the independent learning phase (ILP) and four hours in the contact learning phase (CLP), when relevant”. In addition to that, the ‘Course manual for Frontex fundamental rights trainers’, in order to promote and guarantee the highest standards of this trainings, was offered to the Agency’s officers and granted “comprehensive and operational guidelines”. Finally, in relation to children’s rights, the Agency aims to focus on them and protect “the best interest of the child”. In 2020, the Agency published “Frontex course manual on the protection of children at borders” which

meant to “support trainers in their more in-depth analysis of risks faced by children at borders and the applicable countermeasures”.

Last but not least, the Frontex Press Team concludes that the “Basic Training for the European Border and Coast Guard Standing Corps Category 1” focuses on providing its members with “the necessary competences to operate in a unitary manner in any particular operational area generating added value and fully respecting fundamental rights in all action”. Also, it mentions that fundamental rights are an integral part of the course and they are referred to “in various modules, to allow the future standing corps to operate in compliance with the relevant standards set within international and European law and Frontex’s Code of Conduct”.

Drawing on the information obtained from both the interviews with the border guards and the Frontex Press Team, this study finds that Frontex has prioritized the protection and respect of fundamental rights in the procedures that must be followed during operational activities at the borders. Through the training provided, the Agency has equipped the border guards with the necessary theoretical and practical knowledge on the protection of fundamental rights, including through the use of Conventions, videos, case studies, and seminars.

However, as the border guards have pointed out, the reality is often different during operational activities at the borders, as they do not have executive powers, and the responsibilities fall on the national authorities. Therefore, Frontex border guards and Member State officers need to establish more effective cooperation between them to ensure that appropriate procedures are followed, in accordance with international and European law, for the protection of fundamental rights.

At the outset of this study, I believed that Frontex needed to ensure that border guards received high-quality training on fundamental rights to avoid criticism for a lack of respect and attention to fundamental rights. However, given that the border guards did not offer any recommendations for improvements to the training, it is apparent that the Agency has complied with

regulations regarding their training. It is the individual's responsibility to apply this knowledge during operations as border guards represent the Agency. As such, the Agency must take action against any violation or suspected violation of fundamental rights to deter and prevent such behavior.

4.3.Fundamental Rights Strategy and its Effectiveness in Operational Activities

The last updated form of the Fundamental Rights Strategy was advocated by the Fundamental Rights Officer on 25th January 2021 and accepted by the Management Board on 14th February 2021. The aim of this Strategy is to ensure “the protection of fundamental rights” during the activities of the Agency “related to European Integrated Border Management (EIBM), as provided for by Regulation (EU) 2019/1896”.¹⁰⁷

This Strategy aims to guarantee that the agency is functioning in accordance with “the EU Acquis and in particular the Charter and the case-law of the EU Court of Justice, as well as international fundamental rights standards and principles, especially the principle of non-refoulement”.¹⁰⁸ Also, it guarantees the respect of fundamental rights of all persons without any discrimination “regardless of their age, gender, color, ethnic or social origin, migration status, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, gender identity and sexual orientation”.¹⁰⁹ It promises the agency’s “proactive and strict” agreement with the commitments imposed by “international law and the Union acquis on fundamental rights, as a shared responsibility of the agency and the Member States”.¹¹⁰ Finally, it aims at creating and “further developing a fundamental rights culture within the

107 FRONTEX, *Fundamental Rights Strategy*, 4 (2021).

108 *See id.*

109 *See id.*

110 *Id.* at 5.

EU border management and returns community” and growing “knowledge, skills and competences on fundamental rights”.¹¹¹

One of the main principles of the Strategy is that migration is faced “in full compliance with fundamental rights as contained in international and EU law”, ensuring the right to seek asylum adequately in all cases.¹¹² Also, the Strategy mentions that gender equality must be fundamental during the Member States’ and the agency’s activities and they should incorporate “gender considerations throughout their operational activities”.¹¹³ Finally, this Strategy highlights the agency’s “transparency, good administration and access to documents” according to Regulation (EC) No 1049/2001 as it is in contact with “stakeholders about its activities”, through annual reports, “without revealing information that, if made public, would jeopardize the attainment of operational objectives”.¹¹⁴

In relation to risk analysis during border controls, the border guards must respect and contemplate “on the rights of persons crossing the borders”.¹¹⁵ More specifically, they must gather, examine and exchange the relevant information “on entry and exit” regardless of their “nationality, sex and age”.¹¹⁶ It is the FRO’s duty to offer “methodological support” in order to protect fundamental rights during the agency’s risk analysis and to facilitate the accumulation and examination of “quantitative and qualitative data”.¹¹⁷ Furthermore, this Strategy imposes that Operational Plans (OPLANs) must offer guidelines on protecting fundamental rights, during border control activities, “including data protection requirements\binding on the Agency, the host and participating Member States”.¹¹⁸ Also, regarding border checks and border surveillance, their first concern must be the “respect for, protection and promotion of the fundamental rights of those on the

111 FRONTEX, *Fundamental Rights Strategy*, 5 (2021).

112 *See id.*

113 *See id.*

114 *Id.* at 6.

115 *See id.*

116 *See id.*

117 *Id.* at 7.

118 *See id.*

move”, guaranteeing the protection of children in cooperation with “members of the teams with special training on child protection as soon as possible”.¹¹⁹

Regarding the responsibilities of Frontex’s members, along with standing corps and interpreters/ cultural experts, they must ensure the protection of fundamental rights, “including the principles of equality and non-discrimination”.¹²⁰ Their action must follow the EU and international law and “the principle of good administration” and they must be in compliance with “the ethical and professional guidelines of the Code of Conduct applicable to all persons participating in Frontex operational activities”.¹²¹ The members of the agency’s operational activities are responsible for “breaches of their professional conduct rules and for promoting, respecting, upholding and protecting fundamental rights”, which also involves violations of fundamental rights.¹²²

Moreover, this Strategy clarifies the duties and responsibilities of the Fundamental Rights Officer (FRO) and Fundamental Rights Monitors (FRMs). More specifically, the FRO works independently, examines if the agency adheres to the protection of fundamental rights, “reports directly to the Management Board” and is in collaboration with the Consultative Forum.¹²³ One of their main duties is to provide their consultation “on the Operational Plans and working arrangements”, to examine the “fundamental rights impact of the activities” and to facilitate the agency in order to organize “their rights-based design and implementation”.¹²⁴ Also, the FRO examines the data collected by the FRMs, manages SIRs “on alleged violations of fundamental rights and in the complaints mechanism”, pays visits “to operational areas” to consult “on compliance of the activities with FR and follow up on incidents of alleged violations”.¹²⁵

In addition to that, FRO must increase the knowledge of the agency staff on fundamental rights and enhance “the culture of fundamental rights in the agency’s work and conduct of its staff,

119 FRONTEX, *Fundamental Rights Strategy*, 9 (2021).

120 *See id.*

121 *See id.*

122 *Id.* at 10.

123 *Id.* at 15.

124 *See id.*

125 *See id.*

including fundamental rights considerations in training materials”.¹²⁶ Finally, the FRO examines the results of the agency’s operational activities in order to strengthen “the quality, coherence and effectiveness of future activities”.¹²⁷ Regarding FRMs, they are selected by the FRO in order to work in “each operational activity” and their duty is to control and “report to the FRO on fundamental rights concerns and alleged breaches of fundamental rights”.¹²⁸ If there are “serious or systematic violations”, the FRO will undertake measures against them, including the “suspension or termination of the activity”, which they have to inform the Executive Director about.¹²⁹

Last but not least, the 2021 Strategy establishes certain mechanisms in order for asserted violations of fundamental rights to be properly recorded. Firstly, it mentions the “Serious Incident Report Mechanism (SIR)” where every member of Frontex’s activities must “report on allegations of violation of fundamental rights” in order for every incident to be addressed appropriately.¹³⁰ The FRO is responsible for managing these accusations by collecting information and contacting “the relevant MS authorities”. Frontex guarantees that the FRO is offered the information needed regarding “SIRs categorized as fundamental rights-related”.¹³¹

Additionally, the Strategy refers to the “complaints mechanism for possible fundamental rights violations during any activity of the agency”. There, people can express their “complaint in accordance with Article 111 of Regulation (EU) 2019/1896”, if they feel that they have been violated¹³². Also, “suspected breaches by statutory staff deployed” can be submitted in the complaints mechanism regarding “the rules on the use of force applicable under Annex V of Regulation (EU) 2019/1896”.¹³³ Frontex or “the relevant MS” should examine the complaints and investigate further “with the relevant administrative or disciplinary measures”.¹³⁴

126 FRONTEX, Fundamental Rights Strategy, 16 (2021).

127 *See id.*

128 *See id.*

129 *See id.*

130 *See id.*

131 *See id.*

132 *See id.*

133 *See id.*

134 *See id.*

As previously addressed in this study, the enactment of Regulation (EU) 2016/1624 mandated the implementation of a complaints mechanism which aimed to facilitate the reporting of alleged breaches of fundamental rights. Nevertheless, the findings of the OLAF report reveal that this mechanism was not operating effectively and those responsible for overseeing it failed to adhere to the prescribed procedures. More specifically, it is mentioned that the European Parliament's Frontex Scrutiny Working Group (FSWG) came to the conclusion that "national and international human rights bodies and organizations" repeatedly informed the agency about "fundamental rights violations at the border in a number of Member States" but the Agency ignored these statements.¹³⁵ Also, the agency was unsuccessful in taking action regarding "internal observations about certain cases of probable fundamental rights violations in Member States which were raised by the FRO, the Consultative Forum (CF) or through incident report".¹³⁶ Furthermore, the agency did not succeed in following the procedure and "follow-up" on the accusations of violations "promptly, vigilantly and effectively". Thus, it failed in preventing these violations and in decreasing "the risk of future fundamental rights violations".¹³⁷

In relation to Fundamental Rights Officer (FRO), the Office has dictated irregularities in their functions. According to the agency's Regulation, FRO must have access to all information needed to fulfill their duties. However, the OLAF Report has demonstrated that the FRO and the FRO Office did not have the appropriate "cooperation from the executive management and poor access to information".¹³⁸ This obstacle influenced the efficiency "of the performance of the FRO in monitoring the compliance with, and respect of, the fundamental rights in Frontex's activities".¹³⁹ This intended to exclude the FRO from having valuable certain information. Furthermore, as it was mentioned earlier, the 2019 Regulations imposes the recruitment of a Fundamental Rights Officer (FRO) and 40 Fundamental Rights Monitors (FRMs) with all the necessary skills and requirements.

135 OLAF Report, 10 (2021).

136 *See id.*

137 *See id.*

138 *Id.* at 39.

139 *See id.*

However, the Office reveals that the Agency did not adhere to what the Regulation imposed and did not proceed with the recruitment of the above entities. More specifically, the OLAF report mentions that “the relevant Frontex entities” were guided to announce, “under strict confidentiality, the vacancies for the FRO and Deputy FRO Posts without prior involvement of the MB, for the FRO post, and of the FRO, for the Deputy FRO post”.¹⁴⁰

Furthermore, the Office reported the accusations of the lack of reporting by Frontex-deployed officers regarding fundamental rights violations. According to the OLAF report, there is the suspicion that human rights violations “are not always reported to Frontex” as the deployed officers fear the consequences “in the host MS”.¹⁴¹ Furthermore, the report highlights the “the low number of SIRs” regarding fundamental rights violations.¹⁴² However, this low number does not mean that there are no violations but rather that the violations are not properly reported.¹⁴³ It is mentioned the “current SIR system” is problematic and amendments must be implicated promptly.¹⁴⁴ Also, the members of the Agency’s operations are not familiar with SIRs “including respective obligation to report and/or they apparently lack willingness to report”.¹⁴⁵ The sources used in the report prove that “violations were not reported through official channels as the Frontex-deployed staff feared retaliation by local Authorities, in this case Greek”.¹⁴⁶

4.4. Assessing the Code of Conduct: Aims, Implementation, and Violations

As it was mentioned earlier in this paper, every member of Frontex’s activities must follow the Frontex Code of Conduct. More specifically, the Code of Conduct focuses on advocating “professional values based on the principles of the rule of law and the respect of fundamental

140 OLAF Report, 69 (2021).

141 *Id.* at 77.

142 *Id.* at 78.

143 *See id.*

144 *See id.*

145 *See id.*

146 *See id.*

rights” and on confirming that every member of Frontex’s activities according to the “ethical standards”.¹⁴⁷

Every person who participates in the agency’s activities, according to Article 3, “serves the public interest” and must act according to “international law, European Union law, the national law of both home and host Member States and the present Code of Conduct”.¹⁴⁸ Moreover, in relation to fundamental rights, according to Article 4, Frontex’s members must advocate and protect “human dignity and the fundamental rights of every individual, regardless of their sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation”.¹⁴⁹ They must also encourage the “compliance with the relevant international and European instruments regarding fundamental rights protection”.¹⁵⁰

Furthermore, Article 5 establishes certain principles in relation to international protection which must be followed by the participants. Namely, the participants must respect the principles of non-refoulement and ensure that “persons seeking international protection are recognized, receive adequate assistance, are informed, in an appropriate way, about their rights and relevant procedures and are referred to national authorities responsible for receiving their asylum requests”.¹⁵¹ Also, the participants must be very thoughtful “particularly vulnerable groups of people”, such as “women, unaccompanied minors, disabled people, persons susceptible to exploitation and victims of exploitation or trafficking in human beings”.¹⁵²

In relation to the use of force, Article 19 requires that, in case officers decide that it is necessary to use force, they have to get the approval of “the host Member State, in the presence of border guards of the host Member State and in accordance with the national law of the host Member

147 FRONTEX, *Code of Conduct for All Persons Participating In Frontex Activities*, FRONTEX, 6 (n.d.).

148 *Id.* at 8.

149 *See id.*

150 *See id.*

151 *Id.* at 9.

152 *See id.*

State”.¹⁵³ Also, the use of force must be according to the “minimum degree necessitated by the circumstances, for the performance of duties or in legitimate self-defense or in legitimate defense of other persons”.¹⁵⁴ The same applies for the use of weapons as, according to Article 20, officers must get the approval “the home Member State and the host Member State, in the presence of border guards of the host Member State and in accordance with the national law of the host Member State”.¹⁵⁵ Their choice to use weapons must be an “exceptional measure and it shall not exceed the minimum degree necessitated by the circumstances, for the performance of duties or in legitimate self-defense or in legitimate defense of other persons”.¹⁵⁶ In this way, the Agency guarantees that the officers are not going to take advantage of their power during operational activities and they will use force and weapons only when it is an absolute necessity.

According to the Code of Conduct and Article 21, every person who wishes to be involved in Frontex’s activities, must, prior to their involvement, receive an “appropriate training”.¹⁵⁷ This kind of training must be offered “by national authorities responsible for the deployment of the participants or by Frontex” and, during which, the officers will acquire the necessary knowledge in relation to the Code of Conduct.¹⁵⁸ Also, as it was mentioned earlier in the Fundamental Rights Strategy too, Article 22 imposes that every member of Frontex’s operational activities must report to the agency any kind of “a violation of the present Code”¹⁵⁹, such as a violation of the protection of fundamental rights. In the case of this kind of violations, the Executive Director will undertake the appropriate actions, according to Article 23, including “the immediate removal of the Frontex staff member from the activity”. Finally, in case that the “the violation was committed by a person deployed by a Member State”, the Executive Director may ask the Member State to dismiss “the person concerned from the Frontex activity and expects that the relevant authority of the Member

153 FRONTEX, *Code of Conduct for All Persons Participating In Frontex Activities*, FRONTEX, 13 (n.d.).

154 *See id.*

155 *Id.* at 14.

156 *See id.*

157 *Id.* at 16.

158 *See id.*

159 *See id.*

State will use its powers regarding the necessary disciplinary measures and, if applicable, to remove the person concerned from the respective pool for a defined period”.¹⁶⁰

In summary, I concur with the provisions outlined in the Code of Conduct as they serve to safeguard fundamental rights and ensure the proper functioning of Frontex in compliance with international and European laws. Nevertheless, allegations have surfaced regarding violations of the Code of Conduct and fundamental rights by both Frontex border guards and national officers. As noted by the border guards during the interviews, decisions and actions during border operations are primarily made by national authorities, with Frontex border guards playing a consultative role, thereby indicating that national border guards bear a greater degree of responsibility in the event of any violation of the Code of Conduct or fundamental rights. Nonetheless, Frontex border guards must abide by the Code of Conduct and promptly report any suspicion of misconduct.

The OLAF report concluded that certain members of the Agency acted immorally and performed illegal actions which did not allow the Agency “to fully comply with its responsibilities, namely ensuring for protection and promotion of fundamental rights, as enshrined in particular in the Chapter of Fundamental Rights of the EU”.¹⁶¹ The Agency failed to “follow procedures and processes, in their duty of loyalty and in their managerial responsibilities”.¹⁶² According to the report, “OLAF considers the repeated misconduct of the persons concerned to be in breach of the Staff Regulation of Officials of the EU, of the Frontex Code of Conduct and of the legal framework stipulated by the Frontex Regulation [Regulation (EU) 2016/1624 and Regulation (EU) 2019/1896] in particular in relation to the protection and respect of fundamental rights, as enshrined in the Charter of Fundamental Rights of the European Union, in the performance of the Agency’s tasks”.¹⁶³

160 FRONTEX, Code of Conduct for All Persons Participating In Frontex Activities, FRONTEX, 17 (n.d.).

161 OLAF Report, 122 (2021).

162 *See id.*

163 *See id.*

4.5. Strengthening the Consultative Forum on Fundamental Rights: Enhancing Effectiveness and Institutional Role

The 2011 Regulation, Article 26a, introduced the establishment of the Consultative Forum (CF) which offers their knowledge on matters of fundamental rights to Frontex Management Board and Executive Director.¹⁶⁴ Later on, Article 70 of Regulation 2016/1624 acknowledged the incorporation of the CF in the Agency in order “to assist the executive director and the management board with independent advice in fundamental rights matters,” and specifically on Frontex Fundamental Rights Strategy and Common Core Curricula for the training of border and coast guards.¹⁶⁵ However, the 2019 Regulation changed this arrangement and clarified that the CF “is not part of Frontex’s administrative and management structure and has only advisory functions”.¹⁶⁶ One of the most importance changes brought by the 2019 Regulation is that the Agency must notify the Forum “of the follow-up with regard to its recommendations”.¹⁶⁷

The CF started its full action in 2012 and since 2014, they had been paying visits to “the borders of the EU, where Frontex operates”.¹⁶⁸ It has been working as a “fully independent body” and, according to Regulation 2016/1624, the participants of CF must be granted “access to all information concerning the respect for fundamental rights” and they can execute “on-the-spot visits to joint operations or rapid border interventions subject to the agreement of the host Member State, and to hotspot areas, return operations and return interventions”.¹⁶⁹ More specifically, the CF members are “international organizations, EU agencies, and CSOs” which include Council of Europe, IOM, OSCE/ODIHR, UNHCR the FRA and EASO.¹⁷⁰ Thus, the CF is considered “an institutional space for dialogue” which encourages “fundamental rights-oriented” organizations to

164 Leila Giannetto, *CSOs and EU Border Management: Cooperation or Resistance? The Case of Frontex Consultative Forum*, *American Behavioral Scientist*, 64(4), 8 (2019).

165 *See id.*

166 Chiara Loschi and Peter Slominski, *Frontex's Consultative Forum and Fundamental Rights Protection: Enhancing Accountability Through Dialogue?*, *European Papers - A Journal on Law and Integration*, 7(1), 201 (2022).

167 *Id.* at 202.

168 *See id.*

169 *See id.*

170 *See id.*

work both together and with “various EU institutions and bodies as well as with securitized-oriented Frontex officials on a regular basis”.¹⁷¹

CSO	Expertise/tasks	Field/target group	Advocacy strategy
<i>AIRE</i>	Case litigation, research, training, and advocacy	Human rights law in Europe/vulnerable and marginalized people	Not going public: litigation and access
<i>AI EIO</i>	Research and advocacy	Human rights in Europe	Access and going public
<i>Caritas Europa</i>	Service provision (humanitarian action), advocacy, networking (within the organization)	Relief to vulnerable people act	Access and going public
<i>CCME</i>	Service provision (humanitarian action), advocacy	Vulnerable people	Access and going public
<i>ECRE</i>	Research and advocacy	Refugees and exiles/ asylum	Access and going public
<i>ICMC</i>	Service provision (humanitarian action), advocacy, research, and networking (within the organization)	Refugees, migrants, vulnerable people	Access and going public
<i>ICJ</i>	Case litigation, research, training, and advice	EU law and specifically EU fundamental rights law	Access, going public (limitedly), and litigation
<i>JRS</i>	Service provision (humanitarian action), advocacy, networking (within the organization)	Refugees' rights and the EU asylum system	Access and going public (limitedly)
<i>PICUM</i>	Research and advocacy	Undocumented migrants	Access and going public
<i>Red Cross EU Office</i>	Service provision (humanitarian action), advocacy	Vulnerable people	Access and going public
<i>Save the Children</i>	Advocacy and service provision	Children	Access and going public

Note. AI EIO = Amnesty International European Institutions; CCME = Churches' Commission for Migrants in Europe; ECRE = European Council on Refugees and Exiles; ICMC = International Catholic Migration Commission; ICJ = International Commission of Jurists; JRS = Jesuit Refugee Service Europe; PICUM = Platform for International Cooperation on Undocumented Migrants. Author's own elaboration.

Table 1. Expertise and Focus of Civil Society Organizations (CSOs) Sitting in the CF

171 Chiara Loschi and Peter Slominski, *Frontex's Consultative Forum and Fundamental Rights Protection: Enhancing Accountability Through Dialogue?*, *European Papers - A Journal on Law and Integration*, 7(1), 199 (2022).

The main duties of the CF is to promote the establishment and improvement of “human rights–related documents such as Frontex’s Fundamental Rights Strategy and the Code of Conduct for the national border guards”.¹⁷² Therefore, the member groups have the opportunity to express themselves “from within in a highly contested agency” and they have admission to Frontex documents, unlike other “advocacy groups”.¹⁷³ It is very important that the CF works with Frontex officials, is provided with “relevant information about border practices and has privileged access to important stakeholders inside and outside of the agency such as the FRO, the European Ombudsman or Members of the European Parliament (MEPs)”.¹⁷⁴ Also, CF can produce documents, such as annual reports, which could be published only with the permission of Frontex Management Board and Executive Director.¹⁷⁵ Finally, CF works independently and its members work voluntarily as, according to Frontex, these groups “contribute their work on a voluntary basis in accordance with the principles of independence, transparency, mutual respect, informed participation and collegiality”.¹⁷⁶

Nevertheless, Loschi and Slominski (2022) argue that the Forum has been criticized for being a “public relations exercise for Frontex” as it indicates “only a shallow or rhetorical commitment to fundamental rights without any corresponding efforts to improve fundamental rights protection in practice”.¹⁷⁷ This statement proves the Agency takes measures for the protection of fundamental rights which applies only on a theoretical level and not on a practical one. Also, the authors denounce the limited “scholarly effort to assess how the Consultative Forum has affected Frontex’s accountability for ensuring compliance with fundamental rights standards”¹⁷⁸, which I confirm myself since the bibliography on the Consultative Forum proved to be restricted.

172 Leila Giannetto, *CSOs and EU Border Management: Cooperation or Resistance? The Case of Frontex Consultative Forum*, *American Behavioral Scientist*, 64(4), 9 (2019).

173 *See id.*

174 Chiara Loschi and Peter Slominski, *Frontex's Consultative Forum and Fundamental Rights Protection: Enhancing Accountability Through Dialogue?*, *European Papers - A Journal on Law and Integration*, 7(1), 199 (2022).

175 *See id.*

176 *See id.*

177 *Id.* At 196.

178 Chiara Loschi and Peter Slominski, *Frontex's Consultative Forum and Fundamental Rights Protection: Enhancing Accountability Through Dialogue?*, *European Papers - A Journal on Law and Integration*, 7(1), 197(2022).

As it was mentioned earlier, Frontex has been repeatedly criticized for its lack of accountability and the Forum belongs to the Agency in order to increase its accountability to the public. However, according to Loschi and Slominski (2022), the creation of the Consultative Forum “as an advisory body in the field of fundamental rights does not remedy Frontex’s lack of legal accountability”.¹⁷⁹ The reason why is because the Forum does not have the authorization or the competency to control and examine “the fundamental rights compliance” during operational activities.¹⁸⁰ More specifically, the Forum handles “soft issues” which does not concern operations but it is involved with “Frontex officials on fundamental rights issues”.¹⁸¹ Also, all the documents produced by the Forum, such as “annual reports and recommendations”, are not “legally-binding” which means that the Agency is not obligated to follow these “recommendations”¹⁸², which is not effective and contributes to the belief that the Agency is using these mechanisms for the protection of fundamental rights as a smoke screen. Some Forum members have expressed their concern regarding the insufficient significance their reports and recommendations have on Frontex’s actions and decisions which renders the communication “problematic” between the Consultative Forum and the Executive Director or the Management Board “from an accountability point of view”.¹⁸³

On the other hand, there have been examples where “the work of the Forum” was used in order to contribute to the “legal accountability of the Agency”.¹⁸⁴ More specifically, in December 2020, the European Court of Justice (ECJ) confirmed that Hungary was conducting illegal “push-backs to Serbia” and adjudicated “Hungary’s asylum process and border practices” as not corresponding with EU law.¹⁸⁵ In order for the European Commission to support this statement, it “used several reports including those from Forum members such as UNHCR and the Council of Europe as evidence in support of its claim that Hungary had failed to fulfill its obligation under EU

179 Chiara Loschi and Peter Slominski, *Frontex's Consultative Forum and Fundamental Rights Protection: Enhancing Accountability Through Dialogue?*, *European Papers - A Journal on Law and Integration*, 7(1), 205 (2022).

180 *See id.*

181 *See id.*

182 *Id.* at 206.

183 *See id.*

184 *See id.*

185 *See id.*

law”.¹⁸⁶ This example proves that the documentation produced by the Consultative Foun “can also be used in legal proceedings”, which can improve “the legal accountability of Frontex”.¹⁸⁷ It demonstrates that, through these “institutionalized legal dialogues on (potential) violations of human rights and refugee law”, the agency became aware that it can not neglect “these issues”.¹⁸⁸

As it was discussed earlier, the Consultative Forum engages in conversation with the Management Board and the FRO in order to consult each other regarding the decisions made. More specifically, the Management Board determines the “composition and the terms of the transmission of information to the Forum” and the Forum offers advice on issues of fundamental rights.¹⁸⁹ However, the communication between the Management Board and the Forum has been regarded as inadequate since some Forum members have expressed their discontent towards the lack of interest by the Management Board to engage in a “meaningful dialogue” with the Forum “but rather in protecting established border practices”.¹⁹⁰ The lack of efficient communication between the two bodies has been evident since many Forum members do not understand “if or how the Board has responded to the recommendations of the Forum”.^{191\}

Nevertheless, the communication between the FRO and the Consultative Forum seems to be more effective and productive regarding the ways which the agency can follow to enhance the protection of fundamental rights.¹⁹² The FRO is in a more powerful position than the Forum within the agency but they still face difficulties “mainly due to limited resources” and, thus, the Forum has recommended multiple times that “the FRO should be better resourced” in order to fulfill its duties.¹⁹³ In return, the FRO helps the Forum in order to handle “the information flow and refers it to relevant issues such as complaints or serious incident reports”.¹⁹⁴ This interconnection between

186 Chiara Loschi and Peter Slominski, Frontex's Consultative Forum and Fundamental Rights Protection: Enhancing Accountability Through Dialogue?, *European Papers - A Journal on Law and Integration*, 7(1), 206 (2022).

187 *Id.* at 207.

188 *See id.*

189 *Id.* at 209.

190 *See id.*

191 *See id.*

192 *See id.*

193 *Id.* at 210.

194 *See id.*

the two bodies is crucial since, without it, “the Forum would often be unable to identify or process fundamental rights-relevant cases”.¹⁹⁵

Furthermore, since the Consultative Forum has an advisory role in the agency, it needs the necessary resources in order to make the appropriate recommendations and fulfill its duties. However, some Forum members accused the agency of not offering them adequate “resources”, such as “the lack of their own secretariat”, and enough time in order to handle “the Forum’s workload”.¹⁹⁶ This insufficiency serves us an obstacle to the Forum’s goal and renders them unproductive. Consequently, the members believe that the agency should be more “proactive” and offer to the Forum the necessary data, especially “about border operations”.¹⁹⁷ Thus, the agency must offer the appropriate support to the Forum in order to fulfill its aim and assist the agency in the protection of fundamental rights.

In conclusion, the Consultative Forum has a consultative role and it only completes “the role of the FRO”.¹⁹⁸ Hence, it can not take the place of “the necessary oversight by stakeholders such as the European Parliament, national parliaments, national human rights institutions, civil society and the judiciary”.¹⁹⁹ In order to offer its assistance to the agency, it needs the relevant resources. However, the Forum faces certain issues in this effort such as “limited access to internal documents, insufficient resources and the lack of any formal power with regard to fundamental rights violations”.²⁰⁰ Nevertheless, I believe that the Consultative Forum has the ability to enhance the agency’s concern of the issues raised regarding fundamental rights, with the necessary support from the agency. If they are granted the “access to documents and stakeholders”, it will boost the Forum’s awareness and “confidence to include relevant evidence in its annual reports that may in turn be

195 Chiara Loschi and Peter Slominski, *Frontex's Consultative Forum and Fundamental Rights Protection: Enhancing Accountability Through Dialogue?*, *European Papers - A Journal on Law and Integration*, 7(1), 10 (2022).

196 *See id.*

197 *Id.* at 211.

198 *Id.* at 212.

199 *See id.*

200 *See id.*

used in legal proceedings”.²⁰¹ Last but not least, for the organizations who participate in the CF, it is a remarkable chance for them “to lobby the agency from within”, even if this lobbying is unsuccessful.²⁰²

4.6. Examining the OLAF Report: Frontex, Greece, and Accountability for Human Rights

Violations

OLAF is the European Anti-Fraud Office and it is responsible for conducting “investigations into fraud and corruption” regarding EU funds, in order to guarantee that these funds will fulfill the goal of EU projects to “create jobs and growth in Europe”.²⁰³ Furthermore, OLAF assists the enhancement of EU “citizen’s trust” as it examines “serious misconduct by EU staff and members of the EU Institutions”.²⁰⁴ Last but not least, it establishes an intact “anti-fraud” policy.²⁰⁵

OLAF collects information on potential "fraud and irregularities" from various sources, and then evaluates the information to determine if it meets the criteria for initiating an investigation.²⁰⁶ There are three types of investigations that OLAF conducts, which may involve "interviews and inspections of premises".²⁰⁷ "Internal investigations" are conducted "within EU institutions and bodies" to detect illegal activity that may financially impact the EU.²⁰⁸ "External investigations" are conducted "by natural or legal persons outside of EU institutions and bodies".²⁰⁹ OLAF also provides support to "national authorities and other EU departments" in coordinating investigations by "sharing data and contacts".²¹⁰

201 Chiara Loschi and Peter Slominski, *Frontex's Consultative Forum and Fundamental Rights Protection: Enhancing Accountability Through Dialogue?*, *European Papers - A Journal on Law and Integration*, 7(1), 213(2022).

202 Leila Giannetto, *CSOs and EU Border Management: Cooperation or Resistance? The Case of Frontex Consultative Forum*, *American Behavioral Scientist*, 64(4), 21 (2019).

203 European Anti-Fraud Office, *What we do*, European Anti-Fraud Office (n.d.).

204 *See id.*

205 *See id.*

206 *See id.*

207 *See id.*

208 *See id.*

209 *See id.*

210 European Anti-Fraud Office, *What we do*, European Anti-Fraud Office (n.d.).

This dissertation focuses on OLAF report OC/2021/0451/A1, which investigates serious misconduct by Frontex. The case opened on April 30th, 2021, and became public in October 2022, but not all information is included in the report. The Office obtained data in October 2020 regarding violations impacting “Frontex's top managers”, including “possible witnessing of illegal pushbacks, exclusion of the Fundamental Rights Officer, staff intimidation and harassment, obsessive micromanagement, conflicts of interest in recruitment procedures, and irregularities affecting procurement contracts”²¹¹. OLAF found these accusations to be proven and determined that they prevented Frontex from “complying with fundamental rights at the EU's external borders” according to the EU Charter of Fundamental Rights.²¹²

Even though Greece signed the Geneva Convention in relation to the Status of Refugees, it has been continuously criticized regarding its asylum practices “by NGOs and the European Court of Human Rights and the Court of Justice of the European Union (ECJ)”.²¹³ More specifically, according to the European courts, migrants and refugees are subjects to “inhuman and degrading treatment or punishment” in Greece violating Article 3 of the European Convention on Human Rights (ECHR).²¹⁴ Also, Greece has been accused of “exposing asylum seekers to risks of deportation” without considering their asylum applications.²¹⁵ According to EctHR, Greece has also violated the asylum seekers’ “right to an effective to an effective remedy as required by Article 13 of the ECHR”.²¹⁶

Frontex has been operating in the Evros region of Greece since 2010, following a request for support from Greece to manage the influx of migrants and refugees²¹⁷. Frontex's involvement began with “the RABIT operation” and continued with “Operation Poseidon Land” and “JO Flexible

211 OLAF report, 2 (2021).

212 *Id.* at 3.

213 FIDH et al., *Frontex between Greece and Turkey: at the Border of Denial*, International Federation for Human Rights, 65 (2014).

214 *See id.*

215 *See id.*

216 *See id.*

217 Lena Karamanidou and Bernd Kasperek, *What is Frontex doing about illegal pushbacks in Evros?*, Respond Migration (2020).

Operational Activities”.²¹⁸ However, during the RABIT operation, Greece faced international criticism for human rights violations, including inhumane and degrading treatment and lack of access to asylum, which occurred while EU agents were present.²¹⁹ Given that such violations occur in an area where Frontex operates, the agency should be concerned about its supervisory responsibilities.²²⁰

The main aim of the RABIT operation was to “enhance Greece’s capacity to control its land border with Turkey”.²²¹ A crucial issue during the RABIT deployment was the unacceptable conditions of detention centers, which Frontex border guards were aware of.²²² The degrading detention conditions and the fundamental rights violations in Greece are proven in the case of *M.S.S. v. Belgium and Greece*. In this case, the EctHR decided that “detention conditions of migrants in Greece violate article 3 of the ECHR”, against torture, degrading treatment or punishment.²²³ Even though Frontex renounces itself of any “responsibility for what happens to migrants in detention in Greece because it has no mandate over that detention”, Human Rights Watch insists that “not having the mandate to intervene in abusive detention centers does not absolve Frontex from responsibility” since it works with the Greek authorities and exposes detainees to fundamental rights violations.²²⁴

Frontex was or should have been aware of detention conditions in Greece since they decided to cooperate with the country. Their renouncement of any responsibility “for exposing migrants to human rights violations”, of which they were aware, does not comply with the Agency’s principles regarding the importance “of respect for fundamental rights and freedoms in its operations”.²²⁵

218 Lena Karamanidou and Bernd Kasperek, *What is Frontex doing about illegal pushbacks in Evros?*, Respond Migration (2020).

219 Human Rights Watch, *The EU's Dirty Hands Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece*, Human Rights Watch, 24 (2011).

220 FIDH et al., *Frontex between Greece and Turkey: at the Border of Denial*, International Federation for Human Rights, 65 (2014).

221 See note 219, 39.

222 See *id.*

223 *Id.* at 46.

224 *Id.* at 47.

225 Human Rights Watch, *The EU's Dirty Hands Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece*, Human Rights Watch, 50 (2011).

Moreover, the Agency should be coherent with “the principles of the “Fundamental Rights Strategy” in continuing its operations on the Greek borders.²²⁶ It should consider if its decisions are “likely to fill already overcrowded detention facilities and that those detention facilities do not meet minimal standards”, which may lead to fundamental rights violations.²²⁷ Therefore, Frontex’s operations led to “the detention of migrants in Greek detention centers” which “violated the prohibition on inhuman and degrading treatment”.²²⁸

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published a “Public Statement Concerning Greece” in 2011.²²⁹ In this statement, CPT considers “the conditions in Greek detention facilities for migrants” to be “their all-time worst at the height of Frontex’s RABIT deployment”.²³⁰ More specifically, the Greek authorities presented false information to the Committee regarding the detention conditions.²³¹ CPT states that the “police and border guard stations” in Greece detain higher “numbers of irregular migrants in even worse conditions”.²³²

Furthermore, the EU Fundamental Rights Agency published a report, the “Thematic Situation Report of March 8, 2011”, with important data on the crisis in Greece.²³³ The report referred to Frontex, stating that the RABIT operation was effective in certain areas, such as the decrease of “the risk of informal push-backs to Turkey for persons who have crossed irregularly into Greece”.²³⁴ Also, the report criticizes “the inhuman and degrading conditions in detention centers in Greece” but it does not refer to “Frontex’s role in transferring migrants to authorities who will subject them to inhuman and degrading detention” since, according to them, it is not their authorization.²³⁵ More specifically, it states that “Frontex covers only initial processing and does not impact on the most

226 Human Rights Watch, *The EU's Dirty Hands Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece*, Human Rights Watch, 50 (2011).

227 *See id.*

228 *See id.*

229 *Id.* at 24.

230 *Id.* at 25.

231 *See id.*

232 *See id.*

233 *See id.*

234 *Id.* at 26.

235 *See id.*

critical fundamental rights concern – the inhuman conditions in which persons are currently being held, because the reception of persons crossing the borders irregularly is seen as falling outside the mandate of Frontex”.²³⁶

In the recent years, Greece has been accused for illegal pushbacks of migrant boats towards the Turkish waters which constitutes a fundamental rights violation of the principle of non-refoulement and the right of any person to leave a country. The then Minister of the Merchant Navy and the Aegean Sea, Mr Varvitsiotis, responded to these accusations by claiming the Greek authorities simply “prevent” the access of migrant boats to Greek waters and that they do not “tow” them.²³⁷ Therefore, the Greek authorities were using “dissuasion techniques” to prevent contact with the boat.²³⁸ Under European law, Greece is obliged to “examine the individual situations of persons presenting themselves at its border and on its territory”.²³⁹ It can not avoid the request of these people by dissuading them “from seeking international protection”.²⁴⁰ The dissuasion technique applied by Greece simulates “the practice of collective expulsions” or pushbacks.²⁴¹

NGOs have reported on illegal pushback practices by Greek coast guards in the Aegean Sea, citing hundreds of refugee testimonies.²⁴² Most of the pushbacks occur at sea due to “increased surveillance at land borders”.²⁴³ The reports detail “violence, intimidation, and abusive practices against vulnerable individuals”, which constitute “inhumane and degrading treatment in violation of the European Convention on Human Rights”.²⁴⁴ These actions violate fundamental rights, including “the prohibition of inhuman and degrading treatment, procedural guarantees for detained persons, the right to asylum, the principle of non-refoulement, and the prohibition on collective expulsions”.²⁴⁵

236 *See id.*

237 FIDH et al., *Frontex between Greece and Turkey: at the Border of Denial*, International Federation for Human Rights, 27 (2014).

238 *See id.*

239 *See id.*

240 *See id.*

241 *See id.*

242 *Id.* at 28.

243 *See id.*

244 *See id.*

245 *Id.* at 32.

In 2015, the European Commission deemed Greece's border management as inadequate and proposed "a more effective border control" involving "better screening, identification and registration processes, as well as a more systematic fingerprinting".²⁴⁶ Since then, the Agency supports Greece in different fields, where the country "lacks expertise and resources".²⁴⁷ However, the current Greek prime minister, Kyriakos Mitsotakis, has continuously requested from the EU to support Greece in handling the migration issues and has emphasized "the need for a more enhanced role of Frontex in the islands and the sea borders with Turkey".²⁴⁸ In 2020, Greece declared "the more active role of Frontex and NATO with operations across the sea borders with Turkey", an improved cooperation of "the Greek and Turkish Coast Guards" and asked for "more effective operations with the effective technologically equipped tools of Frontex".²⁴⁹

The OLAF report reveals human rights violations in Greece by the Greek national forces covered by Frontex. The report refers to an incident in April 2020 when the Hellenic Coast Guard "intercepted a rubber boat of migrants within Greek Territorial Waters" and subsequently transferred them back to the rubber boat, which was left adrift in Turkish Territorial Waters.²⁵⁰ Despite evidence of potential fundamental rights violations, Frontex classified the incident as Category 2 Serious Incident Report (SIR), which includes "incidents occurring in Frontex activities/joint operations and not related to Frontex staff and/or other participants in Frontex activities"²⁵¹, even though there were unmistakable evidence of "potential violations of fundamental rights"²⁵² and it should have been classified as Category 4 SIR, meaning "situations of possible violations of Fundamental Rights or international protection obligations".²⁵³ This suggests that the agency attempted to cover the Greek authorities.²⁵⁴

246 Konstantinos Vlachopoulos, *10,000 Standing Corps and Expanded Responsibilities: FRONTEX's Reform and Its Impact, Policy Brief No.110/2020*, Hellenic Foundation for European & Foreign Policy (ELIAMEP), 11 (2020).

247 *See id.*

248 *See id.*

249 *See id.*

250 OLAF Report, 20 (2021).

251 OLAF Report, 14 (2021).

252 *Id.* at 21.

253 *Id.* at 14.

254 *See id.*

Frontex's claim of being unaware of fundamental rights violations during border operations has been disproved by the OLAF report. The report included proof offered by the UN Refugee Agency of emails sent to the Frontex Fundamental Rights Officer's office regarding "alleged violations in Greece".²⁵⁵ Despite this, Frontex claimed they were not aware of any such violations.²⁵⁶ There have been accusations of fundamental rights violations by Greek authorities at the Greek-Turkish border and during Frontex activities since 2017, which were reported by various "media outlets" and "international organizations".²⁵⁷ For instance, the Council of Europe Commissioner for Human Rights urged Greek authorities to respect international law on the protection of human rights violations in 2017.²⁵⁸ There have also been concerns regarding the risk of refoulement during the Rapid Border Intervention EVROS 2020.²⁵⁹

Between 2012 and 2013, Frontex "received 27 reports of incidents of violations of human rights from participants in the Poseidon Land and Sea Operations"²⁶⁰, in Greece. In 2012, twelve violations were documented "at the land border alone" while, in 2013, fifteen cases were documented concerning both the land and the sea border.²⁶¹ More specifically, the Agency was notified about "allegations of collective expulsions (19 of the 27 reports. Frontex calls them "unprocessed returns"), problems of access to asylum procedures, violence (a Greek officer is alleged to have pointed his gun at a migrant at the time of interception at the land border) and inhuman and degrading treatment (migrants hit by guards)".²⁶² Even though these incidents are fundamental rights violations, the Agency still supports Greek operations with "experts, boats, planes, thermal cameras".²⁶³

255 *Id.* at 90.

256 *Id.* at 92.

257 *See id.*

258 *See id.*

259 *See id.*

260 FIDH et al., *Frontex between Greece and Turkey: at the Border of Denial*, International Federation for Human Rights, 42(2014).

261 *See id.*

262 *See id.*

263 *See id.*

The OLAF report discusses the frequent illegal pushbacks occurring in the Greek-Turkish borders by Greek authorities, which have been reported by various international organizations. The report presents evidence such as “letters and statements by IOM, UNHCR, FRA, and footage” during a Management Board meeting in 2021.²⁶⁴ It states that over “200 incidents involving potential fundamental rights violations” took place “on the coasts of Greece and Turkey between March and August 2020”.²⁶⁵ The UN Special Rapporteur on the human rights of migrants also reported “increased militarization in Evros”, leading to “the collective expulsion of tens of thousands of migrants and asylum seekers”.²⁶⁶ The Special Rapporteur also denounced irregular pushbacks “from urban areas, including reception and detention centers”.²⁶⁷ Finally, pushbacks have been observed “in the Aegean Sea, from Greek territorial waters and the islands of Rhodes, Samos, and Symi.”²⁶⁸

In 2022, Human Rights Watch published a report regarding the illegal practices of the Greek authorities and they conducted interviews with 26 Afghans reporting “30 pushback incidents between September 2021 and February 2022”.²⁶⁹ However, the Greek government denies these allegations and they argue that it is “fakes news” or “Turkish propaganda” and, in February 21, Greek Minister of Migration and Asylum Notis Mitarachi claimed that the country “protects the external borders of the European Union, in total compliance with international law and in full respect of the charter of fundamental rights”.²⁷⁰ In contrast with the Minister’s statement, in December 21, “the Greek Ombudsman launched an investigation into the case” of a Frontex border guard deployed in Evros who asserts that “in September 2021, Greek border guards mistook him for an asylum seeker, assaulted him, and then forced him across the Evros border into Turkey alongside

264 OLAF Report, 93 (2021).

265 *See id.*

266 *See id.*

267 *See id.*

268 *See id.*

269 Human Rights Watch, *Their Faces Were Covered*: Greece’s Use of Migrants as Police Auxiliaries in Pushbacks, Human Rights Watch, 4 (2022).

270 *Id.* at 6.

dozens of migrants”.²⁷¹ This is a strong evidence coming from someone who works in the Agency and is aware of international law and it confirms the illegal practices applied by the Greek authorities.

Furthermore, the Human Rights Watch report declares that the Agency is aware of the illegal practices but chooses to ignore them and it does not impede the fundamental rights violations.²⁷² In several cases, the victims mentioned that, while they were in custody, besides the Greek authorities, there were “other police wearing uniforms with either a German or Austrian flag patch” who “did not interact with them or make efforts to intervene in the situation”.²⁷³ This confirms the presence of Frontex in this situation among the Greek authorities. The interviewees mentioned that with the presence of the “European police the beatings stopped” but continued after their leaving.²⁷⁴ It can be concluded that Frontex presence prevent the abuse temporarily but it did not take measures in order to guarantee “proper treatment at all times, respect for due process or access to asylum, or to prevent collective expulsion”.²⁷⁵

According to Human Rights Watch (2022), since October 2020, it is evident that the Agency covered and defended Greece towards “pushbacks of migrants at the land and maritime borders with Turkey”.²⁷⁶ Frontex initiated “a rapid border operation (RABIT) in Evros, in March 2020” despite Greece’s fundamental rights violations, which involved “temporarily suspending access to asylum, prosecuting asylum seekers for irregular entry, and violently forcing them back across the border”.²⁷⁷ Also, in July 2021, a European Parliament investigation was conducted against Fabrice Leggeri who “failed to take action to address reports of migrant pushbacks from Greece”²⁷⁸, which is against his role. More specifically, “Frontex management ignored reports, including video

271 Human Rights Watch, *Their Faces Were Covered*: Greece’s Use of Migrants as Police Auxiliaries in Pushbacks, Human Rights Watch, 6 (2022).

272 *Id.* at 17.

273 *See id.*

274 *See id.*

275 *See id.*

276 *Id.* at 18.

277 *See id.*

278 *See id.*

evidence, about human rights violations taking place where Frontex operates, and charged that its executive director deliberately delayed hiring people whose job it would be to monitor rights”.²⁷⁹ These claims are also confirmed by the OLAF report.

The *Safi and Others v. Greece* case resulted in a historic ruling by the European Court of Human Rights (ECtHR) on July 7th, 2022, convicting Greece of fundamental rights violations.²⁸⁰ The case pertains to a fishing boat carrying 27 foreign nationals which sank in the Aegean Sea on January 20th, 2014, resulting in the deaths of 11 people, including relatives of the 16 applicants who brought the case.²⁸¹ The ECtHR found Greece guilty of violating Article 2 (right to life) and Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights.²⁸² As a result, Greece was ordered to pay a total of 330,000 euros in non-pecuniary damages to the applicants.²⁸³

Heinrich Böll Stiftung promoted the creation of a database of law cases against Member States which do not comply with international and European law.²⁸⁴ The database included initially 150 cases “from all over Europe” and it is now published on the BVMN website.²⁸⁵ The Legal Action Database on Pushbacks is constituted of cases “from national courts, the European Court of Human Rights, the Court of Justice of the EU, and from UN Committees”.²⁸⁶ The cases collected concern violations such as “non-refoulement, pushbacks, summary expulsions, collective expulsions and, in general, to border violence”.²⁸⁷ In the database, there are 18 cases against Greece from UNHRC and ECtHR and the majority of them is still pending.

²⁷⁹ Human Rights Watch, *Their Faces Were Covered*: Greece’s Use of Migrants as Police Auxiliaries in Pushbacks, Human Rights Watch, 18 (2022).

²⁸⁰ European Council on Refugees and Exiles, *Greece: ECtHR Condemns Greece in Prominent Ruling, New Evidence of Pushbacks, Renewed EU Critique – Same Old Denials, Government Ignores European Courts and Continue Crack-Down on Solidarity* | European Council on Refugees and Exiles (ECRE), European Council on Refugees and Exiles (2022).

²⁸¹ *See id.*

²⁸² *See id.*

²⁸³ *See id.*

²⁸⁴ Neda Noraie-Kia, *Legal Action Database on Pushbacks*, Heinrich-Böll-Stiftung (2023).

²⁸⁵ *See id.*

²⁸⁶ Border Violence Monitoring Network, *Legal Action Database on Pushbacks*, Border Violence Monitoring Network (2023).

²⁸⁷ *See id.*

During a meeting with European lawmakers in Strasbourg, on July 5th 2022, Tineke Strik addressed Kyriakos Mitsotakis and highlighted that “covering up evidence of pushbacks won’t work. Evidence is recorded by UN bodies, NGOs and investigative journalists. European judges refuse to accept a reality that violates core EU values”.²⁸⁸ Nevertheless, Mitsotakis refused these accusations of withholding proof of illegal pushbacks and he claimed that “Greece fully respects fundamental rights” and that “allegations are orchestrated by Turkiye”.²⁸⁹ Moreover, Border Violence Monitoring Network (BVMN) reported “the recent increase in use of Rule 39 measures on the Greek mainland, in order to secure access to international protection”, referring to illegal pushbacks to Turkey.²⁹⁰ Finally, NGOs have been repeatedly accused by the Greek government for working with “human smugglers” in order to mislead border controls “by making appeals to the European Court” and there has been “concerning trend of criminalisation of civil society organisations and the use of smear campaigns to restrict migrant rights defenders from operating”.²⁹¹

The presence of Frontex in Greece is being debated due to allegations of human rights violations committed by Greek border guards. The human rights chief of Frontex has suggested that the agency “should stop operating in Greece”, citing reports of violence against asylum seekers and the separation of migrant children from their parents.²⁹² Despite these accusations, Member States have agreed on border control, leaving countries on the external borders to manage the situation independently.²⁹³ The effectiveness of the Fundamental Rights Officer in this matter is questionable, as political decisions such as suspending Frontex's work in Greece are outside of his control.²⁹⁴

While “credible reports” indicate systematic expulsions and degrading treatment of migrants by

288 European Council on Refugees and Exiles, *Greece: ECtHR Condemns Greece in Prominent Ruling, New Evidence of Pushbacks, Renewed EU Critique – Same Old Denials, Government Ignores European Courts and Continue Crack-Down on Solidarity* | European Council on Refugees and Exiles (ECRE), European Council on Refugees and Exiles (2022).

289 *See id.*

290 *See id.*

291 *See id.*

292 Monika Pronczuk and Matina Stevis-Gridneff, *Greece Border Abuses Highlight Europe’s Clashing Priorities on Migration*, The New York Times (2023).

293 *See id.*

294 *See id.*

Greek authorities, recent procedural improvements could lead to positive changes.²⁹⁵ The human rights chief believes that these developments warrant Frontex's continued presence in Greece, “one of the most challenging border areas in the EU”.²⁹⁶

Once the OLAF report became public, Frontex released a statement and they called these irregularities “practices of the past”.²⁹⁷ According to Frontex, the Agency has proceeded in certain amendments in order to improve their mistakes. For example, in July 2022, the Management Board adopted a decision regarding “the obligations of the Management Board and Executive Director to inform the Consultative Forum on the follow-up of its recommendations and to action the recommendations of the Fundamental Rights Officer.”²⁹⁸ They pledged that, by the end of October 2022, they would strengthen the process of the FRO’s “access to all necessary information in relation to serious incidents and to be automatically assigned as case-handler for those on alleged violations of Fundamental Rights”.²⁹⁹ Furthermore, it is stated that the Greek authorities in collaboration with the Agency organized an action plan to “right the wrongs of the past and present, and to engage in Structured Dialogue, bringing the Fundamental Rights Officers on both sides to the table, while enabling interaction both the political and practitioner levels on operational issues”.³⁰⁰

The agency ensures that the findings of the report are taken into consideration and it engages itself to provide “the best practices of good governance”.³⁰¹ It uses the war in Ukraine to prove that “the Agency has been able to reinforce the authorities of Member States at the external borders by re-deploying the European Border and Coast Guard Standing Corps at short notice”.³⁰² It

295 Monika Pronczuk and Matina Stevis-Gridneff, *Greece Border Abuses Highlight Europe’s Clashing Priorities on Migration*, The New York Times (2023).

296 *See id.*

297 Frontex, *Statement of Frontex Executive Management following Publication of OLAF Report*, frontex.europa.eu (2022).

298 *See id.*

299 *See id.*

300 *See id.*

301 *See id.*

302 *See id.*

demonstrates how valuable the Agency is to the Member States and it aims to continue offering their assistance when there is the need to.³⁰³

In conclusion, Frontex is obligated to adhere to international human rights and refugee law, and any violations of these standards must be taken seriously. If Greece is found to be in breach of human rights law in border control, it is imperative that Frontex takes appropriate measures to ensure that its own operations are not implicated in these violations. It is the Agency's responsibility to respect human rights and to ensure that its own activities are in line with international law. However, while Frontex can provide support to Member States, the ultimate responsibility for ensuring that border operations comply with international law rests with each State. Therefore, it may be more appropriate to focus on holding Greece accountable for any human rights violations that may be taking place at its borders, rather than solely on Frontex.

³⁰³ Frontex, *Statement of Frontex Executive Management following Publication of OLAF Report*, frontex.europa.eu (2022).

5. Critical Assessment of Frontex's Fundamental Rights

Protection Mechanisms

Examining the mechanisms that Frontex introduced to guarantee the protection of fundamental rights of refugees and migrants, it is evident that there is an implementation gap in their policy intent and policy implementation. This implementation gap enhances the notion of institutional bilingualism in EU policies since Frontex, an EU body, is involved in fundamental rights violations and infringement of its mechanisms. Therefore, from the research conducted, the question that arises is whether the adoption and complete implementation of these mechanisms, leading to improvement within the agency, would be sufficient to resolve migration challenges, particularly in Greece, which this sections attempts to answer.

Even if Frontex would implement the existing mechanisms in their best possible form, it is still debatable whether it would be sufficient to protect the fundamental rights of people on the move, especially in Greece, during border operations since it is a perplexing and versatile issue. Undoubtedly, Frontex must guarantee the effectiveness of the existing mechanisms for the protection of fundamental rights in order to ensure that border operations adhere to international and European law. However, it is critical to recognize that the confrontation of the challenges faced by the people on the move at the borders demands a broader approach that exceeds the capabilities and power of a single agency or mechanism.

Frontex introduced these mechanisms which adhere to international and European law, in theory, and prioritize, above all, the fundamental rights protection of refugees and migrants. As the interviewees mentioned, during the research conducted, they expressed their satisfaction on how much the agency prioritizes fundamental rights and on the knowledge they acquired on the subject matter. However, the implementation of these mechanisms has been a matter of concern since reports and allegations of fundamental rights violations have emerged. Even if Frontex would implement the mechanisms examined flawlessly, there are deep-rooted complexities and limitations that render it demanding to fully prioritize the fundamental rights of refugees and migrants.

The sheer scale of migration flows and refugee crisis and the difficulties faced by border authorities, either Frontex or national authorities, pose significant issues. More specifically, as it has been already mentioned, Greece protects the European borders, being at the forefront of the migration influx, leading to the limitations of its resources. The high volume of arrivals and the limiting capacity to process asylum claims can create an environment conducive to fundamental rights violations, leading to illegal pushbacks to the Turkish borders to avoid their examination. Their refusal of arrival to Greece lead migrants and refugees to chose unsafe routes to arrive in Europe causing shipwrecks in the Mediterranean Sea and, therefore, their fundamental rights violations.

Addressing these challenges requires a more holistic approach to the migration issue. This includes not only complete implementation of the fundamental rights protection mechanisms but also broader measures such as cooperation between EU and Greece. EU must increase its support to Greece, being EU's external borders, in order to avert fundamental rights violations. Further recommendations will be discussed in the next section.

In conclusion, while the implementation of the existing mechanisms in Frontex is necessary, it is not enough to protect the fundamental rights of refugees during border operations, especially in Greece. Achieving this goal requires a multi-dimensional approach that addresses the complex challenges associated with migration, cooperation and border authorities. It demands a commitment to upholding fundamental rights of refugees and migrants and within broader societal contexts. Lastly, it is essential to assess the existing mechanisms for the establishment of new policies.

5. Contributions, Future Research, and Recommendations for Defending Basic Rights in Border Management

This portion of the study defines the contribution of the present study to the existing literature, provides avenues of further research and offers some recommendations about Frontex's and the Greek authorities' roles in the defense of basic rights based on the body of available literature. It is essential to make proposals of this nature in the framework of border management and migration control in order to guarantee legal compliance, accountability, efficacy, and the values of human rights. These recommendations derive as conclusions from the research conducted and the existing literature.

This study makes a significant scholarly contribution to the existing literature by conducting an in-depth examination of the efficacy of fundamental rights protection mechanisms implemented by Frontex. The findings of this study bring to light instances of reported violations and inconsistencies encountered during the practical implementation of these mechanisms, indicating their limited effectiveness in fulfilling their intended objectives. Moreover, the study enriches the ongoing scholarly discourse surrounding the efficacy of training programs, policies, and ethical standards within this domain. Additionally, the research elucidates the intricate dynamics existing between Frontex and the Member States, with a particular emphasis on fundamental rights violations that occur during border operations. By shedding light on the division of responsibilities, issues of accountability, and the consequential ramifications for safeguarding fundamental rights, this study offers valuable insights.

Additionally, what is exceptional is that the study delves into the specific area of fundamental rights training for Frontex border guards, providing valuable insights from the perspective of the guards themselves and shedding light on the agency's commitment to fundamental rights. However, it is important to acknowledge certain limitations encountered during the research, such as the

scarcity of available sources for assessing the efficacy of fundamental rights training. Although interviewees expressed satisfaction with their training, it was challenging to objectively evaluate its effectiveness.

After the 2015 refugee crisis, general proposals have been developed for Frontex to help it better serve the purpose of defending the fundamental rights of refugees and migrants. In order to guarantee Member States' commitment to international and European law, the Agency should first concentrate on strengthening its interaction with Member States, particularly Greece. Additionally, improving its collaboration with human rights organizations, like the Consultative Forum, and enhancing its knowledge of fundamental rights would be another excellent alternative. Frontex ought to work closely with key parties, including independent human rights groups. This collaboration may entail exchanging data, running cooperative training initiatives, and requesting unbiased evaluations of its operations. These alliances can offer insightful information, improve transparency, and aid in the creation of best practices for defending basic rights.

Furthermore, the agency's organizational structure ought to have a specific department or team with knowledge of fundamental rights. This department should be in charge of offering guidance, oversight, and recommendations on matters pertaining to human rights, making sure that all facets of Frontex's activities take fundamental rights into account. In order to earn the public's trust, Frontex should also increase its transparency by releasing reports on events that occur during border operations and follow-ups. To provide transparent and timely information on its operations, especially those involving fundamental rights, the Agency should improve its reporting processes. Data on interceptions, returns, and events involving the use of force should be disclosed to the public on a regular basis. Transparency encourages accountability and makes it possible for Frontex's adherence to fundamental rights norms to be independently evaluated.

Furthermore, in relation to Greece, the country should fortify its monitoring and accountability mechanisms by implementing robust incident reporting procedures and establishing

independent monitoring bodies to oversee operations concerning migrants and refugees. These bodies should possess unrestricted access to reception centers, detention facilities, and border areas to effectively evaluate adherence to fundamental rights standards. Through independent oversight, accountability and transparency can be strengthened, facilitating the prompt identification and resolution of any violations or abuses.

Finally, stronger cooperation between Greece and the EU is essential to support countries handling large migration flows and establish safe and legal channels for migration. This cooperation enables shared resources, expertise, and financial assistance, strengthening Greece's migration management capacity while ensuring the protection of migrants' rights. It fosters harmonized policies, solidarity among Member States, and balanced distribution of responsibilities. By establishing safe and legal migration channels, risks associated with irregular migration can be mitigated, human trafficking reduced, and migrants provided with secure options. Enhanced cooperation contributes to sustainable and humane migration governance in the region.

Based on the research conducted, certain recommendations have been produced in order for Frontex and Greece to improve their operations towards the protection of fundamental rights via the examination of the available data. One of the respondents suggested conducting joint training exercises between Frontex and the Greek national border guards to achieve this. Non-discrimination, recognizing at-risk populations, employing reasonable force, and respect for the non-refoulement principle should all be included in this training. To support a rights-based approach, training programs should be frequently updated and incorporate hands-on activities and case studies. Finally, one of the interviewers suggested that they be made mandatory.

Frontex has to improve the efficiency of its reaction to violations of basic rights and its supervision procedures. The Fundamental Rights Officer's and the Consultative Forum's roles might both be expanded to better accomplish this. For the purpose of preventing and addressing abuses of fundamental rights, the Agency should set up accountability procedures. This entails consistent,

impartial operation monitoring, both at the EU level and in coordination with national authorities. Migrants and refugees should have easy access to complaint processes so they may report mistreatment without worrying about reprisal. Any reported infractions should be the subject of prompt, objective investigations. Moreover, it is advisable for the Agency to augment its executive powers, thereby enabling active participation in the decision-making processes related to border operations and effectively discouraging any potential instances of fundamental rights violations perpetrated by the Member States. By enhancing its authority and influence in decision-making, the Agency can play a more proactive role in ensuring the protection and promotion of fundamental rights during border operations.

It has been concluded that Greece has been accused of multiple fundamental rights violations and illegal pushbacks of refugees and migrants to Turkey. In order to improve the protection of the fundamental rights of people on the move and adhere to international and European law, certain recommendations should be followed. Firstly, the Greek government should provide appropriate training to the Greek border guards on international and European law relating to fundamental rights to eliminate incidents of violence and maltreatment of refugees and migrants during border operations. Greek authorities, including border guards, police officers, and personnel involved in migration management, should receive comprehensive training on human rights, non-discrimination, and the rights of migrants and refugees. This training should promote understanding, respect, and adherence to fundamental rights standards and principles, enabling them to effectively protect and uphold the rights of migrants and refugees.

Moreover, it is imperative for Greece to enhance the conditions prevailing in reception and detention centers, as substantiated by existing scholarly literature. It is essential that refugees and migrants are afforded suitable living conditions that encompass provisions for healthcare and access to legal assistance. To achieve this, Greece should ensure that reception centers and facilities designated for migrants and refugees are adequately equipped, appropriately staffed, and aligned

with established international standards. This entails providing access to shelter, sanitation facilities, healthcare services, and other essential provisions. A central consideration in reception conditions should be the preservation of dignity and well-being for all individuals, while catering to the specific needs of vulnerable groups such as children, pregnant women, and individuals with disabilities. Collaborative efforts with civil society organizations and non-governmental entities should be embraced, recognizing their role as partners rather than adversaries, to effectively accomplish these goals.

In relation to avenues of further academic research, it would be advantageous to expand the present study by incorporating other Member States and diverse case studies. This broader approach would provide a more comprehensive and holistic view of the subject matter. Particularly, researchers could conduct a comparative analysis of Frontex's operational activities and their implications for the protection of fundamental rights across various European countries. This comparative approach would enable a deeper understanding of the similarities, differences, and underlying factors that influence Frontex's impact on fundamental rights within different national contexts. Moreover, it would be crucial to enhance the methodological robustness of the research by conducting interviews on the fundamental rights training provided to Frontex border guards, involving a higher number of participants to ensure greater representativeness. This would yield more reliable and nuanced conclusions regarding the effectiveness of such training in upholding fundamental rights standards.

Furthermore, to grasp the broader societal implications, researchers should examine the public perception and media discourse surrounding Frontex's activities, specifically focusing on their effects on the protection of fundamental rights in Greece. Analyzing public opinion and media narratives would shed light on how Frontex's actions are perceived by various stakeholders, including the general public, civil society organizations, and the media. Lastly, a comprehensive exploration of the role played by EU institutions, such as the European Court of Human Rights and

the European Parliament, in overseeing and addressing potential instances of fundamental rights violations by Frontex in Greece is warranted. Examining the mechanisms through which these institutions exercise oversight and accountability would contribute to a better understanding of the institutional framework governing Frontex's activities and its effectiveness in safeguarding fundamental rights in Greece.

In conclusion, implementing the recommendations is crucial for Frontex and Greece as it ensures the protection of fundamental rights, legal compliance, accountability, effectiveness, and the promotion of a rights-based approach. By adhering to these recommendations, both entities can fulfill their obligations under international and European human rights law, enhance transparency, and establish mechanisms to address potential violations. Furthermore, implementation improves the efficiency of border management operations, enabling fair and timely processing of asylum claims while upholding the rights and well-being of migrants and refugees. Ultimately, it contributes to their international reputation, fostering partnerships and cooperation in addressing migration challenges while prioritizing human rights.

6.Conclusion

In this section, the author provides a summary of the key findings of their research, specifically regarding the implementation of fundamental rights protection mechanisms by Frontex and the associated implementation gap in border operations, particularly in Greece. The existence of this implementation gap suggests that the EU may prioritize institutional bilingualism over the practical implementation of fundamental rights protection policies through Frontex.

Frontex is an EU agency responsible for border management and should prioritize protecting fundamental rights. Regulations were established to ensure fundamental rights protection, but reported violations suggest that mechanisms have not served their purpose. The study examined the effectiveness of these fundamental rights protection mechanisms during Frontex border operations, mainly in Greece. More specifically, Frontex's Fundamental Rights Training reveals that while training prioritizes fundamental rights protection, inconsistencies exist in its practical implementation. Furthermore, the Fundamental Rights Strategy promotes compliance with EU and international law, but the mechanism seems to be ineffective since it oversees fundamental rights violations. Allegations of misconduct have been raised against both border guards and national officers, despite the emphasis on professional ethics in the Frontex Code of Conduct. Moreover, the Consultative Forum encourages dialogue between fundamental rights-oriented organizations and Frontex officials, but it lacks formal power. Finally, Greece has been accused of fundamental rights violations during Frontex border operations, and while Frontex is responsible for adhering to international law, the ultimate responsibility rests with each State.

The case of Greece, with accusations of fundamental rights violations during border operations, highlights the complex nature of implementing fundamental rights protection policies. While Frontex carries a responsibility to adhere to international law, the ultimate accountability lies

with each Member State. The research suggests that the implementation gap within the EU contribute to the challenges faced in upholding fundamental rights, particularly in the context of border operations. Therefore, improving cooperation between Frontex and Member States is essential to ensure compliance with international and European law, as well as to raise awareness among Member States regarding their responsibilities towards the protection of individuals on the move. Although Member States hold the final decision-making power in border operations, Frontex has not fulfilled its primary mandate of protecting the fundamental rights of vulnerable populations and ensuring adherence to relevant laws and regulations.

The current study exhibits a dual nature, encompassing both policy-oriented and academic dimensions. Primarily, it adopts a policy-oriented approach by directing its attention towards the matter of the implementation gap observed in Frontex's mechanisms for safeguarding fundamental rights. With the aim of advancing policy development and effective implementation, this study provides pertinent recommendations tailored to address this concern. Additionally, it undertakes an examination of the implementation gap within the context of fundamental rights protection, employing Frontex and Greece as case studies. Lastly, the study delves into the subject of fundamental rights training within Frontex, an entity representing the European Union, through the execution of interviews with Frontex border guards. This investigation endeavors to shed light on the efficacy of the training program in upholding fundamental rights standards.

The phenomenon of institutional bilingualism is evident within EU migration policies and Frontex's fundamental rights protection mechanisms, as their stated objectives aim to safeguard fundamental rights in theory, yet their practical implementation falls short of expectations. This thesis examines the mechanisms introduced for the protection of fundamental rights, identifies the implementation gaps primarily observed in Greece, and proposes specific recommendations for their proper implementation to address migration issues. Consequently, the question arises as to

whether the adoption of these recommendations, leading to improvement within the agency, would be sufficient to resolve migration challenges, particularly in Greece.

The implementation of the aforementioned mechanisms is a crucial step towards ensuring the protection of fundamental rights, thereby fostering humane and respectful treatment of migrants and refugees. However, it is important to recognize that EU migration issues, particularly in Greece, are multifaceted and cannot be resolved through the actions of a singular entity. While Frontex's commitment to protecting fundamental rights is of utmost importance, it represents only one aspect within a comprehensive approach required to effectively tackle migration challenges. The task of addressing violations of fundamental rights necessitates collaboration among various entities, including Member States and Frontex, despite potential obstacles arising from diverging personal interests. Nevertheless, it is an appropriate course of action, as suggested by the interviewees. Hence, while Frontex's implementation of mechanisms for the protection of fundamental rights is a significant component, it should be viewed as part of a broader framework aimed at managing migration flows holistically, fairly, and sustainably.

The multifaceted nature of this study, combining policy-oriented and academic elements, allows for a comprehensive exploration of pertinent issues concerning the protection of fundamental rights within the Frontex framework. By providing targeted policy recommendations and assessing the effectiveness of fundamental rights training, this research aspires to bridge the gap between theoretical inquiry and practical policy implications.

It is crucial to emphasize that this paper aims not only to focus on Frontex as an isolated entity but also to shed light on the broader context of the European Union's role in safeguarding fundamental rights through the establishment of such an agency. The existence of an implementation gap in EU regulations, as manifested in the practices of Frontex, reveals a systemic issue of institutional bilingualism within the EU concerning the protection of fundamental rights for individuals on the move.

Reference List

- Aas, K.F. and Gundhus, H.O.I. (2014). Policing Humanitarian Borderlands: Frontex, Human Rights and the Precariousness of Life. *British Journal of Criminology*, [online] 55(1), pp.1–18. doi:<https://doi.org/10.1093/bjc/azu086>.
- Ahmad, S., Wasim, S., Irfan, S., Gogoi, S., Srivastava, A. and Farheen, Z. (2019). Qualitative v/s. Quantitative Research - a Summarized Review. *Journal of Evidence Based Medicine and Healthcare*, [online] 6(43), pp.2828–2832. doi:<https://doi.org/10.18410/jebmh/2019/587>.
- Bhat, A. (2018). *Snowball Sampling: Definition, Method, Advantages and Disadvantages | QuestionPro*. [online] QuestionPro. Available at: <https://www.questionpro.com/blog/snowball-sampling/>.
- Border Violence Monitoring Network (2023). *Legal Action Database on Pushbacks*. [online] Border Violence Monitoring Network. Available at: <https://borderviolence.eu/databases/legal-actions/> [Accessed 18 Apr. 2023].
- Boslaugh, S. (2007). *Secondary Data Sources for Public Health : a Practical Guide*. Cambridge ; New York Cambridge University Press.
- Cossé, E. (2022). *European Court Slams Greece over Deadly Migrant Pushback*. [online] Human Rights Watch. Available at: <https://www.hrw.org/news/2022/07/08/european-court-slams-greece-over-deadly-migrant-pushback>.
- Czaika, M. and De Haas, H. (2013). The Effectiveness of Immigration Policies. *Population and Development Review*, [online] 39(3), pp.487–508. doi:<https://doi.org/10.1111/j.1728-4457.2013.00613.x>.
- European Anti-Fraud Office (n.d.). *What We Do*. [online] anti-fraud.ec.europa.eu. Available at: https://anti-fraud.ec.europa.eu/about-us/what-we-do_en
- European Anti-Fraud Office (OLAF). (2021). CASE No OC/2021/0451/A1. Available at: <https://fragdenstaat.de/dokumente/233972-olaf-final-report-on-frontex/>
- European Council on Refugees and Exiles (2022). *Greece: ECtHR Condemns Greece in Prominent Ruling, New Evidence of Pushbacks, Renewed EU Critique – Same Old Denials, Government Ignores European Courts and Continue Crack-Down on Solidarity | European Council on Refugees*

and Exiles (ECRE). [online] European Council on Refugees and Exiles. Available at: <https://ecre.org/greece-ecthr-condemns-greece-in-prominent-ruling-new-evidence-of-pushbacks-renewed-eu-critique-same-old-denials-government-ignores-european-courts-and-continue-crack-down-on-solidarity/>.

European Data Protection Supervisor (2019). *Whistleblowing*. [online] European Data Protection Supervisor. Available at: https://edps.europa.eu/data-protection/our-work/subjects/whistleblowing_en [Accessed 12 Jan. 2023].

FIDH, Migreurop and EMHRN (2014). *Frontex between Greece and Turkey: at the Border of Denial*. [online] International Federation for Human Rights. Available at: <https://www.fidh.org/en/region/europe-central-asia/frontex-between-greece-and-turkey-the-border-of-denial-the-deployment> [Accessed 15 Mar. 2023].

Fleetwood, D. (2018). *Non-Probability Sampling: Definition, Methods and Examples*. [online] QuestionPro. Available at: <https://www.questionpro.com/blog/non-probability-sampling/>.

FRONTEX (n.d.). *Code of Conduct for All Persons Participating in Frontex Activities*. [online] Available at: https://frontex.europa.eu/assets/Publications/General/Frontex_Code_of_Conduct.pdf [Accessed 30 Jan. 2023].

FRONTEX (n.d.). *Consultative Forum*. [online] frontex.europa.eu. Available at: <https://frontex.europa.eu/accountability/fundamental-rights/consultative-forum/general/> [Accessed 17 Oct. 2022].

FRONTEX (n.d.). *Fundamental Rights at Frontex*. [online] frontex.europa.eu. Available at: <https://frontex.europa.eu/accountability/fundamental-rights/fundamental-rights-at-frontex/>.

FRONTEX (n.d.). *Fundamental Rights Monitors*. [online] frontex.europa.eu. Available at: <https://frontex.europa.eu/accountability/fundamental-rights/fundamental-rights-monitors/> [Accessed 17 Oct. 2022].

FRONTEX (n.d.). *Fundamental Rights Officer*. [online] frontex.europa.eu. Available at: <https://frontex.europa.eu/accountability/fundamental-rights/fundamental-rights-officer/> [Accessed 17 Oct. 2022].

FRONTEX (2022). *Statement of Frontex Executive Management following Publication of OLAF Report*. [online] frontex.europa.eu. Available at: <https://frontex.europa.eu/media-centre/news/news->

release/statement-of-frontex-executive-management-following-publication-of-olaf-report-amARYy
[Accessed 20 Oct. 2022].

Frontex (2023). *Frontex Executive Director and Greek Officials Agree on Cooperation on Returns*. [online] frontex.europa.eu. Available at:

<https://frontex.europa.eu/media-centre/news/news-release/frontex-executive-director-and-greek-officials-agree-on-cooperation-on-returns-iNUJcF>.

Frontex (n.d.). *Tasks & Mission*. [online] frontex.europa.eu. Available at:

<https://frontex.europa.eu/about-frontex/who-we-are/tasks-mission/>.

Frontex (2019). *Common Core curriculum: for Border and Coast Guard Basic Training in the EU : a Guide to the Modifications from the CCC 2012 to the CCC 2017*. [online] Publications Office of the European Union. Frontex. Available at: <https://data.europa.eu/doi/10.2819/537983> [Accessed 3 Mar. 2023].

FRONTEXIT (2014). *The Mandate of FRONTEX Is Incompatible with Human Rights*. [online] frontexit.org. Available at: <http://www.frontexit.org/images/Bilan%20ENG.pdf> [Accessed 18 Oct. 2022].

Giannetto, L. (2019). CSOs and EU Border Management: Cooperation or Resistance? the Case of Frontex Consultative Forum. *American Behavioral Scientist*, 64(4), pp.501–524.
doi:<https://doi.org/10.1177/0002764219882988>.

Grigoriadis, I.N. and Dilek, E. (2018). Securitizing Migration in the European Union: Greece and the Evros Fence. *Journal of Balkan and near Eastern Studies*, 21(2), pp.170–186.
doi:<https://doi.org/10.1080/19448953.2018.1506280>.

Hammarberg, K., Kirkman, M. and De Lacey, S. (2016). Qualitative Research methods: When to Use Them and How to Judge Them. *Human Reproduction*, [online] 31(3), pp.498–501.
doi:<https://doi.org/10.1093/humrep/dev334>.

Hancké, B. (2009). *Intelligent Research Design*. OUP Oxford.

Horii, S. (2012). It Is about More than Just Training: the Effect of Frontex Border Guard Training. *Refugee Survey Quarterly*, 31(4), pp.158–177. doi:<https://doi.org/10.1093/rsq/hds015>.

Human Rights Watch (2011). *The EU's Dirty Hands Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece*. [online] Available at:
https://www.hrw.org/sites/default/files/reports/greece0911webwcover_0.pdf.

Human Rights Watch (2022). *'Their Faces Were Covered': Greece's Use of Migrants as Police Auxiliaries in Pushbacks*. [online] Human Rights Watch. Available at: <https://www.hrw.org/report/2022/04/07/their-faces-were-covered/greeces-use-migrants-police-auxiliaries-pushbacks>.

Kazanci, H. (2022). *European Court Rules against Greece for Migrant Deaths at Sea*. [online] www.aa.com.tr. Available at: <https://www.aa.com.tr/en/europe/european-court-rules-against-greece-for-migrant-deaths-at-sea/2632654> [Accessed 29 Mar. 2023].

Lazaridis, G. and Skleparis, D. (2015). Securitization of Migration and the Far right: the Case of Greek Security Professionals. *International Migration*, 54(2), pp.176–192. doi:<https://doi.org/10.1111/imig.12219>.

Léonard, S. and Kaunert, C. (2020). The Securitisation of Migration in the European Union: Frontex and Its Evolving Security Practices. *Journal of Ethnic and Migration Studies*, pp.1–13. doi:<https://doi.org/10.1080/1369183x.2020.1851469>.

Loschi, C. and Slominski, P. (2022). Frontex's Consultative Forum and Fundamental Rights Protection: Enhancing Accountability through Dialogue? *European Papers - a Journal on Law and Integration*, 7(1), pp.195–224. doi:<https://doi.org/10.15166/2499-8249/554>.

Marin, L. (2011). Policing the EU's External Borders: a Challenge for the Rule of Law and Fundamental Rights in the Area of Freedom, Security and Justice? an Analysis of Frontex Joint Operations at the Southern Maritime Border. *Journal of Contemporary European Research*, 7(4), pp.468–487. doi:<https://doi.org/10.30950/jcer.v7i4.379>.

Mezmir, E.A. (2020). Qualitative Data Analysis: an Overview of Data Reduction, Data Display and Interpretation. *Research on Humanities and Social Sciences*, 10(21). doi:<https://doi.org/10.7176/rhss/10-21-02>.

MIGREUROP (2022). *'Frontex between Greece and Turkey, at the Border of denial'*. [online] MIGREUROP. Available at: <http://migreurop.org/article2533.html> [Accessed 14 Oct. 2022].

Miller, R.L. and Brewer, J.D. (2003). *The A-Z of Social Research*. SAGE Publications.

NEAL, A.W. (2009). Securitization and Risk at the EU Border: the Origins of FRONTEX. *JCMS: Journal of Common Market Studies*, 47(2), pp.333–356. doi:<https://doi.org/10.1111/j.1468-5965.2009.00807.x>.

Noraie-Kia , N. (2023). *Legal Action Database on Pushbacks*. [online] Heinrich-Böll-Stiftung. Available at: <https://gr.boell.org/en/2023/04/04/legal-action-database-pushbacks> [Accessed 18 Apr. 2023].

Pallister-Wilkins, P. (2015). The Humanitarian Politics of European Border Policing: Frontex and Border Police in Evros,. *International Political Sociology*, 9(1), pp.53–69. doi:<https://doi.org/10.1111/ips.12076>.

Pronczuk, M. and Stevis-Gridneff, M. (2023). Greece Border Abuses Highlight Europe’s Clashing Priorities on Migration. *The New York Times*. [online] 14 Feb. Available at: <https://www.nytimes.com/2023/02/14/world/europe/eu-greece-border-abuses.html> [Accessed 19 Apr. 2023].

Tubaro, P. (2015). *Research Ethics in Secondary data: What issues?* [online] Data Big and Small. Available at: <https://databigandsmall.com/2015/10/18/research-ethics-in-secondary-data-what-issues/>.

Vlachopoulos, K. (2020). *10,000 Standing Corps and Expanded Responsibilities: FRONTEX’s Reform and Its Impact, Policy Brief No.110/2020*. [online] Hellenic Foundation for European & Foreign Policy (ELIAMEP). Available at: https://www.eliamep.gr/wp-content/uploads/2020/04/Policy-Brief_No110-Konstantinos-Vlachopoulos-.pdf [Accessed 18 Mar. 2023].

Appendix 1

Interviews

Interview 1 with border guard (the interview was conducted on 15.11.2022)

Interview 2 with border guard (the interview was conducted on 15.11.2022)

Interview 3 with border guard (the interview was conducted on 16.11.2022)

Interview 4 with border guard (the interview was conducted on 17.11.2022)

Interview 5 with border guard (the interview was conducted on 06.12.2022)

Interview 6 with border guard (the interview was conducted on 23.12.2022)

Appendix 2

Interview Questions

Ελληνική Έκδοση Ερωτήσεις Συνεντεύξεων

1. Ποια είναι τα κύρια καθήκοντά σας ως συνοριοφύλακας στη FRONTEX;
2. Πριν από τη FRONTEX, ποιο ήταν το ιστορικό σας σε σχέση με τα ανθρώπινα δικαιώματα; Έχετε λάβει προηγουμένως κάποιου είδους εκπαίδευση σχετικά με την προστασία των ανθρωπίνων δικαιωμάτων;
3. Σύμφωνα με την επίσημη ιστοσελίδα της FRONTEX, κάθε συνοριοφύλακας λαμβάνει εξάμηνη εκπαίδευση η οποία συμπληρώνει την προηγούμενη επαγγελματική του κατάρτιση. Στο πλαίσιο αυτής της εξάμηνης κατάρτισης, παρακολουθήσατε μαθήματα σχετικά με την προστασία των ανθρωπίνων δικαιωμάτων και το δίκαιο της ΕΕ;
4. Ποια ήταν η ιδιότητα/επάγγελμα του ατόμου που παρέδωσε αυτά τα μαθήματα; Είχε εμπειρία στον τομέα των συνόρων;
5. Θεωρείτε ότι αυτή η εκπαίδευση για τα ανθρώπινα δικαιώματα ήταν αρκετή για να κατανοήσετε πλήρως τον τρόπο προστασίας των ανθρωπίνων δικαιωμάτων των μεταναστών και των προσφύγων κατά τη διάρκεια των συνοριακών επιχειρήσεων;
6. Έχετε συστάσεις σχετικά με το πώς θα μπορούσε ο οργανισμός να βελτιώσει την εκπαίδευση των συνοριοφυλάκων του στα ανθρώπινα δικαιώματα;

English Version Questions

1. Which are your main tasks as a border guard in FRONTEX?
2. Before FRONTEX, what was your background in relation to human rights? Have you received before any kind of training on the protection of human rights?
3. According to the official website of FRONTEX, every border guard receives a six-month training which complements their previous professional training. In this six-month training, did you attend courses related to the protection of human rights and EU law?
4. What was the status/profession of the person who delivered these courses? Did they have experience on the field?
5. Do you feel that this training on human rights was enough for you to fully comprehend how to protect the human rights of migrants and refugees during border operations?
6. Do you have any recommendations on how the agency could improve the training of its border guards on human rights