



**The principle of non-refoulement, the pushbacks of asylum seekers
by Greece, and the role of Frontex.**

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Abstract

The objective of this study is threefold: to provide an overview of the principle of non-refoulement, to present, discuss and examine the accusations of pushbacks by Greece, and the involvement of Frontex. For this purpose, some necessary definitions for better understanding of the topic will be provided. Next, it will be examined under which international and European legal texts the principle of non-refoulement and the right to seek asylum are protected. In addition, there will be a presentation of cases of pushbacks by other European countries (Italy, Croatia, Serbia, and Slovenia), with references to local and European courts. Moving on to the case of Greece, there will be an examination of Greece as a receiving country, of the EU-Turkey deal with its aftermaths, the current incidents in Evros border with Turkey, and Greece's decision to construct a fence on the Evros border. Subsequently, the accusations of pushbacks by Greece and the reported violations against migrants and refugees will be discussed and examined. Furthermore, complaints filed at the European Court of Human Rights regarding accusations of pushback will be presented as well as a reference to the reaction of the Greek authorities as regards the accusations will be made. In closing, the accusations of the involvement of Frontex in Greece's pushbacks will be discussed, leading up to its reaction.

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List of Acronyms – Abbreviations

APC	Asylum Protection Center
BVMN	Border Violence Monitoring Network
ECCHR	European Center for Constitutional and Human Rights
ECHR	European Convention on Human Rights
ECRE	European Council for Refugees and Exiles
ECtHR	European Court of Human Rights
EU	European Union
GCR	Greek Council for Refugees
IOM	International Organization for Migration
LCL	Legal Centre Lesbos
MEP	Member of the European Parliament
NATO	North Atlantic Treaty Organization
OLAF	European Anti-Fraud Office
SIS	Schengen Information System
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

Introduction

The refugee crisis of 2015 had Europe facing the consequences that followed, as well as its own capability to manage the situation. There were different reactions from the EU countries, with each following a different migration policy and with some of them closing their borders. Other countries, such as Spain, Greece and Italy, serves as the “gate” of Europe, especially the last two. Due to their geographical locations, Italy and Greece experienced the highest number of arrivals of migrants and refugees, since the main routes were, and still are, the central and eastern Mediterranean. An additional reason for Greece and Italy being the countries with the most frequent refugee and migrant arrivals, is the Dublin Regulation which establishes that the first country of entrance should be responsible for examining the asylum applications. Consequently, a significant burden has been placed on both Greece and Italy (Balla, 2023).

One of EU’s steps for managing the refugee crisis, was the EU-Turkey deal. However, even though the number of arrivals in the EU had been decreased, Turkey’s decision to open its land border with Greece in February 2020 led to a “deadlock situation” (Balla, 2023). In general, EU’s migration policy has focused on strict border controls and cooperation with third-countries. The European Council prioritizes the strengthening of EU’s external borders and the prevention of irregular migrants from reaching the territory of EU. However, the European Union has been criticized for not prioritizing migrant’s human rights and focusing on border controls. Those human rights violations appear in multiple allegations of collective expulsions, “pushbacks”, by EU Member States, also including allegations of ill-treatment and excessive use of force by border officials and security personnel. The involvement of Frontex has also been mentioned in such reports (Luyten, 2022).

There have been various rulings by the European Court of Human Rights as well as local courts which determined that there has been a violation of non-refoulement, among other violations, by different EU countries. Except of the case of Greece, the countries that will be discussed through this study will be Croatia, Serbia and Slovenia based on the judgment of the ECtHR or local courts.

1. The conceptual context of migration

1.1 The definition of refugee and the difference with the subsidiary protection

The refugee and subsidiary protection are two forms of international protection granted to those who have fled their countries of origin due to persecution or serious harm.

The definition of the refugee is provided by the 1951 Refugee Convention which is a legal document about the refugee protection. Therefore, according to the Convention “a refugee is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion” (UNHCR, n.d.).

Subsidiary protection is a form of protection granted to third-country national or a stateless individual who do not meet the criteria for refugee status, but there are proven substantial grounds for believing that if they return to their country of origin or to the country of former habitual residence (in the case of a stateless person) would face a risk of serious harm as defined in Art. 15 of Directive 2011/95/EU, and “to whom Article 17(1) and (2) of this Directive do not apply, and is unable or, owing to such risk, unwilling to avail themselves of the protection of that country” (European Commission, n.d.).

Even though both refugee status and subsidiary protection provide legal protection and rights to individuals in need of international protection, the difference can be noticed in the criteria for eligibility. Refugees are recognized based on the fear of persecution, while individuals granted subsidiary protection are recognized based on the risk of serious harm.

1.2 Border control and sovereignty

Held (1990 cited in Rudolph, 2005) has stated that “the concept of 'sovereignty' is usually taken to mean that a nation state has power and control over its own future... A

loss of sovereignty implies a loss of legal and actual control over the determination of the direction of national policy”. Some scholars have suggested that aspects of sovereignty can be negotiated in order to advance a broader strategic plan and maximize other aspects of sovereignty. This implies that sovereignty is increasingly seen as a collection of evolving norms and practices that can adapt and change (Held 1990 cited in Rudolph, 2005).

Sovereignty is widely recognized as the cornerstone of the current international system. It refers to the authority of a political entity to govern itself and the principle of non-interference in the affairs of other states. Within this context the decisions made by sovereign states regarding border control are driven by the concept of national security. National security encompasses various aspects such as politics, economics, society, and culture. In practice, there are restrictions on the authority of states, which they have voluntarily imposed on themselves. This is because the advantages of multilateral cooperation were deemed to outweigh the drawbacks of limiting sovereignty (IOM, 2017).

Border control is considered as a quintessential exercise of sovereignty. Border control serves various objectives: maintaining control of populations, limiting access to labor markets and maintaining internal security. Despite governments allocating increased resources to border policing and the implementation of advanced technology for border control, they usually find it hard to effectively manage the flow of individuals onto to their territories, especially with smuggling operations (Martin and Ferris, 2017). States have the sovereign to control either the entry or the presence of non-national on their territory, but those policies should be based on international humanitarian law and international human rights law (Luyten, 2022).

1.3 The definition of pushback and non-refoulement

There is no internationally agreed definition of the term 'pushbacks' in the area of migration. The practice of pushback has been multiply defined providing though the same meaning. For example, according to the special rapporteur on the human rights of

migrants at the UN Office of the High Commissioner for Human Rights, pushbacks are described as “various measures taken by States which result in migrants, including asylum-seekers, being summarily forced back to the country from where they attempted to cross or have crossed an international border without access to international protection or asylum procedures or denied of any individual assessment on their protection needs which may lead to a violation of the principle of non-refoulement” (Radjenovic, 2021). Amnesty International (2021) in its report has given the following definition “summary, unlawful, forcible, and sometimes violent transfer of refugees and migrants back across an international border without consideration of their individual circumstances, often, but not exclusively, upon or shortly after they crossed it. The practice is unlawful because it deprives people of the right to challenge the decision to return them as required by law making it impossible to determine whether they would be at risk of refoulement” (Amnesty International, 2021). It is clear that in both definitions, pushback is the practice of summarily, unlawfully and forcibly return of individuals back to the country they enter from, without being considered their individual circumstances and thus without being provided international protection in the case they are in need of it (Amnesty International 2021; Radjenovic, 2021).

At this point it will be provided a preliminary definition of the term “non-refoulement” due to the fact that it will be elaborated further down in the chapter “2.1.2 1951 Geneva Convention (Article 33)”. Therefore, the term non-refoulement is defined by the European Commission (n.d.) as “a core principle of international refugee law that prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion” (European Commission, n.d.).

1.4 In which cases a border cross is considered illegal?

In general, a border crossing is considered illegal in cases of violation of the laws, regulations or policies of a country. According to European Parliament and Council

regulation (EU) 2016/399 (2016), border cross is considered illegal when it does not take place from a border crossing point and “during the fixed opening hours” (Art. 5, par. 1). According to Art. 6, for third-country nationals, in order their border cross not to be considered illegal, there are some entry conditions. Possessing a valid travel document is such an entry condition and which “validity shall extend at least three months” from the departure date and which should “have been issued within the previous 10 years”. In addition, third-nationals should have a valid visa and their purpose and condition of the intended stay should be justified, and, also, to “have sufficient means of subsistence”. Furthermore, it considered illegal, when they are not deemed to pose a risk to public order, internal security, public health, or the international relations of any of the Member States (European Parliament and Council regulation (EU) 2016/399, 2016).

2. Violation of the principle of non-refoulement and the right to seek asylum

2.1 International law

2.1.1 1948 Universal Declaration of Human Rights (Article 14)

One of the most important documents for the protection of human rights and especially the right to seek asylum is the 1948 Universal Declaration of Human Rights. Specifically, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights on December 10 1948 (Claiming Human Rights. n.d.). It was drafted by representatives from all regions of the world and with “different legal and cultural backgrounds” as a common standard of achievements for everyone despite the nation. It has inspired and opened the way for the adoption of around 70 human rights treaties containing references to its preambles and being applied global and region levels (United Nations, n.d.).

According to United Nations (n.d.), the Article 14 (par. 1) of the Declaration states that “everyone has the right to seek and to enjoy in other countries asylum from persecution” while paragraph 2 states that “this right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the

purposes and principles of the United Nations” (United Nations, n.d.). Therefore, the right to asylum is restricted, since it cannot be granted to avoid any persecution, like the cases stated in Article 14. For example, war criminals or those who are guilty of a crime against the peace or against humanity cannot be granted asylum (Office of the United Nations High Commissioner for Human Rights, 2018).

Providing asylum is a responsibility that should be shared by all countries (Amnesty International UK, 2023). Furthermore, every country has the right to control its borders but an orderly migration system based on the human rights principles enshrined in the Universal Declaration will both “address countries’ legitimate security concerns” and honor the refugees’ and migrants’ rights (Office of the United Nations High Commissioner for Human Rights, 2018).

2.1.2 The 1951 Geneva Convention (Article 33)

The 1951 Geneva Convention, also known as a Refugee Convention, is one of the most significant legal documents concerning the refugee protection. It was adopted on 28 July 1951 at a United Nations conference and on 22 April 1954 became illegally binding. As it has been already mentioned in a previous chapter, Convention defines the term refugee and outlines the refugees’ rights as well as states’ obligations on refugees and asylum seekers (Refugee Council of Australia, 2020). An important principle of the Refugee Convention is the ‘non-refoulement’ which is provided in Article 33 (Chaudhury, 2022). According to Article 33 (par. 1) “no Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion” while par. 2 states that “the benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country” (Office of the United Nations High Commissioner for Human Rights, n.d.).

Under the Article 33, refugees cannot be sent back to a country where they may be persecuted (Refugee Council of Australia, 2020). In the case that the life or freedom of the refugee is in danger in his/her country of origin, the signatory states have the obligation to not return or expel these individuals, except in the case that they are considered as a threat to the national and public security (Chaudhury, 2022). However, this principle now applies not only to the countries of origin but also to places where they might be in danger of cruel, inhumane or degrading treatment (Refugee Council of Australia, 2020). Furthermore, the principle of non-refoulement “has been adapted as a customary international law” it also applies to non-signatory states. Therefore, the principle protects all refugees in need even though the host country has not ratified the Refugee Convention (Chaudhury, 2022).

2.1.3 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 3)

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, also known as the “Torture Convention”, was adopted on 10 December 1984 by the General Assembly of the United Nations and entered into force on 26 June 1987 (Danelius, n.d.). Article 3 of the Convention, which is the one that will be analyzed, reads that “no State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture” and according to par. 2 “for the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights” (Office of the United Nations High Commissioner for Human Rights, n.d.).

Article 3 of the Convention mandates that States “do not deport, extradite, expel, return (refouler) or otherwise transfer” individuals to countries where there is a genuine risk of them being subjected to torture. The principle of non-refoulement, as outlined in the Convention, is absolute and does not permit any exceptions and it extends to all non-

citizens, irrespective of their legal status, and is not limited to only asylum seekers and refugees. A State has the responsibility to conduct its own individual, impartial and independent investigations before any proposed deportation, ensuring that there is no genuine risk of the individual being subjected to torture. It should be an individual examination of each case rather than a collective. The State must take into consideration all relevant factors, including the human rights record of the destination country, when determining such grounds (REDRESS, 2018). According to Weissbrodt (1999), the Committee of Torture has concluded that the principle of non-refoulement, as outlined in Article 3, not only applies to direct expulsion, return or extradition but also covers situations where individuals are transferred to a third-country indirectly and from which the individual might be returned to a country where they would face the risk of torture (Weissbrodt, 1999).

2.2 Council of Europe

2.2.1 European Convention on Human Rights (Articles 3 and 4 of Protocol No. 4)

The European Convention on Human Rights (ECHR) is an international human rights treaty between the 47 member-states of the Council of Europe. Governments that have ratified the ECHR have legally committed to following specific standards of behavior and to protect the fundamental rights and freedom of individuals. This treaty aims to protect the rule of law and foster democracy in European countries (Amnesty International UK, 2018).

Protocol No. 4 of the ECHR was prepared by the Committee of Experts on Human Rights, operating under the Council of Europe and it was made available for signing on 16 September 1963 (Council of Europe, n.d.). It was the first international treaty to address the issue of collective expulsion (Council of Europe: European Court on Human Rights, 2022). Article 3 and 4 from this Protocol are the ones that will be analyzed. Therefore, Article 3 § 1 of Protocol No. 4 of the ECHR reads that “no one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national”, and § 2 that “no one shall be deprived of the right to

enter the territory of the State of which he is a national". The prohibition of collective expulsion of aliens is stated in Article 4 which reads that "collective expulsion of aliens is prohibited" (Council of Europe: European Court on Human Rights, n.d.).

Article 3 of Protocol No. 4 guarantees the right not to be expelled from a country and the right to enter a country. These rights concern individuals who are national of that country. The term "expulsion" is referring to the permanent obligation of an individual to leave the territory of a State of which he/she is national and there is no possibility of returning later. Protocol No. 4 makes a distinction between the expulsion of nationals, which is regulated by Article 3, and the expulsion of aliens (including stateless individuals), which is addressed in Article 4. Both the collective expulsion of nationals and the collective expulsion of aliens are prohibited in the same way. Article 3 of Protocol No. 4 can only be invoked in cases where the alleged violation of this provision occurs in relation to the State of which the victim is a national (Council of Europe: European Court on Human Rights, 2021). The wording of this provision does not allow for any exemptions or the imposition of restrictions on this right. Article 3 § 2 of Protocol No. 4 guarantees the right for nationals of a State to enter its national territory. This right is exclusive to the nationals of the State in question and only they can invoke the protection provided by Article 3 § 2 of Protocol No. 4 in order to enter the territory. The obligation to secure and protect this right is solely held by the State to which the alleged victim, who is a citizen of that State, belongs (Council of Europe: European Court on Human Rights, 2022).

The main purpose of Article 4 of Protocol No. 4 is to ensure that States will not be able to expel a certain number of aliens without considering their individual circumstances and providing them with the opportunity to present their case against the decision made by the appropriate authority. The term "collective expulsion" refers to any action that forces a group of aliens to leave a country, unless such action is based on a fair and unbiased evaluation of the circumstances of each individual within the group. If a number of aliens receive similar decisions does not automatically indicate a "collective expulsion" if each individual within the group has been given the chance to present their arguments against their own expulsion to the appropriate authorities on an individual basis (Council of Europe: European Court on Human Rights, 2022).

2.3 European law

2.3.1 Treaty on the Functioning of the European Union (Article 78]

The Treaty on the Functioning of the European Union (TFEU) was derived from the Treaty establishing the European Community (TEC or EC Treaty) through the Lisbon Treaty. The TFEU was established through the Treaty of Maastricht. The TFEU, along with the Treaty on European Union (TEU), is one of the main treaties of the EU. It forms the detailed basis of EU law by outlining the principles, objectives, and policy areas of the EU. Additionally, it provides detailed information about the structure and functioning of the EU institutions. It was signed on 13 December 2007 by 27 European countries, and on 1 December 2009 it entered into force (EUR-Lex, 2017).

Article 78 (1) of the TFEU, states that it should be developed by the Union a common policy on asylum, subsidiary protection and temporary protection “with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement”. This should be in accordance with the Geneva Convention and its Protocol, as well as, other relevant treaties. In order for a common European asylum system to be created, as stated in Article 78 (2), some measures should be adopted, including a uniform status of asylum and of subsidiary protection, a common system of temporary protection for displaced persons, standards concerning the conditions for the reception and cooperation with third-countries (EUR-Lex, n.d.). According to the Article 78 (3) the Council can adopt temporary measures for benefit of the Member States involved after consulting the European Parliament, through a qualified majority vote. After receiving approval from the Council, the Decision becomes effective the day following its publication in the Official Journal of the EU, taking into consideration the urgent nature of the situation (PubAffairs Bruxelles, n.d.).

The wording of Article 78 TFEU clearly emphasizes the need of providing international protection or temporary protection to displaced third country nationals, complying with international norms such as the Geneva Convention, the New York Protocol, and others. It does not make any mention of the Union's geopolitical interests or

foreign policy objectives (ASILE, 2022). Article 78(3) of the TFEU provides the adoption of temporary measures during emergency migration situations occurring at the external borders of the EU. During the 2015 migration crisis, Article 78(3), was initiated as Italy and Greece, located at the EU's external borders, experienced an unprecedented influx of asylum-seekers fleeing persecution or significant harm (Radjenovic, 2020).

3.3.2 Charter of Fundamental Rights of the European Union (Articles 18 & 19)

The Charter of Fundamental Rights of the European Union was declared in 2000 and came into force in December 2009. It unifies the essential personal freedoms and rights enjoyed by EU citizens into a legally binding document. The primary aim of the Charter is to foster the protection and promotion of human rights within the European Union's territory and it has the same legal power as an EU treaty (Citizens Information, 2023). One notable advancement of the Charter, in contrast to other human rights documents, is its inclusion of numerous "modern" fundamental rights as well as its extensive use of gender-neutral language (Friedrich Ebert Stiftung, n.d.).

According to the Charter of Fundamental Rights Article 18 concerns the right to asylum and it states that “The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community” (Charter of Fundamental Rights of the European Union, 2000). This Article is based on Article 78 of the Treaty on the Functioning of the European Union, which requires the Union to respect the Geneva Convention on refugees. The application of this Article to the United Kingdom, Ireland, and Denmark depends on the Protocols attached to the Treaties, which specify how these Member States implement Union law in this area. This Article is in line with the Protocol on Asylum included to the Treaties (European Union Agency for Fundamental Rights, n.d.).

Article 19 concerns the protection in the event of removal, expulsion or extradition. Paragraph 1 of the Article 19 states that the prohibition of collective expulsions and paragraph 2 covers the protection of a person from being “removed, expelled or

extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment” (Charter of Fundamental Rights of the European Union, 2000). The meaning and scope of the first paragraph of this Article correspond to Article 4 of Protocol No 4 to the European Convention on Human Rights (ECHR), which deals with collective expulsion. The intention is to guarantee that every decision is based on a thorough examination of individual circumstances, preventing the adoption of a single measure to expel all persons having the same nationality (European Union Agency for Fundamental Rights, n.d.).

3. Pushbacks by different European countries, through local and European courts

3.1 Italy

During the last years many countries have been accused for the act of pushback in order to stop people from reaching the European territory. Despite the fact that to people, who flee a place where they can be in danger because of a war or persecution, must be given refuge, many European countries have been violating this obligation and one of them is Italy (Burdeau, 2021). This will be analyzed through a case and the decision of the Court of Rome.

3.1.1 The case of the Pakistani national and the decision of the Court of Rome

A recent case that can be enlightening is that of a Pakistani national, as well as, the decision of the Court of Rome on 18th January 2021. The case refers to a Pakistani citizen who even though he had expressed his willingness to apply for asylum, he was pushed back to Slovenia and, later, to other countries. The importance of this case can be reflected on the decision of the Court of Rome, which confirmed the illegality of the readmission agreement between Italy and Slovenia and accepted the appeal of the Pakistani citizen (Corritore, 2021). The judge Silvia Albano has decided that illegal informal readmissions have been taken place to Slovenia by Italy, based on the bilateral

agreement with Slovenia, which, even though it was signed in 1996, has been never ratified by the Italian Parliament (Scoop, 2021). According to Corritore (2021) this bilateral agreement has been used as a way to formalize the readmissions of migrants to Slovenia, and as the Minister of the Interior, Lamorgese, has stated, 1,301 has been readmitted to Slovenia in 2019. A great number of informal readmissions can, also, be detected at the end of 2020 when 1,300 people were readmitted to Slovenia through the instructions, given by the Italian Government to the border authorities of Friuli Venezia Giulia to conduct informal readmissions to Slovenia (ASGI, 2021).

3.1.2 Details and the facts of the case

So, moving on the details and the facts of the case, brought by lawyers Caterina Bove and Anna Brambilla (Statewatch, 2021), on 18th January 2021 the Civil Court of Rome accepted the appeal lodged by the aforementioned Pakistani man (ASGI, 2021). According to the translation of the Court's ruling, N.R.G. 56420/2020¹, the applicant fled his country because of his persecution, regarding his sexual orientation, and came to Italy at the border of Trieste with a group of Pakistanis. By the time he arrived, he expressed the desire to apply for international protection, as well as the other Pakistani men. While they had been approached by some volunteers who were helping them and treating their wounds, some other men with civilian clothes approached them as well, claiming that they were policemen and asking them questions as for their migration path. They provided information about their origin and expressed their willingness to seek asylum. Then, the applicant and his compatriots were moved to a police station where they were forced to sign some documents in Italian, their mobile phones were taken from them, "they were handcuffed and loaded into a van journeying to a hilly area (clearly on the Slovenian border), and threatened with sticks and ordered to run straight ahead on the count of five". After running for, more or less, one kilometer, they were ceased by the Slovenian police's gunshots, who arrested and transferred them to the police station, where they repeated their desire to apply for international protection more than once. The next day, and after spending the night locked in a room with no food, water and access to

¹N.R.G. 56420/2020, ordinary Court of Rome.

restrooms, they were transferred to a police station to the Croatian border where “they were instructed to lie on the ground with their hands handcuffed with plastic bands behind their backs and searched, kicked and hit with batons” and were beaten “with batons wrapped in barbed wire and were kicked in their backs”. This brutally behavior towards them, was continued, since they were loaded again into a van, and despite the fact that they expressed again their willingness to apply for asylum, they were instead transported to the Bosnian border, being treated violently by the policemen one more time, “spraying them with pepper spray, inciting the German shepherd dog with them to chase them and bite them”. In Bosnia, he was taken to the Lipa camp but because there was no room for him, he was then moved to the countryside and abandoned there. What he did, was to find in Sarajevo an abandoned building and stay there (N.R.G. 56420/2020).

3.1.3 The Border Violence Monitoring Network’s contribution

A great contribution to the case has been made by the Border Violence Monitoring Network (BVMN) which provided evidence for the case. According to BVMN’s press release “Italian Court Ruling on Illegal Chain Pushback” (2021), the case was importantly based on the first-hand testimony from the BVMN’s database. The evidence has been crucial proof for the applicant’s unlawfully removal from the Italian territory and the chain pushback that followed, without taking into consideration and respect the international law for asylum, despite the fact that the applicant expressed multiple times his desire to apply for asylum in each country. When the applicant was pushed in Bosnia, he was interviewed in Sarajevo, by Fresh Response, a member of BVMN, an interview that had been confirmed by the photographs that had been taken during the journey (Border Violence Monitoring Network, 2021). These documents, which include reports, testimonies and complaints, have not been derived only from BVMN but also from other organizations, such as Amnesty International, UNHCR, Danish Refugees Council, MSF and Rivolti ai Balcani, as well as from the research made by different newspapers, like The Guardian, New York Times and Avvenire. It is important to mention that, despite the

photographs that confirm the violence the applicant suffered, the scars were still visible, according to the lawyer Anna Brambilla (Corritore, 2021).

3.1.4 Violations in the procedure

From the case of the Pakistani man, can be clearly seen the violations, regarding the procedure that should have been followed by the time he asked to apply for asylum and as regards his rights. Violations that have been taken place from the time he reached the Italian territory, until the time he was readmitted to the finally destination of Bosnia. This journey from Italy to Slovenia, from Slovenia to Croatia, and then to Bosnia, it is based, according to ASGI (2021), on a consolidated mechanism of readmissions by chain. As it has already been mentioned, the bilateral agreement that the readmission from Italy to Slovenia was based on, has been illegal, since it was never ratified by the Italian Parliament. This is one of the two reasons that this order is important, according to the one of the two ASGI lawyers, Anna Brambilla, who has explained that it recognizes both the illegitimacy of the application of the Readmission Agreement between Italy and Slovenia to those who express their intention to apply for international protection, and the illegality of refoulement because of the failure to predict the inhumane treatment during the chain pushbacks (Corritore, 2021). Moreover, Michela Pugliese, Legal Researcher at Euro – Med Monitor, has said, according to Scoop (2021), that the Italian authorities can't no more pay no attention to the fact that those informal readmissions to Slovenia has as a consequence, the refoulement to Croatia and Bosnia, but also psychological and physical abuses and abandonment in one of those Balkan countries. Lawyers Brambilla and Bone has asked Judge Silvia Albano to acknowledge the Italian responsibility both for the readmission to Slovenia and for the the chain pushbacks to Croatia and Bosnia, since the Italian authorities knew that people will be readmitted to Croatia and then to Bosnia (Corritore, 2021).

The order has mentioned many violations on the procedure that was followed after the applicant's expression to apply for international protection. The readmission procedure clearly violated the international, European and internal rules regarding the access to the

asylum procedure (ASGI, 2021). As Gianfranco Schiavone of ICS Trieste and member of ASGI has explained, the applicant has been prevented from applying for asylum something that mustn't have happened since it is a fundamental right guaranteed by Italian Constitution Article 10 and, also, by European and international legislation. From the time the applicant will expressed his desire to apply for international protection, written or orally, the procedure must be applied (Corritore, 2021). The whole procedure violates the principle of non – refoulement which prohibits exposing persons to inhuman and degrading treatment. Moreover, has been a violation of the right to an effective remedy, since the concerned persons were not offered any remedy (ASGI, 2021). Finally, has been also a violation of Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment (Corritore, 2021). Therefore, the order of the judgment “declares the applicant’s right to apply for international protection in Italy and orders the competent administrations to issue all the deeds deemed necessary to allow his immediate entry into the territory of the Italian State” (N.R.G. 56420/2020).

3.1.5 Hirsi Jamaa and Others vs Italy

Another older case that the Court had decided that the principle of non – refoulement had been violated, according to UNHCR (2012), is the Hirsi Jamaa and Others vs Italy. In that case, the European Court of Human Rights in Strasbourg decided that Italy, by intercepting and returning to Libya, in 2009, a group of Somalis and Eritreans without taking into consideration a potential risk to their lives, violated the European Convention of Human Rights but also the principle of non – refoulement by forcibly return people to countries where they face persecution and serious harm (UNHCR, 2012).

3.1.6 Conclusion

Through the case of the Pakistani man, we can understand how difficult the reality that many asylum seekers face is, in any of their attempts to enter the European territory (Burdeau, 2021). The applicant had to go through the process of demanding these rights,

consisting a strong proof of the lack of formal access to asylum and respect of fundamental rights. However, this is a procedure that is not feasible for all the people that face pushbacks (Border Violence Monitoring Network, 2021). These two cases consist only a small percentage of cases and judgments that prove the act of pushback by the Italian authorities.

3.2 Croatia

Croatia is another country that has been repeatedly accused for the act of pushback. In general, according to the European Center for Constitutional and Human Rights, (n.d), the Balkan route had been a safe path for people who wanted to go to the Northern and Western Europe from Greece. However, in 2016 the countries of this route closed their borders, and even though the European Council, on March of the same year, announced that the “irregular” flows of refugees had ended, people continued to migrate on this route with many of them finding death instead of protection (ECCHR, n.d.).

3.2.1 Increasing numbers of collective expulsions and violence

According to Border Violence Monitoring Network (n.d.), a rising number of people had tried to get into Croatia, after the fortification of the border of Hungary, through different ways such as hiding in, under trains or walking through the forest in the border area. The number of collective expulsions has been increased, with many claiming that they had not access to the asylum procedure, and, also, being violently treated during their pushback to Serbia or Bosnia (Border Violence Monitoring Network, n.d.). The pushbacks at the Croatian borders, are not isolated cases but part of a systematic practice of collective expulsions, according to the case report of the European Center for Constitutional and Human Rights (ECCHR) (2020). Since 2017 the Border Violence Monitoring Network has observed an increasing violence by Croatia against refugees, something that has made the suspicion of a systematic deterrence strategy even stronger. In addition, some other international organizations, such as UNHCR, Oxfam, Human

Rights Watch and Amnesty International, have condemned the acts of violence during the expulsions. Also, Médecins Sans Frontières mentioned a great increase in violence, referring that police were “hitting with batons, destroying cell phones, snatching money”. There have been times that police officers denied the asylum requests and deported them to Bosnia or Serbia (Border Violence Monitoring Network, n.d.). Human Rights Watch has, also, mentioned that Croatian police are pushing back to Bosnia, both migrants and asylum seekers without examining the asylum requests or giving them the opportunity to apply for asylum, and sometimes violently. From several interviews that Human Rights Watch has taken, there were testimonies which were revealing that the pushbacks were accompanied with detention (before they were pushed back) and violence from the Croatian police, such as beating them with batons, kicking and punching them, stealing their money and mobile phones and even destroy them. Those have been confirmed from different documentations of the Human Rights Watch, and UNHCR has received reports about Croatia pushing back 2,500 migrants and asylum seekers to Serbia and Bosnia since the beginning of 2018 (Human Rights Watch, 2018). According to European Council on Refugees and Exiles (2021), between June 2019 and September 2021, more than 30,000 pushbacks were reported, accompanied with the use of violence.

3.2.2 M.H. and Others v. Croatia

Despite all these reports and testimonies, crucial has been, also, the fact that for the first time the European Court of Human Rights (ECtHR) has recognized the pushback of migrants and asylum seekers from Croatia in the judgment of M. H. and Others v. Croatia (Hakiki, 2021). The case M. H. and Others v. Croatia concerns an Afghan family of fourteen, who in 2016 left their country of origin, ending up in Croatia through Serbia. One of the things they claimed, was that the first applicant and her six children, on 21 November 2017, entered Croatia from Serbia but they were taken again to the border by the police officers, even though they had expressed their willingness to apply for asylum, and ordered to return to Serbia, by following the train tracks. During this return, one of

the children, MAD. H., was hit and killed by a passing train². The constitutional complaint was filed by the parents and the eight siblings of the girl who was killed (HINA, N1 Zagreb, 2021).

3.2.3 Violations

The European Court of Human Rights has found, unanimously, violations of some articles of the European Convention on Human Rights (ECHR). One of those, is the Article 2 of the Convention. The applicants complained that responsible for MAD. H's death was the State and that in the investigation about her death the relevant facts had not been properly established. They, also, argued that the Croatian authorities should have investigated on their own initiative as soon as they got informed of the death and despite the fact that the investigation started by the complaint lodged by their lawyer S.B.J. on their behalf, neither the applicants nor their lawyer had an effective opportunity to participate in the investigation (specifically the lawyer had been excluded). The Court considering the deficiencies, concludes that the Croatian authorities failed to carry out an effective investigation regarding the circumstances that lead to the death of the girl, and as a consequence, the Article 2 of the Convention has been violated³.

Among others, the Article 3 of the Convention has also been violated, and it is about their transfer to the Tovarnik Centre in Croatia (Hakiki, 2021). The applicants complained that the conditions according to which their placement took place violated the Article 3 of the ECHR, which prohibits the torture, the inhuman or degrading treatment or punishment. According to the applicants' complaint, in the Tovarnik Centre that they were kept, the conditions were similar as the ones in a prison. They could not get out of the rooms they were placed, since they were locked, and they could see each other only during the meal. Children could use the outdoor facilities one or two hours per day. Even though the applicants had been visited by a psychologist, there was no interpreter present to help them. However, despite of the situation, the psychologist concluded that they were in a poor psychological state and most of the children had developed psychological

² M. H. and Others v. Croatia, nos 15670/18 and 43115/18, §§ 5 – 7, ECHR 2021.

³ M. H. and Others v. Croatia, nos 15670/18 and 43115/18, §§ 125, 142, 163 – 164, ECHR 2021.

disorders due to the exposure to stressful situation and adverse living conditions. Moreover, the authorities did not provide them with any information regarding their situation, they gave them to sign documents in a language they did not understand and without being able to contact with their lawyers. Considering all the above, the Court decided that there has been a violation of the Article 3 of the Convention as for the applicant children, but there has been no violation as for the adult applicants⁴.

Another article that has been violated, is the Article 5 §1 of ECHR. The applicants submitted that their detention did not take place under the permissible grounds of Article 5 §1. According to the government, the purpose of the applicants being placed in detention was to verify their identities, because they had no identity papers, but also their relationship with the minors. The delays in the verification of the identities and in the examination of their application for international protection have showed that the authorities have failed to limit, as much as it can be possible, the time the applicants would be in the detention centre. In addition, they were not informed for the decision regarding their transfer to the Tovarnik Centre in an understandable language. Accordingly, the Court decided that their detention was not according to the Article 5 §1 of the Convention and therefore there has been a violation⁵.

One more violation that the Court decided, was that of the Article 4 Protocol 4 of the Convention. The applicants submitted that even though they had been allowed to stay in Croatia, during the examination of the application for international protection, they were returned three times to Serbia without examining their individual circumstances. Therefore, their complaint was relied on the Article 4 Protocol 4 of the Convention, which is about the prohibition of collective expulsions. They, also, support that they had entered Croatia secretly and unlawfully because since they had no the proper documents they would not be able to leave Serbia and enter Croatia at the official border crossing points. On the other hand, the Government supports that there was a possibility for the applicants to enter Croatia legally despite the absence of the identification documents, based to section 36 of the Aliens Act and the Ordinance on the Treatment of Third – Country Nationals, mentioning that those who cannot enter Croatia legally, due to the

⁴ M. H. and Others v. Croatia, nos 15670/18 and 43115/18, §§ 167, 173 – 175, ECHR 2021.

⁵ M. H. and Others v. Croatia, nos 15670/18 and 43115/18, §§ 222, 226, 257 – 259, ECHR 2021.

absence of identification documents, could be granted entry on humanitarian grounds. Furthermore, the Government supports that the applicants left the country in 2018 before their application for international protection had been examined. However, the Court noticed that the humanitarian grounds, which are referring in section 36 (1) of the Aliens “are defined as emergency medical assistance, human organ donation, natural disasters and unforeseen events involving close family members such as illness or death”. So, it is difficult to see in which way these grounds can be applied to the applicants’ case. The Court, also, mentioned that due to some factors, it is difficult to know whether a legal way was accessible at that time. Specifically, even though the Government motivates “the intention to seek international protection expressed in the border crossing” in order to trigger the examination of the application, there are no information as regards the asylum procedures at its border with Serbia in 2017 and 2018, and also, the fact that the Government had not mentioned that the applicants “could have submitted an application for international protection in the Croatian embassy in Serbia” confirms that a legal path would be considered as unavailable in this case. Therefore, the removal of the first applicant and the five children to Serbia on 21 November 2017, was of collective nature and the Court finds a violation of the Article 4 Protocol No. 4 of the ECHR⁶.

The Court, also, found, unanimously, the violation of the Article 34 of the Convention. The applicants complained that their contact with their lawyer was prevented, a criminal investigation was conducted regarding the power of attorney which they had signed and the State interfered with their communication with their lawyer in breach of Article 34 of the Convention. The Court underlines the importance of the applicants or potential applicants to be able to communicate with the Court and not being subjected in any form of force by the authorities in order to withdraw or modify their complaints. Regarding all the aforementioned, the Court concluded on the decision that there has been a violation of the Article 34 of the ECHR⁷.

⁶ M. H. and Others v. Croatia, nos 15670/18 and 43115/18, §§262-263, 284, 287, 290, 297, 300-304, ECHR 2021.

⁷M. H. and Others v. Croatia, nos 15670/18 and 43115/18, §§305, 319, 336, ECHR 2021.

3.2.4 The Croatian government's reaction

In general, the Croatian government has denied and tried to belittle all these reports in court as well as in public discourse accusing the journalists that they try to debase the reputation of the country and calling migrants and refugees liars (Hakiki, 2021). According to Cussianovich (2022), the Republic of Croatia, submitted a request to the Grand Council of the European Court of Human Rights to reconsider the case, however the Court on April 4 2022 rejected this request and the verdict became final (Cussianovich, 2022).

3.2.5 Conclusion

The difficulties that refugees face after being pushed back during their effort to find justice can be clearly seen, since the material evidence can be hardly found and they mostly depend on their testimonies. That is what makes this case so important. Through this case the European Court of Human Rights confirmed what these refugees endure during their journey, since the case of Madina's death gave us a taste and it is a significant ruling for the ECtHR and generally for the Croatia, as well as for Europe (Hakiki, 2021). The Deputy Director for Europe at Amnesty International, Massimo Morraiti, has said that the ruling has been a big victory, since it confirms the pushbacks and abuse that Croatian authorities consistently deny. He, also, added that other European countries can take the message from this ruling that pushbacks, collective expulsions and the denial to people to seek asylum violate the European Convention on Human Rights (Euronews, 2021).

3.3 Serbia

3.3.1 Serbian Constitutional Court's ruling

Serbia appears to be mostly a transit country for those who want to seek asylum in Europe, especially Afghans and Syrians (European Council for Refugees and Exiles,

2022). Repeatedly accused for pushing back migrants and refugees, the Serbian Constitutional Court, in 2021, ruled that the Republic of Serbia and Border Police Administration – Border Police Station Gradina had unlawfully detained and then deported Afghan asylum seekers to Bulgaria on breach of the prohibition of collective expulsions (Protecting Rights at Borders, 2021).

3.3.2 Serbia becoming the main bottleneck for migrants and refugees

Back in 2015, when German Chancellor Merkel opened the borders for the asylum seekers, Serbian President Vucic praised her. However, when Hungary and Croatia closed their borders and thus closing down the Balkan route, Serbia was feared of the possibility that all these migrants and refugees would have been stuck in the country (Rujevic, 2021). According to Weber (2017), Serbia, in 2016, became the main bottleneck for migrants and refugees on the Balkan route. Since the transit to the Croatia and Hungary became difficult, migrants and refugees entering Serbia got stuck there. Most of them were entering Serbia mainly from Macedonia and Bulgaria and sometimes from Albania and Montenegro. Consequently, 1,700 refugees and migrants were trapped in Serbia in March 2016, while at the end of the same year the number had increased to 7,400, and civil society representatives claimed the number to be 10,000. In 2016, after Hungary's policy to tighten its borders, Serbian leadership sent army and police forces to patrol the borders with Macedonia and Bulgaria, leaving the more liberal asylum and migration policy that used to have before. The Minister Alexander Vucic stated that the aim of it was the defense of the national and state interests, and the protection of the country from migrant's illegal entry. Since this move took place, the illegal pushbacks of refugees and migrants have been legitimized. According to human rights organizations, 100 to 140 pushbacks have been taken place to Bulgaria per day and as for the number of pushbacks to Macedonia, it is unclear. However, official sources supported that 18,500 irregular entries have been prevented in the second half of 2016 (Weber, 2017).

As it has already been mentioned, Serbia is a transit country for those who want to seek asylum in Europe. The government said that at the end of 2021, 4,276 people were in reception centers and around 1,000 were sleeping in difficult conditions across the

country (European Council on Refugees and Exiles, 2022). From the 60,407 people who passed through Serbian's accommodation facilities, only a small part of them sought asylum. Different NGO's, including ECRE member, Asylum Protection Center (APC), have been criticizing the asylum and reception system of the country. Asylum Protection Center has mentioned that in 2021 only 14 were granted protection out of 2,306 people who applied for asylum. According to ECRE member organizations, the country's asylum and reception conditions remain bad (European Council on Refugees and Exiles, 2022). Border officers, police and military staff, have been criticized for years for their brutal behavior towards migrants and refugees along the Balkan route and at the same time, the authorities of the involved Balkan countries, have denied the illegal deportations known as pushbacks and which are against the international law. This is why the ruling by the Constitutional Court of Serbia has been so significant, when at the same time very few Courts have ruled regarding pushback cases (Rujevic, 2021).

3.3.3 Details of the case

The case concerns a group of 25 persons from Afghanistan, including 9 children, who, when entered Serbia from Bulgaria on February 3 2017, got arrested by the Border Police and detained in the police station's basement. They had not been informed about their rights (Protecting Rights at Borders, 2021), and according to Rujevic (2021) "the rundown cell had neither running water, not heating, nor a toilet and the migrants were not able to consult a lawyer". Around 12 hours later, they were taken to the Misdemeanor Court in Pirot (a local court) where they were facing a trial with an accusation of the illegal entry. However, the presiding judge dropped the charges acquitting them in that way, and stating that they "were in need of international protection, and that they should not be removed to Bulgaria due to poor living conditions in reception centres and because they might be victims of human trafficking". The order of the judge was the applicants to be issued with asylum certificates by the police and to be taken to an asylum center. In contrast to what the judge ordered, the police took them in a forest close to the border with Bulgaria and expelled them (Protecting Rights at Borders, 2021). They spent the night there, at below freezing temperatures and afterward they were moved to Sofia

(Raičević, 2021). One of the Afghan asylum seekers, reported, using the Viber service, that even though the police did not beat them, they took their papers for the Serbian asylum – seeker shelter. Also, through the Viber he managed to contact with the lawyer Nikola Kovacevic (Rujevic, 2021).

3.3.4 Violations

Some years later, the Constitutional Court of Serbia ruled that the asylum seekers had been illegally deported by the border security personnel violating their rights (Rujevic, 2021). Specifically, the Constitutional Court found that the right to liberty and security had been violated (Article 27 (3) and Article 29(1) of the Constitution), since the opportunity to challenge the legality of the detention with the assistance of a lawyer had been denied. Also, the expulsion to Bulgaria had been taken place without following any legal procedure, without examining the individual circumstances and without giving the possibility "to provide arguments against their expulsions" (Protecting Rights at Borders, 2021). According to Raičević (2021), has, also, been violated the "prohibition of expulsion and inhuman treatment, both guaranteed in the Serbian Constitution". The Constitutional Court noted that even though they had expressed their willingness to apply for asylum and the Misdemeanor Court had ordered the asylum seekers to be issued with asylum certificates, the border police expelled them, involving "elements of inhuman treatment". The elements of inhuman treatment are referring to the fact that they were left to the woods at night with the temperature being -20C (Raičević, 2021).

3.3.5 Conclusion

The existence and the illegality of the collective expulsions of those in need of international protection by the Serbian state, has been officially confirmed and they violate the Constitution of Serbia as well as the European Convention. This rises the expectations of the legal team of the Belgrade Centre for Human Rights (BCHR), that the decision may prevent such collective and violent expulsions in the future, deter the police to use pushbacks as a way to prevent refugees from entering Serbia and can "secure

access to the asylum procedure in RS to all those in need of international protection" (Raičević, 2021). Concluding, the lawyer Kovacevic has said that all borders have violated the prohibition of collective expulsions but in Serbia, now, "was officially confirmed, not by a non - government organization, local or foreign, but the highest authority for protection of human rights" (AP newswire, 2021).

3.4 Slovenia

3.4.1 Asylum applications in Slovenia

Since the beginning of the refugee crisis in 2015, Slovenia had a specific way of controlling the massive refugee flow and it had mostly the role of the gate – keeper, in the Balkan corridor (Border Violence Monitoring Network, n.d.). Before 2015, Slovenia had a low number of irregular border crossings and, considered as a transit country, it was not receiving many applications for international protection. In 2015, an unexpected number of people started arriving in Slovenia, especially in September of the same year, and with the Hungary's border closure in October, Slovenia was the only passage through which they could enter Austria (Bajt, 2019). In the same year, Slovenia raised, in the southern border with Croatia, a razor wire fence and it granted asylum to a very small number of asylum applicants (Border Violence Monitoring Network, n.d.). Less than a half of the asylum applicants receive legal assistance during the first – instance asylum procedure, according to Legal-Informational Centre for NGO's. Also, during the Covid-19 pandemic, asylum procedures became lengthier, taking from 6 months to 2 years in some cases (European Union Agency for Fundamental Rights, 2021). After 2020, 5,651 persons have expressed their willingness to apply for international protection, a higher number in comparison of 2020, when 4,007 individuals had applied for international protection. The difference between the number of the irregular crossings and the number of people who enter the procedure for international protection, shows that the access to the asylum procedure is still being denied in the police procedure (PIC, 2022).

3.4.2 Amendments to the Foreigners Act and to the International protection Act

Slovenia adopted amendments to the Foreigners Act “allowing the National Assembly to declare a complex crisis in the field of migration for 6 months”. With these amendments, the police have the power to accompany those who have irregularly pass Slovenia, back to the border and then to the country of arrival. In the case that a person, who has irregularly entered Slovenia, expresses his/her intention to apply for international protection, the police must take into account whether the return of that person would violate the prohibition of refoulement, if the health condition of that person prevents a return and whether the person is an unaccompanied minor. The intention to apply for international protection will be dismissed in the case that the police determine that none of the above conditions are met. Moreover, amendments have been adopted to the International Protection Act by the National Assembly in Slovenia, “which limit the rights of asylum applicants and beneficiaries of international protection” and according to the new rules “legal counselors will be required to disclose personal information about asylum applicants to the Ministry of the Interior”. In addition, with these amendments the freedom of movement of the asylum seekers has been restricted and the grounds for detention were expanded (European Union Agency for Fundamental Rights, 2021).

3.4.3 Returns based on readmission agreements

Slovenia in 2021, based on the readmission agreements, has returned 4,000 of the 10,067 arrested migrants, a 60.1% decrease in comparison to 2020. This can be attributed to the fact that Croatian police began to deny the Slovenia’s police requests to accept them based on the readmission agreement, as well as to the fact that Italy changed its practices since the readmissions were suspended, after the Italian’s court decision in 2021, according to which “the readmission agreement could not form a legal basis for return as it is not in accordance with Italian and EU law” (PIC, 2022). According to Amnesty International (n.d.), courts in Italy and Austria found that the practice of Slovenia to return asylum seekers based on readmission agreements, violated the

international law and subjected them to chain – pushbacks, which led people to further expulsion to Croatia and Bosnia and Herzegovina (Amnesty International, n.d.).

3.4.4 The case of a Cameroonian national and the Slovenian’s Administrative Court ruling

In 2020, the Administrative Court in Slovenia, Ljubljana, ruled in favor of a Cameroonian national who was illegally deported to Croatia, based on the readmission agreement, and then Croatia deported him to Bosnia and Herzegovina. The return took place despite the fact that he had expressed his intention to apply for international protection more than once. However, the police neither register his intention nor refer him to the preliminary procedure (PIC, 2022). While he was in Bosnia’s camps, he decided to fight against his irregular deportation from there. A lawyer in Ljubljana, took the case against the Slovene Ministry of Interior Affairs to the Administrative Court (Border Violence Monitoring Network, n.d.).

3.4.5 Violations

The Administrative Court found that there has been a violation of the Article 18 of the EU Charter of Fundamental Rights about the applicant’s right to apply for asylum, the Article 19 §1 about the prohibition of collective expulsions, and the Article 19 §2 about the principle of non – refoulement (Border Violence Monitoring Network, n.d.). Regarding the principle of non – refoulement, and according to the EU Charter of Fundamental Rights (2000), “No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment” (EU Charter of Fundamental Rights 2000/C 364/1, 2000). Therefore, the procedural component of non – refoulement has been breached by Slovenia, since it did not investigate if there is a real risk for the applicant to be subjected to torture or inhuman treatment, with the deportation to Croatia, considering all the evidence of ill-treatment by Croatian police.

Regarding the possible breach of the prohibition of collective expulsion, the Court considered that there was no real possibility for the applicant to fight his expulsion with arguments which should have to be taken into the police consideration, he wasn't adequately informed about "the intention of the procedure of which he was a part of, since he wasn't even informed that he would be expelled" and that he didn't receive any legal help or translator. The Court has, lastly, found a violation of the applicant's right to ask for asylum, due to the fact that there was no official record that the applicant had been informed about his right to international protection, as well as, no record of him refusing to use it. So, the Court didn't focus on whether or not the applicant did ask for asylum since he wasn't even informed about his right, as it can be seen from the official records or the submissions by the Ministry of Interior Affairs, despite the fact that, according to the Procedural Directive, every state institution should inform foreigners about their right to international protection, "when it is possible to conclude that the foreigner might be in need of it" (Border Violence Monitoring Network, n.d.). The Court, also, decided that the applicant should be allowed to enter the territory of Slovenia and to apply for asylum. Moreover, the applicant should be paid €5,000 in compensation (PIC, 2022).

3.4.6 Supreme Court's ruling

The Supreme Court annulled the decision and returned it to the Administrative Court. In the new procedure, the Court decided once again that Slovenian authorities had violated the prohibition of non-refoulement, of collective expulsion and the applicant's right to apply for international protection. The Ministry of the Interior appealed the decision but in the new procedure the Supreme Court confirmed the Administrative Court's decision, becoming, in this way, final (PIC, 2022).

3.4.7 Conclusion

The case of the Cameroonian national, who was pushed back to Croatia, from Slovenia, is the first that successfully challenge the practice in court, having the help of

the InfoKolpa collective, which is a member of the BVMN, and a Ljubljana law firm (Bozic, 2020). It is difficult for the victims of pushback to prove what happened, being in a precarious situation after a period of stress, physical strain and being unable to communicate with the authorities in a language that they probably do not speak (Vladislavljivic, 2021). The applicant has said that the judgment might help those who will be in the same situation with him, and that despite the fact that it may not have a direct solution for him, it will create awareness (Border Violence Monitoring Network, n.d.).

4. The case of Greece

4.1 Greece as a receiving country

During the last decades of the 20th century, Greece from a migrant-sending country was turned to a migrant-receiving country (Cavounidis, 2018). What made Greece becoming a migrant-receiving country was its economic growth between 1950s and 1970s in combination with the closure of the borders to migration of some EU countries. However, migrant inflows took on massive proportions at the beginning of the 1990s with the collapse of socialist regimes in Central and Eastern Europe, with Albania prevailing as a country of origin (Migrants & Refugees Section, 2020).

According to Kotsiou, et. al. (2018), Greece is the main gateway to enter Europe. Since 2014, 1,112,332 refugees have crossed the Greek borders. During the period of 2015-2016, 2,68 million refugees arrived in Europe, with the majority entering the EU either by land or sea, risking, in this way, their lives, aiming for a better and safer life in Europe. The majority entered Greece (1,015,100), with Italy and Spain following respectively. During 2016, 5,096 deaths were reported. This refugee crisis has put many countries, including Greece, on challenges, trying to address problems that have been occurred (Kotsiou, et. al., 2018).

On 27 July 2020, 1,200,835 migrants were living in Greece, representing 11.3% of the country's population (Migrants & Refugees Section, 2020). Refugees entered Greece mainly from the islands, since they constitute a border with easy and quick access into Europe (Kotsiou, et. al., 2018). Lesbos can be considered such an island. According to

Kousoulis, Ioakeim-Ioannidou and Economopoulos (2017), Lesbos “*is situated on one of the most direct passages to the European continent*”. Moria in Lesbos hosts a hotspot, which is an “EU-run reception centre to identify and fingerprint migrants and refugees”. After the agreement between EU and Turkey, Moria has been mostly operating as a detention camp. There, the refugees are waiting for their registration by the Greek police authorities, receiving the necessary documentation in order to be able to move on to other European countries (Kousoulis, Ioakeim-Ioannidou and Economopoulos, 2017).

In general, they are accommodated in centers which are situated either inland or on some islands. In 2019, unaccompanied minors were living in shelters situated in urban areas and 26% of these were in Reception and Identification centers. The unaccompanied children, who were living in the Reception centers, were facing an insecure environment and lack of schooling. They are, also, overcrowded with poor hygiene and sanitary conditions. Moreover, those who are in the islands for a very long time (months or years), are not sufficiently supported with medical care, trauma counseling and mental health services, but, also, they are facing physical and gender-based violence (Migrants & Refugees Section, 2020). Some other examples of where they live, while they are waiting for a decision either resettlement, repatriation/deportation or asylum, according to Fotaki (2019), are former military camps, abandoned factories and disused public buildings like summer camps and orphanages. The difficulty to address the health and housing needs of these people, has been even harder for Greece due to its economic crisis (Fotaki, 2019).

4.2 EU-Turkey deal and the aftermaths

The refugee crisis, found the European Union with an ineffective mechanism to manage this crisis and the inability to share the burden of responsibility, since countries in the South and the East faced a bigger number of arrivals (Terry, 2021). In 2016, borders were closing in Europe and far-right parties were rising in many countries in Europe like Hungary, France, Poland and Austria. The number of refugees and migrants was rising more and more, the number of deaths continued to be increased and the

political climate deteriorated with the European states putting pressure on Turkey to control the departures from the coastal cities (Pete, 2018).

4.2.1 What the EU-Turkey deal is

The aforementioned, had as a result an agreement between the European Union and the Turkey, known as the EU-Turkey deal. It is a joint statement, released by the EU and Turkey on 18 March 2016, which aimed to the reduction of smuggling and irregular migration from the Turkey to the EU (Arribas, 2016). According to European Council (2016), the agreement includes 9 action points. From 20 March 2016, irregular migrants crossing from Turkey into the Greek islands will be returned to Turkey, in full accordance with EU and international law. Migrants who arrive in Greek islands will be registered and the asylum applications will be proceeded by the Greek authorities individually, and migrants who do not apply for international protection or their application has been found unfounded or inadmissible in accordance with Asylum Procedure Directive will be returned to Turkey. Also, “for every Syrian being returned to Turkey from a Greek island, another Syrian will be resettled from Turkey to the EU”. Turkey should take any necessary measure in order to prevent the opening of new sea and land routes from Turkey to the EU for illegal migrants, cooperating with other states and the EU. A Voluntary Humanitarian Admission Scheme will be activated, when the irregular crossings, between Turkey and the EU, are ending or reduced, with EU Member States contributing to this scheme on a voluntary basis. The EU-Turkey deal, also, stipulates that in the case that all benchmarks have been met, “the fulfillment of the visa liberation roadmap will be accelerated vis-à-vis all participating Member States with a view to lifting the visa requirements for Turkish citizens at the latest by the end of June 2016”. EU will speed up, in cooperation with Turkey, the disbursement of the €3 billion that have been initially allocated under the Facility for Refugees in Turkey, and guarantee more projects regarding persons under temporary protection identified from Turkey. They, also, “confirmed their commitment to re-energise the accession process as set out in their joint statement of 29 November 2015”, and “welcomed the ongoing work on the upgrading of the Customs Union”. Furthermore, the EU and the Member States, in

cooperation with Turkey, will work to improve humanitarian conditions in Syria, and in some areas in the Turkish borders, proving a safer area for refugees and local population (European Council, 2016).

The prevailing ambition of the deal was, from the one side, the reduction of the number of crossings at the Europe's borders and thus reducing the pressure, and from the other side to dissuade future possible asylum applicants or economic migrants from making this dangerous journey again (Terry, 2021).

4.2.2 The consequences of the deal

This deal had important consequences for Greece as well as for the EU, Turkey and the refugees. According to Dimitriadi (2016), the creation of two separate asylum procedures in Greece and the changes in the legal framework, have been some of these consequences. The regular asylum procedure is applied for those living in the mainland, who are not including in the deal. For those in the islands a different procedure is applied, so as to implement the deal and the returns (Dimitriadi, 2016). With the Balkan route closed from the one hand and the agreement with Turkey from the other hand, Greece became the final destination. The ones who arrived after 20 March 2016, could not leave the islands, with the European Commission supporting that geographical restrictions were required for the fulfillment of the agreement and in order to ensure that irregular arrivals will be returned to Turkey or to their countries of origin. In that way, Greek islands became something like open-air detention camps (Mascareñas, 2020). All the migrants who arrived before 20 March, were transferred to the mainland, in contrast with those arrived since 20 March who stayed in the hotspots where they now apply for asylum and which were transformed into overcrowded detention facilities. The next day, the stranded people were 50,411 and as for the 27 October 2016 the number was 61,057 (Dimitriadi, 2016). Both the mismatch of the number of the arrivals and returns as well as the fact that people are not sent to the mainland anymore, has as a consequence, a big number of people being stuck on the islands, causing problems both in the Greek asylum landscape and in their living conditions. Specifically, on August and September 2017 with the increasing number of arrivals, and the hotspots being full, people sometimes, after a first

negative decision, chose to sleep either in squats or in informal arrangements. These conditions, that put their health and safety at risk, have forced an increasing group of asylum seekers to accept returns (Van Liempt, et al., 2017). According to Dimitriadi (2016) “in an effort to ensure that migrants would not abscond, the law prescribed “detention” for 25 days in the hotspots”. After the 25 days, the asylum seekers can move from the hotspots, but not from the island, unless their application has been accepted. However, since they do not have any available accommodation, most of them return to the hotspots to sleep. In many islands, such as Chios, the capacity of hotspots was low, having as a result 1,080 persons staying in ad hoc facilities and not in organized places. In general, hotspots are hosting double the number of its capacity (Dimitriadi, 2016).

4.2.3 Reactions about the deal

The EU – Turkey deal, has been extremely criticized for the human rights violations that has been caused on Greek islands, and for the decision of the EU member states to return asylum seekers to Turkey. People should not be returned to a country where they can't receive or request protection (Van Liempt, at al., 2017). On the other hand, Amnesty International found that the Greek Government made some changes in the asylum procedure and, under a fast track procedure, asylum applications started to be rejected at first instance. The decision of the asylum applications' rejection, without the assessment of their merits, was based on the supposition that Turkey is a safe country for refugees and asylum seekers (Pete, 2018). The situation of the asylum seekers being trapped in limbo, was worsened in June 2021 by a Greek Joint Ministerial Decision (JMD) “which designated Turkey as a ‘safe third country’ for people from Afghanistan, Bangladesh, Pakistan, Somalia and Syria” and it applies to asylum seekers everywhere in Greece and not only in the islands. Specifically, the asylum applications that have been applied from people of these five nationalities will not be examined “based on their individual circumstances and the risks they face in their country of origin” due to the fact that Turkey is considered safe country, and only in the case that is proven not to be safe, will these applications be considered ‘admissible’ and Greece will examine them. Therefore, people have been stuck in a legal limbo in Greece with no access to asylum or

documents as for their legal status, as well as, no right to housing, cash assistance, work or catering services in the camps they reside in, especially after the past two years that Turkey has not been accepting returns (International Rescue Committee, 2022).

4.2.4 Turkey as a safe country

A question that has been raised is whether Turkey can be considered a safe country. According to Terry (2021), one of deal's promises, was the creation of an EU Facility for Refugees in Turkey "which is a joint coordination mechanism that provides modest financial and other support to more than 1.8 million refugees". However, many of them continued to be in difficult conditions, relying on low wages in the unofficial sector, with no social support and with Syrian children who have not been registered in school. There are many advocacy organizations which do not believe that Turkey can be considered a safe country for refugees and asylum seekers, who should be given sufficient care and protection and not being sent back to Syria. Many cases of people being forced to return to Syria, have been documented from rights groups and journalists. Amnesty International and Human Rights Watch have reported such cases, namely refugees being deported to Syria with the excuse of voluntary repatriation (Terry, 2021). According to Pete (2018), by September 2017, from the non-Syrians who have returned from Greece, a 5% could apply for asylum in Turkey, and 2 of them were granted refugee status. Moreover, by January 2019, more than 2/3 of non-Syrians who were returned from Greece, were deported to their countries of origin, which were countries in conflicts or fragile states. Afghanistan was one of the countries with the biggest number of returnees, where 343,341 people have been displaced internally caused by the existing conflict (Pete, 2018).

4.3 The incidents at the crossing borders in Evros river at the early 2020

The promises of the European Union to Turkey, in order for the EU – Turkey deal to take place, were not fulfilled as they should, and as the Erdogan's government has claimed, the key elements of the deal were not met (Terry, 2021). For a long time,

Erdogan had threatened to allow refugees and migrants to transit into the EU, supporting that the European Union is not keeping its promises (Smith and Busby, 2020). Therefore, in the last days of February 2020 a high number of refugees and migrants gathered at the Greek-Turkish border, on the Turkish side, after the Turkish government's announcement that the border will open for them (Stratoudaki, 2022). The Turkish government announced, on 28 February 2020, that it will not prevent asylum seekers and migrants from leaving Turkey anymore, creating scenes of chaos with the Greek government trying to prevent them from crossing the borders (Reidy, 2020).

With the opening of the borders, thousands of refugees have traveled to Edirne, a Turkish city located close to the border with Bulgaria and Greece and to the Turkish coast, with the help of the Turkish government and the full media coverage. During the first days, IOM observed at least 13,000 asylum seekers at formal and informal crossings along the Greek – Turkish land border, with the UNHCR estimating that approximately 1,400 persons had entered Greece, landing mostly on the islands. Most of them considered it as an opportunity to leave a country with a high anti – refugee sentiment, lack of economic opportunity, or in order to reunite with their families that were already living in Europe. However, the passage from the one country to the other was not that easy as they might have hoped. Between Turkish and Greek border checkpoints, volleys of tear gas were fired by Greek police and soldiers, and rocks were lobbed by the asylum seekers at the security forces (Reidy, 2020).

After the Turkish announcement, regarding the opening of its borders, Greece closed the border gates of Pazarkule – Kastanies and Ipsala – Kipi, taking, also, strict measures in order to prevent border crossings. On 28 February 2020, the Greek Prime Minister Kyriakos Mitsotakis tweeted that illegal entries into Greece would not be tolerated. Therefore, the country strengthens its border forces and asked the European Union for further support on the border protection. Furthermore, on 2 March 2020, Greece introduced an emergency legislative decree “for the suspension of the right to seek asylum for individuals entering Greece for a period of one month and for their return without registration, to their countries of origin or transit” (DicleErgin, 2020). According to Boitiaux (2021) the establishment of a “monitoring mechanism” at the borders of Greece requested by the UN and the European Commission, has been officially rejected,

on 1 October 2021, by the Greece's Migration Minister Notis Mitarakis supporting that it undermines the sovereignty of the country. The head of the UNHCR in the Fylakio hotspot, Margaritis Petritzikis, supports that the Evros border needs to be better monitored, due to unclear incidents that are taking place there (Boitiaux, 2021).

As it has already been mentioned, the threats of the Turkish President Erdogan to open its borders were based on the government's allegations and complaints that the funds, for the support of the refugees, were arriving slowly. However, this policy intends to persuade the EU and NATO to support Turkish's military campaign in the north – western province of Idlib in Syria, where Turkish soldiers “are supporting opposition forces facing onslaught from regime forces backed by Russian air power” (Smith and Busby, 2020). Despite these, the actual decision to open the borders came after dozens of Turkish soldiers were killed in an air attack in Idlib, which led to complaints of Turkey of lack military support of its military campaign but also of the fact that the country hosts a higher number of refugees than any other country in the world (Psaropoulos, 2020). As for 2022, Turkey hosts more than 3,5 million refugees, most of them from Syria (Statista, 2023). With regard to the EU, it has reacted condemnatory, asking from Turkey to be keen concerning its obligations under the EU – Turkey deal and the German Chancellor Angela Merkel describing this move as “unacceptable” (Reidy, 2020).

4.3.1 The extension and construction of the Evros fence

After the incidents in Evros, with many migrants trying to pass the borders, Greece decided to extend the already existing fence along the Evros river. Greece is trying to prevent events like the aforementioned of 2020 and the refugee crisis of 2015 to take place once again (Kokkinidis, 2021). These measures are being taken after the crisis in Afghanistan, with the Citizens Protection Minister, Michalis Chrisochoidis, saying that "the crisis in Afghanistan is creating new parameters in the geopolitical sphere, and at the same time creates the possibility of migratory flows" (Kokkinidis, 2021) and that "the country had taken action to stop a repeat of scenes six years ago. We cannot wait, passively, for the possible impact" (Taylor, 2021) underlining the country's necessity to protect its borders and to prevent another possible migratory flow.

According to Kokkinidis (2021), Greece has completed a 40-km (25 mile) fence, adding a new surveillance system. The fence is 5-meter-tall and eight observation towers have been erected at the area of Ferres (Kokkinidis, 2021). Long-range cameras, night vision and numerous sensors have been fitted in the nearby observation towers. The data will be transmitted to control centers and, by using artificial intelligent analysis, will flag suspicious movement. Greek border police use a long-range acoustic device, or otherwise “sound cannon”, firing bursts of deafening noise, similar with the volume of a jet engine, mounted on an armored truck (Gatopoulos and Kantouris, 2021). According to McKernan (2020), high powered mobile sirens had started being tested by the Greek police intending to deter migrants who were trying to cross from Turkey, as well as, an upgraded surveillance camera network which was planned to cover the entire Greek-Turkish border (120 mile) (McKernan, 2020).

However, in 2022 the extension of the fence along the entire border with Turkey has been decided. According to Citizen Protection Minister, Takis Theodorikakos, Citizen Protection Ministry and Ministry of Defense have completed a study of first the extension by a further thirty-five kilometers (Tsoni, 2023). According to Schengenvisa (2023), the Greek authorities have indicated that the construction of the additional 35 km is anticipated to be completed by the end of 2023. The news was announced by the Minister Theodorikakos, saying that is the way to prevent illegal entries into the country benefiting not only Greece but, also, the other countries of the European Union (Schengenvisa, 2023).

4.3.2 The reactions

All these new technologies, which the fence has been equipped with, have caused different reactions. The use of the sound cannon by Greece against migrants has received criticism, as the sound can be similar with the noise of a jet engine capable of injuring people and according to reports, Greek authorities are using sound cannons for this ability. Several politicians, like the Federal Minister for Asylum and Migration Sammy Mahdi and the Belgian MEP Guy Verhofstandt, have criticized the use of modern

technology against migrants, called on the country as well as on the European Commission to offer an explanation. Sammy Mahdi has said that even though he is in favor of protecting the European borders, he is more in favor of protecting the European values, adding that the main goal should be to have a better control of migration in humane way rather than to prevent all migrants. Guy Verhofstandt has disapproved this tactic on Twitter by critically writing that despite the Europe's weakness against the strong (referring to Putin, Erdogan, China) "we are tough against the weak", questioning, also, Europe's protection of human rights (Psara, 2021).

According to Gatopoulos and Kantouris (2021), human rights groups argued that the developing technology will complicate refugees from fleeing wars and find safety. In addition, Ella Jakubowska, of the digital rights groups EDRi, claimed that EU is using technology as a solution in dealing with migration, without taking into account moral considerations. She supports that this is caused by funding expensive technologies which have as a result the criminalization and dehumanization of people (Gatopoulos and Kantouris, 2021).

4.4 Reports by organizations documenting pushbacks and violence by Greece

During the last years, Greece had multiple times been accused for pushing migrants back to Turkey. With the increased militarization of the country's borders in 2020, aiming at the reduction of the arrivals, and with the new or reinforced surveillance or deterrent system as well as the deployment of more law enforcement personnel, the tougher migration approach of the country can be seen. Moreover, an increasing number of reports, from 2020, is referring to the fact that the tightening of the borders was achieved by using unlawful techniques for the detection and the dealing with the arrival of migrants and refugees, something that the Greek authorities have repeatedly denied (Amnesty International, 2021). In those unlawful techniques is including the practice of pushback for which the country has been monitored and documented during the last years (European Council on Refugees & Exiles, 2021). The media and non-governmental

groups have reported unlawful returns to Turkey by law enforcement officers and unidentified masked men who it seems to be working together (Human rights and humanitarian non-governmental organizations, 2020).

Numerous reports have been published from various NGOs. Many of them have documented cases of pushbacks, as well as, arbitrary detentions and ill-treatments. According to Amnesty International (2021), despite the fact that pushbacks and apprehensions are not new, since the organization has documented cases from 2013, the frequency of them has been increased. The reason for this can be the fact that during the last years the returns are taking place not only in the border area, as it was used to, but also from deep into the mainland (Amnesty International, 2021). According to Panayotatos (2020), people who seeking refugee are facing many obstacles. Greece has tried to keep people away from its land, to adopt laws and policies that are not providing adequate protection and integration support to those who the refugee status has been granted (Panayotatos, 2020).

4.4.1 Amnesty International

The report of Amnesty International, published in 2021 and based on interviews with rights-holder, lawyers and civil society organizations can be enlightening as for the pushbacks' accusations. In the incidents that the organization has documented in detail, has been found that the returns to Turkey were held in large groups of 8 to 170 persons. Some interviewees stated that they have been subjected to multiple pushbacks while few of them to at least 10. The land pushbacks documented, took place through the Evros river, even in cases where the entrance did not happen from there or were arrested in the mainland. Also, during the pushback operations, in some spots, people faced bad treatment and were subjected to body searched and beatings (Amnesty International, 2021).

From what have been described, Amnesty International has found that most were apprehended with their entrance to Greece, through the Evros river, by soldiers or police who called more officers or civilians usually bringing a vehicle for the transport. At the

apprehension, officers asked for their belongings like their mobile phones, their backpacks with everything they had inside, like their ID documents. Moreover, they forced parents with young children or babies to give them their belongings even food, diapers, bottle and formula milk. Then, they were boarded into vehicle and transported to detention site or to the river. In the cases (12) that they were transported to detention sites, they were not informed about the reason of their arrest or the information provided was false and there was no official registration at the detention sites. Amnesty International has also found that in the 12 cases they had not access to lawyers and phone calls, the conditions in the sites were unsanitary and crowded, with no access either to clean water or toilets. People were taken to the river mostly in the evening or during the night. The operations at the riverbank were conducted by men either with military style or black uniforms and balaclavas, who forced people to board in boats and to cross the river and in some cases to ford parts or the whole of it (Amnesty International, 2021).

Noteworthy is also the fact that they had not access to asylum procedures. Indicative example, in Amnesty's International report, can be Amira's testimony who said that even though someone asked for asylum, they did not do anything. Also, in another testimony Azad has said that he was trying to say to the person who was in charge that he can't push him back since it is against the law and he has to accept his asylum. The person in charge replied that the chief was coming and they would not push him back. However, when Azad was asked by the chief what did he want, he insisted that he can't be pushed back and that he wanted asylum. The chief's reply was to leave the country which is his and he doesn't want to see them (referring to the refugees) again. In the interviews that have been reported by Amnesty International, no one was asked about their need for protection, about their migration status in Greece and has not given any evaluation of their individual circumstances. In a case of an asylum seeker and a recognized refugee in Greece a return has been applied even though the evidence of their status has been given to the officers (Amnesty International, 2021).

4.4.2 Human Rights Watch

Many human rights and humanitarian NGOs have expressed their concerns about the issue. Human Rights Watch, an international non-governmental organization, has also interviewed asylum seekers and migrants. According to Human Rights Watch (2020), in nine cases that the organization has interviewed, has been found that it was not taken any measure during the period of Covid-19 in order to prevent its transmission to or among the migrants throughout their detainment. The organization has also interviewed victims and witnesses and according to their descriptions, migrants have been violently pushed back to Turkey during the months of March and April 2020 by the Greek police, the Greek Coast Guard and men wearing black or commando-like clothes working in coordination with the authorities. Moreover, according to interviews, they had coordinated summary returns from Symi, Samos and Rhodes, using in some cases dangerous maneuvers to force a boat with migrants back to Turkey from the Aegean Sea. All the interviewees said that they were initially forced to board large Coast Guard boats and later to small inflatable rescue boards without motor, ending up close to the sea border of Turkey. In addition, in all cases has been said that Greek officers stole their belongings like money, bags and personal identification, something that was also mentioned in Amnesty's International report (Human Rights Watch, 2020).

In one of the interviews given to Human Rights Watch, Karrim (a pseudonym) has said that when him and around 30 other Syrians arrived to Symi by boat, they let them know that they wanted to claim asylum but instead they were detained at an unofficial site and after 2 days they were summarily returned to Turkey by violently being thrown from military ships to an inflatable boat. Similar pattern of pushbacks operations can be also found in other incidents like the one of the 17 men, women and an unaccompanied minor who were in a tent for 2 days with no food and water and thrown in a small boat with no motor and dumped at sea where the Turkish Coast Guard rescued them. Regarding this case, Human Rights Watch had four separate witness statements giving similar descriptions. What has been also noticed is the extremely use of violence by the officers like in the case of 6 men from Afghanistan who described 5 different incidents in which they were summarily returned to Turkey and the police took their personal

belongings including their clothes and beat them with wooden or metal rods. In one case, a man gave Human Rights Watch a photograph showing the injuries that were caused by persons that he thought were police officers, and which injuries were like red strips. In another incident, Mohamed described that all the police had stick made of plastic but heavy which they use to beat them. However, all of those interviewed said that they were stripped of their clothes and left with their underwear or a layer before being pushed back to Turkey and in a report, Human Rights Watch documented that Greek officers as well as unidentified men detained, assaulted and sexually assaulted, stripped and robbed asylum seekers and migrants before returning them to Turkey (Human Rights Watch, 2020).

4.4.3 Calls for investigation

In 2020, an open letter from 29 human rights and humanitarian non-governmental organizations to Members of the Hellenic Parliament was published. On the letter, the NGOs were calling on the Members of the Hellenic Parliament to establish an inquiry that would be “quick, independent, transparent and effective” into the accusations regarding the illegal returns of asylum seekers and migrants to Turkey by the Greek Coast Guard, police and army personnel, in some cases together with uniformed men. IOM and UNHCR said that they were also concerned about the increasing and consistent reports, with IOM having received reports of migrants who were arbitrarily arrested, violently treated and then pushed back in Turkey. In addition, IOM along with partners have been monitoring the situation (Human rights and humanitarian non-governmental organizations, 2020). Another letter that has been published was by the Council of Europe in 2021 coming from the Commissioner for Human Rights Dunja Mijatovic. Through the letter Mijatovic urged Greece to investigate these allegations and to “put an end to these practices”. She added that she is concerned about Greece’s rejection of the accusations even though has been a great amount of evidence presented last years. In addition, she found the allegations credible because they had been reported repeatedly by credible human rights organizations, like the European Committee for the Prevention of

Torture and Inhuman and Degrading Treatment or Punishment (CPT) and the UNHCR (Wallis, 2021).

Noteworthy, has been the fact that the Greek Ombudsman, in a report, had also asked the government to respond to pushback allegations and investigate (Oikonomou and Papastergiou, 2021). The institution recorded 15 complaints of pushbacks which has investigated (Gatopoulos, 2021).

4.5 Complaints filed at the European Court of Human Rights

Besides the plenty of reports being published, many applications have been filled to the European Court of Human Rights (ECtHR). Historic has been the ruling that was issued by the ECtHR on July 7 and was about Greece's practice of pushing boats back to Turkey full of asylum seekers, a practice which is considered illegal and life-threatening (Coseć, 2022). The *Safi and Others v. Greece* concerned a case which took place in 20 January 2014 and it is about the sinking of a fishing boat "transporting 27 foreign nationals in the Aegean Sea, off the island of Farmakonisi, resulting in the death of 11 people, including relatives of the applicants". The applicants (16) who lodged the application supported that the high speed of the coastguard vessel while it was travelling, in order to push the refugees back to Turkish waters, caused the capsizing of the fishing boat. On the other hand, the national authorities supported that the boat capsized due to the panic and the sudden movements of those who were on the boat while it was being towed in the island of Farmakonisi so as to rescue the refugees. According to the Court there has been a violation of the "Article 2 (right to life) of the European Convention on Human Rights under its procedural head", since Greece did not do what was necessary to, during the proceedings, and authorities "had not carried out a thorough and effective investigation" so as to shed light on the circumstances that caused the sinking of the boat and putting their lives in danger. Furthermore, has been a violation of Article 2 (right to life) due to "the failure to comply with the positive obligation under this Article". The Court found that the authorities had not provide the necessary protection to the applicants and their relatives. In addition, Article 3 (prohibition of inhuman or degrading treatment)

has been violated concerning 12 of the applicants who were on the boat and after the sinking of it they had been subjected to degrading treatment by undergoing body searches and being forced to undress in front of some soldiers and the other survivors when they arrived in Farmakonis. The Court's decision was for Greece to pay 330,000 euros "in respect of the non-pecuniary damage sustained by the applicants". 100,000 euros should be given to one of the applicants, 80,000 euros to three of the applicants, 40,000 euros to another applicant and 10,000 euros to each of the remaining applicants (Court of Human Rights, 2022).

Greek Council for Refugees (GCR) has filed 24 applications for interim measures, representing 468 Syrians and 38 Turkish refugees before the European Court of Human Rights, with the request to be granted to them humanitarian assistance and access to asylum procedure. The Court granted, for all cases, the interim measures that were requested, but also "ordered the Greek government not to remove the refugees from the country's territory and to provide them with food, water and proper medical care". Furthermore, some of the things the Court requested was to be informed about any submission of asylum application by the refugees and whether they have access to the asylum procedure and to legal assistance. In the 24 applications some refugees have been formally arrested but the majority said that they have been pushed back to Turkey. Additionally, refugees complained, even the ones that were formally arrested, that have been subjected to violent and informal return from Greece to Turkey in the past. They also complained that they were informally arrested and detained in "an unspecified detention facility in the Evros region", violently treated and transferred to the Evros river from where they were pushed back to Turkey by forcibly putting them in boats (Greek Council for Refugees, 2023).

Another organization that has filed a complaint before the ECtHR is the Legal Centre Lesbos (LCL). The case concerns 11 Syrian nationals, represented by LCL's lawyer, who were part of a group of 180-200 people and were violently expelled to Turkey from Greece on 20-21 October. This pushback operation took place in Aegean Sea by the Hellenic Coast Guard. The group was on a fishing boat with the purpose to seek asylum in Italy but due to the fact that on 20 October 2020 they fell in distress at sea near of Crete, they asked for help from the Greek authorities and UNHCR. Following the

constructions of the Hellenic Coast Guard they entered the Greek territorial waters and waited for at least five hours with the promise of being rescued. However, they were not rescued or even given food, water or safety equipment according to a video footage. Instead, they were violently attacked by masked men in black without insignia uniform operating from Hellenic Coast Guard vessels. The people of the group were assaulted by them, their belongings were stolen and they were threatened with further violence if they try to enter Greece again. They were then “forcibly transferred to two different Hellenic Coast Guard vessels on which they were forced to spend the night outdoors, without food, water or any assistance, before being abandoned on 21 October on various motorless, unseaworthy, life rafts near the Turkish Coast” (Reliefweb, 2021).

According to Reliefweb (2021), what is noticeable about this case is the nature of this collective expulsion which is insidious and premeditated due to the repeatedly lies of the Greek authorities to the people who were on the fishing boat and in a vulnerable position after surviving a storm. Greek authorities were intentionally and repeatedly misleading them, making them thus believe that they would be rescued, when instead were attacked and returned to Turkey. This is the fifth complaint that LCL has filed before the European Court of Human Rights against Greece about “extensively evidenced incidents of collective expulsions in the Aegean region”. In all cases the pattern was similar, migrants arriving in Greece with the intention to seek asylum but instead they were treated with violence, humiliation and torture by the Greek authorities and then being abandoned at sea without being able to stay safe or call for rescue (Reliefweb, 2021).

4.6 The reaction of the Greek authorities regarding the pushback allegations

Greek authorities deny all those allegations and claim that they have already started investigations to prove that they are not involved in any action in respect of pushbacks. They rate them as “fake news” (Human rights and humanitarian non-governmental organizations, 2020; MacGregor, 2022). The Greek Minister of Migration and Asylum Notis Mitarakis, on the Marion MacGregor’s interview (2020), from the InfoMigrants,

supported that Greek authorities are not involved and that Greece protects its borders in line with the international and European law (MacGregor, 2020).

Since 2021, there have been a lot of accusations and testimonies from refugees and local people but it was difficult to be supported by evidence (MacGregor, 2022). However, in 2022-2023, video and photo evidence were published, which showed that Greece did not conduct a proper investigation concerning the allegations. The Greek Council for Refugees (GCR) was informed several times that some people were forcibly returned back to Turkey without being given the opportunity to submit an asylum application, as an attempt to seek international protection in Greece. GCR notified the Greek government but they never replied (Lifo, 2021; European Council on Refugees and Exiles, 2022; Cosse, 2022; Asylum Information Database and European Council on Refugees and Exiles, 2023).

Vasiliki Siouti (2021) from the Greek magazine Lifo, sent a letter to the Greek Coast Guard (GCG) asking the Ministry of Shipping and Island Policy about the pushbacks in Aegean. The commander of GCG Nikolaos Kokkolas replied in writing that GCG takes the necessary actions in order to protect the Greek and European sea borders. He mentioned as well that through an effective patrol network, they track migrants before entering the Greek sea borders and inform the Turkish Coast Guard to take restrain measures at its borders. The actions of port authority do not violate the UN Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea and the International Convention on Maritime Search and Rescue. He added that the intensive guarding of sea borders in Greece, helped control illegal arrivals at the borders. Furthermore, he mentioned that all those allegations are not based on a reliable source (Siouti, 2021).

On April 11 of 2023, New York Times published a video of the Greek coast guard dumping refugees in the middle of the Aegean Sea, including a 6-month-old baby, after putting them in a van and taking them to the coast. The Prime Minister of Greece, Kyriakos Mitsotakis, took a stand on all the statements about the pushbacks in Greece saying that he has already started an investigation, while adding that the country's migration policy is strict but fair. When he visited Lesbos during his campaign trail, he

stated that he is proud because Greece solved the migration issue and that the government protected the borders by decreasing illegal arrivals to 90% (Smith, 2023). In another interview with the reporter of New York Time's, Steven Erlanger, he said that what Greece does, which is within European regulations, is to intercept migrants at sea on their border with Turkey and then ask the Turkish coast guard to pick them up (Libre, 2023). As for the accusations, the Prime Minister Kyriakos Mitsotakis claims that Turkey is responsible and that Greece is the victim of this misinformation campaign. The Greek government supports that Turkey harnesses refugees in order to discredit Greece in the context of the Greek-Turkish disputes and the wider geopolitical reality of the region. In case that this is true, it cannot be an excuse for disregarding the international law and fundamental human rights (Human rights and humanitarian non-governmental organizations, 2020; Παπαγιαννάκης, 2023). In sum, Greek authorities deny that the practice of pushback is taking place, even though there have been plenty of reports, evidence and denunciations at national and international levels (Reliefweb, 2021).

4.7 Accusations about the involvement of Frontex in the practice of pushbacks by Greece

The operation of Frontex in Greece, a European Border and Coast Guard Agency, which assists the country with joint operation Poseidon, is the agency's largest operation. There are now working in Greece 518 standing corps officers and staff who "perform border surveillance and assist in identifying and registering migrants". It also deploys 11 boats and 30 patrol cars at the external borders of Greece and other equipment. Officers have been at the mainland and on the Aegean's islands. Specifically, they have been at the Evros border since 2010 and in the Aegean since 2006 as part of Operation Poseidon Sea (Human Rights Watch, 2021; Frontex, 2023).

Regarding the accusations of the practice of pushbacks by Greece toward the Turkish waters, there has been evidence that Frontex has been complicit in those illegal pushbacks (Euro-Mediterranean Human Rights Monitor, 2021). Different media outlets reported in 2020 on allegations concerning the involvement of Frontex (Van Der

Burchard, 2021). The joint media investigation documented 6 instances in which the agency was in a close proximity or directly involved to a pushback. These allegations as well as “the serious shortcomings of its reporting and monitoring mechanisms” has as a consequence, investigations by the European Parliament, the European Ombudsman and the European Anti-Fraud Office (OLAF) (Human Rights Watch, 2021). The OLAF’s investigation was opened over allegations of “harassment, misconduct and migrant pushbacks” (Van Der Burchard, 2021). The report was concluded that Frontex “was involved in covering up illegal pushbacks of migrants who tried to reach Greece”. According to the report, Frontex did not ensure the protection and promotion of fundamental rights, since it did not assess their rights for asylum application and any other form of protection, failing thus to deal with the situation (Schengenvisa, 2022). OLAF in order to investigate the accusations as for the misconduct or irregularities of Frontex and regarding the involvement or covering up of illegal pushbacks, took information from open sources and media reports, sought documents from Frontex and the European Commission, and interviewed twenty witnesses (Gatopoulos and Brito, 2022). In addition, and according to Schengenvisa (2022), Frontex said, with a press release, that the reports identified three key issues. Starting with, the Fundamental Rights Officer was not permitted to access operational information something that is contrary to the provisions of the 2019 Regulation of Frontex. Secondly, the Fundamental Rights Officer was not assigned as a case handler for reports on serious incidents with alleged violations of fundamental rights. Thirdly, the staff following the procedure and reporting these types of serious incidents, were ignored by those who have been investigated by OLAF. Frontex has said that all these were past practices and that the Agency has agreed to take measures aiming at addressing the aforementioned findings among others (Schengenvisa, 2022). OLAF concluded that the allegations are proven, based on the evidence which were collected in the investigation procedure (Gatopoulos and Brito, 2022). The OLAF report raises questions of how Frontex will continue operating in Greece since according to its regulations, the agency’s activity should be suspended or terminated by its leader in the case that they see any violation of fundamental or international protection obligations that are likely to take place or to persist (Gatopoulos and Brito, 2022).

A case has been filed to the European Court of Justice in May 2021 by the non-governmental organization front-Lex against Frontex, calling for the termination of the agency's activities in the Aegean Sea due to the existing evidence of the violation of fundamental rights. The case concerns a child asylum seeker and a recognized refugee in Greece, known as SS and ST. The organization argues that "Frontex had contributed to the fundamental rights violations they suffered on the journey to Greece". Moreover, it calls on the court to rule that the agency failed to act according to the Article 46 of the Frontex Regulation, specifically to suspend or terminate its operation. Frontex argues that the application is inadmissible with front-Lex supporting on the other hand that there are multiple grounds of admissibility (Statewatch, 2022).

4.7.1 Frontex's arguments

Frontex Executive Director Fabrice Leggeri, has denied the participation of Frontex in pushbacks and said there was no evidence that agency's personnel took part in this practice. A Frontex spokesperson has said that the report is welcomed and the recommendations will be looked at and evaluated thoroughly (Van Der Burchard, 2021). The Frontex Manager Board in response to the allegations regarding Frontex's involvement, created in November 2020 a Working Group for the investigation of 13 reported incidents in the maritime border with Turkey in the Aegean Sea. The Working Group is consisted by 8 country representatives as well as the European Commission. In March 2021 the group reported "that there had been no wrongdoing by Greece or Frontex". The Manager Board of Frontex has raised concerns regarding the efficiency of its reporting and monitoring systems and has emphasized the need for immediate improvements. In June 2020, Frontex as a respond to a Human Rights Watch inquiry regarding the accusations of human rights abuses at Greece's borders, has stated that it had not received any reports of violations of fundamental rights by its own officers or by Greek border guards in Greece during its operations. Additionally, Frontex clarified that it lacked the jurisdiction to investigate such allegations (Human Rights Watch, 2021).

As it has been already mentioned, in Frontex's statement, following the publication of OLAF report, was said that the Agency and its Management Board had agreed to take remedial measures for the prevention of the shortcomings. Additionally, was mentioned that the Agency takes the findings of investigations seriously. It is committed to make a well-functioning and legal Agency that will preserve the best practices of good governance (InfoMigrants, 2022).

Conclusion

Migration, either voluntary or involuntary, is a significant and timeless social issue requiring delicate handling in order to be effectively managed. Each refugee and applicant for international protection is a different case and thus requires a different approach.

Throughout this study, it has been discussed in detail under which legal texts the principle of non-refoulement and the right to seek asylum are protected. In different judicial cases, the importance of the principle of non-refoulement has been underlined and, thus, of the protection from the act of pushback, as well as, from not giving the opportunity to an individual to apply for asylum. Expulsions, collectively or not, are prohibited, as the Article 33 of the 1951 Geneva Convention indicates, stated also in the Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in Article 4 Protocol No. 4 of the European Convention of Human Rights.

In the case law that have been discussed, the term “pushback” has not been used by the courts. Instead, they have used words like “deportation”, “removal/return”, “expulsion”, “transfer back” and “readmission”. However, all of these words have been used to describe the same practice, through which people concerned cannot challenge the decision, there is no access to international protection or asylum procedures and the principle of non-refoulement, which prohibits State to return individuals to countries where they might face any way of torture, is being violated. The examination of their individual circumstances is required before any return, in order to ensure that there is no risk of being subjected to torture. Any other practice is considered illegal.

The multiple pushbacks reported, depicting Greece practicing this act, cannot be ignored. During this practice, further violations are taking place, including ill-treatment and arbitrary detentions. Despite the repeated denial of the Greek authorities that Greece is involved in such practices, published reports with evidence and judicial case law, insist that the practice is taking place and that the country should conduct an inquiry. The increasing reports are alarming, reports which includes testimonies, photographs showing

injuries and distinct testimonies with same descriptions. Unlawful returns back to Turkey, individuals being arrested upon their entrance to Greece and then being put in boats by law enforcement officers and unidentified men to return them back, lack of access to asylum procedures and their belongings being stolen, are some of the incidents that are taking place, according to the reports. Furthermore, it is also worth mentioning that many applications have been filed to the European Court of Human Rights. A historic ruling, considering Greece's involvement in pushbacks, has been the *Safi and Others v. Greece* resulting to the condemnation of Greece. Many more applications have been filled by the Greek Council for Refugees and the Legal Centre of Lesbos to the European Court of Human Rights. Despite the fact that there are European countries where local courts have ruled pushback cases, with indicative examples being Italy, Serbia and Slovenia, in Greece there is no ruling in favor of such case from any local court. In addition, despite the decision of the European Court of Human Rights in the case *Safi and Others v. Greece*, no criminal charges have been laid in the case from Greece and it has not been reopened.

Furthermore, noteworthy has been also the fact that Greece supports that Turkey is a safe third country, specifically with the Joint Ministerial Decision in 2021 which declares Turkey a safe third country for asylum seekers originating from Afghanistan, Bangladesh and Somalia, in addition to Syria (UNHCR, 2021). Therefore, all applications for international protection lodged in Greece by the aforementioned nationalities, are examined under the safe third country concept and not on their individual circumstances and the risks that may face in their country of origin. However, Turkey has been considered a safe third country from Greece before the Joint Ministerial Decision. Specifically, in the judgements 2347-8/2017 of the Council of State, concerning Syrians who entered Lesbos (Greece) through Turkey and asked for international protection, their application was rejected as well as their appeals. The Council of State ruled that Turkey was a safe country, due to the fact that it met the requirements of the Art. 38 §1 of the Directive 2013/32/EU, and also that there was a connection between the applicants and Turkey, so it was reasonable to be returned back to that country which was considered safe. As regards the Geneva Convention, the Council of State ruled that is not needed a third country to have ratified the Geneva Convention without any territorial restriction

and to establish a system of protection of foreigners, providing that the principle of non-refoulement and the rights of the Geneva Convention would be guaranteed. In addition, it ruled that a third country consider to be safe in the case that it provides adequate protection of certain fundamental rights, and according to the Council of State Turkey is such a country (Anagnostopoulou, 2023). On the other hand, there are advocacy organizations supporting that Turkey should not be considered a safe third country since sufficient care and protection is not provided and in some cases refugees and asylum seekers are being sent back to Syria. Amnesty International and Human Rights Watch have reported cases of refugees being deported back to Syria. Therefore, even though Greece supports that Turkey, in some cases, is a safe third country for refugees and asylum seekers, it does not excuse the practice of pushback which is still illegal since the individual circumstances are not being examined, the opportunity to apply for international protection is not provided as well as the chance to challenge the decision. Furthermore, deporting them without examining each case separately, does not provide Greece with the necessary information in order to decide whether Turkey is a safe third country for a specific individual.

Reports have been also published concerning the involvement of Frontex in the pushbacks of Greece, like the OLAF's report, in which it has been concluded that Frontex has indeed been involved in those acts by covering them up. The report supports that the allegations are verified, based on the evidence that has been gathered. A case has been filed as well against Frontex to the European Court of Justice, for the violation of fundamental rights of the persons concerned, for suffering during their journey to Greece. Frontex has also denied its involvement, though taking into consideration the report. After the publication of OLAF' report, Fabrice Leggeri, Director of Frontex, announced his resignation stating, in his resignation letter, that he returns his mandate to the management board, supporting that the Frontex mandate has been change and it is not similar to the one on which he has been elected and renewed in 2019 (Rankin, 2022). On the other hand, the new head of Frontex, Hans Leijtens, has promised to "restore trust" after the reports of Frontex covering up illegal pushbacks (Wallis, 2023).

The pushbacks and the occurring violations of human rights, like the right to seek asylum, the prohibition of non-refoulement and collective expulsions, are set out in the

European Convention of Human Rights and the EU Charter of Fundamental Rights, among others, which Greece has ratified and Frontex is bound to (Euro-Mediterranean Human Rights Monitor, 2021). Therefore, Greece should comply with these legal texts. Even though Greece supports that pushbacks are an act of border control, and indeed states have the right to control and protect their borders, this must be based on international and European human rights law. For example, in the case that an individual expresses his/her willingness to apply for international protection, the state is obliged to examine the asylum request rather than pushing him/her back.

The consistent reports which accuse Greece for pushing individuals back to Turkey it should be seriously taken into consideration, since these allegations have been supported by different means. Greece should conduct, as it has been repeatedly asked to, an independent investigation in order to ensure that these allegations are not true. Despite the fact that Greece insists that it is not involved in any practice of pushback, the photo and video evidence showing the opposite is consistently increasing, making the need for an independent investigation even more necessary.

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