



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF A.R.E. v. GREECE

(Application no. 15783/21)

JUDGMENT

Art 3 • Expulsion • Systematic practice of “pushbacks” to Türkiye from Evros region in Greece established • Turkish applicant’s sufficiently convincing allegations of “pushback” established beyond reasonable doubt • Removal without examining alleged risk of ill-treatment or application for international protection • Art 13 (+ Art 3) • No effective remedy

Art 5 § 1 • Lawful arrest or detention • Informal detention of applicant prior to “pushback” without any legal basis • Art 5 § 2 • No information on reasons for arrest • Art 5 § 4 • No remedy by which to have lawfulness of detention reviewed

Art 3 (substantive) • Expulsion • Inhuman or degrading treatment • Art 2 (substantive) • Life • Applicant’s factual allegations regarding “pushback” across Evros River largely consistent with *modus operandi* described in relevant reports from national and international institutions • Alleged violations not provable beyond reasonable doubt for lack of clear and concordant evidence • Art 13 (+ Art 2 and Art 3) • No effective remedy

Art 41 • Exceptional circumstances calling for award of just satisfaction in respect of non-pecuniary damage, notwithstanding belated nature of claim under that head, having regard to seriousness of violations found and complete unavailability of reparation at domestic level

Prepared by the Registry. Does not bind the Court.

STRASBOURG

7 January 2025

FINAL

30/06/2025

This judgment became final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of A.R.E. v. Greece,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Peeter Roosma, *President*,

Pere Pastor Vilanova,

Ioannis Ktistakis,

Jolien Schukking,

Georgios A. Serghides,

Darian Pavli,

Andreas Zünd, *Judges*,

and Milan Blaško, *Section Registrar*,

Having deliberated in private on 7 January 2025,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns the applicant’s alleged “pushback” from Greece to Türkiye. The applicant relied on Articles 2, 3, 5 and 13 of the Convention.

PROCEDURE

2. The case originated in an application (no. 15783/21) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Ms A.R.E. (“the applicant”), on 19 March 2021.

3. The applicant was born in 1992 and lives in Türkiye. She was represented by Ms M. Papamina, Ms. K. Prountzou, Mr A. Konstantinou, Ms Z. Katsigianni, Ms C. Kavvadia, Ms E. Koutsouraki and Mr V. Papadopoulos, lawyers practising in Athens. The Greek Government (“the Government”) were represented by their Agent, Ms N. Marioli, and her delegates Mr K. Georgiadis, Legal Counsellor at the State Legal Council, Mr D. Kalogiros, Ms S. Trekli and Ms Z. Chatzipavlou, Advisers at the State Legal Council, and Ms A. Magrippi, Legal Assistant at the State Legal Council.

4. The application was allocated to the Third Section of the Court, pursuant to Rule 52 § 1 of the Rules of Court. On 2 December 2021 it was communicated to the respondent Government. The Government and the applicant each made written submissions on the admissibility and merits of the case.

5. Upon the leave granted by the President of the Chamber, third-party comments were also received from the following entities: the Border Violence Monitoring Network; the AIRE Centre, jointly with the Dutch

Council for Refugees and the European Council on Refugees and Exiles; the European Association of Lawyers for Democracy and World Human Rights, jointly with the European Democratic Lawyers, the Association of Lawyers for Freedom and the Progressive Lawyers' Association; and, lastly, the Greek Helsinki Monitor.

6. On 14 November 2023 the Chamber decided to hold a hearing in the case and to give notice thereof to the Turkish Government.

7. On 15 February 2024 the Chamber scheduled the hearing for 4 June 2024. It sent the parties general questions for the hearing and further asked them to reply to specific questions in writing and to provide additional information before the hearing.

8. Upon invitation by the President of the Chamber, the Greek Ombudsman and the National Human Rights Commission submitted observations in reply to the following question: "Has there been a systematic practice of *refoulement* of foreign nationals by the Greek authorities to Türkiye at land and sea borders?"

9. On 8 April 2024 the parties' replies to the specific questions and the requested additional information were received.

10. A hearing took place in public in the Human Rights Building, Strasbourg, on 4 June 2024.

There appeared before the Court:

(a) *for the Government*

Mr K. Georgiadis, Legal Counsellor at the State Legal Council,
Mr D. Kalogiros,
Ms S. Trekli,
Ms Z. Chatzipavlou, Advisers at the State Legal Council;

(b) *for the applicant*

Ms M. Papamina, lawyer, Coordinator of the Legal Department of the Greek Council for Refugees,
Ms K. Prountzou,
Mr A. Konstantinou,
Mr V. Papadopoulos,
Ms Z. Katsigianni,
Ms C. Kavvadia, advisers.

The Court heard addresses by Ms M. Papamina, Ms K. Prountzou and Mr A. Konstantinou, for the applicant, and by Mr D. Kalogiros and Ms S. Trekli, for the Government, as well as their replies to questions from the judges.

THE FACTS

I. THE APPLICANT'S ACCOUNT

11. In November 2016, having been accused of being a member of the organisation described by the Turkish authorities as the “Fetullahist Terror Organisation/Parallel State Structure” (FETÖ/PDY), the applicant was placed in pre-trial detention, where she remained for 28 months.

12. On 12 March 2019 she was sentenced to six years and three months' imprisonment for membership of the FETÖ/PDY movement. After appealing against her conviction, she was released the same day pending appeal proceedings and on condition that she not leave the country.

13. At around 5.30 a.m. on 4 May 2019 she entered Greece by crossing the Evros River from Türkiye with two other Turkish nationals seeking international protection.

14. At 5.51 a.m., while still in a wooded area near Nea Vyssa, she contacted her brother using the WhatsApp application, activating the “live location” function which allowed her position to be tracked in real time. Her brother was in Greece at the time, having travelled there in 2018 to seek asylum.

15. The applicant sent her brother a photograph of her with the two other Turkish nationals in front of trees in a rural area near Nea Vyssa.

16. From 7.30 a.m. to 7.31 a.m. the applicant contacted her brother again to ask him to give her the address of a lawyer in Orestiada.

17. At 10.30 a.m. she sent her brother a 12-second video in which she told him, in Turkish, that she feared being unlawfully removed.

18. At 10.40 a.m. she sent him a new, 23-second video in which she reiterated her fears.

19. At 10.48 a.m. the applicant's brother sent an email to the Office of the United Nations High Commissioner for Refugees in Greece, stating as follows (original English):

“Dear UN Representatives

I am Turkish Political Asylum Seeker and living in Athens

On 04 May 2019 around 05:30, 3 Turkish Political Asylum Seeker, one of them my sister crossed the Evros river and came to the Greece. They are very near to Orestiada.

They wanted to apply asylum, but they are afraid of to be push back. If they push back to Turkey, her life will be in danger.

Please help them

Their names

...”

20. At 10.55 a.m. the applicant sent an email to the Office of the United Nations High Commissioner for Refugees (UNHCR), in which she explained as follows (original English):

“We as 3 Turkish Political Asylum Seekers, escaped the Erdogan Government persecution and crossed the Evros river and came to the Greece today around 05:30.

We are very near to Orestiada.

We want to apply asylum, but we are afraid of inhuman behaviours and push back by Greek Security Forces. If we push back to Turkey, our life will be in danger.”

21. At 12.58 p.m. the applicant sent her brother a new, 26-second video and carried on communicating with him.

22. At 1.03 p.m. the applicant sent a message to a lawyer, who responded by offering to meet her at the Nea Vyssa Citizens’ Service Centre (“the KEP”).

23. At 1.54 p.m. the applicant’s brother sent another email to the UNHRC.

24. At 2.25 p.m., while waiting for the lawyer, the applicant sent her brother a photograph of her and her two compatriots standing in front of a sign that read “Nea Vyssa KEP”.

25. The lawyer arrived shortly thereafter and took a photograph of the three Turkish nationals sitting on a bench in Nea Vyssa town square.

26. A few minutes later the police arrived and arrested the three Turkish nationals. The applicant alleged that the police had refused to allow the lawyer to get into the vehicle with them but had allowed him to follow them in his own car.

27. When they arrived at the police station the applicant and her two compatriots requested asylum for the first time.

28. Immediately afterwards the police took them to the Orestiada border guard station in Neo Cheimonio. In the applicant’s submission, the police did not allow the lawyer to enter but he took a photograph of the outside of the station from his car and sent it to her brother, informing him that his sister was there.

29. The applicant’s position was still being transmitted to her brother via WhatsApp.

30. The police officers did not give the three Turkish nationals any information during their transfer. Once they arrived at the border guard station, the applicant reiterated her request for asylum. Together with the two other Turkish nationals, she was unofficially and unlawfully held at the border guard station by two police officers until 7 p.m. After that, the “pushback” of the three Turkish nationals began.

31. After a journey of approximately 15-20 minutes in a green van, the police officers transferred the applicant and her two compatriots to an unknown police station which was larger than the one in Neo Cheimonio. All their personal belongings were confiscated, including their bags, shoes, mobile phones and money.

32. The applicant submitted that she had injured herself walking on the journey to Greece and was suffering from a sprain. She had been forced to walk barefoot and her injury had worsened to the point where she still suffered from leg pain.

33. A different, larger lorry with an awning transported them to an unknown location near the Evros River. A total of 31 people were in the vehicle: the applicant, the two Turkish nationals with whom she had entered Greece, three other Turkish nationals of Kurdish origin, fifteen Syrians and ten Afghan or Pakistani nationals.

34. When the lorry arrived near the bank of the Evros River, the migrants were made to disembark by three individuals wearing balaclavas and camouflage uniforms, who were probably police officers. There were thus five police officers in total.

35. When the applicant got out of the lorry, she asked the police: “Where are we going? We are asking for asylum.” A police officer indicated that she was to remain silent by pressing his finger to his lips. Some individuals refused to get out of the lorry, including the Syrians, whereupon the police officers beat them on the head and back. Once everyone had got out, the applicant shouted “asylum” and a police officer replied, in Turkish, “you will see where we will take you”.

36. At around 11 p.m. the applicant and the others were put into a small inflatable boat to be sent back to Türkiye. Since the boat was too small to hold 31 people, it made several crossings to take all of them back to Türkiye.

37. They thus arrived on the Turkish shore very late at night and waited there until dawn. As the Syrians had lit a fire, the applicant tried to hide in the reeds with the two Turkish nationals who had accompanied her to Greece.

38. The Turkish gendarmerie arrived on the scene and arrested the other 28 members of the group. The applicant then heard one of the Turkish gendarmes say that “the opposite side [had] told [them] that there were 31 [of them]” and they began searching for the missing individuals. The applicant and her two compatriots were discovered and arrested on 5 May 2019. The applicant was taken to Edirne Prison the same day and was transferred to Gebze Prison on 20 May 2019.

39. The applicant added that her brother had stopped seeing her status as “connected” on the WhatsApp application as of 6.52 p.m. on 4 May 2019. The same day, he took a flight from Athens to Alexandroupolis and arrived in Neo Cheimonio at approximately 8.30 p.m., accompanied by the lawyer, N.O. The police told them that there was no one there and asked them to leave. At 8 a.m. the following day, on 5 May 2019, the applicant’s brother went once more, alone, to the border guard station in Neo Cheimonio. The police officers advised him to check with the Orestiada police station or the Fylakio Reception and Identification Centre, which he did, to no avail. Shortly afterwards, his other sister, who was in Türkiye, informed him that the applicant had been arrested in that country and was being held in detention

there. On 6 May 2019 the wives of the Turkish nationals who had accompanied the applicant contacted her brother and confirmed the information he had been given, as their husbands had also been arrested and imprisoned.

II. THE CRIMINAL PROCEEDINGS

40. On 18 June 2019 the Greek Council for Refugees filed a complaint on behalf of the applicant with the Athens public prosecutor, together with a request that the case file be transferred to the public prosecutor at the Orestiada Court of First Instance, alleging abuse of power, breach of duty, unlawful detention, life-endangerment, grievous bodily harm, destruction of property, torture and other offences against human dignity.

41. On 13 December 2019, in decision no. 51/2019, the public prosecutor at the Orestiada Court of First Instance dismissed the complaint for lack of evidence. He considered that the examination and assessment of the content of the complaint, the sworn statement given by a police officer and the documents in the case file had not yielded sufficient evidence of the commission of a criminal offence by an officer of the Orestiada border guard station or of the Orestiada Police Directorate. The prosecutor further took the view that no other evidence gathered in the course of the preliminary investigation corroborated the accusations against the officers of those entities and that there was therefore no evidence to substantiate the applicant's allegations. The prosecutor added that the applicant had not relied on anyone else's testimony in her complaint and that her allegations could not be substantiated on the basis of the documents she had submitted and were, moreover, contradicted by the sworn statement of the chief of the Orestiada border guard station, G.T., and by the material in the case file.

42. On 10 February 2020 the applicant appealed against decision no. 51/2019 to the public prosecutor at the Thrace Court of Appeal. She complained that the evidence she had submitted had not been assessed and that her brother, the lawyer N.O. and the Turkish journalist, Z.K., had not been summoned as witnesses.

43. On 3 March 2020 the public prosecutor at the Thrace Court of Appeal ordered that the preliminary investigation be continued and, in particular, that the three witnesses identified by the applicant be examined, along with all the police officers who had been on duty at the border guard station on the date alleged. Accordingly, on 11 March 2020 the prosecutor at the Orestiada Court of First Instance instructed the Orestiada investigation judge to take statements from those individuals.

44. In his sworn statement recorded on 18 March 2020 the lawyer N.O. stated as follows:

"On 4 May 2019 I received a call from an unknown number, which I did not answer. In a text message sent to this number I asked who it was and at 10.09 a.m. I received a

reply [stating] that they were three Turkish asylum-seekers who had entered Greece unlawfully [via] a border region which they did not specify, and that they were hiding in a rural area near the village of Nea Vyssa. At the same time, A.E.'s brother, I., called me and told me that his sister was near Nea Vyssa with two other Turks and that they wished to file an asylum application with the authorities, asking me to provide them with legal advice. Later, I went to Nea Vyssa, where the three Turks were waiting in the central square of the village for the authorities to arrest them (at roughly 2.40 p.m.), and at the same time A.'s brother informed me that he was coming to Orestiada from Athens to meet his sister. [I contacted] the Greek authorities who, as I had been informed by A.'s brother, had already been notified by means of emails and [telephone] calls both from him and from other associations. At around 4.15 p.m., I received A.'s last message by means of an internet tracking app, telling me she was at the border guard station in Cheimonio. I went there a few minutes later and asked whether the three Turks were there or whether they had been arrested, and I received a negative reply from the authorities. In the afternoon, A.'s brother arrived in the area and I met him at around 10 p.m. outside the border guard station in Cheimonio, where he too received a negative reply as to his sister's presence there. The following day, at around 12.38 p.m. on 5 May 2019, A.'s brother sent me a message to inform me that his sister and the two other Turks had been arrested in Türkiye in the [Edirne] region. He subsequently told me that their trial had taken place in Türkiye at 1.20 p.m. on 6 May 2019 and that they had all been taken to prison."

45. In reply to a question concerning the contact details of the Turkish journalist Z.K., N.O. stated that he had contacted him on the morning of the interview and gave the investigation judge his address and telephone number.

46. When further questioned as to the contact details of the applicant's brother, N.O. replied that he had also contacted him on the morning of the interview and that the brother had explained that he no longer lived in Greece, had applied for asylum in another country and would not be able to come back in a timely manner. N.O. added that the applicant's brother wished to make himself available to the Greek authorities.

47. In his sworn statement of 6 June 2020 the Turkish journalist Z.K., who was assisted by an interpreter while giving his testimony, stated as follows:

"On 4 May 2019, at around 11 a.m., I.E. called me via WhatsApp and told me that his sister A.E. had entered Greece with two other individuals. He also told me that they were afraid to report to the police because he had read on Twitter that there were pushbacks from Greece to Türkiye. I. also told me that his sister and the other two individuals, T.N. and K.Y., had crossed the Evros River into Greece in order to apply for asylum. I asked for A.'s telephone number so that I could gather information and find out where they were. After that, I contacted her, told her who I was and asked her to send me her current location from her mobile phone. She sent me her position and I saw that she was indeed in Greece, near Nea Vyssa. A. told me that she was terribly afraid of being sent back to Türkiye because she was accused of being a member of Fethullah Gülen's organisation, the FETÖ. Subsequently, I contacted the lawyer N.O. [because] I knew that he handled cases of this kind, and I learned that he was in the Nea Vyssa area and that he was going to help A. and the other two with the asylum procedure. N.O. was tracking them remotely and he took a picture of them in a park in Nea Vyssa and sent it to I. and to me. I. also sent me another picture taken outside the Nea Vyssa KEP, showing the three [next to a] KEP sign. I posted that photo on Twitter. N.O. had also sent me the first photo. While the three Turks were in Nea Vyssa waiting for the Greek authorities in order to apply for asylum, the police arrived and

took them to the Cheimonio police station. N.O. informed me that he was following the police vehicle in his own car and I could see their position on my mobile phone. Everything [that I have just said] is what N.O. told me, but I have no knowledge of his own actions and, in particular, [I don't know] whether he asked the Greek police what was going on. A.'s brother, I., went to the Cheimonio police station and was told she was not there. On 5 May 2019 I was informed that A. and her two friends had been arrested in the [Edirne] region and that, as I. informed me, they had been taken to prison, [where they are still] today. In March 2020 I did an interview with A. and posted it. In the interview she recounts the facts in detail."

48. On 23 September 2020, in decision no. 41/2020, the public prosecutor dismissed the applicant's case for lack of evidence. He took the view that no evidence had been adduced in the preliminary and additional investigations to substantiate the accusations against the police officers. In particular, he submitted that no further evidence had emerged from the statements of the journalist Z.K. and the lawyer N.O. taken on 6 June 2020 and 18 March 2020, respectively. He added, in this connection, that the lawyer had had a telephone conversation with the complainant's brother, who had not been able to testify because he had left Greece, where he had initially come to apply for asylum, and was now seeking asylum in another country. The prosecutor further observed that the statements given by the chief of the Orestiada border guard station, G.T., and by police officers D.S. and D.M. had clarified that, when an alien was found by patrols from the Orestiada Police Directorate, he or she was taken to their station for verification of the lawfulness of his or her entry and stay in the country and a criminal file was subsequently opened, where appropriate. The prosecutor further noted that "no arrest of a person with the same name as the applicant [had been] made, a fact which [was] not contradicted by the aforementioned testimony of the journalist and the lawyer". Moreover, the allegations had not been proved "since the Greek police, having a specific remit and clear orders to open a case and submit it to the competent prosecuting authorities, never [carried out] such 'pushbacks' to Türkiye". The public prosecutor further noted that persons arrested by the police very frequently applied for asylum and that "it [was] therefore clear that this would also have been the case for the complainant if she had been detected and arrested on Greek territory". He concluded that it was not apparent from the case file that the complainant had been subjected to an unlawful "pushback" to Türkiye.

III. THE PARTIES' INITIAL SUBMISSIONS

A. The Government

49. The Government firmly denied all the applicant's allegations.

50. In their view, in her complaint of 18 June 2019, she had submitted in evidence only a few photographs of herself in the company of other

individuals, without proof of the date and time when they had been taken, and private messages between her and her brother or her lawyers.

51. The Government further submitted that there were serious gaps and inconsistencies in the applicant's account. In particular, in his testimony, N.O. had not confirmed that he had actually met the applicant; nor had he testified that he had witnessed her arrest by police officers.

52. As to Z.K.'s testimony, the Government observed that he had not met the applicant and that he could never have been certain that the GPS signal he was receiving had actually come from her mobile phone, or that the phone had been in her possession at all times. In the Government's view, this signal could have been emitted by any mobile phone carried by anyone. The Government further alleged that Z.K. had not witnessed any of the incidents complained of but had merely related what the applicant's brother and the lawyer N.O. had told him. They added that N.O. had not corroborated Z.K.'s statements to the effect that N.O. had informed him that the three Turkish nationals had been taken to the border guard station in Neo Cheimonio and that he had followed the police car.

53. Moreover, the applicant's brother, who was cited as a key witness in the application, had never gone to the Greek judicial authorities of his own volition to give evidence during the preliminary investigation, appealing to the fact that he was living as an asylum-seeker in another country but failing to specify his whereabouts.

54. The Government further alleged that the applicant had not reported to the national authorities, adding that no witness had testified to the contrary, and that she had not been held on Greek territory or sent back to Türkiye. In this connection, they submitted that there was no witness testimony or evidence in support of the applicant's version of events.

55. The Government argued, in particular, that the photographs submitted by the applicant in support of her allegations could have been taken at any time, including during a previous trip to Greece.

56. The Government submitted that, following Lighthouse Reports' allegations of "pushbacks" of migrants by the Greek authorities, the National Transparency Authority, which was an independent body, had conducted an investigation into the operational activities of the domestic bodies responsible for monitoring sea and land borders and had found, in its published investigation report no. OM 3/4, that no evidence of such pushbacks had come to light.

57. In the Government's view, the incidents described in the application had never happened and did not reflect the conduct and practices of the border authorities. They concluded that the applicant had not entered Greece from Türkiye on the dates alleged, had not been held by State agents and had not been "pushed back" to Türkiye.

58. In their additional observations, the Government submitted that the applicant, with whom lay the full burden of proving her allegations, had failed

to prove the truth of her claims. In particular, the applicant had not provided an accurate list of the documents and other material she had submitted to the domestic criminal-law authorities by producing an official receipt drawn up by the prosecutor's office. They inferred from this that her claims as to what had actually been brought to the prosecutor's attention and, more importantly, what had been dismissed and/or allegedly disregarded by him, were not supported by any evidence.

59. The Government argued, moreover, that the documents attached to the application form had been brought to their attention for the first time when the application in question had been communicated to them. Furthermore, those documents included photographs the originals of which had not been provided to them and, consequently, could not be technically examined to determine whether they were authentic and unedited. The Government thus completely denied the validity and probative value of all the evidence relied upon.

60. Furthermore, the Government submitted that the applicant had not proved that her lawyer had filed two requests for mutual legal assistance to obtain her brother's testimony.

61. They also pointed out that they had been asked merely to submit arguments on the facts alleged and by no means to clarify whether the applicant had been to Greece at any other time in her life. It was for the applicant alone to prove the exact time at which the photographs submitted to the Court had been taken and the place of their taking.

62. The Government submitted that all the incidents alleged by the applicant were completely unsubstantiated. In their view, the factual analysis they had given was fully borne out by official documents the content of which was indisputable and the applicant's submission that they had not provided any concrete evidence establishing that she had never been arrested and "pushed back" was therefore unjustified. Moreover, she had not indicated what evidence they might have produced in order to prove that she had never been arrested or "pushed back".

63. Lastly, the Government alleged that the applicant referred only to reports that were neither commonly taken into account by the national or European Union (EU) authorities, nor upheld by national and/or international courts, which demonstrated perfectly that the present application was an ill-founded *actio popularis*. They were also dismissive of the content of this type of material.

B. The applicant

64. The applicant submitted that, contrary to the Government's submissions, the complaint she had lodged on 18 June 2019 had comprised eight sets of printed annexes accompanied by a CD-ROM containing all the photographs and videos relating to the case and that this material had thus

been made available to the authorities, who could perfectly well have assessed its authenticity.

65. She further explained that on 15 November 2019 she had submitted additional observations to the prosecutor at the court of first instance, including the decision delivered against her by the İzmir Criminal Court on 6 May 2019, following her “pushback”, which stated as follows: she had been sentenced to six years and three months’ imprisonment from 12 March 2019 onwards and had breached the prohibition on leaving the country and fled to Greece, whence she had been sent back to Türkiye. The applicant added that the decision had been based on a report by the Uzunköprü district prosecutor dated 5 May 2019.

66. The applicant submitted that she had provided this evidence to both the Greek authorities and the Court.

67. As to the Government’s allegations that they had not been provided with the originals of the photographs and videos in question, the applicant argued that the authorities had had access to the criminal case file, which had included the original documents. The applicant further submitted that the Government’s argument that the photographs submitted could have been taken during an earlier trip to Greece contradicted their submission that she had never been to Greece. She added, in this connection, that the messages posted on social media on the date alleged supported her claim that the photographs had been taken the same day in order make her presence in Greece publicly known on account of her fear of being sent back to Türkiye.

68. The applicant submitted that all the evidence described above were also corroborated by the testimony of N.O., a lawyer who had met her and her two compatriots in Nea Vyssa on 4 May 2019, and by that of the journalist Z.K., with whom she, her brother and the lawyer N.O. had spoken by telephone the same day. She submitted that the lawyer N.O. had clearly stated that she had been one of the three individuals arrested and that he had been an eyewitness to their arrest. The fact that N.O. had not mentioned that he had followed the police vehicle in his own car – unlike the journalist Z.K., who had said as much in his statement, citing the lawyer as his source – did not alter that fact.

69. As to the absence of any statement from her brother, the applicant pointed out that her lawyer had sent his address to the judicial authorities on two occasions (9 March 2020 and 17 June 2020), as he had been living in Sweden as an asylum-seeker, and that, pointing to the travel restrictions imposed on account of COVID-19 and a delay in obtaining travel documents in Sweden, she had requested additional time for him to appear and give evidence. On that occasion, her lawyer had also filed a request for the activation of the mutual legal assistance procedure, to which the competent authorities had not responded.

70. Furthermore, the applicant submitted that the conclusion reached by the public prosecutor at the Thrace Court of Appeal completely disregarded

the simple wording of the witness statements adduced and she therefore considered it to be totally arbitrary. Moreover, the applicant complained that the prosecutor had given disproportionate weight to the testimony of the police officers, namely G.T., the chief of the Orestiada border guard station, and officers D.T. and D.B., explaining that he had relied on their statements to conclude that it should be presumed that the legal procedure for the registration of anyone entering Greek territory had been followed in the present case, even though the officers in question had been potential suspects in connection with the acts alleged by her. Furthermore, the prosecutor's conclusion that anyone who was arrested was normally subjected to the legal procedure was contradicted by reliable and credible findings by international organisations, human rights monitoring bodies, non-governmental organisations (NGOs) and the media concerning systematic "pushbacks" effected in the same period, in particular in the Evros region.

71. Lastly, the applicant pointed out that she had been arrested on her return to Türkiye and had initially been held in Edirne Prison for fifteen days, from 5 to 20 May 2019, before being transferred to Gebze F-Type High-Security Prison, where she had remained until 14 October 2021. She had been released on that date upon completion of her prison sentence of six years and three months for alleged membership of the "FETÖ/PDY" movement.

IV. THE PARTIES' REPLIES TO SPECIFIC QUESTIONS PUT TO THEM IN PREPARATION FOR THE HEARING

72. The Court observes that, in view of the complete divergence between the parties' submissions as to the facts in the present case, it decided to have them reply in writing to a number of specific questions for the hearing.

A. The absence of testimony from the applicant's brother

73. The Government submitted that the prosecutor at the Thrace Court of Appeal had believed that the applicant's brother was in Greece, where he had filed an asylum application, and had accordingly ordered that he be heard as a witness. They submitted that when the public prosecutor had learned that the applicant was not in Greece, he had apparently considered that there was no need for him to testify and that it was therefore unnecessary to request legal assistance for that purpose, given that he already had evidence at his disposal, including the statements of N.O. and Z.K. in particular, in which extensive reference was made to the alleged involvement of the applicant's brother in the events about which he was to have testified.

74. The applicant submitted that her lawyer had twice – on 1 March and 17 June 2020 – requested that mutual legal assistance be activated with the Swedish authorities to enable her brother to give evidence. She provided the Court with copies of those requests, which had allegedly been filed with the

office of the Orestiada investigation judge, explaining that they had been included in the criminal case file compiled by the prosecutor at the Thrace Court of Appeal. She added that the requests in question had gone unanswered and that her brother had never been asked to give evidence. She clarified, moreover, that her brother had been an asylum-seeker in Greece at the time of the incident, that he had been living in Athens since 2018 and that he had remained in the country until July 2019, noting, in this connection, that he had never been asked to testify as a witness during the time that he had been present in Greece. The applicant also pointed out that decision no. 41/2020 (see paragraph 48 above) merely stated that it had not been possible to interview her brother because he was an asylum-seeker in another country and was no longer in Greece, without mentioning the requests made by her lawyer on 19 March and 17 June 2020.

B. The question as to who informed the police of the applicant's presence in Nea Vyssa

75. The Government submitted that it could be seen from the lawyer N.O.'s sworn statement of 18 March 2020 that the Greek authorities had been informed of the applicant's alleged presence in Greece by the lawyer himself, her brother and various organisations, through emails and telephone calls. They further alleged that in an additional statement of 5 March 2024 (see paragraph 79 below) N.O. had testified that the Greek authorities had also been informed of her presence by the applicant herself. Moreover, according to the sworn statement given by the journalist Z.K. on 6 June 2020, the applicant's brother had told him that the applicant was afraid to go to the police because she had seen Twitter messages about "pushbacks" from Greece to Türkiye. The Government further referred to the statements made by the applicant and her two companions at the Meriç police station, noting the following, in particular: (a) K.Y. had stated: "After walking for a while we called the lawyer of the refugees' association. Said lawyer called the police. Subsequently we entered the police zone and the Police took us"; (b) T.N. had provided the following information: "In Greece we called the lawyer handling cases of refugees. He told us to call the police and make a request for asylum"; (c) the applicant had stated as follows: "We called the Greek police to come and take us".

76. In the Government's view, it followed from the above that the applicant and her two companions had given conflicting accounts of the person or persons who had informed the police of their alleged presence in Greece. They pointed out, in particular, that the applicant had stated that she, K.Y. and T.N. had been the ones to inform the police, whereas K.Y. had testified that it had been the lawyer N.O. who had called them, while N.O. had stated that all of them – namely he himself, the applicant, the two individuals accompanying her and the applicant's brother – had contacted the

police, despite the applicant's fears of being "pushed back". Lastly, the Government added that no relevant information on this point was included in the application or in the domestic criminal complaint.

77. The applicant argued that it was clear from the content of N.O.'s two statements that the above question had not been put to him by the investigation judges who had examined him. In this connection, she submitted that if such a question had been put to the witness, an affirmative or negative reply would necessarily have been included in the transcript of his statements. Nevertheless, she submitted that the available documents and evidence all pointed to the fact that the police had been informed of her presence in the central square of Nea Vyssa by the lawyer N.O., referring in this regard to the lawyer's exchange of messages with her brother on WhatsApp, from which it could be inferred that N.O. had called the police twice on 4 May 2019, namely at 2.44 p.m. and 3.20 p.m.

78. The applicant added that the fact that N.O. had called the police was corroborated by excerpts from her brother's personal account of the events, as submitted to the UNHCR on 15 May 2019, which were contained in a document from the UNHCR Representation in Greece dated 8 April 2024 which she had submitted to the Court. In any event, her presence and that of the two other Turkish citizens would not have gone unnoticed in a small village such as Nea Vyssa and her brother I.E. had therefore informed the lawyers and the UNHCR early in the morning of her presence in that village.

C. The testimony of the lawyer N.O.

79. The Court observes that, in reply to certain specific questions concerning the role played by lawyer N.O. on the day of the alleged incident, the Government submitted to the Court an additional sworn statement by the lawyer N.O., who had been summoned once more by the Orestiada public prosecutor's office for that purpose. In his statement, taken on 5 March 2024, N.O. testified as follows:

"In May 2019, [someone with] a Turkish telephone number called me. I did not answer but sent a message asking who it was. [The person] answered that she was a Turkish national, that her name was [A.R.E.] and that she had entered Greece unlawfully from Türkiye. She sent me her position; she was near Vyssa. While I was speaking with [A.], her brother, whom I did not know at the time, also contacted me and told me that his sister was in the Vyssa area with two other Turks and that he wanted me to represent her and the two other individuals.

On 4 May 2019 I drove my car to Nea Vyssa, where, in the central square of the village, I saw a woman whom I recognised, from the photos she had sent me and the ones she had herself posted on the internet, as [A.R.E.], [who was] with two other individuals, probably Turkish. I did not speak to her face-to-face, but we were in contact by telephone and I could see her from the window of my car. I had no reason to get out of the car to go talk to her. All communication with her that day was conducted by telephone and, at the same time, I had visual contact with her. I went to Vyssa because she and her brother had told me that they were afraid that an illegal act might be

committed against them. The three Turks had themselves posted a video explaining why they were persecuted and why they had fears.

I was an eyewitness to the alleged arrest (*φερόμενης σύλληψης*) of [A.R.E.] and the two Turks. An unmarked van stopped and made them get in. I did not see any violence [against them]. I take it that they [got in] of their own volition, since they themselves had also informed the police. When the van drove away, I too drove towards Orestiada. The van was in front of me [for some time], after which I overtook it near Sakkos, more or less. I was not following the van with the intention of seeing where it was going. I went to Orestiada, by the main road, where I have a property, and about twenty minutes later the van arrived at the Orestiada border guard station. The photo of [A.R.E.] in Nea Vyssa with the two Turks was taken by me, without having spoken with her in person. As for the photo in Cheimonio, I don't remember whether it was taken by me. I remember that she sent me her own position at the border guard station in Cheimonio using the live location function and that, at the same time, her brother also informed me that she was at that precise location and that he was on his way to the area. I have nothing further to add."

80. Regarding this statement, the Government noted that, although the lawyer N.O. had undertaken to aid and represent the applicant, he had not got out of his car to meet her, had not intervened when the van had arrived in Nea Vyssa, not even by simply making his presence known, as a lawyer, and informing the individuals in the van that the applicant wished to apply for asylum and had not followed the van. In the Government's view, N.O.'s testimony in the statement in question was completely inconsistent with the applicant's allegations, in both the application and the criminal complaint, that the police officers had refused to allow the lawyer to get into their vehicle with the three Turkish nationals but had allowed him to follow them in his own car. Furthermore, they pointed out that these statements differed significantly from those given by him on 18 March 2020, where no details were provided. The Government further submitted that what he now described defied common sense, explaining that one would normally expect an individual who had been designated to represent and assist the applicant – who, they reiterated, had posted various videos in which she had expressed her anxiety about being “pushed back” – to take steps to ensure that his or her client's fears would not be realised. In this connection, they observed that, that on the applicant's account, the fear of “pushback” had been her main concern, one which she had expressed on several occasions, in various forms (exchange of emails, messages, photos, etc.), and had also shared with the UN, which she had urged protect her. The Government added that she had further shared those fears with N.O., a lawyer, who had, moreover, been contacted precisely to ensure that the applicant would not be “pushed back”. They also pointed out that the lawyer had testified that the police vehicle had arrived at the Orestiada border guard station 20 minutes after the applicant had been taken into custody, even though he claimed not to have followed the vehicle in question and therefore could not have known where and when the police officers had ultimately stopped.

81. In view of the above, the Government firmly believed that N.O.’s testimony did not stand up to rational scrutiny and could not be considered reliable.

82. For her part, the applicant alleged that, in his second statement, the lawyer N.O. had testified that he had been an eyewitness to her arrest and that of the two other Turkish nationals. Moreover, he had consistently maintained that he had gone to the Orestiada border guard station in Neo Cheimonio after leaving the central square in Nea Vyssa and, in his second statement, had further testified that he had seen the van at the border guard station in question. Moreover, in the applicant’s view, N.O.’s presence in the vicinity of the Orestiada border guard station in Neo Cheimonio was corroborated by the fact that the lawyer had sent her brother his position in Neo Cheimonio via WhatsApp on 4 May 2019 at 4.22 p.m. Lastly, the applicant pointed out that N.O.’s second statement had been taken on 5 March 2024, after all the domestic proceedings had concluded and the Court had already scheduled a hearing in the present case.

D. Whether the applicant submitted the relevant audiovisual material to the domestic authorities

83. The Government acknowledged that the applicant had submitted to the Orestiada prosecutor the audiovisual material on which she had relied to substantiate her complaints but explained that the originals had not been provided, only copies taken or recorded by mobile phones that had not been identified and examined. Relying on two documents prepared by the Forensic Division of the Hellenic Police and the Orestiada public prosecutor, respectively, the Government submitted that no information could be derived from the material as to when and where it had been shot or recorded. Likewise, no conclusion could be drawn as to its authenticity.

84. In the introductory remarks to their replies to the specific questions for the hearing, the Government noted that this was the first time, to their knowledge, that the Court was called upon to assess the reliability and probative value of electronic material submitted by an applicant. Such an assessment should focus on whether the information and the manner in which it had been gathered could be independently verified or tested. Furthermore, referring to two documents provided by the Forensic Division of the Hellenic Police, the Government argued that none of the audiovisual material submitted by the applicant had been accompanied by metadata.

85. The applicant submitted that the CD-ROM containing the relevant audiovisual material had been provided to the Greek authorities twice, once to the public prosecutor at the Orestiada Court of First Instance and once to the public prosecutor at the Thrace Court of Appeal, in the context of her criminal complaint and the appeal proceedings, respectively. She produced the official acknowledgements of receipt of her appeal and of the documents

appended thereto, including the CD-ROM in question. The applicant further alleged that the two witnesses who had given evidence before the Orestiada investigation judge in the course of the preliminary investigation, namely N.O. and Z.K., had been in possession of their mobile phones, containing all the relevant messages and the original audiovisual material, which could therefore have been technically examined by the competent authorities.

E. The identity of the three Turkish nationals arrested on 4 May 2019, as mentioned in a document from the Hellenic Police Headquarters dated 16 March 2022

86. Referring to a document from the Hellenic Police Headquarters dated 16 March 2022, which they submitted to the Court, the Government alleged that on 4 May 2019 three Turkish nationals had been arrested by the border guard station of the Didymoteicho Police, which was administratively attached to the Orestiada Police Directorate, but not by the border guard station of the Orestiada Police. They submitted that the two border guard stations in question were “separate and totally different”. Moreover, the Government referred to the information contained in a confidential document from the Hellenic Police Headquarters dated 8 March 2024 and – pointing out that the arrest of the three Turkish nationals mentioned above had been carried out in Didymoteicho (Evros region) at 9 p.m. by police officers of the Didymoteicho border guard station – provided details as to the identity of the persons arrested, namely their surname and first name, the names of their respective fathers and mothers and, lastly, their sex, as follows: (1) M. (surname), U (first name), H. (father’s surname), A. (mother’s surname), male; (2) C., M.K., I., F., male; and (3) G., B., B., N., male. They further alleged that the three individuals in question had filed applications for international protection, registered on 9 May 2019 at the Fylakio Asylum Unit, which was located inside the Fylakio Reception and Identification Centre.

87. The Government further argued that, in their statements to the Didymoteicho District Court, the chief of the Orestiada border guard station and the other police officers who had been on duty there on 4 May 2019 (and not at the Didymoteicho border guard station) had merely stated that no arrests had been made by the Orestiada border guard station on the date in question and had therefore not been referring to arrests made within the entire area under the responsibility of the Orestiada Police Directorate. In the Government’s view, it was evident from the foregoing considerations that there was no contradiction between the content of the document dated 16 March 2022 regarding the aforementioned arrests made on 4 May 2019 by the Didymoteicho border guard station and the statements given by the chief of the of the Orestiada border guard station and the other police officers on duty there.

88. The applicant replied that the arrest of three Turkish nationals in the Orestiada Police Directorate's jurisdiction on 4 May 2019 was mentioned in a document dated 20 August 2019, in other words, a document that predated the one relied on by the Government. Moreover, the document in question had been submitted to the Orestiada investigation judge by the chief of the Orestiada Police Directorate on 21 August 2019 and had been included in the case file in the initial preliminary investigation. The applicant further submitted that, in her appeal against decision no. 51/2019 of the public prosecutor at the Orestiada Court of First Instance, she had pointed out a contradiction between the content of the aforementioned document and the police officers' testimony, an observation which had never been examined by the competent prosecutors.

F. The Uzunköprü district prosecutor's report

89. The Government did not dispute the authenticity of the report by the public prosecutor for the Uzunköprü district (see paragraph 65 above). According to that report, an official English translation of which was provided by the Government, the applicant had been arrested at 8.10 a.m. on 5 May 2019 after entering a prohibited military zone in Türkiye in an attempt to effect an unlawful entry to Greek territory with the two other Turkish nationals. They inferred from this that the Uzunköprü district prosecutor had not endorsed the version of events given by the applicant and her companions, according to which, after their "pushback", they had ended up in a prohibited military zone, where they had been arrested by the Turkish authorities.

90. The Government further observed that the document in question contained the version of events submitted by the Uzunköprü district prosecutor to the İzmir Criminal Court, which was the court with jurisdiction to review the applicant's compliance with the prohibition on leaving Türkiye that had been imposed on her as a condition for her release. In this connection, the Government explained that it was true that, in its decision of 6 May 2019, the Turkish court had found that the applicant had travelled to Greece and had subsequently been removed to Türkiye, where she had been arrested for entering a prohibited military zone, but that, in the context of the case before it, its task had been merely to determine whether or not she had breached the condition imposed on her in a previous judgment that she not leave Türkiye. Noting that it was not for them to comment on the decision in question, the Government took the view that it could have been based on the applicant's confession to having unlawfully entered Greece on 5 May 2019. The decision also mentioned that the chief prosecutor had requested that the applicant be placed in detention "in the context of her act to illegally exit Türkiye on 5 May 2019".

V. THE PARTIES' SUBMISSIONS AT THE HEARING

A. The Government

91. The Government considered that the audiovisual material submitted to the Court by the applicant (in particular the photographs and videos) was unreliable and, reiterating that the material in question was not accompanied by any metadata, argued that it therefore had no probative value. The metadata were absolutely necessary in order to establish when and where the photographs and video footage had been taken or recorded. Moreover, they were of the view that the open-source information provided by the applicant, such as references to social media or to internet blogs and press cuttings, had no probative value, since it did not come from direct sources.

92. In reply to a question from a judge at the hearing concerning a statement contained in the Forensic Architecture research group's report dated 2 May 2024 (see paragraphs 114 and 256 below) to the effect that the group had previously submitted observations to the Greek courts which those courts had taken into account, in particular in two important and complex cases (namely, the 2022 case involving the far-right Golden Dawn party and the 2024 *Z.K.* case), the Government clarified that they did not question the research group's work as a whole and were unaware of any investigations it may have conducted in the two cases cited.

93. As to the coherence and credibility of the applicant's account, the Government submitted that the version of events given in her application was inconsistent with the two witness statements given by the lawyer N.O. on 18 May 2020 and 5 May 2024, respectively. In particular, they noted that, in his first statement, N.O. had not testified that he had taken the applicant's picture in Nea Vyssa town square, that he had witnessed her arrest or, lastly, that he had followed the car transporting her. They added that, contrary to the allegations made in the application, N.O.'s statements made no mention of his having sought to enter the border guard station in Neo Cheimonio and having been refused access by the police officers. Furthermore, the Government submitted that it was clear from the English translation of the messages exchanged between the lawyer N.O. and the applicant's brother that the lawyer had not been present at the border guard station in Neo Cheimonio on 4 May 2019 at 8.30 p.m., as mentioned in the application, since that was the time at which the applicant's brother had asked him to go there. Lastly, it was paradoxical that N.O. had not left his car to assist the applicant in her dealings with the police when he had been contacted for that very purpose.

94. The Government did not dispute the credibility of the İzmir Criminal Court's decision of 6 May 2019 but submitted that this decision did not constitute evidence of the applicant's alleged "pushback". They reiterated that the Uzunköprü district prosecutor's report had found that the applicant had been arrested while attempting to cross the border with Greece.

95. The Government submitted, firstly, that the applicant had not been “pushed back” and, secondly, that they were unable to ascertain whether she had entered Greece on the dates alleged. The topography of the Evros region made it easy for foreign nationals to cross the Greek border there. The fact that the applicant could have entered Greece on the dates alleged or on other occasions did not mean that she had been detected by the Greek authorities and subjected to the treatment complained of by her.

96. In reply to a question from a judge at the hearing, the Government explained that in order for a foreign national to be registered, he or she must either have entered the territory lawfully or have been detected and arrested on Greek soil.

97. As to whether there had been a systematic practice of “pushbacks”, the Government took note of the third parties’ submissions but observed that they all relied more or less on the same sources, namely, personal narrations which were not open to cross-examination and were taken by them to be credible *per se*, together with electronic sources that appeared to be modelled on those accounts, without a thorough examination being conducted in order to confirm the relevant allegations.

98. As to the National Transparency Authority’s investigation report no. OM 3/4 published in May 2022 (see paragraphs 146-151 below), the Government submitted that this was an independent entity and laid out its methodology for examining complaints. They alleged that criticism of the effectiveness of that Authority’s investigations and of its impartiality came from those who had been actively involved in the very events under investigation or, in the case of the report in question, who were themselves the subject of that report through their cooperating partners, using as evidence electronic files which the Authority had found to be inaccurate and contradictory. In their view, therefore, those criticisms could not be regarded as well-intentioned or convincing.

99. The Government submitted that they had provided information on the investigations conducted by prosecutors into allegations of “pushbacks”, including investigations that were currently pending. An overview of the relevant cases revealed the standard practice followed by those making such allegations, namely, adducing as evidence mere descriptions coupled with social media uploads. Moreover, no eyewitnesses had been called in the cases in question and no evidence from direct sources had been submitted to corroborate the impugned conduct. The alleged victims vanished, and it was presumed that their disappearance was the result of their alleged “pushback”. In the Government’s submission, however, most of the individuals involved admitted that they had made several unsuccessful attempts before successfully entering Greece by circumventing border checks by the competent authorities. Furthermore, despite the reception services they received once they were identified, it was frequently the case that they would

leave the country, most often in the context of “asylum shopping”, without notifying the authorities.

100. In the Government’s view, none of the photographs added to the case file to corroborate the applicant’s allegations had been examined to ascertain its authenticity. In particular, the photograph of the applicant outside the KEP in Nea Vyssa – a village located within a kilometre of the border – could not be regarded as material evidence of those allegations.

101. Referring, moreover, to the fact that, in their view, Greece was the gateway to Europe, and pointing to the number of foreign nationals, including Turkish nationals, who had been registered by the Greek authorities, the Government explained that when the authorities detected irregular migrants, whether at sea or in the Evros region, they did not randomly select those they would arrest and subject to reception procedures and those who would be removed. They further submitted that there was no “face-control policy”.

102. In reply to a question from a judge at the hearing, the Government stated that they had no data or information confirming that the applicant and her two companions had previously entered Greece prior to May 2019. However, this did not mean that the applicant had never travelled to Greece before. They added that the information in their possession reflected lawful entries or arrests of third-country nationals.

B. The applicant

103. The applicant submitted that “pushback” operations had become a *de facto* general policy in Greece and that this state of affairs was reflected in numerous credible reports from UN, European or national institutions documenting the same *modus operandi*: informal arrest, incommunicado detention, illegal confiscation of personal belongings, transportation across the Evros River or to Turkish territorial waters and unlawful removal to Türkiye.

104. The applicant submitted that she had adduced *prima facie* evidence in support of her allegations and had proved the facts of the case, as submitted by her, “beyond reasonable doubt”.

105. Firstly, she submitted that she had provided a specific, coherent and consistent account of the facts to the Greek judicial authorities, the Court and the Turkish judicial authorities after the events in issue. She further argued that the two Turkish nationals with whom she had fled Türkiye had given an account of the facts similar to her own at the Meriç police station following their “pushback” from Greece and arrest by the Turkish authorities on 5 May 2019.

106. Secondly, she submitted that her presence in Greece, in the central square in Nea Vyssa, and her arrest by the Greek authorities had been corroborated by the lawyer N.O. – an eyewitness, she emphasised – in two sworn statements given on 18 March 2020 and 5 March 2024 respectively.

107. Thirdly, the applicant added that she had submitted to the national authorities and to the Court a number of audiovisual files which, in her view, corroborated her allegations. In this connection, she referred, in particular, to a photograph of her in front of the Nea Vyssa KEP and one of her in the central square in Nea Vyssa which she claimed had been taken by the eyewitness N.O., who had sent it to her brother. She further submitted that these facts had been confirmed by the witness in question in his statements before the public prosecutor.

108. Fourthly, the applicant submitted that she had provided the domestic judicial authorities and the Court with the İzmir Criminal Court's decision of 6 May 2019 and all the relevant documents.

109. The applicant further submitted that her version of events was corroborated by a large number of credible and reliable reports on the practice of "pushbacks" in Greece.

110. The applicant argued that the only document relied on by the Government was the National Transparency Authority's investigation report no. OM 3/4 and, pointing out that the National Transparency Authority had been set up in 2019 and had undertaken its first investigation into "pushbacks" in 2021, that its work was irrelevant to the present case. In any event, unlike the Greek Ombudsman, that authority was not independent within the meaning of the Constitution.

111. More specifically, the applicant submitted that investigation report no. OM 3/4 did not follow the methodology presented by the Government, explaining that it was essentially based on 65 interviews conducted mainly with police or coastguard officers, individuals holding high-ranking positions in the area of migration management, local church leaders and members of local business associations. Moreover, of the 65 people interviewed, only one was a lawyer for an NGO working in the field of migration and only four were migrants hosted in reception camps. In addition, the applicant contested the investigation report's methodology and findings in its assessment of the video footage pertaining to the allegations made by Lighthouse Reports, submitting, in that regard, that the analysis of the 15 videos in question by the National Transparency Authority's audit team could not be regarded as exhaustive or conclusive. In support of her statements, she submitted to the Court an assessment of investigation report no. OM 3/4 prepared by the Greek Council for Refugees on 10 May 2024 and an expert opinion of 1 May 2024 prepared by Forensic Architecture on the methodology and findings of investigation report no. OM 3/4.

112. As to the Government's argument that there were significant discrepancies between the two statements given by the lawyer N.O., the applicant submitted that the full text of the statements showed that the witness had corroborated the facts alleged by her and had provided more specific details in his second statement, apparently in response to questions from the prosecutor.

113. As to the argument that N.O. had not done what would normally have been expected of a lawyer, the applicant referred to the Report on Greece published on 2 March 2022 by the UN Special Rapporteur on human rights defenders, alleging that lawyers and other human rights defenders assisting refugees risked criminalisation, intimidation, harassment and smear campaigns. In such circumstances, in her view, it was even more surprising that N.O. had gone to Nea Vyssa town square to assist asylum-seekers.

114. Lastly, as to the audiovisual material submitted to the national authorities and the Court, the applicant alleged that the technical examinations carried out by the Forensic Division of the Hellenic Police in 2024 did not call into question their authenticity. In any event, the forensic division's technical examination of the metadata and photographs had not been the only available procedure. In support of her argument, the applicant submitted to the Court an investigation report on her own case by the Forensic Architecture research group dated 2 May 2024 allegedly confirming her account.

115. The applicant further submitted that, contrary to the Government's submissions, the photograph of her in Nea Vyssa town square had been taken at a very specific time on a very specific date, which could easily have been established on the basis of video footage from security and CCTV cameras, adding that it was the respondent State that had had access to this evidence. The same applied to the footage recorded at the border guard station in Neo Cheimonio and by the traffic cameras located between Nea Vyssa and Neo Cheimonio.

116. The applicant also alleged that the very large quantity of audiovisual material which she had submitted to the Court had come from various sources and individuals, and that the evidence it contained formed a coherent whole, no item of which contradicted any of the others. On the contrary, they corroborated one another. Thus, all the relevant data contained in the evidential material demonstrated the sequence of events in chronological order and those events were, moreover, substantiated by all the other evidence in the case file. In this connection, the applicant submitted the following, by way of example: her presence in the central square of Nea Vyssa was corroborated both by the photograph showing her in front of the Nea Vyssa KEP, which had been sent to her brother by one of the two other Turkish nationals, K.Y., and by the photograph of her in the central square of Nea Vyssa, which had been taken by N.O. and sent to her brother. This was further corroborated by the lawyer N.O.'s two witness statements, according to which he had seen the applicant in Nea Vyssa Square and had taken that photograph of her. Similarly, her presence at the border guard station in Neo Cheimonio was established not only by the live location shared with her brother by K.Y. but also by the location pin sent to him by the eyewitness N.O. and, lastly, by N.O.'s witness statements.

117. The applicant contended that the amount of audiovisual material from various sources and individuals, its internal coherence, the sequence of events it demonstrated and the consistency of those events with all the rest of the evidence were arguments in favour not only of the material's authenticity but of its evidential value as well.

118. In addition, the applicant submitted that the decision of the İzmir Criminal Court constituted further evidence of her "pushback". In reply to the Government's arguments on this point, she argued that the Uzunköprü district prosecutor had sought her imprisonment because she had fled abroad and that the İzmir Criminal Court had taken into consideration her confession, along with all the other evidence in the case file. The applicant argued that it had clearly not been in her interest to confess to the Turkish authorities that she had breached the prohibition on leaving Türkiye and fled to seek asylum in Greece, where she had been subjected to a "pushback". On the contrary, her testimony to that effect had made her situation worse, having regard also to the fact that she had previously been convicted as an alleged member of the FETÖ/PDY. However, in view of the general circumstances of her arrest, she had had no choice but to admit to those acts. In this connection, she pointed out that she had been arrested right next to the river, barefoot, with no personal belongings and in the company of her two companions, amid a larger group of other foreign nationals. Moreover, her two companions had also confessed to the same acts, namely, that they had fled to Greece on 4 May 2019 and had been "pushed back" from Greece to Türkiye.

119. Lastly, the applicant disputed the Government's contention that, given the ease with which foreign nationals could enter and leave the country in the Evros region, she might well have been in Greece on the date alleged but have returned to Türkiye on her own initiative. She argued that the allegation that she had returned to Türkiye voluntarily was not consistent with the fact that she had been the subject of persecution in that country.

VI. THE PARTIES' SUBMISSIONS FOLLOWING THE HEARING

120. The Court notes that the Government were invited to reply in writing to a number of questions put to them by the judges at the hearing and the applicant was invited to submit her observations on the Government's replies.

A. The Government

121. The Government submitted that the video in which the applicant stated that after crossing the Evros River she and her two companions had hidden near Nea Vyssa for fear of being sent back to Türkiye did not contain metadata. The video had also been posted on Twitter, where, according to the police forensic report, it had contained metadata indicating that it had been posted on 4 May 2019 at 11.02 p.m. The Government clarified that the time

referred to above was not the time when the video had been filmed but the time when it had been posted on Twitter. They added, in this connection, that it was clear from the content of the video in question that it had been filmed in the daytime, not at 11.02 p.m.

122. The Government were of the view that the critical issue with regard to the probative value of audiovisual material was not the time at which the files had been posted on social media but rather when and where the photos had been taken and the videos recorded. They reiterated that no metadata were attached to the audiovisual files submitted and, consequently, that no information could be derived from them as to the aforementioned times and places. The Government further disputed, as being technically inaccurate, the applicant's argument at the hearing that metadata were not the sole determining factor in establishing the probative value of audiovisual evidence. Metadata were necessary, since without them the photographs could not be authenticated, the time at which they had been taken could not be established and it was moreover impossible to determine whether they had been taken with a given mobile phone. The Government argued that it was entirely possible that the applicant had entered Greece unlawfully prior to 4 May 2019, without being arrested.

123. The Government further submitted that, if a person had not been registered by the authorities, this meant that he or she had never been detected and processed. They specified that foreign nationals were registered either when they were arrested or when they went to the competent authorities of their own volition, and the procedures provided for by law in such cases were then followed. The Government added that foreign nationals who entered Greek territory unlawfully were not necessarily arrested at the very moment they crossed the border but could be arrested later, when they were tracked down. Moreover, some of those individuals were in transit to other countries and managed to avoid arrest, and thus registration, which was explained by the topography of the region where Greece's northern border with Türkiye lay and by the maritime borders between the two countries. Relying on a document from the Orestiada Police Directorate, the Government submitted that 8,552 people had been arrested in the Evros region in 2019. They emphasised that this figure did not reflect the total number of foreign nationals who had unlawfully entered the territory by crossing the Evros River that year, since a number of such individuals were never detected, or were so much later, in another place. The Government further alleged that all those arrested had been registered, as had those arrested in subsequent years. They reiterated in this connection that, when a person was arrested, he or she was registered and the relevant legal procedures were then followed. Consequently, any lack of registration meant that the authorities had never detected the person concerned and processed him or her, such that a foreign national's non-registration proved that he or she had been neither detected nor processed by the national authorities.

124. The Government submitted, moreover, that the argument alleging that N.O. had feared being prosecuted for defending the applicant had been raised for the first time at the hearing. In their view, that allegation was wholly unsubstantiated and had merely been used as a means of justifying the inconsistencies and discrepancies between N.O.’s two witness statements. In this connection, the Government argued that, according to the report of 2 March 2023 by UN Special Rapporteur on human rights defenders, there were no criminal proceedings in Greece against lawyers who defended the rights of migrants. In addition, the Government referred to a document from the public prosecutor at the Court of Cassation purportedly stating, in reply to the questions raised by the Rapporteur, that the judicial authorities did not prosecute anyone for being a human rights defender but prosecuted crimes on the basis of concrete facts and evidence.

125. Lastly, referring to a document from the Orestiada police dated 13 June 2024, the Government alleged that no CCTV cameras, whether private or public, had been installed in 2019 – or even before or after that – in Nea Vyssa town square, the neighbouring shops and cafés, the Nea Vyssa KEP, or the surrounding area.

126. Contending that they had put forward not just one but an array of arguments capable of rebutting the “evidence” adduced by the applicant, the Government concluded that she had not furnished any *prima facie* evidence in support of her allegations. They inferred from this that the burden of proof could not be shifted and, accordingly, that it could not be required of them to prove that the applicant had neither entered Greece nor been summarily returned to Türkiye.

B. The applicant

127. The applicant submitted that the video file titled “twitter.mp4” corresponded to the video posted on Twitter by the journalist Z.K. at 11.02 p.m. on 4 May 2019. In that 23-second video, she had stated as follows (original English): “We are Turkish political asylum-seekers. We fled persecution back in Turkey and crossed Evros on May 4 at 5 am. We are hiding near Nea Vyssa in fear of push-back. We urge the United Nations and Greek authorities to protect us from being pushed back”. The applicant added that the metadata to which she referred were those that had been created when the video had been posted on Twitter by the journalist Z.K.

128. The applicant submitted that, as demonstrated by the audiovisual material and the screenshots of WhatsApp messages submitted with the application, she had initially sent the video posted in that tweet to her brother via WhatsApp on 4 May 2019 at 1.54 p.m. She confirmed that the video thus sent had not contained metadata, explaining in this connection that WhatsApp, like most instant chat applications, removed metadata. She alleged that the video in question and other files (photos, etc.) had

subsequently been sent to the journalist Z.K., who had in turn posted a number of tweets on the evening of 4 May 2019, including one containing the video, and that all of this could moreover be seen from his witness statement of 6 June 2020.

129. The applicant further submitted that the information contained in the metadata for the video in question was consistent with all the other audiovisual material submitted by her and with the other evidence in the case file. She reiterated that, taken together, they made it possible to establish the chronological sequence of events in the case and corroborated her account of the facts. In addition, the applicant challenged the Government's argument that metadata were necessary to determine an exact time or place in respect of audiovisual evidence, citing in this connection, in particular, the expert opinion of 1 May 2024 on the methodology and findings of the National Transparency Authority's investigation report no. OM 3/4, wherein the Forensic Architecture research group had concluded as follows: "while metadata analysis is an important step towards examining the veracity of a multimedia evidentiary piece, it is not the only one... A wide toolkit of methodologies exists...".

130. As to the Government's contention that she could have entered Greece unlawfully and clandestinely at any time prior to 4 May 2019, the applicant submitted that this position differed from the one they had defended in their previous observations, in which they had expressly stated that the submitted photographs could have been taken at any time during any journey she might have made to Greece. The applicant submitted that, in the latter case, the Government ought to have been in a position to provide records from the Greek State's official databases proving lawful entry for the alleged journey to Greece. She pointed out that the Greek authorities had provided no such records, adding that the Government had explicitly stated at the hearing that they were not in possession of any such evidence.

131. Furthermore, the applicant argued that she had faced persecution in her country of origin and there had been a genuine risk that she would be targeted again by that country's authorities. She submitted that the supposition that someone in her situation might enter Greece unlawfully and then return to Türkiye of his or her own free will could not reasonably be defended.

132. As to the Government's allegation that no CCTV cameras had been installed in Nea Vyssa town square, the applicant submitted that it was based solely on a document from the Orestiada Police Directorate and that this authority was directly implicated in the events in question. She further alleged that the document in question referred to an on-site inspection carried out in June 2024, namely, five years after the events and the alleged oral testimony from employees of the Nea Vyssa KEP. The applicant further submitted that the relevant footage could perfectly well have been collected from other places, for example from the traffic and security cameras along the streets and

motorways between Nea Vyssa and Neo Cheimonio and from the security camera at the Orestiada border guard station in Neo Cheimonio. However, the Government had not provided any information in that regard.

RELEVANT DOMESTIC AND INTERNATIONAL LEGAL FRAMEWORK AND MATERIAL

I. DOMESTIC LAW

133. The Greek legislation transposing the relevant EU instruments provides that any alien/foreign national has the right to lodge an application for international protection. Furthermore, it allows asylum-seekers to remain in the country until the examination of their application has been completed, prohibits their removal in any manner whatsoever and recognises the principle of *non-refoulement* (see sections 36(1), 37(1) and (2), 54, 56(1) and 57(4)(c) of Law no. 4375/2016, which was applicable at the material time).

134. The new Code on reception, international protection of third-country nationals and stateless persons and temporary protection in the event of a mass influx of displaced aliens contains similar provisions (see sections 69(1), 73(1) and (2)(b), 90, 91(1)(b), 92(4)(c), 94(9), 110(4), 119(2) of Law no. 4939/2022).

135. The relevant provisions of domestic law on the detention of asylum-seekers are set out in the *J.R. and Others v. Greece* (no. 22696/16, §§ 29-35, 25 January 2018) and *E.K. v. Greece* (no. 73700/13, §§ 45-46, 14 January 2021) judgments.

136. The relevant provisions of the Code of Criminal Procedure, along with section 105 of the Introductory Law to the Civil Code, are set out in *Tsalikidis and Others v. Greece* (no. 73974/14, §§ 34-35, 16 November 2017).

II. INTERNATIONAL AND EUROPEAN UNION LAW

137. The relevant provisions of EU and international law on foreign nationals' access to the asylum procedure and the principle of *non-refoulement* are set out in *M.K. and Others v. Poland* (nos. 40503/17, 42902/17 and 43643/17, §§ 78-97, 23 July 2020) and *D v. Bulgaria* (no. 29447/17, §§ 69-72, 20 July 2021).

III. MATERIAL ON “PUSHBACKS” FROM GREECE TO TÜRKİYE

A. National institutions

1. *The Greek Ombudsman*

138. On 9 June 2017 the Greek Ombudsman, an independent authority provided for in the Greek Constitution, on its own initiative launched an investigation into allegations of “pushbacks” of foreign nationals to Türkiye from the Evros region in Greece. The findings of that investigation, which covered the period from summer 2017 to 31 December 2020, were published in an interim report in April 2021 (own-initiative investigation, “Alleged pushbacks to Turkey of foreign nationals who had arrived in Greece seeking international protection”, Interim Report (updated 31 December 2020), 2021, 24 pages).

139. In its findings and conclusions, the report states as follows (original English; footnotes omitted):

“...

(a) On the incidents

Most complaints of illegal pushbacks indicate a standard practice, involving an indefinite number of victims who are nevertheless counted in several thousands: foreign nationals, in small groups, cross irregularly from Turkey into Greece and reach a village or town, in most cases in the border area looking for access to the asylum procedure. They are intercepted by the police and have their mobile phones and identification documents removed. Then the foreign nationals are handed over to unidentified men usually in blue uniforms. They are then forced to embark unidentified vehicles, almost always white vans. They are driven to an unidentified building, bearing no signs, where they are locked in large rooms together with other detained foreign nationals. No communication with state services or civil society organisations is permitted, no information is provided, no food or water. Some hours later, other unidentified men, this time wearing black uniforms, take them to the Greek bank of Evros River. They are forced to get on board dinghies and they are taken to the Turkish bank. The whole procedure is fast and, usually, the foreign nationals have been pushed back to Turkey within 24 hours after they are intercepted.

The uniformed men remain silent and do not address the foreign nationals. There were a few instances when the uniformed men were overheard to talk to each other or to give orders to the foreign nationals. On the basis of that, certain complaints allege that the uniformed men were not all Greek. In the majority of cases the complainants appear convinced that the police was responsible for the planning and implementation of the pushbacks. Non-governmental and international organisations which have raised the issue of the alleged pushbacks appear to have no doubt that (a) pushbacks take place, possibly for many years and that (b) the said pushbacks take place, if not by Greek state agents themselves, they are at least tolerated or encouraged and facilitated (by means of personnel, vehicles, facilities etc) by the Greek authorities, at either local or central level. The possible participation of police officers from other EU member states is also alleged.

(b) On the response of the administration

The Ombudsman addressed all the state services involved in the reception of foreign nationals in the area of Evros River. The replies sent by the reception and identification service, the asylum service and the police noted that their respective services and agents perform their duties in line with the Greek and European legislation, fully respecting and protecting the rights of those who cross from Turkey to Greece including their right to apply for asylum, if they so wish.

Noting that, in the vast majority of alleged pushbacks, the foreign nationals affected had not managed to establish any communication with the reception and identification service or the asylum service, the Ombudsman focused his investigation on possible acts or omissions of the police. The Ombudsman asked the police, both at local and central level, for information and clarification, and enquired whether any measures were or would be taken to address the allegations.

All police replies to the Ombudsman's enquiries included the following: the local police directorates noted that no evidence or indications emerged to confirm the allegations or to provide at least the necessary basis for a formal internal investigation for human rights violations by acts or omissions of police officers. The replies also offered general information on the operational framework of the police, the applicable Greek and European legislation, while noting cases of successful operations whereby local police officers managed to locate and escort to safety several foreign nationals who had crossed irregularly from Turkey to Greece. The police attributed the allegations for pushbacks to traffickers and unidentified individuals aiming to destabilise the operational capacities of the Greek authorities.

The said replies whereby local police directorates categorically denied any involvement in pushbacks reflected the replies of the central services of the police to the respective Ombudsman's letters, like those of September 2017 and August 2018.

...

The large number of the complaints by international organisations and by international and Greek non-governmental organisations regarding illegal pushbacks of hundreds or even thousands of foreign nationals, from Greece to Turkey in the area of Evros River, which follow, through the years, constantly repeated patterns, has created concerns regarding the level of the protection of human rights in Greece, in particular in the regions close to the land borders with Turkey.

Those concerns derive from the persistent allegations for direct involvement of the Greek police, namely the alleged involvement of police officers, vehicles and infrastructure in certain areas close to Evros River, as well as the failure of the Greek authorities to locate and identify clandestine groups or individuals who are likely to engage in illegal pushbacks.

The Greek authorities' response to the said allegations has not until today resulted to effectively address those concerns through a comprehensive investigation of the complaints, in particular of those complaints whereby the foreign nationals named as victims of illegal pushbacks from Greece to Turkey had already contacted the Greek authorities, as recorded in official documents."

140. In its capacity as National Mechanism for the Investigation of Arbitrary Incidents (Law no. 4443/2016), the Greek Ombudsman also published two investigation reports on a number of alleged pushbacks.

141. The 2021 special report published in June 2022 (“National Mechanism for the Investigation of Arbitrary Incidents (EMIDIPA)”, pp. 77-81) states, *inter alia*, as follows (original English; footnotes omitted):

“4.2. Investigation of complaints and cases of unlawful pushbacks

By the end of 2021, twenty-one (21) complaints about unlawful pushbacks had been examined under the special competence of the National Mechanism for the Investigation of Arbitrary Incidents (EMIDIPA). It is important that in 2019 the Hellenic Police initiated the preliminary disciplinary investigation of cases for which there had been reports published in the press, regarding alleged unlawful pushbacks through Evros. Until then, the Hellenic Police was in total denial of such incidents without conducting any investigation.

...

The incidents that have been reported to the National Mechanism are the tip of the iceberg, given that there is a number of Articles and online posts regarding systematic unlawful pushbacks of a great number of persons from land or maritime borders, a fact of concern for both the European Parliament, and the European Commission. The added value of these reports to the National Mechanism is the fact that the persons affected dare to support their signed complaints and that the National Mechanism conducts official investigation in order to verify the reported incidents.

...

In the relevant administrative inquiries that have been transmitted to the National Mechanism in 2021, in order to examine their completeness, both by LS-ELAKT (coastguard) and the Hellenic Police, there appear to be some common problems. We specifically note the following:

Examination of the alleged victims of unlawful pushbacks is often omitted, while they should be sought through their legal representatives. This reduces the effectiveness and reliability of the internal investigations of the Administration.

Cross-checking the coordinates in the photographs provided by reported persons in order to prove their entry into Greece is also omitted.

Non-registration by the Greek authorities is used as evidence, a fact which constitutes an obtaining of the sought, since if the legal administrative procedures had been followed, there would have been no room for unlawful pushbacks.

In some cases, those conducting the internal investigations of the Administration make evaluative judgments that raise issues of non-observance of equal distancing (e.g. general judgments about the reliability of foreigners’ complaints), or ethical judgments (e.g. for the observance of the Constitution and the laws by the Administration) that cannot be used as judgments about the facts and for proving violation of law and violations of right, because again they fall into the logical error of obtaining the sought.

Investigations on unlawful pushbacks are still pending, even in the cases that the National Mechanism has requested from the Hellenic Police or LS-ELAKT supplementation of the investigation, highlighting specific deficiencies and omissions. The Ombudsman will insist on the need for a thorough investigation of all relevant reports that raise issues of serious violations of fundamental rights.”

142. As to the 2022 special report published in October 2023 (“National Mechanism for the Investigation of Arbitrary Incidents (EMIDIPA)”, pp. 29-33), it states, *inter alia*, as follows (original English; footnotes omitted):

“4.1 Investigation of complaints and cases of unlawful pushbacks

...

In 2022 sixteen (16) more complaints were added to the twenty-one (21) illegal pushback reports that were filed to the National Mechanism from 2019 to 2021. The increasing trend in 2022 follows public awareness on systematic pushbacks of large numbers of persons from the country’s land or sea borders, as reported in the Media and on the Internet, and the official records of public and international bodies. The incidents reported to the National Mechanism appear to be the tip of the iceberg, given that, by definition, these practices are kept away from the public eye and largely in public silence. Given that (i) these are anonymous complaints and (ii) they lead to a formal investigation by the National Mechanism, the added value of these cases for the constitutional right to report administrative misconduct and the duty of accountability of state institutions is quite evident.

...

For all alleged unlawful pushback cases, the Ombudsman, as a National Investigation Mechanism, has requested thorough investigation of the incidents, irrespective of how the reported actions were committed and the enforcement authorities involved. To this end, the Ombudsman has forwarded the relevant complaints to the Administration for internal investigation and monitors the investigation process, reserving his right to conduct his own investigation, as per art. 1 para. 1 of Law 3938/2011, as in force. The Ombudsman has pointed out to the Administration that the relevant reports raise the following issues for investigation: a) issues of unlawful pushbacks, which constitute violation of personal freedom and non-compliance with the procedure of arrest and administrative treatment for any irregular migrant, and even more so for asylum seekers; b) issues of violation of international protection rules, given that any unlawful pushback of an asylum seeker constitutes not only a violation of personal freedom but also put the protection of life and protection against torture in jeopardy, in violation of the principle of non-refoulement; c) issues of ill-treatment by police authorities that may constitute torture, violations of physical integrity or degrading treatment, possibly with a racist motive.

...

In the relevant administrative investigations that are under way, the National Mechanism often identifies deficiencies, e.g. failure to examine the alleged victim and important witnesses, judgements as to the role of state authorities or the reports of foreigners infringing upon the arms’ length principle, failure to record the arrest of the victims mentioned above (often used as evidence of nonrefoulement) etc. The monitoring of these cases by the National Mechanism is intended to disseminate and consolidate the jurisprudential principles of effective investigation, which, according to the invariable ECHR rulings, is assessed not on the basis of its specific result, but rather, on the basis of its ability to produce results, i.e. how possible it is identify the circumstances of the incident and the perpetrators and impute responsibility accordingly.

...”

2. *The National Human Rights Commission*

143. In September 2021 the National Human Rights Commission (“NHRC”) – an independent advisory body of the Greek State for the protection of human rights established by Law no. 2667/1998 and currently governed by Law no. 4780/21 – set up a mechanism for recording Informal Forced Returns (IFRs) of third-country nationals from Greece to other countries, for the purpose of monitoring, recording and documenting the phenomenon.

144. Following an interim report published in January 2023 titled “Recording Mechanism of Incidents of Informal Forced Returns”, the NHRC published its 2022 annual report in December 2023 (“Recording Mechanism of Incidents of Informal Forced Returns”, 62 pages), which contained the Mechanism’s findings concerning alleged IFRs from the Evros region or the Greek islands to Türkiye between April 2020 and October 2022, established on the basis of testimony recorded in 2022 through personal interviews with the alleged victims. The relevant parts of that report state as follows (original English; footnotes omitted):

“...

EXECUTIVE SUMMARY

In the period between February 2022 and December 2022 the Recording Mechanism has recorded testimonies through personal interviews with 43 alleged victims about 50 IFRs, which according to the alleged victims occurred in the period between April 2020 and October 2022.

According to these testimonies it is estimated that at least 2157 persons are included in the total number of the alleged victims. The countries of origin of the alleged victims are listed among the countries whose nationals are granted international protection status in Greece and the EU at a significant rate (Syria, Palestine, Turkey, Afghanistan, Iraq, Iran, Somalia, Cameroon, Mali and Democratic Republic of Congo).

...

In particular, testimonies about 27 out of the 34 recorded incidents, where the alleged victims reported to have been subjected to detention/restriction on freedom of movement period, reported use of violence against them, 5 testimonies did not report any use of violence and 2 testimonies reported that the alleged victims were not aware whether any acts of violence occurred during the stage of informal detention/restriction on freedom of movement, or not. Testimonies reveal all forms of physical violence, verbal abuse, bullying and threats, as well as deprivation or destruction of money and other personal belongings ... The alleged victims involved in 18 incidents, alleged that guards in uniforms used violence during the detention/restriction on freedom of movement stage, the alleged victims involved in 9 incidents reported that they had been subjected to acts of violence by guards out of uniform and testimony/ies in relation to 1 incident reported acts of violence by other detainees.

... the Recording Mechanism does not possess or request victims to have evidence as a prerequisite for recording a testimony, given that, as indicated by the testimonies, in the majority of incidents the alleged victims experienced deprivation of all their personal belongings. More specifically, according to 22 testimonies the alleged victims reported

that they possess evidence in support of their claims. 36 other testimonies reported that the alleged victims are no longer in possession of any evidence, which is usually justified by the fact that the alleged perpetrators had deprived them of their personal belongings, and thus photos, audio or video material, geolocation recording etc are no longer in their possession.

...

CHAPTER 6. CONCLUSION

On the basis of the information recorded by the Recording Mechanism, it is indicated that IFRs do no longer constitute an occasional and *irregular* phenomenon. On the contrary, it is indicated that they have developed the pattern of a systematic and *organised* operation. As it is indicated, incidents of informal forced returns are carried out by mobilizing human resources, facilities, heavy vehicles or watercrafts and other material and technical means.

The *modus operandi* of the IFRs, as revealed by the testimonies, seems to have been built up as a progression of stages. Most testimonies report that victims are initially detected by a group of people in or out of uniform (detection stage), subsequently they are taken to a facility where they are kept under guard (detention or restriction on freedom of movement stage) and finally they are transferred from the detention/movement restriction place to the starting point of physical removal, where the IFR operation is completed (physical removal stage).

The IFRs are conducted in specific geographical regions (in the river Evros border region and at sea), the specific geographical characteristics of which determine the way of their implementation (*modus operandi*). Some testimonies, especially in cases where the detection location was at sea or very near the Evros River border region, alleged that the detention/restriction on freedom of movement stage was skipped and thus the IFR was carried out immediately after the detection.

The majority of the alleged victims are unregistered asylum seekers who have never before attempted to access the asylum procedure or have repeatedly attempted to do so, but according to their allegations their data were never recorded by the competent Greek Authorities, and they were informally and forcibly returned to Turkey. Additionally, some of the alleged victims claimed that at the time of their detection, they were already recognised beneficiaries of international protection in Greece or that they were registered as asylum applicants by the Greek Authorities.

According to testimonies, persons in uniform and also persons wearing civilian clothing seem to have been involved as perpetrators in the incidents recorded by the Recording Mechanism, whose actions indicated coordination with the Authorities. It is possible, however, that these individuals were ordinary citizens not having legally assumed public authority. Furthermore, in some testimonies it is mentioned that third-country nationals, speaking some of the victims' spoken languages, appear to have been involved as perpetrators in the physical removal stage in the Evros River border region.

..."

145. In June 2024 the NHRC published its 2023 annual report, which found that the testimony recorded by the Mechanism in 2023 confirmed the findings set out in 2022 as to the *modus operandi* and organised nature of IFRs. In particular, the report stated that the testimony that had been collected

showed that the same pattern was repeated, with the same operational characteristics as had been observed and analysed in the 2022 annual report.

3. *The National Transparency Authority*

146. In November 2021 the National Transparency Authority, established by Law no. 4622/2019, launched an investigation following a post on the Lighthouse Reports information platform on 6 October 2021. The post, which linked to several videos, contained allegations of irregular migrants being returned by masked groups.

147. In May 2022 the Authority published investigation report no. OM 3/4, titled “Management of immigration flows – Allegations of pushbacks in Greece”.

148. Regarding the investigation team’s macroscopic data analysis, the report states, in particular, as follows (original English):

“ ...

The video recordings are fragmented. The majority of videos is a synthesis/collage of plans and photos, fragmented scenes, recordings without continuous event flow. Video processing elements can be spotted such as use of point symbols, use of comments subtitles or third-party comments, taking images through third-party mechanical video media without specifying the place and time. The identity of persons in the videos is not provided and cannot be identified or verified.

In the videos provided there is no footage of the alleged officials of the Greek port authorities in contact with passengers on an inflatable boat. No act of physical violence or attack or threat of any kind is recorded. ...

The information provided does not include (a) testimonies from persons involved or alleged victims, (b) specific clues or any evidence concerning organized hierarchical structures and money flows for pushbacks of third country nationals illegally entering the country, (c) testimonies of serving and/or former senior Greek Coast Guard officers who allegedly recognised the masked person as members of the Special Operations Unit of the Greek Coast Guard ... as reported in the publication. ...”

149. Moreover, according to the report, after examining the audiovisual material in question, the Forensic Division of the Hellenic Police Directorate observed, *inter alia*, as follows (original English):

“In some of the videos, changes of plans, symbols and text inputs, lack of sound ...

Indications of editing with a specific software, in some cases using software capable of editing existing videos or collating video parts or adding graphics, etc.

Also in some videos there are either no indications of date and time, or it is not possible to determine whether the displayed date and time correspond to the actual ones, or whether the recording of the sound (the talking person) takes place at the same time as the video recording.

In some videos, the images are not taken directly by a recording device but a screen is recorded, while others stop video recording and display still images and text.

It has to be noted that (a) the majority of videos do not show the date of downloading/digitalisation of the file, as well as elements of the recording device, and

(b) the metadata analysis indicates that 7 out of 16 videos contain not primary and unedited material (material which is complete and unchanged from the time of download until the time of the examination), or it is not possible to determine whether video footage is primary and unedited. ... In addition, no GPS information (metadata) was found in all the videos. Even in cases where coordinates are displayed, it cannot be established whether they correspond to real ones. ...”

150. As to the views of the 65 people interviewed, the report states as follows (original English):

“...

1) The majority of them are convinced that such incidents ‘do not occur’ and ‘cannot occur’ because:

Such actions, given that they require a high level of organisation and coordination, would be easily revealed by the local communities and by the authorities of the neighbouring country, particularly in the Evros region, because of the morphology of the ground.

Greece would not risk to be ‘exposed’ and such unlawful practices are incompatible with the ‘mentality of the Greek people’.

According to their personal experience while participating in rescue missions of irregular migrants or when providing voluntary work, the respondents stated that the competent authorities carry out their tasks with dignity and do their best in managing irregular migration flows with respect to human rights.

In the opposite direction, the view of one respondent was that ‘pushbacks take place very often’ stressing the secrecy of the operation, stating that ‘it is impossible to witness a pushback because if you are seen at the place of arrival the migrants will be immediately registered [and] taken to the RIC’.

2) The majority of respondents argued that relevant references from the press and social media are unfounded as they lack evidence.

3) The officers put emphasis on the following:

The compliance with the legal framework and the rules of international law governing maritime law, maritime safety standards and human rights in the performance of their duties.

The strict operational framework which does not allow for deviations or unlawful action.

The phenomenon of ‘guided/manipulated’ testimonies of interviewed persons (immigrants) during the debriefing process.

The inaccurate use and misunderstanding of the term ‘pushback’ instead of legal term ‘deterrence’, carried out in the context of border surveillance which constitutes a sovereign obligation of the country under both national and EU law. ...”

151. Lastly, regarding the allegations contained in the Lighthouse Reports publication, the report concludes as follows (original English):

“Taking into account:

A) Video and photographic material brought to the attention of the investigation team

B) The two (2) laboratory reports on the examination of digital material (video and photographic archives)

C) The laboratory expert report of the Hellenic Police Forensic Science Division

D) The testimonies of Greek officials

E) The testimonies of citizens from local communities

F) The fact that no further documentation material has been provided, although that it has been requested, in order to verify the alleged cases of refoulements/pushbacks;

It has not been possible to verify the incidents stated in this publication/report, as no supporting evidence or relevant documentation has emerged.”

B. International institutions

1. The Council of Europe

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

152. In its report of 19 February 2019 following its visit to Greece from 10 to 19 April 2018, the CPT observed as follows (footnotes omitted):

“8. Push-back operations

...

138. In the course of the April 2018 visit, several foreign nationals alleged the occurrence of push-back operations from Greece to Turkey *via* boat across the Evros River border. These consistent and credible allegations were received by the delegation through individual interviews with 15 foreign nationals carried out in private at three different places of detention. They mainly referred to incidents that had taken place between January and early March 2018, whereas some dated back to 2017. The persons who alleged that they had been pushed back from Greece to Turkey had subsequently re-entered Greek territory and had been apprehended and detained by the Greek police.

139. Several of these persons alleged that they had been physically ill-treated by police and border guard officers or (para-) military commandos during such push-back operations. The alleged ill-treatment consisted in particular of slaps, punches and kicks to various parts of the body (including to the head), as well as baton blows to the head after the foreign nationals concerned had been made to kneel face-down on the boat during the push-back operations (i.e. all those who raised their head were systematically subjected to a baton blow to the head). Several persons complained that they – together with all the members in their group being pushed back – had been threatened, treated brusquely (i.e. pushed, dragged or thrown to the ground) and forced to board small inflatable boats.

Usually, the persons who were described as the authors of the alleged ill-treatment were armed and had their faces covered with balaclavas; while some were dressed in police uniforms, others wore military fatigues.

140. From the information gathered by the delegation during the visit, it transpired that the alleged push-back operations described in detail by the foreign nationals interviewed displayed a similar pattern. The persons concerned had initially entered Greece from Turkey by irregularly crossing the Evros River. Shortly after their arrival in Greece, they were apprehended by Greek police and border guards and were usually

brought to one of the nearby police and border guard stations in the Evros region. Personal belongings, including mobile phones, were usually confiscated. Some foreign nationals alleged that they were not individually registered and that their arrest and detention had not been recorded. One person claimed that, before being pushed back, he had been kept overnight in a van together with a group of other apprehended migrants. Further, some foreign nationals alleged that they were not provided with food by the police during the entire period of their detention in police custody, which lasted between several hours and more than one day.

The persons interviewed told the delegation that they were then transported in a van with a group of other foreign nationals, including in some instances families with children, to a military zone at the Evros River bank. Subsequently, they were handed over to other armed and masked police and border guards or (para-)military commandos who forced the group to board small inflatable boats. Some persons complained that their repeated requests for asylum in Greece were ignored and that they were not given the possibility to challenge their removal. Foreign nationals also alleged that, in some cases, personal belongings (including identity documents) were destroyed. They were then taken back by boat to the Turkish side of the river; some alleged that they were left on one of the small islets in the middle of the river near the Turkish river bank, and either had to reach Turkish soil by their own means or were required to wait to be collected by the Turkish authorities.

141. These allegations also correspond to allegations that the CPT had previously received, including through interviews with foreign nationals who had alleged push-backs during its 2015 visit to Turkey.

...

144. That said, from the information gathered by the delegation during the visit, it appears that, at least until early March 2018, a number of foreign nationals who irregularly entered Greece from Turkey *via* the Evros River border and who were apprehended by Greek police and border guards were *de facto* subjected to informal forcible removals (push-backs) to Turkey without being provided an effective possibility to apply for asylum in Greece. Further, it appears that these persons were not properly identified and registered and, consequently, they were not in a position to make use of the legal remedies against their expulsion or return provided for by law.

In the light of these circumstances, the CPT considers that these persons were not effectively protected against the risk of *refoulement*, including possible chain *refoulement*.

...”

153. Furthermore, in its report of 19 November 2020 following its *ad hoc* visit to Greece from 13 to 17 March 2020, the CPT stated as follows (footnotes omitted):

“...

7. The practice of pushbacks across the Turkish border and at sea

53. In the report on the 2018 visit, the CPT addressed the issue of pushback operations from Greece to Turkey *via* boat across the Evros River border.

In the course of the 2020 visit, the CPT’s delegation again received consistent and credible allegations obtained through individual interviews in different places of detention of foreign nationals being detained, having their belongings confiscated and subsequently being pushed back across the Evros River border to Turkey. The

allegations mainly referred to incidents that had taken place prior to March 2020 but within the previous six months. The persons who alleged that they had been pushed back from Greece to Turkey had subsequently re-entered Greek territory and had been apprehended and detained by the Greek police.

...

54. The persons who alleged to have been pushed back in the period prior to March 2020 described having been held for short periods in various detention facilities situated not far from the Evros River. Further, the persons alleged that they had had their personal belongings, including mobile phone and in some instances footwear, confiscated by their guards who had escorted them to the river and supervised the pushbacks (these persons all wore balaclavas which hid their faces and were dressed either in military-style fatigues or police uniforms).

...

57. The evidence supporting the case that migrants are pushed back across the Evros River to Turkey after having been detained for a number of hours, without benefiting from any of the fundamental guarantees, by Greek officers operating in an official capacity is credible.

...”

154. Moreover, in its report of 12 July 2024 following its visit to Greece from 20 November to 1 December 2023, the CPT made the following findings (footnotes omitted):

“C. Informal forcible removals at borders – ‘pushbacks’

152. In the reports on the 2018 and 2020 visits, the CPT addressed the issue of informal enforced return operations of foreign nationals from Greece to Türkiye both along the Evros land border area and at sea, without consideration of their individual circumstances, vulnerabilities, protection needs or risk of ill-treatment when returned (informally referred to as ‘pushbacks’ or ‘driftbacks’). The Committee gathered sufficient evidence to conclude that pushbacks took place. Some persons had indicated that they had been pushed back multiple times.

153. The increasing resort to violent pushback practices at Europe’s borders with minimal accountability by state actors has led the CPT to set out its views in its 32nd General Report. In particular, the Committee has identified diverse *modus operandi* of pushback operations and established clear patterns of physical ill-treatment deployed against foreign nationals. The CPT has advocated for reinforcing the safeguards against *refoulement* and ill-treatment, and for promoting the operation of independent monitoring and complaints mechanisms at the borders. Any allegations of pushback operations must be effectively investigated and those involved be held accountable.

154. During the 2023 visit, the CPT delegation again received many consistent and credible allegations of persons pushed back, often violently, across the Evros River or at sea to Türkiye. The allegations were obtained through detailed interviews with persons detained throughout Greece in various CCACs, PRDCs and other police and border guard establishments. Most allegations on pushbacks at sea referred to the period prior to the tragic sinking of a boat near Pylos in June 2023. However, the delegation received several allegations dating from mid-October to early November 2023 in relation to pushbacks across both land and sea borders. Many allegations obtained in different locations from various unrelated individuals, including unaccompanied and separated children, corroborated the detailed descriptions and stories received

elsewhere. The persons who alleged that they had been pushed back from Greece to Türkiye had subsequently re-entered Greek territory and had been apprehended by the Hellenic Police or the Hellenic Coast Guard and transferred to a CCAC or police and border guard station or, regarding older allegations, were held in a PRDC. Two patterns emerged.

155. As regards alleged pushbacks at the land border in the Evros region, detained persons reported that they had crossed the Evros River from Türkiye and had arrived on Greek territory, where they were apprehended by police officers or unidentified masked men in military fatigues and brought to a holding place (usually a building but sometimes in the open) where they were held for several hours. Several persons interviewed by the delegation alleged that they had to kneel with their hands behind their back or lie down on the floor, head down, and that they were subjected to baton blows, kicks or punches if they disobeyed. After several hours, they were placed in overcrowded vans. They were then reportedly brought to the river by men dressed in dark clothes or military fatigues, wearing balaclavas and equipped with sticks. Several alleged that they were forced to undress. All stated that their personal belongings were removed, including money and mobile phones, before they were placed in boats and taken across the Evros River. The delegation also received corroborating allegations that some of the alleged pushbacks were carried out by foreign nationals employed for this purpose, who were wearing balaclavas and wielding plastic sticks.

...

158. The Greek authorities have maintained, in their response to the report on the 2020 visit and in various exchanges, including with the delegation at the end of the 2023 visit, that there was no evidence to implicate Greek law enforcement agencies with incidents of violent forcible removals from Greek territory across the land border with Türkiye in the Evros region.

... The Greek authorities have pointed to the oversight mechanisms in place such as the Greek Ombudsman and the National Transparency Authority, in addition to the prosecutor's office, as evidence that any alleged pushback operations would be subject to scrutiny. They also informed the CPT that the *modus operandi* of the human smuggling groups is to tell persons crossing into Greece that they should make up stories that they had previously been forcibly removed from Greece. The CPT is unconvinced by such reasoning as persons seeking asylum, especially women and children, have nothing to gain by making up stories of pushbacks.

159. Moreover, the evidence to date seems to highlight that no effective investigations have been carried out into allegations of violent forcible removals from Greece to Türkiye.

...

Further, the CPT understands that the National Transparency Authority had received over 200 documented complaints of pushbacks by June 2022. Apparently some 88 of these complaints referred specifically to incidents involving the Hellenic Coast Guard and they had been transferred to the Naval Court Prosecutor for investigation. However, there is no information on how such cases are progressing or whether the investigations are being carried out in accordance with the criteria set out by the European Court of Human Rights and its caselaw, and the standards promoted by the CPT. In the past, the CPT has raised questions over the effectiveness of investigations into alleged ill-treatment by law enforcement officials.

...

160. Moreover, numerous accounts of alleged pushbacks have been documented by several organisations, such as Médecins sans Frontières, the Greek National Commission for Human Rights (GNCHR) and UNHCR. In particular, UNHCR stated that during 2020-2021, it recorded 539 incidents of informal enforced return at land and sea, involving at least 17 000 people, during which potential violations of several rights were reported. Among those were the rights to life and to protection from torture, inhuman or degrading treatment as well as, *inter alia* the right to seek asylum. The CPT understands that UNCHR has continued to raise concerns over such practices.

The findings of the CPT during the 2023 visit concord with those documented by UNHCR.

161. ... For the CPT, there is sufficient evidence to conclude that pushbacks to Türkiye have taken place and continue to take place, albeit on a smaller scale at present. The focus now must be on ending violent, dangerous and illegal pushback operations once and for all.

162. The CPT reiterates its recommendation that the Greek authorities act to prevent any form of pushbacks taking place either across the Evros River border or at sea in the Eastern Aegean by law enforcement officials, military or coast guards personnel, as well as by foreign nationals employed to carry out such tasks. All foreign nationals arriving at the border or present in the territory of Greece who wish to request international protection should be effectively protected against the risk of *refoulement*, including possible chain *refoulement*...”

(b) The Parliamentary Assembly of the Council of Europe (PACE)

155. In Resolution 2299 (2019) of 28 June 2019 on pushback policies and practice in Council of Europe member States, PACE emphasised the following:

“1. To control and manage migration flows, Council of Europe member States concentrate much of their efforts on guarding frontiers. In this context, refusals of entry and expulsions without any individual assessment of protection needs have become a documented phenomenon at Europe’s borders, as well as on the territory of member States further inland. As these practices are widespread, and in some countries systematic, these ‘pushbacks’ can be considered as part of national policies rather than incidental actions. The highest risk attached to pushbacks is the risk of *refoulement*, meaning that a person is sent back to a place where they might face persecution in the sense of the 1951 United Nations Convention Relating to the Status of Refugees (‘the Refugee Convention’), or inhuman or degrading treatment in the sense of the European Convention on Human Rights...

...

5. The Assembly is extremely worried about persistent reports and evidence of inhuman and degrading treatment of migrants by member States and their agencies in the framework of these pushbacks, through intimidation, confiscating or destroying migrants’ belongings, and even through the use of violence and by depriving migrants of food and basic services. In denying having carried out such pushbacks, these types of (sometimes systematic) inhuman and degrading treatment are denied as well, and are therefore not adequately examined or not examined at all.

6. The Assembly therefore calls on Council of Europe member States to comply with their international obligations in this regard, in particular those set out in the European Convention on Human Rights concerning the prohibition of collective expulsion and

inhuman and degrading treatment, as well as the right of access to asylum procedures and the prohibition of refoulement as established in the United Nations Refugee Convention.

...”

156. In Resolution 2462 (2022) of 12 October 2022 headed “Pushbacks on land and sea: illegal measures of migration management”, PACE stated as follows:

“4. The Assembly deplores the profound disregard for international standards on the matter in some countries, combined with the instrumentalisation of migration flows for political purposes in others, and concludes that the right to asylum continues to be breached. Border pushbacks have now taken on worrying proportions, taking place routinely on land and in the more deadly environment of the sea, becoming a pan-European problem which pertains to at least half of the Council of Europe’s member States. Allegations are no longer limited to just one or two countries, or one or two incidents, but have become widespread and, most worryingly, part of tolerated policy. Pushbacks from Croatia to Bosnia and Herzegovina, from Greece to Türkiye, from Malta and Italy to Libya, from Hungary to Serbia and from Poland to Belarus render the plight of migrants and refugees even harsher, heightening the risk of losing one’s life on an extremely perilous journey.

...

12. The Assembly calls for changes to the law and practice in the Council of Europe member States to stop pushbacks on land and at sea and to codify the principle of *non-refoulement* in national legislation. In specific terms, it asks member States to take measures to prevent pushbacks, to protect the victims of pushbacks, to prosecute those responsible for pushbacks and to improve international co-operation and co-ordination between border authorities, police and other bodies in charge of border protection, as follows:

12.1 as regards prevention:

12.1.1 to prevent all forms of ‘pushback’ and ‘pullback’ actions regarding migrants, refugees and asylum seekers. Priority should be given to ensuring that border management is aligned with international law and human rights obligations. The Assembly underscores the need to ensure an individual assessment of protection needs and of the safety of return in order to prevent violation of Article 3 of the European Convention on Human Rights and of the prohibition of collective expulsions, as enshrined in Article 4 of Protocol No. 4 to the Convention;

...

12.3 as regards prosecution:

12.3.1 to ensure that allegations of pushbacks are fully investigated and those responsible are held to account to dissuade the continuation of such practices. The Assembly reiterates, therefore, the importance of the prohibition of torture or inhuman or degrading treatment and the prohibition of collective expulsions, which also apply during emergency situations;

12.3.2 to comply with judgments of national courts and of the European Court of Human Rights, including their interim measures, in relation to pushbacks and refusing access to asylum and even to an asylum procedure, and to follow up recommendations of national independent bodies such as ombudspersons, as stated in

Resolution 2299 (2019), keeping in mind that codifying the principle of *non-refoulement* in national legislation is key;

...”

(c) The Commissioner for Human Rights

157. In her report of 6 November 2018 following her visit to Greece from 25 to 29 June 2018, the Commissioner summarised her findings as follows:

“64. The Commissioner is deeply concerned about persistent and documented allegations of summary returns to Turkey, often accompanied by the use of violence. ... Considering that the information available points to the existence of an established practice in this field, the Commissioner urges the Greek authorities to put an end to push-backs and to investigate any allegations of ill-treatment perpetrated by members of Greek security forces in the context of such operations.”

158. Moreover, in a letter addressed to the Greek Minister for Citizens’ Protection, the Greek Minister of Migration and Asylum and the Greek Minister of Shipping and Island Policy (CommHR/DM/sf 019-2021, 3 May 2021), the Commissioner stated as follows:

“In my 2018 report, I noted the numerous credible allegations of summary returns (‘pushbacks’) to Turkey, often accompanied by violence, and urged the Greek authorities to put an end to this practice. I am deeply concerned that, two and a half years later, allegations of pushbacks persist at both the land and the sea borders with Turkey.

Summary returns from Greece to Turkey across the Evros river border have been reported and documented for several years, not only by international media and civil society organisations, but also by national human rights structures and international organisations.

...

In this respect, I want to underline that when persons at the border are returned without individual identification or procedure, they are prevented from putting forward reasons why such returns would violate their rights, and to apply for protection against such violations. In such cases, member states cannot satisfy themselves that they are not sending them back in violation of, for example, Article 3 of the European Convention on Human Rights (ECHR) and the refoulement prohibition in the UN Refugee Convention. These protections apply to anyone, regardless of the way in which they arrive at member states’ borders, including if this in an irregular manner.

Moreover, the way in which these operations are reportedly carried out would clearly be incompatible with Greece’s human rights obligations. The verbal and physical abuses reportedly inflicted on the persons pushed back to Turkey may amount to inhuman or degrading treatment, and the mere fact of leaving them on boats on the Evros river or on life-rafts in the Aegean sea seriously endangers their right to life. In addition, such operations may undermine the right to family life as they sometimes reportedly result in family separations.

I am deeply concerned that the official reaction of the Greek authorities has often been to simply dismiss allegations of pushbacks despite the overwhelming body of evidence that has been presented in recent years. Therefore, I urge you to put an end to these practices and to ensure that independent and effective investigations are carried out into

all allegations of push backs and of ill-treatment by members of security forces in the context of such operations. I also invite the Greek authorities to consider and act upon the Ombudsman's proposals regarding the investigations by the Greek police of allegations of pushbacks.

..."

159. Lastly, in her Recommendation titled "Pushed beyond the limits. Four areas for urgent action to end human rights violations at Europe's borders" (March 2022), the Commissioner noted as follows (footnotes omitted):

"There have been numerous and consistent allegations of pushbacks from Greece to Turkey for several years now, with the Commissioner joining many other international bodies and civil society in calling on the Greek government to put an immediate end to this practice, which is also frequently accompanied by allegations of violence. Such pushbacks have notably been reported at Greece's land border with Turkey (across the Evros river). In addition, reports of pushbacks across the Aegean Sea have also proliferated, featuring consistent allegations of persons being left adrift at sea in life rafts, potentially putting their lives at risk..."

2. The United Nations

(a) The Office of the United Nations High Commissioner for Refugees (UNHCR)

160. On 12 June 2020, in a press briefing titled "UNHCR calls on Greece to investigate pushbacks at sea and land borders with Turkey", the UNHCR stated as follows:

"UNHCR ... is urging Greece to investigate multiple reports of pushbacks by Greek authorities at the country's sea and land borders, possibly returning migrants and asylum seekers to Turkey after they had reached Greek territory or territorial waters.

UNHCR has continuously addressed its concerns with the Greek government and has called for urgent inquiries into a series of alleged incidents reported in media, many of which corroborated by non-governmental organizations and direct testimonies. Such allegations have increased since March and reports indicate that several groups of people may have been summarily returned after reaching Greek territory.

..."

161. On 21 August 2020, in a press briefing titled "UNHCR concerned by pushback reports, calls for protection of refugees and asylum-seekers", the UNHCR observed as follows:

"UNHCR, the UN Refugee Agency, remains deeply concerned by an increasing number of credible reports indicating that men, women and children may have been informally returned to Turkey immediately after reaching Greek soil or territorial waters in recent months.

UNHCR firmly reiterates its call on Greece to refrain from such practices and to seriously investigate these reports, which include a series of credible and direct accounts that have been recorded by the UNHCR Office in Greece and have been brought to the attention of the responsible authorities. Given the nature, content, frequency, and consistency of these accounts, a proper investigation should be launched without further delay.

...”

162. On 21 February 2022 the United Nations High Commissioner for Refugees issued the following statement:

“...

We are alarmed by recurrent and consistent reports coming from Greece’s land and sea borders with Turkey, where UNHCR has recorded almost 540 reported incidents of informal returns by Greece since the beginning of 2020. Disturbing incidents are also reported in Central and South-eastern Europe at the borders with EU Member States.

Although many incidents go unreported for various reasons, UNHCR has interviewed thousands of people across Europe who were pushed back and reported a disturbing pattern of threats, intimidation, violence and humiliation. At sea, people report being left adrift in life rafts or sometimes even forced directly into the water, showing a callous lack of regard for human life. At least three people are reported to have died in such incidents since September 2021 in the Aegean Sea, including one in January. Equally horrific practices are frequently reported at land borders, with consistent testimonies of people being stripped and brutally pushed back in harsh weather conditions.

...”

(b) Other UN bodies

163. In its Concluding observations on the seventh periodic report of Greece (CAT/C/GRC/CO/7, 3 September 2019), the Committee against Torture stated as follows:

“...

16. The Committee is seriously concerned at consistent reports that the State party may have acted in breach of the principle of non-refoulement during the period under review. In particular, the reports refer to repeated allegations of summary forced returns of asylum seekers and migrants, including Turkish nationals, intercepted at sea and at the land border with Turkey in the north-east of the Evros region, with no prior risk assessment of their personal circumstances. According to the information before the Committee, Greek law enforcement officers and other unidentified forces involved in pushback operations have often used violence and have confiscated and destroyed migrants’ belongings. While noting that the Division of Internal Affairs of the Hellenic Police and the Greek Ombudsman initiated investigations into the allegations in 2017, the Committee is concerned that these administrative investigations have not included the hearing of live evidence from alleged victims, witnesses and complainants (arts. 2, 3, 11–13 and 16).

...”

164. In its report on its visit to Greece (A/HRC/45/16/Add.1, 29 July 2020), the Working Group on Arbitrary Detention noted the following:

“...

87. The Working Group was informed that a number of persons newly arrived in the Evros region had been arrested, detained and summarily returned across the land border between Greece and Turkey without being given the opportunity to apply for international protection in Greece. In some cases, it was alleged that individuals had

made previous attempts to cross the border, but had been forcibly removed to Turkey in each case. Pushback practices are not permitted under Greek law and are contrary to the right to seek asylum. The Working Group is therefore of the view that detention for this purpose has no legal basis. The Working Group urges the Government to promptly and fully investigate all allegations of such pushbacks, including any acts of violence or ill-treatment that may have occurred during such incidents, and to ensure that such practices do not occur in future.

...”

165. In paragraph 55 of his Report on means to address the human rights impact of pushbacks of migrants on land and at sea (A/HRC/47/30, 12 May 2021), the UN Special Rapporteur on the human rights of migrants stated as follows (footnotes omitted):

“Numerous submissions have raised concerns regarding Greece’s border governance at both its land and sea borders with Turkey. Situated on the Eastern Mediterranean migration route, Greece deploys border and coastguard patrol teams as part of national and joint European Union border operations, in cooperation with the European Border and Coast Guard Agency (Frontex). On top of an increased militarization of the Evros land border region since March 2020, which has effectively resulted in preventing entry and in the summary and collective expulsion of tens of thousands of migrants and asylum seekers, the Special Rapporteur has received allegations that pushbacks over the land border are also reportedly carried out from urban areas, including reception and detention centres. ...”

166. In its Report on Greece (A/HRC/49/5, 6 January 2022), the Human Rights Council’s Working Group on the Universal Periodic Review made a number of recommendations to Greece, including, for example, the following ones:

“Promptly and fully investigate reports of breaches of the principle of non-refoulement and allegations of summary forced returns of migrants at the European Union border between Greece and Turkey, including acts of violence or ill-treatment that may have occurred during such incidents...

...

Ensure that all asylum seekers have the opportunity to obtain an individual review of expulsion decisions, with automatic suspensive effect, and are protected against refoulement and collective referrals, given information regarding the violation of the principle of non-refoulement...”

167. In his report to the Human Rights Council titled “Human rights violations at international borders: trends, prevention and accountability” (A/HRC/50/31, 26 April 2022), the Special Rapporteur on the human rights of migrants observed as follows (footnotes omitted):

“32. In Greece, pushbacks at land and sea borders have become de facto general policy. UNHCR has recorded almost 540 separate incidents during the period 2020–2021, involving at least 17,000 people who were reportedly returned by force, informally, to Turkey. The Special Rapporteur is concerned about the significant increase in the number of people prevented from entering Greek territory, as part of the declared strategy of the authorities. Greece reportedly deterred over 140,000 people from entering the country between April and November 2021, and has announced an

extension to a fence in the Evros region. In the Aegean Sea, NGOs have documented at least 147 incidents of the forcible return of 7,000 migrants, including children, to Turkey by the Hellenic Coast Guard, without due process.”

168. In its Concluding observations on the report submitted by Greece under Article 29, paragraph 1, of the International Convention for the Protection of All Persons from Enforced Disappearance (CED/C/GRC/CO/1, 12 May 2022), the Committee on Enforced Disappearances stated as follows:

“28. ... The Committee is concerned about the alleged lack of adequate safeguards and procedural guarantees to ensure strict compliance with the principle of non-refoulement, in particular:

(a) Consistent reports of violent pushbacks and summary expulsions of migrants into Turkey, including of asylum seekers and refugees, according to which migrants, after having their phones, personal belongings and clothes confiscated, are forced insufficiently dressed into life rafts and abandoned adrift by Greek authorities in open waters and the Evros River, without the authorities having undertaken the necessary prior individual assessment to evaluate and verify their risk of being subjected to enforced disappearance...

...

30. While taking note of the assertion by the State party that there are no secret detention facilities in its territory, the Committee is concerned at allegations that migrants, including children, have routinely been held in secret detention, incommunicado and without being registered before being pushed back into Turkey. ...”

THE LAW

I. THE GOVERNMENT’S PRELIMINARY OBJECTIONS

169. Relying on Articles 3 and 13 of the Convention, the applicant alleged that she had been the victim of a “pushback” to Türkiye by the Greek authorities (see paragraphs 268-270 below). She further complained that she had been unlawfully deprived of her liberty with a view to her removal, in breach of Article 5 of the Convention (see paragraphs 285-286 below). Lastly, under Articles 2 and 3 of the Convention, she submitted that her return to Türkiye had put her life in danger and had amounted to inhuman and degrading treatment, and that there had been no effective remedy available to her in respect of her complaints, as required under Article 13 of the Convention (see paragraphs 293-294 below).

A. The parties’ submissions

1. The Government

170. The Government raised a number of preliminary objections in relation to the application as a whole.

171. Firstly, they submitted that the applicant was not a victim of Convention violations and alleged, in that connection, that there was no evidence of her arrest, detention or “pushback” to Türkiye. They further submitted that the application amounted to an abuse of the right of individual application in so far as it was based on allegations which were not supported by sufficient evidence. Moreover, the Government were of the view that the application should be dismissed for failure to exhaust domestic remedies. They complained that the applicant had not lodged a compensation claim against the Greek authorities under section 105 of the Introductory Law to the Civil Code for allegedly putting her life at risk and for her alleged detention, ill-treatment and “pushback”. They submitted, in this connection, that the dismissal of her criminal complaint by the prosecutor at the Thrace Court of Appeal would not have prejudged the outcome of a compensation claim. Moreover, the applicant had failed to lodge complaints with the Greek Ombudsman and the National Transparency Authority.

172. In the material submitted to the Court with a view to the hearing, the Government argued more specifically that the compensation claim provided for in section 105 of the Introductory Law to the Civil Code was an effective remedy. They referred to a number of cases in which such a claim had been lodged in response to alleged infringements of the right not to be subjected to inhuman or degrading treatment and the right to life in the case of migrants having unlawfully entered the country in circumstances similar to those at issue in the present application. They alleged that in three such cases, for which they appended the relevant official documents, the applicants had applied to the Court before pursuing the domestic remedy in respect of the same events as those forming the subject matter of their application to the Court. Those cases were as follows: (1) *Alkhatib and Others v. Greece* (no. 3566/16, 16 January 2024), in which the two actions lodged had been dismissed as ill-founded by the Rhodes Administrative Court of First Instance (judgments nos. 464/2023 and 75/2023) before the Court had delivered its judgment, although an appeal against judgment no. 75/2023 was currently pending before the Piraeus Administrative Court of Appeal; (2) *Safi and Others v. Greece* (no. 5418/15, 7 July 2022), where a compensation claim lodged on 30 December 2019 had been examined by the Rhodes Administrative Court of First Instance on 27 April 2023 and had resulted in a judgment delivered on 17 April 2024 (see paragraph 176 below); and (3) *F.M. and Others v. Greece* (no. 17622/21), which was pending before the Court and in which a compensation claim had been lodged on 29 December 2023 with the Piraeus Administrative Court of First Instance, with a hearing scheduled for 9 April 2024.

173. The Government also referred to other compensation claims brought under section 105 of the Introductory Law to the Civil Code in connection with violations of Articles 2 and 3 of the Convention. In those cases, the administrative courts had awarded compensation to the relatives of asylum-

seekers who had died in reception centres as a result of the Greek State's failure to meet its positive obligations (judgments nos. 842/2023 and 998/2023 of the Athens Administrative Court of Appeal).

174. In the Government's view, these examples showed that the administrative courts had examined the merits of the claims, applying the Court's relevant case-law, and had conducted a thorough investigation into the events complained of. Referring to judgments nos. 464/2023 and 75/2023 of the Rhodes Administrative Court of First Instance, they argued that the administrative courts had accepted that, under Article 5 § 2 of the Code of Administrative Procedure, a prosecutor's decision to discontinue proceedings in a criminal case involving the potential liability of State agents was not binding on them when examining the State's civil liability. In particular, according to those judgments, a decision to discontinue a criminal case did not constitute a final acquittal that was binding on the administrative courts. Furthermore, the Government submitted that the administrative courts had endorsed the Court's case-law on the impartiality of investigations, for example. Moreover, in their assessment, those courts had also taken account of the difficulty or impossibility for the applicants to adduce other evidence, regard being had to the procedural safeguards under Articles 2 and 3 of the Convention.

175. Furthermore, noting that some of the applicants in these cases before the Court had brought a claim under section 105, the Government inferred from this that they had apparently considered such a claim to be an effective remedy in the event of alleged breaches of Articles 2 and 3 of the Convention similar to those complained of in the present application. While they could not speculate as to why the applicants had chosen to pursue the remedy in question after lodging an application with the Court, the Government pointed out that they had done so upon the expiry of the time-limit for lodging their claims under the domestic legislation. Thus, in the Government's view, the failure to pursue that domestic remedy before lodging an application with the Court did not mean that the applicants considered the remedy to be ineffective but stemmed, rather, from the strategy they had chosen for asserting their rights. This explained why it was not possible at the present time to provide more examples of *ad hoc* case-law for this type of case.

176. In preparation for the hearing, the Government also submitted to the Court judgment no. A128/2024 of 17 April 2024 of the Rhodes Administrative Court of First Instance in the case brought before it by some of the applicants in *Safi* (cited above). In this connection, the Government submitted that the Administrative Court had accepted that the judgment in which the Court had found a violation of the Convention constituted *res judicata* for the domestic court when deciding on the lawful or unlawfulness of the act or omission at issue in a claim brought under section 105, since the subject matter and parties were identical in both the domestic and European proceedings. In the case in question the Administrative Court had observed

that the Court – in its judgment of 7 July 2022 concerning the same facts as those before the Administrative Court – had found substantive and procedural violations of Articles 2 and 3 of the Convention and had awarded the applicants various sums in respect of non-pecuniary damage. The Government explained, moreover, that the Administrative Court had specified that this just satisfaction was intended as compensation for non-pecuniary damage but did not constitute such compensation for the purposes of Article 932 of the Greek Civil Code. It had therefore concluded that it could award compensation for non-pecuniary damage on the basis of section 105, taking into account, however, the sums already paid to the applicants pursuant to the Court’s judgment. Lastly, the judgment had upheld part of the claim under section 105 and had awarded the plaintiffs various sums in respect of non-pecuniary damage.

177. With regard to criminal proceedings, the Government referred to several investigations into “pushback” incidents which prosecutors throughout the country had opened either following a complaint, usually lodged by an NGO, or of their own motion. Some of these proceedings were still pending before the relevant prosecutors’ offices, but most of the cases had been discontinued following the preliminary investigation for lack of sufficient evidence. The majority of the discontinuance decisions noted that the complainants had been urged to testify as witnesses and adduce evidence but had not cooperated with the investigation, referring only to the documents they had initially submitted (publications, CPT or NGO reports, etc.), without providing any additional information. In some case, moreover, the discontinuance decisions highlighted key points which the investigation had brought to light and proved that the complainants’ allegations were inaccurate. The Government further maintained that whenever there had been sufficient evidence, the competent authorities had examined it thoroughly and, in any event, had justified their decision.

178. Regarding the cases handled by naval prosecutors, the Government submitted that 123 cases of alleged “pushbacks” from the Greek islands to Türkiye by officers of the Hellenic Coastguard had been investigated since 1 January 2019 and that 97 of those cases had been discontinued, four had been either redirected to other competent national judicial authorities or joined to other cases and, lastly, 22 had been referred for preliminary investigation or were currently being examined by naval prosecutors. In the latter cases, once the case file had been compiled, a preliminary investigation was ordered, with instructions as to the specific investigative measures to be carried out (for example, the taking of witness statements from certain individuals; producing copies of official coastguard documents and transcripts of conversations between officers and the authorities; obtaining transcripts of audiovisual material and conducting searches of mobile phones that had recorded videos relevant to the case; drawing up medical/expert reports, requesting NGO staff or journalists who had reported an incident to

produce all the material in their possession; etc.). The Government added that in the 97 cases which had been discontinued, the prosecutors' decisions included a description of the accusations and an assessment of the evidence gathered. In addition, a lack of sufficient evidence had been noted in all cases and, in most of them, a failure on the part of the complainant (usually an NGO) to respond to a request for clarification and additional information.

179. In support of their submissions, the Government provided the Court with several examples of decisions to open a preliminary investigation or to discontinue proceedings, together with a list of all the cases that had been referred to naval prosecutors since 2019.

2. *The applicant*

180. The applicant referred to the evidence cited in her application and asked the Court to join to the merits the objections concerning her alleged lack of victim status and abuse of the right of application.

181. Regarding the objection for failure to exhaust domestic remedies, the applicant replied that she had lodged a criminal complaint, which had contained all the complaints she had subsequently raised before the Court. She pointed out that, according to the Court's case-law, where more than one potentially effective remedy was available an applicant was only required to have used one of them, and concluded that it had not been necessary for her to pursue another remedy before applying to the Court.

182. The applicant further submitted that, in any event, there had been no appropriate remedies for a breach of the *non-refoulement* principle. Emphasising that this was a fundamental principle, she complained that the national legal system lacked any remedy for a breach thereof at any stage prior to a foreign national's registration in Greek territory. She added that, for a migrant seeking to prevent his or her removal from a Contracting State because of an alleged risk of a breach of Articles 2 or 3 of the Convention in another State, a remedy could be effective only if it had suspensive effect. She argued that, in the present case, no such remedy had been available before the administrative or criminal courts, as she had not been registered by a competent authority, her detention had been arbitrary and her "pushback" had not been based on any written order. She submitted, moreover, that the speed with which the events had unfolded on 4 May 2019 – pointing out, in this connection, that her unlawful detention and "pushback" had occurred in the space of a few hours – and the particular circumstances of her case would in any event have deprived any judicial remedy of reasonable prospects of success. In particular, she argued that no administrative remedy had been available to her by which to prevent her removal, as no removal order had been issued against her.

183. As to the compensatory remedy provided for in section 105 of the Introductory Law to the Civil Code, the applicant submitted that an infringement of the *non-refoulement* principle was not a breach of domestic

law which could be relied on for such a claim, except where the removal conditions themselves amounted to inhuman or degrading treatment, or to torture, and thus to acts punishable under criminal law. Moreover, even then a breach of Article 3, or even Article 2, could not be remedied solely by an award of compensation. The applicant pointed out, furthermore, that a claim under section 105 did not have suspensive effect and was therefore unable to prevent a removal that might put someone at risk of breaches of Articles 2 or 3 of the Convention.

184. Lastly, the applicant submitted that the other remedies referred to by the Government, namely complaining to the Ombudsman or to the National Transparency Authority, did not constitute legal remedies.

185. At the hearing, the applicant further alleged that N.O.'s first witness statement had not been duly examined by the competent prosecutor, arguing that this proved the ineffectiveness of the investigation in her case and in all other suspected cases of "pushback". In this regard, she added that the information submitted to the Court by the Government showed that the relevant cases had been discontinued or were still pending and therefore that none of them had been examined to date by a court.

B. The third-party intervener (Greek Helsinki Monitor)

186. The Greek Helsinki Monitor submitted that it had brought more than 200 "pushback" cases in the domestic criminal courts which had been or were being examined by the competent prosecutors, the Ombudsman or the National Transparency Authority. Hundreds of such cases had been reported, none of which had resulted in the opening of a criminal and/or disciplinary investigation of the authorities' own motion, such that all proceedings in respect of them had been launched as a result of complaints by victims or NGOs. The third party added that, regarding the complaints it had lodged itself, the prosecutors' main argument had been that it was not coastguard or police practice to carry out "pushbacks".

187. In support of its submissions, the third-party intervener provided a list of the cases in which it had lodged a complaint between 2018 and 2022 regarding "pushbacks" from the Evros region or the Greek islands, pointing out that most of those cases had been summarily discontinued. In so doing, the competent prosecutors had mostly relied on letters from the coastguard or the police, in other words, the very authorities accused of having been involved in the incidents in question. The third party submitted to the Court a DVD containing the complaints and discontinuance decisions to which it referred.

188. Explaining that prosecutors, judges and other investigators were reluctant to conduct impartial investigations, preferring instead to dismiss all complaints, the third party concluded that there was no effective remedy in

Greece for alleged breaches of Articles 2 and 3 of the Convention in connection with a “pushback”.

C. The Court’s assessment

189. The Court observes that the objection for failure to exhaust domestic remedies concerns the application as a whole, namely the complaints raised under Articles 3 and 13 of the Convention in relation to the alleged “pushback” as such (summary return without prior processing); Articles 2 and 3 (risk to life and ill-treatment before and during the “pushback” in question); and, lastly, Article 5 (unlawful detention). It is of the view that the various complaints are closely connected and all stem, in sum, from the allegation of a “pushback”. The Court considers, however, that the effectiveness of the two remedies referred to by the Government must be assessed in the light of the nature of each complaint taken separately.

190. The Court would point out that, in the present case, the applicant lodged a criminal complaint the content of which was largely congruent with the complaints she submitted to the Court and that this criminal complaint was dismissed for lack of evidence. It would further point out that, in the event of there being a number of domestic remedies which an individual can pursue at the domestic level, that person is entitled to choose, for the purpose of fulfilling the requirement of exhaustion of domestic remedies, a remedy which addresses his or her essential grievance. Accordingly, when one remedy has been pursued, the use of another remedy which has essentially the same objective is not required (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 177, 29 June 2019). The Court is thus of the view that the Government’s objection for failure to exhaust domestic remedies cannot be upheld.

191. Regardless, the Court finds that in the present case there was no effective remedy in respect of the applicant’s various complaints.

192. Firstly, as to the complaint concerning the alleged “pushback” as such, which can be regarded as the applicant’s main complaint, the Court reiterates that where Article 3 is in issue, effectiveness requires that the person concerned should have access to a remedy with automatic suspensive effect (see, for example, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 293, ECHR 2011, and *Akkad v. Turkey*, no. 1557/19, § 81, 21 June 2022). In the present case, it observes that the compensatory or criminal-law remedies referred to by the Government were not available to the applicant until after her alleged “pushback”. In the light of the applicant’s complaint that she was subjected to a “pushback” precisely before gaining any access to the asylum procedure, the remedies in question cannot be regarded as effective in respect of the alleged violation (see, *mutatis mutandis*, concerning a complaint under Article 4 of Protocol No. 4, *A.A. and Others v. North Macedonia*, nos. 55798/16 and 4 others, § 70, 5 April 2022). In particular,

remedies which do not have suspensive effect and therefore could not have prevented the return of the individual concerned to a country where he or she was allegedly exposed to a real risk of treatment contrary to Article 3 of the Convention cannot be regarded as meeting the requirement of effectiveness (see *M.K. and Others v. Poland*, cited above, §§ 142-48, with further references).

193. The Court therefore dismisses the Government’s objection for failure to exhaust domestic remedies inasmuch as it concerns the complaint under Articles 3 and 13 of the Convention alleging a “pushback”.

194. Secondly, the Court takes the view that compensatory or criminal-law remedies are in principle accessible to persons alleging that they were victims of breaches of Articles 2 or 3 of the Convention committed during a “pushback” (risk to life and ill-treatment before and during the alleged “pushback”), and of Article 5 of the Convention (unlawful detention with a view to removal). However, it considers the effectiveness of these remedies to be highly doubtful in practice, for the following reasons.

195. As to the remedy provided for in section 105 of the Introductory Law to the Civil Code, the Court reiterates that in cases of wilful ill-treatment, or even of a threat to life, the breach of those Convention provisions cannot be remedied only by an award of compensation to the victim. This is because “if the authorities could confine their reaction to incidents of wilful ill-treatment by State agents to the mere payment of compensation, while not doing enough to prosecute and punish those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity” (see, *mutatis mutandis*, *Gäfgen v. Germany* [GC], no. 22978/05, § 119, ECHR 2010, in the context of Article 3).

196. Furthermore, the Court would emphasise that, with the exception of the claim brought by some of the applicants in *Safi and Others* (cited above), the actions brought before the administrative courts under section 105 in the cases cited by the Government, some of which are currently pending, are irrelevant to the present case, since they do not concern breaches of Articles 2 or 3 of the Convention allegedly committed during a “pushback”. It further notes that in *Safi and Others* (cited above, § 155), when examining the complaint under the substantive limb of Article 2 of the Convention, it held that, owing to the lack of an effective investigation, it was not in a position to make findings concerning a number of specific details of the impugned operation, and in particular to determine whether there had been an attempted “pushback” of the applicants towards the Turkish coast.

197. The Court also takes note of the Government’s argument that the administrative courts examining a claim under section 105 are not bound by the factual findings of a public prosecutor who has dismissed a criminal complaint in connection with the alleged “pushback”. However, it finds it difficult to see how an administrative court hearing a case concerning breaches of Articles 2 and 3 of the Convention allegedly committed during a

“pushback” could reach a different conclusion from that of the competent prosecutor, in particular as to whether the alleged “pushback” had even taken place. It further notes that, in its judgment no. A128/2024 (see paragraph 176 above) in the proceedings brought by a number of the applicants in *Safi and Others* (cited above), the Rhodes Administrative Court of First Instance relied on the judgment in which the Court had found violations of Articles 2 and 3 of the Convention by the respondent State. Even though, as indicated above, that case did not concern a “pushback” as such, the judgment in question expressly stated that the Court’s finding of a violation of the Convention constituted *res judicata vis-à-vis* the national court ruling on the lawfulness or unlawfulness of the relevant act or omission in the context of a claim under section 105. Accordingly, in the Court’s view, absent such a finding by it or a conviction of State agents involved in the commission of a criminal offence in connection with a “pushback”, it is highly unlikely that an administrative court would be able to conduct a thorough examination of the evidence in order, first, to establish that a “pushback” had taken place and, accordingly, that Convention violations had been committed in connection therewith, and, second, to award compensation as a result.

198. As to the criminal proceedings referred to by the Government, in line with the above considerations, the Court notes that it is very clear from the case file, and in particular from the information submitted by the Government themselves, that all the cases in which the competent prosecutors had opened criminal investigations were discontinued for lack of evidence that a “pushback” had even taken place. Thus, none of those cases progressed beyond the preliminary investigation stage and no proceedings were therefore brought against those responsible. In the light of the very large number of complaints lodged and of the competent national and international institutions’ reports documenting recurrent shortcomings that have undermined the effectiveness and diligence of criminal investigations into the alleged “pushbacks” (see paragraphs 139-142 and 154 above), the Court takes the view that this situation raises serious doubts as to the effectiveness of the criminal-law remedy recommended by the Government. It is therefore of the view that, as domestic practice currently stands, a criminal complaint is not a remedy to be pursued in respect of breaches of Articles 2, 3 or 5 of the Convention allegedly committed during a “pushback”.

199. Moreover, the Court notes that the criminal complaint lodged by the applicant in the present case was dismissed by the public prosecutor at the Thrace Court of Appeal in decision no. 41/2020, in which he noted, in particular, that “the Greek police ... never [effected] such ‘pushbacks’ to Türkiye” (see paragraph 48 above). Most importantly, it observes that the complaint was dismissed following a manifestly inadequate preliminary investigation. It is clear from the case file that the authorities did not take any steps to enable the applicant’s brother to give evidence, despite requests to that effect, or to ascertain the authenticity of the audiovisual material

submitted to them. Furthermore, they did not take the trouble to examine seriously the other material in the case file, such as the documents from the Turkish judicial authorities or the testimony of the witnesses called by the applicant, including, in particular, that given by the lawyer N.O. The Court therefore concludes that the applicant's case is but one example among others of the ineffectiveness of the criminal-law remedy in respect of "pushback" allegations.

200. The Court further considers that, in the circumstances of the present case, the lodging of a complaint with the Greek Ombudsman was not an effective remedy within the meaning of its case-law, especially in view of the fact that this institution's recommendations are not binding on the domestic authorities (see *Zabelos and Others v. Greece*, no. 1167/15, § 92, 17 May 2018). The same applies to complaints lodged with the National Transparency Authority.

201. In conclusion, the Court takes the view that, as national practice currently stands, the domestic remedies put forward by the Government are ineffective in respect of complaints alleging a "pushback" as such, together with other Convention violations committed in that connection. It therefore dismisses their objection for failure to exhaust domestic remedies.

202. As to the Government's objections regarding the applicant's victim status and alleged abuse of the right of application, the Court observes that they are based on the respondent State's denial of the applicant's factual allegations as a whole. It follows that they are closely connected to the establishment of the facts and, consequently, to the merits of the case. The Court therefore finds that these objections should be joined to the merits of the complaints raised in the application (see, *mutatis mutandis*, *D v. Bulgaria*, cited above, § 93).

203. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

II. ASSESSMENT OF THE EVIDENCE AND ESTABLISHMENT OF THE FACTS

A. The Court's approach in the present case

1. *Specific context of the case*

204. The Court notes at the outset that the present case has a very specific context and differs from other recent cases involving alleged "pushbacks" in the light of Article 3 of the Convention and/or the collective expulsion of aliens under Article 4 of Protocol No. 4. Moreover, it raises extremely sensitive questions with regard to the establishment of the facts and the burden of proof, in particular.

205. Firstly, the Court notes that in a number of other cases before it, the respondent Governments had not denied that the applicants had been present on their territory or at their border but merely that they had expressly requested international protection and conveyed their fears of being subjected to treatment contrary to Article 3 if returned. In most of these cases, the State’s argument was rejected and the Court found a violation of that Article, in certain cases, in conjunction with Article 13 of the Convention (see *M.K. and Others v. Poland*, cited above, §§ 22, 35, 64 and 174-86; *D.A. and Others v. Poland*, no. 51246/17, §§ 60-70, 8 July 2021; *A.I. and Others v. Poland*, no. 39028/17, §§ 37-46, 30 June 2022; *A.B. and Others v. Poland*, no. 42907/17, §§ 34-43, 20 June 2022; *M.A. and Others v. Lithuania*, no. 59793/17, §§ 105-15, 11 December 2018; *D. v. Bulgaria*, cited above, §§ 120-37; and *Akkad*, cited above, §§ 70-76 and 82-92).

206. Secondly, in *N.D. and N.T. v. Spain* ([GC], nos. 8675/15 and 8697/15, §§ 80-88, 13 February 2020) and *A.A. and Others v. North Macedonia* (nos. 55798/16 and 4 others, §§ 52-56, 5 April 2022), in which the applicants had complained of a violation of Article 4 of Protocol No. 4, the respondent Governments had challenged only, if unsuccessfully, the applicants’ presence among the groups that had been subjected to collective expulsion, not the collective expulsion itself. Requiring prima facie evidence, the Court presumed that the applicants’ account of the facts was truthful, having regard not only to its coherence and the evidence they had provided, but also to the fact that the respondent Governments had not denied that the impugned expulsions had taken place.

207. In the present case, however, the Government firmly denied that there had been any involvement of agents of the respondent State in the events alleged and rejected the applicant’s version of events in its entirety as vague, inconsistent and unsubstantiated. In particular, they disputed the applicant’s very presence on Greek territory and, in consequence, her “pushback” to Türkiye on the dates alleged.

2. Principles governing the standard and burden of proof

208. The Court takes the view that, to the extent that, in the case before it, the Government denied both the alleged involvement of agents of the respondent State in the events in question and the applicant’s presence on Greek soil and “pushback” to Türkiye on the dates alleged, the principles laid down in cases concerning secret detention, in particular, would seem appropriate in the present case (see, for example, *al-Hawsawi v. Lithuania*, no. 6383/17, §§ 135-37, 16 January 2024, and *Abu Zubaydah v. Lithuania*, no. 46454/11, §§ 480-83, 31 May 2018, with numerous further references). These principles may be summarised as follows.

209. In assessing evidence, the Court adopts the standard of proof “beyond reasonable doubt”. However, it has never been its purpose to borrow the approach of the national legal systems which use that standard. The

Court's role is not to rule on criminal guilt or civil liability but on Contracting States' responsibility under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention – conditions its approach to the issues of evidence and proof. In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact.

210. Furthermore, while it is for the applicant to make a *prima facie* case and adduce appropriate evidence, if the respondent Government, in their response to the allegations in issue, fail to disclose crucial documents in order to enable the Court to establish the facts or to provide a satisfactory and convincing explanation of how the events in question occurred, strong inferences may be drawn.

211. Moreover, the Court would point out that Convention proceedings do not in all cases lend themselves to a strict application of the principle *affirmanti incumbit probatio*. It reiterates its case-law under Articles 2 and 3 of the Convention to the effect that where the events in issue lie within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. The burden of proof in such a case may be regarded as resting on the authorities to provide a satisfactory and convincing explanation. In the absence of such explanation the Court can draw inferences which may be unfavourable for the respondent Government.

212. In cases where there are differing accounts of the facts, the Court adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. The level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see *B.G. and Others v. France*, no. 63141/13, § 83, 10 September 2020).

213. As master of its own procedure and its own rules, the Court has complete freedom in assessing not only the admissibility and relevance but also the probative value of each item of evidence before it. It is not bound, under the Convention or under the general principles applicable to international tribunals, by strict rules of evidence (see *Carter v. Russia*, no. 20914/07, § 97, 21 September 2021, with further references).

214. The Court observes, moreover, that similar standards have been relied on in a number of cases of alleged “pushback”. In particular, the Court

has held that in the context of expulsion or removal, it must be borne in mind that the absence of identification and personalised treatment by the authorities of the respondent State, which has contributed to the difficulty experienced by the applicants in adducing evidence of their involvement in the events in issue, is at the very core of the applicants' complaint. Thus, it is essential to ascertain whether the applicant has furnished prima facie evidence in support of his or her version of events. Where the applicant has provided a detailed, specific and consistent account of the events in issue, the Court will in principle consider such prima facie evidence to have been furnished, in which case the burden of proof should shift to the Government (see *N.D. and N.T. v. Spain*, cited above, § 85; *A.A. and Others v. North Macedonia*, cited above, § 54; *M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, § 268, 18 November 2021; and *B.Y. v. Greece*, no. 60990/14, § 79, 26 January 2023).

215. The Court notes that in a number of cases involving the “pushback” and/or collective expulsion of aliens it has taken into account, among other evidence, witness statements taken by national and international human rights institutions which corroborated the applicant's account (see *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, §§ 132-33, ECHR 2012; *M.K. and Others v. Poland*, cited above, § 174; *D.A. and Others v. Poland*, cited above, § 60; *A.I. and Others v. Poland*, cited above, § 38; *A.B. and Others v. Poland*, cited above, § 35; and *M.A. and Others v. Lithuania*, cited above, § 112). For example, in *M.H. and Others v. Croatia* (cited above), the Court observed that the applicants' description of the impugned events “[had been] specific and consistent throughout the whole period following the death...” but that, “[a]t the same time, there [was] no physical evidence to confirm that the applicants [had] entered Croatia ... and [had been] returned to the border with Serbia by the Croatian police”. However, the Court also acknowledged a large number of reports by civil-society organisations, national human rights structures and international organisations concerning summary returns of persons clandestinely entering Croatia to the borders with Serbia and Bosnia and Herzegovina in establishing that there was prima facie evidence in favour of the applicants' version of events (§§ 268-74).

216. The Court would emphasise that in the present case the respondent Government completely denied not only the applicant's account of her own “pushback” but also that there was a systematic practice of “pushbacks” from Greece to Türkiye.

217. The Court observes that an applicant who claims to have been the victim of a “pushback” can in principle meet the standard of proof without needing to allege that his or her “pushback” was part of a systematic or generalised practice of “pushbacks” or having to provide proof of such a practice. Nevertheless, it is of the view that the opposite approach is warranted in the present case, for two reasons. Firstly, the applicant submitted that such a systematic practice had been in place at the time of her own

“pushback”. Secondly, determining whether or not such a practice was in place will help the Court to take account of the general context in the Evros region at the relevant time, as appropriate. The Court will therefore seek to ascertain whether a systematic practice of “pushbacks” from Greece to Türkiye was in place, in particular from the Evros region, before turning to the assessment of the evidence adduced by the applicant in support of her account. In this connection, it would emphasise that, even assuming it is established, a systematic practice of “pushbacks” does not exempt an applicant from the duty to furnish *prima facie* evidence in support of his or her allegations. In such cases, the applicant must establish that the alleged “pushback” was linked to this practice by supporting his or her account – which must moreover be detailed, specific and consistent, that is to say, free of contradictions – with concrete, comprehensive and concordant evidence on the basis of which the burden of proof will shift to the respondent Government.

218. Furthermore, the Court would emphasise that in cases where the respondent Government has denied the facts alleged in their entirety, applicants can find themselves in an inherently difficult evidential position and unable to prove the truth of their version of events. At the same time, it does not lose sight of the fact that, absent any detailed evidence, any foreign national could claim to be the victim of a Convention violation by tailoring his or her account to fit the practice described in reports from national and international institutions.

219. As to what might constitute *prima facie* evidence and cause the burden of proof to shift to the respondent Government, the Court considers first of all that particular importance should be attached to the material in the case file. Admittedly, documents provided by a respondent State disproving the very presence of the individual concerned on its territory, unless corroborated by other evidence, do not in themselves suffice to refute that individual’s allegations as to his or her “pushback” at a particular point in time. However, other documents from the respondent State may be taken into account, especially if they were not prepared specifically for the case before the Court. Documents prepared by other Council of Europe member States, in particular the State to which the applicant alleges that he or she was returned (in the present case, Türkiye), should *a fortiori* be taken into consideration.

220. Secondly, the Court notes that, to date, the issue of digital evidence (photographs, video footage, screenshots, etc.) supplied for the purpose of establishing a “pushback” has not been subjected to particular scrutiny by the Court. In some of the cases cited above, albeit in a somewhat different context, the respondent Governments did not challenge the authenticity of the audiovisual material provided by the applicants. For example, in *M.A. and Others v. Lithuania* (cited above, § 110), the Government acknowledged the authenticity of the photograph that had been taken of the applicants’ asylum

application next to their train tickets from Minsk to Vilnius. Similarly, in other cases involving collective expulsions, the respondent Governments merely denied that the applicants could be seen in the videos they had submitted in order to prove that they had been part of the group that had allegedly been subjected to collective expulsion, not the authenticity of the videos themselves (see *N.D. and N.T. v. Spain*, cited above, § 86, and *A.A. and Others v. North Macedonia*, cited above, §§ 52 and 55). In this connection, the Court would draw attention to the fact that the issue of the authenticity and probative value of audiovisual material may prove to be crucial, in particular where any other evidence directly or indirectly supporting the applicant's account is lacking.

221. Lastly, the Court may also take account of any other evidence adduced by the applicants or included in the case file, such as the testimony of other individuals, including testimony obtained in the context of domestic (criminal) proceedings.

B. Application of this approach to the present case

1. Whether there was a systematic practice of “pushbacks” from Greece to Türkiye in the Evros region

(a) The parties' submissions

222. To corroborate her account, the applicant referred to a large number of reports and documents from national and international institutions purportedly confirming that there was a systematic practice of “pushbacks” from Greece to Türkiye, including from the Evros region.

223. The Government denied that there was any such practice.

(b) The third-party interveners

224. The Greek Ombudsman, referring mainly to the findings of the interim report published in April 2021 and to the 2021 and 2022 special reports which it had prepared in its capacity as National Mechanism for the Investigation of Arbitrary Incidents (see paragraphs 138-142 above), concluded its submissions as follows (original English):

- “– [t]he overall numbers of reported incidents since 2017 to the present day,
- the complaints submitted to the Ombudsman alleging unlawful pushbacks,
- the persistent reluctance on the part of the disciplinary bodies of the enforcement agencies to investigate such incidents,
- the recurrent shortcomings impeding the effectiveness and diligence of the few investigations launched,
- the finding of own investigations of the Greek Ombudsman in his capacity of the National Mechanism,

suggest that unlawful pushbacks at land and sea borders present features that do not correspond or correlate to an isolated phenomenon.”

225. In its submissions, the NHRC provided a summary of the findings of the 2022 annual report of the Recording Mechanism of Incidents of Informal Forced Returns (IFRs), published in December 2023 (see paragraphs 143-144 above). It stated, in particular (original English):

“[a]ll testimonies recorded by the Recording Mechanism present a repeatable pattern, through which the organised nature and the operational characteristics of the IFRs become conspicuous.”

(c) The Court’s assessment

226. The Court notes that there are a great many official reports documenting a systematic practice whereby foreign nationals unlawfully entering Greek territory to seek asylum were sent back to Türkiye from the Evros region and the Greek islands by the Greek authorities (see paragraphs 138-145, 152-154 and 157-168 above). Drawing from the complaints and testimony of individuals alleging that they were victims of “pushbacks” at Greece’s land and sea borders, the reports in question point to a fairly consistent *modus operandi* by the Greek authorities in this regard. Moreover, this is the finding not only of domestic human rights institutions, such as the Greek Ombudsman – which has observed, in the alleged incidents it has investigated, the repetition of a consistent practice over time – and the NHRC, but also of international organisations such as the Council of Europe and the United Nations, whose Special Rapporteur on the human rights of migrants has stated that, in Greece, “pushbacks” at land and sea borders have become “de facto general policy”.

227. On this point, the Court takes the view that in order to determine whether there is a systematic practice of “pushbacks”, special importance must above all be attached to reports from competent national institutions the independence of which is beyond doubt, including any written observations they may have submitted as third-party interveners, like the Greek Ombudsman and the NHRC in the present case. It notes, in particular, that the Greek Ombudsman is an independent authority within the meaning of the Greek Constitution and that the NHRC, which has been accredited by the Global Alliance of National Human Rights Institutions since 2001, provides the guarantees of independence laid down by the United Nations (1993 Paris Principles). However, the Court would call attention to the fact that the National Transparency Authority’s investigation report no. OM 3/4 (see paragraphs 146-151 above), which concerns separate “pushback” allegations from those at issue in the present case, rules out any involvement of State agents in this type of conduct. The Court observes that the applicant questioned that entity’s independence in general and the methodology and findings of investigation report no. OM 3/4 in particular, relying on two

documents produced before the Court, the content of which has not been rebutted by the Government.

228. Consequently, investigation report no. OM 3/4 is not such as to cast doubt on the credibility of the findings set out in the reports and observations of the Greek Ombudsman and the Greek NHRC documenting a systematic practice of “pushbacks” from Greece to Türkiye at the relevant time, including in the Evros region.

229. In the light of the above considerations, and having regard to the large number, variety and concordance of the relevant sources, the Court finds that there are strong indications to suggest that, at the material time, there was a systematic practice of “pushbacks” of foreign nationals by the Greek authorities from the Evros region to Türkiye. It finds that the Government have not succeeded in countering these indications by providing a satisfactory and convincing alternative explanation.

2. Evidence provided by the applicant and other material before the Court

230. The Court notes at the outset that the applicant’s account, which appears to be detailed, specific and consistent, is largely in line with the *modus operandi* documented in the competent national and international institutions’ reports on “pushbacks” from the Evros region to Türkiye. It would point out, however, that this fact does not suffice to prove the applicant’s alleged “pushback” in the present case. In order to determine that the alleged “pushback” actually took place, it is also necessary not only to show that the applicant entered Greece and then ended up in Türkiye on the relevant dates but moreover to establish a connection between those two facts. That being said, the Court does not lose sight of the fact that even where it is established that a person entered Greece on a given date and ended up in Türkiye the following day, to demonstrate what took place in the interim, in particular that person’s removal to Türkiye by agents of the respondent State, is an extremely difficult task, given the inherently secretive and unofficial nature of the conduct in question.

231. Therefore, the Court will now assess the evidence adduced by the applicant in support of her account and examine, in particular, whether she has made a *prima facie* case capable of shifting the burden of proof to the Government. If so, it will then be necessary to ascertain whether the Government have provided a satisfactory and convincing explanation capable of rebutting the applicant’s allegations.

(a) Documentary evidence

232. As a preliminary consideration, the Court observes that, in the Government’s view, the official documents showed that the applicant had never been arrested and registered as an asylum-seeker by the Greek

authorities. It finds, however, that this fact does not in itself cast doubt on the credibility of the applicant's account. In this regard, it would point out that the applicant's non-registration by the authorities of the respondent State is at the very core of her allegations that she was subjected to a "pushback" during the night of 4 to 5 May 2019. In this connection, the Court is of the view that the Government's submission at the hearing that the applicant could have entered Greece on the dates alleged, as on other occasions, without having been arrested and registered by the Greek authorities – a submission, moreover, which is not supported by any evidence – is immaterial to the present case. The Court therefore considers it appropriate to examine the other documentary evidence before it.

233. First of all, as regards the identity of the three Turkish nationals arrested on 4 May 2019, the Court is prepared to accept the Government's argument that the three individuals concerned were not the applicant and her companions (see paragraphs 86-87 above). The confidential document relied on by the Government mentions the identity of the three arrested individuals and the fact that their arrest was not carried out by the border guard station to which the applicant referred, namely the Orestiada border guard station in Neo Cheimonio, but by the Didymoteicho station. At the same time, the applicant submitted to the Court a document indicating that the Orestiada Police Directorate operated four border guard stations dealing with unlawful migration from Türkiye to Greece, namely the stations in Orestiada (Neo Cheimonio), Didymoteicho, Kyprinos and Metaxades. The document further mentions that three Turkish nationals were arrested on 4 May 2019, without, however, specifying the arresting border guard station.

234. That being said, the Court does not consider it established beyond reasonable doubt that the three nationals whose arrest on that date was thus recorded were the applicant and her two companions. To find otherwise would in any event contradict the applicant's own claim that her arrest and detention had never been recorded by the Greek authorities. In this regard, the content of the document relied on by the applicant has been convincingly rebutted by the document submitted by the Government.

235. Secondly, the Court would emphasise that the decision of the İzmir Criminal Court of 6 May 2019 is of tremendous importance for the purpose of establishing the facts in the present case. That decision, a Greek translation of which was submitted to the Court by the applicant, states, in particular, as follows:

"Despite our department's decision dated 12 March 2019, which contained a prohibition on leaving [the national territory] ... the accused disregarded that decision by fleeing abroad and, subsequently, a 'pushback' (removal) was carried out, in relation to which the relevant documents, as read out at the hearing, were provided to us by the Uzunköprü district prosecutor on 5 May 2019."

236. The decision also contains a statement by the applicant admitting that she left the country by crossing the Evros River in order to apply for asylum in Greece, where she was “pushed back” to Türkiye.

237. For his part, as is clear from the decision in question, the public prosecutor sought the applicant’s imprisonment because, despite the condition attached to her release, namely a ban on leaving the country, “on 5 May 2019, A.R.E. [had] unlawfully attempted to flee abroad to Greece”, finding, consequently, “that she [had] breached the court’s restrictive condition by fleeing abroad”.

238. Moreover, in the operative part of the decision, the İzmir Criminal Court ordered A.R.E.’s imprisonment for the following reasons:

“despite the fact that decision no. 2019/133 had imposed a prohibition on her leaving the country ... she breached the condition [imposed] by the court and fled abroad, [where] a ‘pushback’ (removal) was effected, and she was arrested in Prohibited Military Zone A, whereby it was discovered that the condition in question had been breached.”

239. As to the Government’s submission that the İzmir Criminal Court’s decision of 6 May 2019 was based on the applicant’s confession to her unlawful entry to Greece “on 5 May 2019”, the Court notes that the applicant did not specify the date of the event in question in her statement. Regardless, it is difficult to see why the applicant herself would have falsely confessed to entering Greece – before being “pushed back” – if she had been arrested in the context of an unsuccessful attempt to leave Türkiye.

240. In any event, it is certainly true that the Uzunköprü district prosecutor’s report of 5 May 2019, the authenticity of which the Government did not dispute, states that the applicant was arrested at 8.10 a.m. on 5 May 2019 after entering a prohibited Turkish military zone while attempting to enter Greek territory. However, this does not cast significant doubt on the fact – which is clear from the decision of 6 May 2019 – that the applicant actually fled to Greece on 4 May 2019 and, after her “pushback”, was arrested by the Turkish authorities on 5 May 2019. That is why, in that decision, the Turkish court found that the applicant had breached the prohibition on leaving the country that had been imposed on her.

241. The Court therefore takes the view that, notwithstanding the small number of uncertainties that emerge from a reading of the judgment in question alongside the Uzunköprü district prosecutor’s report, in particular as to whether the applicant merely attempted to cross into Greece or whether she actually succeeded in crossing the border, there can be no doubt that the decision in question appears *prima facie* to support the applicant’s version of events as regards her “pushback”. The Court is therefore of the view that this document amounts to *prima facie* evidence capable of substantiating the applicant’s account. The Court further notes that the Government, with whom lay the burden of proof, have not succeeded in rebutting the applicant’s allegations based on that decision.

242. Furthermore, in their statements to the officers at the Meriç district police station (see documents appended to the application), to which they had been taken after their arrest, the applicant and her two compatriots admitted that they had entered Greece, been in contact with the lawyer N.O. and been arrested, held and subsequently “pushed back” to Türkiye by the Greek authorities. The Government did not challenge the content of those documents and even referred to them to argue that it was not clear from these statements who had informed the police of the applicant’s presence in Nea Vyssa town square (see paragraph 75 above).

(b) Audiovisual material

243. The Court observes that the application submitted to it was not accompanied by the audiovisual material relied on by the applicant, as she provided only a print copy of the content of the relevant files. It would point out that the Government submitted in their observations that they had not received the material in question, while at the same time disputing its probative value and authenticity. At the Government’s request, the Court then invited the applicant to submit the audiovisual material in question. The applicant sent the Court a USB drive containing the files mentioned in her application and the Court sent the Government a CD-ROM containing that material.

244. The audiovisual material in question contained the following eight appendices:

- (1) Appendix 1: thirty screenshots of messages exchanged between the applicant and her brother via WhatsApp;
- (2) Appendix 2: four videos showing the applicant and one video recording of a news report from Euronews;
- (3) Appendix 3: messages exchanged between the lawyer N.O. and the applicant’s brother, including a photograph of the applicant sitting on a bench with the other two Turkish nationals in the central square of Nea Vyssa.
- (4) Appendix 4: the messages sent by the applicant to several lawyers to seek legal assistance, including a communication in which she conveyed her position in real time;
- (5) Appendix 5: emails sent by the applicant and her brother to UNHCR-Greece;
- (6) Appendix 6: photographs taken by the lawyer N.O. in Nea Vyssa and outside the border guard station in Neo Cheimonio after the applicant’s arrest;
- (7) Appendix 7: four photographs featuring the applicant, including a photograph (also included in Appendix 1 to prove the date and time when it was sent) of her and her two companions in front of the Nea Vyssa KEP, taken prior to her arrest;
- (8) Appendix 8: several links to press articles on the alleged pushbacks, including a video posted on Twitter at 11.02 p.m. on 4 May 2019.

245. The Court notes that the audiovisual material produced by the applicant also includes a ninth appendix containing the photos and videos referred to in the application, some of which were posted on Twitter by the Turkish journalist Z.K. Furthermore, at the Court's request, the applicant provided an English translation of all the WhatsApp messages exchanged in Turkish that were shown in the various screenshots submitted to the Court.

246. The Court attaches particular importance to the Government's acknowledgment that the applicant did indeed submit the relevant audiovisual material to the competent prosecutors. This acknowledgement contradicts their initial submission to the effect that the material in question was never brought to the attention of the Greek authorities, which were therefore unable to verify its authenticity.

247. The Court would also point out that the Government disputed the probative value and authenticity of the material in question on the grounds that the files transmitted were not originals and therefore did not contain any metadata establishing when and where they had been created.

248. The Court notes that the document from the Orestiada public prosecutor to which the Government referred states that it could be inferred from the audiovisual material submitted neither that the woman appearing in the videos was on Greek territory nor that she was the applicant; nor could a number of the photos be proven to have been taken by the lawyer N.O. It notes, however, that according to the same document the authenticity of the material in question was not examined by the competent authorities. Furthermore, the Government themselves admitted that the audiovisual material in issue did not consist of the original evidence but of copies taken or recorded by mobile phones that had not been identified or examined. However, they have not explained why the competent authorities did not take any steps to examine the phones in question. In this connection, the Court, like the applicant, would observe that, when giving evidence, the two witnesses who testified before the Orestiada investigation judge during the preliminary investigation, namely N.O. and Z.K., were in possession of their mobile phones, which contained all the relevant messages and the original audiovisual material. Consequently, those items could perfectly well have been technically examined by the competent authorities.

249. Moreover, the Court takes note of the Government's submission that in 2019 no CCTV cameras were installed in Nea Vyssa town square, the neighbouring shops and cafés, the Nea Vyssa KEP or the surrounding area. It observes, however, that the Government have not provided any information as to whether the Orestiada border guard station in Neo Cheimonio was equipped with video-surveillance cameras on the date alleged.

250. Without having to examine piece by piece the very large quantity of audiovisual material, the Court notes that, on the whole, the various files included in the case file are consistent with the applicant's account.

251. Firstly, the Court observes that the date alleged, namely 4 May 2019, appears on most of the screenshots of the WhatsApp messages between the applicant and her brother and those between her brother and the lawyer N.O. or K.Y., one of the applicant's two Turkish companions. It further notes that the content of those messages largely supports the applicant's account.

252. Secondly, the Court notes that in their replies to a question put to them at the hearing, the parties agreed that the 23-second video of the applicant which the Turkish journalist Z.K. had posted on Twitter contained metadata. It can be seen from these data that the video was created on 4 May 2019 at 11.02 p.m. In this connection, like the applicant, the Court notes that the WhatsApp messages contained in the screenshots attached to the application show that the video was initially sent by the applicant to her brother at 1.54 p.m. on 4 May 2019, before being also sent to the journalist Z.K. The Court observes, as the Government have moreover acknowledged, that the video was filmed during daylight hours. It takes the view that, in the light of the rest of the audiovisual material submitted by the applicant, it is highly likely that it was shot on 4 May 2019.

253. Thirdly, the Court considers that the applicant's allegation that the mobile phones which she and her two companions were carrying with them were confiscated and destroyed appears credible in the light of the information contained in several reports from national and international institutions (see paragraphs 139, 152-154 and 168 above). It further notes that the applicant's presence in Greece on the date alleged, prior to her arrest, is also clearly established, in particular, by the photograph of her taken in front of the Nea Vyssa KEP and sent to her brother by K.Y., and by the photograph of the applicant and the two other Turkish nationals in Nea Vyssa town square taken by the lawyer N.O. In this connection, the Court finds that the Government have not proved that the applicant travelled to Greece on any other occasion and, in particular, that the photos in question were taken prior to 4 May 2019.

254. Fourthly, the Court notes that, according to a document from the Forensic Division of the Hellenic Police submitted by the Government, there were similarities – both as to hair colour and as to the colours and patterns of the sweatshirts worn – between the person featured in the various videos and the person depicted in the photo taken in Nea Vyssa town square.

255. In any event, the Court considers it unnecessary to settle, in the abstract, the question as to which method is most appropriate (namely, the use of metadata or other, alternative methods) in order to establish the reliability and probative value of the audiovisual material in issue. It would point out, however, that in the present case the authorities could have examined the original files – complete with metadata – on the mobile phones of the applicant's brother (while he was still in Greece), the lawyer N.O. and the journalist Z.K., but, as noted above, did not take any steps to that effect.

256. Moreover, the Court is mindful of the fact that the Government did not contest the findings of the Forensic Architecture group’s investigation report dated 2 May 2024 on the applicant’s alleged “pushback” (see paragraphs 92 and 114 above). It notes that on the basis of a detailed spatiotemporal analysis, the 36-page report concludes that all the audiovisual material is authentic and verifiable and that it is possible to establish the truthfulness of the applicant’s account of her presence in Greece and her subsequent pushback on the dates alleged.

257. In the light of the foregoing considerations, the Court finds that the audiovisual material submitted before it by the applicant clearly corroborates her account.

(c) Witness testimony

258. The Court observes that the lawyer N.O.’s testimony in his first statement do not corroborate the allegations made by the applicant in her application and in her criminal complaint that the police refused to allow him to get into the same vehicle as her but allowed him to follow them in his own car. Furthermore, on the applicant’s account, N.O. took a picture of the outside of the border guard station in Neo Cheimonio and sent it to her brother, informing him that she was there. In his second statement, however, N.O. testified that he could not remember whether he had taken that photo.

259. The Court further notes that there are inconsistencies between the testimony of the Turkish journalist Z.K. and that of N.O., in particular as to whether N.O. followed the police van. Z.K. claimed that N.O. had informed him that he was following the police van in his own car. However, in his second statement, N.O. testified that he had not intended to follow the van and that he had overtaken it at a given point, whereas this had not been specified in his first statement.

260. The Court also notes certain discrepancies between the lawyer N.O.’s two statements. For example, in his initial testimony, N.O. explained that he had received A.’s last message via an internet tracking application at around 4.15 p.m. indicating that she was at the border guard station in Neo Cheimonio, where he had gone a few minutes later and asked whether the three Turkish nationals were there or had been arrested. This was not clearly reflected in his second statement. However, the WhatsApp messages between N.O. and the applicant’s brother would seem to suggest that the lawyer was at the Neo Cheimonio border guard station at 4.22 p.m. – at which time he sent his position to his interlocutor – and that he returned there that evening with the applicant’s brother, who enquired about his sister and was told she was not there.

261. The Court cannot speculate as to the reasons for the discrepancies between N.O.’s two statements and between these statements and a number of the allegations made in the application. It does not lose sight of the fact, however, that the second statement was taken four years after the criminal

case had closed and specifically with a view to the hearing before it. Furthermore, it takes note of the applicant's submission that, as recorded by the authorities, these statements consisted only of the answers given, not the questions asked. In any event, it is clear from both of N.O.'s statements that, although he did not personally meet the applicant and her two companions, he was an eyewitness to their arrest. The Court would emphasise that, when questioned on this point at the hearing, the Government, while emphasising the differences between N.O.'s two statements and pointing out that it had been for the competent prosecutor to determine whether the proceedings should be re-opened, did not specifically rebut this key consideration. Moreover, although it was mentioned only in his second statement, it is clear from the case file that it was N.O. who took the photograph of the three Turkish nationals in the central square of Nea Vyssa and sent it to the applicant's brother. Moreover, the file further shows that the applicant was at the border guard station in Neo Cheimonio on the date alleged, since her position was shared in real time with the lawyer N.O., who then sent the location pin to the applicant's brother, as confirmed in both his witness statements.

262. The Court also notes that the Government did not challenge the version of events related by the applicant's brother to the UNHCR Representation in Greece on 15 May, which was transcribed in a UNHCR document (see paragraph 78 above) and largely corroborates his sister's account.

263. In any event, the Court is of the view that it is not necessary to settle the question as to why the lawyer N.O. did not get out of his car to meet the applicant and assist her in her endeavours, as he himself testified in his second statement. While it takes into consideration the allegations of a hostile environment in Greece with regard to defenders of the rights of refugees, it cannot conclude that, in the present case N.O., feared that he would be harassed by the authorities for having assisted the applicant.

264. In the light of the above, the Court finds that both of N.O.'s witness statements, which converge on a number of essential points and are substantiated by the audiovisual material before it, corroborate the applicant's account of her presence in Greece and arrest by the Greek authorities.

C. Conclusion

265. The Court finds that the applicant has provided several elements that can be held to constitute – including when taken separately – prima facie evidence in support of her version of events, and that it was for the Greek authorities to prove that she had not entered Greece and had not been subjected to a “pushback” to Türkiye on the dates alleged. The Government, however, have failed to put forward any arguments or other elements capable of refuting the prima facie evidence provided by the applicant.

266. The Court notes that it has no direct evidence of the applicant's "pushback" as such. It finds, however, that such evidence would have been impossible to provide in the specific circumstances of the case, in particular because the applicant was no longer in possession of her mobile phone at the time of her "pushback", which, moreover, took place at night. In this connection, the Court attaches particular importance to the fact that it is sufficiently established that the applicant was present in Greece and above all that she was last seen in the custody of Greek officials on the square in Nea Vyssa in the late afternoon/early evening of 4 May 2019, before turning up again in the early hours of the following morning on the Turkish side of the Evros River, where she was arrested. Referring, furthermore, to the judgment of the İzmir Criminal Court, the Court is of the view that it can be inferred from these two undeniable facts that she was subjected to a "pushback" in the interim. The Government, for their part, have given no convincing alternative explanation as to what might have taken place in the period between the two facts in question.

267. The Court therefore finds that it is sufficiently established that the applicant entered Greece on 4 May 2019 and was arrested and held there before being "pushed back" to Türkiye, where she was arrested the following day. It concludes that the applicant's allegations are sufficiently convincing and established beyond reasonable doubt.

III. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION AS A RESULT OF THE APPLICANT'S "PUSHBACK" TO TÜRKIYE

268. The applicant alleged that the Greek authorities, whom she had informed of her intention to apply for asylum, had sent her back to Türkiye, thereby putting her at risk of inhuman and degrading treatment. She further submitted that she had not had access to an effective domestic remedy by which to challenge her removal. She relied on Articles 3 and 13 of the Convention, which provide:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

269. The applicant submitted that she expressly requested asylum on at least three occasions during her time in Greece, namely: (1) when the police had arrested her outside the Nea Vyssa KEP; (2) upon her arrival at the border guard station in Neo Cheimonio; and (3) when she had got out of the lorry near the Evros River. She complained that, despite their responsibility under Article 3 of the Convention, the Greek authorities had sent her back to Türkiye without assessing the risks and without obtaining individual assurances as to the manner in which she would be treated upon her return. She submitted in this connection that there had been substantial grounds to believe that the detention conditions of Turkish nationals (and more specifically of suspected members of the “FETÖ/PDY” movement) were not compatible with the guarantees set out in Article 3 of the Convention, arguing that there were numerous reports of unfair and arbitrary trials, as well as human rights violations in Turkish prisons, especially in the wake of the attempted *coup d'état* in Türkiye in 2016. Nevertheless, the Greek authorities had not taken those substantial grounds into consideration. The applicant alleged that she had thus been immediately imprisoned after her forcible removal from Greece to Türkiye and complained of her current living conditions, which she claimed were incompatible with Article 3, explaining that she was marginalised in society and unemployed.

270. In addition, the applicant submitted that she had not had access to an effective domestic remedy in Greece by which to challenge her return to Türkiye. She alleged that the Greek authorities had not registered her asylum application and had therefore not had the opportunity to explain that she would be at risk of rights violations in Türkiye if returned or to set out the reasons for which she should not be returned to that country. She added that she had spent only a few hours in Greece, that she had been held by the police and that her removal had been expedited and unofficial. She argued that, in these circumstances, she had lacked any practical opportunity to initiate proceedings challenging her return and complained of a breach of Article 13 of the Convention.

271. The Government disputed all the applicant's allegations.

B. The third-party interveners

1. *The European Association of Lawyers for Democracy and World Human Rights, the European Democratic Lawyers, the Association of Lawyers for Freedom and the Progressive Lawyers' Association*

272. In their joint observations, the third-party interveners explained that systematic breaches of the right to a fair trial had been observed in Türkiye since the attempted coup of 2016 and that political opponents were severely persecuted there. They submitted that Turkish nationals facing criminal

charges who were pushed back to Türkiye were at serious risk of arrest, detention and torture.

2. *The Border Violence Monitoring Network*

273. The third-party intervener submitted that it had recorded testimony from several victims of pushbacks in the Evros region since 2019. More specifically, it referred to 163 witness statements, involving some 10,800 individuals.

274. It also pointed out that the *modus operandi* for summary returns included a well-established practice of confiscating personal belongings, in particular recording devices such as telephones, which made it difficult for victims to provide direct evidence in support of their accounts of “pushbacks” and other alleged violations committed against them. It submitted that in roughly 90% of the witness statements taken in 2020 regarding “pushbacks” one or more types of torture or ill-treatment had been reported.

275. In the third-party intervener’s view, the question this raised was whether Greece knew or ought to have known that there was a real risk of treatment contrary to Article 3 of the Convention when carrying out “pushbacks” to Türkiye across the Evros River. In 48% of the cases recorded in 2019 and 2020 the individuals subjected to a “pushback” had clearly stated that they wished to apply for asylum, but in other cases this had not been possible because of the abuse and threats they had endured.

276. Furthermore, the third-party intervener observed that recent reports showed that certain groups were oppressed in Türkiye, such as activists, journalists or asylum-seekers, including Turkish nationals who had been subjected to “pushbacks”. Greece had an obligation to assess the foreseeable consequences of returning someone to Türkiye when that person claimed to belong to a group that was the subject of persecution in that country. By refusing to examine such asylum applications, Greece was in breach of Articles 3 and 13 of the Convention and, in such circumstances, only remedies with suspensive effect were effective.

277. Lastly, the intervener submitted that “pushbacks” in the Evros region systematically involved arbitrary detention at the hands of the Greek authorities, in breach of Article 5 of the Convention. In 52 of the 77 witness statements collected in 2020 concerning the Evros region, detention had been resorted to for the sole purpose of summary return to Türkiye.

3. *The AIRE Centre, the Dutch Council for Refugees and the European Council on Refugees and Exiles*

278. In their joint observations, the third-party interveners stated that there was evidence that Turkish nationals who had been accused of supporting the 2016 *coup d’état* or of having ties to the Gülenist movement faced numerous difficulties when imprisoned in Türkiye and were subjected

to torture and ill-treatment there. In particular, the situation was very difficult for women in Turkish prisons, especially in Gebze Prison. They further submitted that in order to comply with the principle of *non-refoulement*, the authorities of the transferring State had to conduct a genuine, effective and rigorous investigation into the condition of asylum-seekers and refugees in the destination country. Summary returns of migrants without an official procedure, individual assessment or other due process guarantees were in breach of the principle of *non-refoulement*.

C. The Court's assessment

279. The Court notes at the outset that it is not for it to rule directly on the manner in which the applicant was treated in Türkiye, as that State is not a party to the proceedings. It would stress, however, that based on several reports, there is no doubt that suspected political dissidents have faced genuine risks since the 2016 coup attempt in Türkiye (see, in particular, *D v. Bulgaria*, cited above, §§ 5-11, and especially 78-86, concerning the return to Türkiye of a journalist who had alleged that he had been convicted for membership of the “FETÖ/PDY”). Those risks are also mentioned in the submissions of some of the third-party interveners.

280. The Court considers that in the circumstances of the present case its task is to determine, in the light of the facts of the case and the applicant's complaints of shortcomings in the methods used by the Greek authorities, whether those authorities took into account, of their own motion and in an appropriate manner, the general information available on Türkiye and whether the applicant was given sufficient opportunity to apply for international protection in Greece and to explain her personal situation (see *D v. Bulgaria*, cited above, § 129).

281. The relevant principles of the case-law under Articles 3 and 13 of the Convention have been summarised in *M.K. and Others v. Poland* (cited above, §§ 166-73), *D v. Bulgaria* (cited above, §§ 114-16) and *Akkad* (cited above, §§ 77-81).

282. The Court reiterates that it has established that the applicant entered Greece from the Evros River and was sent back to Türkiye. It finds that the respondent State's conduct in the present case, which consisted in subjecting an individual to a “pushback” without affording her access to the asylum procedure, was manifestly in breach of both domestic and international law.

283. The Court finds that the applicant was sent back to her country of origin, Türkiye, which she had fled, without prior examination of the risks she faced in the light of Article 3 of the Convention or, therefore, of her request for international protection (see *D v. Bulgaria*, cited above, § 135 and *M.A. and Others v. Lithuania*, cited above, § 114). It notes that even though the applicant had expressed fears of being subjected to ill-treatment if returned to Türkiye, the Greek authorities ignored her request for

international protection, in breach of Articles 3 and 13 of the Convention (see *D v. Bulgaria*, cited above, § 137).

284. The foregoing considerations are sufficient for the Court to dismiss the Government's objections based on the applicant's alleged lack of victim status and abuse of the right of application and to find that there has been a violation of Article 3 and of Article 13, taken in conjunction with Article 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

285. The applicant complained that, prior to her "pushback" to Türkiye, she had been unlawfully deprived of her liberty, had not been informed of the reasons for her arrest in a language she could understand and had not had an effective remedy available to her by which to challenge the lawfulness of her detention. She relied on Article 5 §§ 1, 2 and 4 of the Convention and on Article 13. The Court considers it appropriate to examine the complaint solely in the light of Article 5 of the Convention. That provision reads as follows:

Article 5

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful..."

286. The applicant submitted that she had been subjected to an informal detention measure which was not based on any decision and that, in consequence, she could not be regarded as having been kept in detention in accordance with a procedure prescribed by law. She explained that the authorities had never registered her arrest, whether in Nea Vyssa or at the border guard station in Neo Cheimonio. In her view, the sole purpose of her detention had been to facilitate her unlawful summary return. Furthermore, the applicant explained that because her detention had not been registered with any authority in Greece, there had been no legal avenue by which to challenge it, even in theory. Moreover, pointing out that her detention had been incommunicado, brief and aimed solely at facilitating her summary removal from Greece, she submitted that, in these circumstances, there had been no remedy available to her by which to challenge the lawfulness of that measure.

287. The Government denied all the applicant's allegations, stressing that there were no official documents whatsoever relating to her purported arrest or detention.

288. The Court reiterates that it has found that the applicant was subjected to a "pushback" from Greece to Türkiye during the night of 4 to 5 May 2019. It is of the view that applicant's complaints under Article 5 of the Convention are closely linked to her complaint alleging a "pushback". The Court notes that the relevant reports (see paragraphs 144, 152-154, 164 and 168 above) and a number of third-party submissions (see paragraph 277 above) show that the arrest and subsequent detention of irregular migrants – a kind of temporary forced disappearance – formed part of the documented *modus operandi* of the practice of "pushbacks". In this connection, it notes that it is clear from the case file that the applicant was arrested by the Greek authorities and subsequently transferred to the border guard station in Neo Cheimonio on the date alleged, since her position was shared in real time with the lawyer, N.O., who forwarded the location pin to her brother. The Court notes that the Government, with whom the burden of proof lay, have failed to rebut the applicant's allegations. In particular, it reiterates that they have not provided any information as to whether the Orestiada border guard station in Neo Cheimonio was equipped with video-surveillance cameras on the date alleged. Accordingly, the Court has no reason to doubt that the applicant was the victim of detention with a view to her "pushback".

289. The Court therefore finds that the Government's objections as to the applicant's alleged lack of victim status and abuse of the right of application in respect of her complaints under Article 5 of the Convention must be dismissed.

290. The Court takes the view that, inasmuch as the applicant's informal detention was a preliminary to her "pushback", it lacked any legal basis for the purposes of Article 5 § 1 of the Convention and infringed the rights guaranteed by paragraphs 2 and 4 of that Article.

291. There has accordingly been a violation of these provisions in the present case.

V. ALLEGED VIOLATIONS OF ARTICLES 2, 3 AND 13 OF THE CONVENTION (RISK TO LIFE AND ILL-TREATMENT DURING "PUSHBACK")

292. The Court observes that the applicant did not rely on Article 2 of the Convention in her application but that it was decided that a question should be put to the parties in that regard when notice of the application was given.

293. The applicant alleged that, as effected, her removal to Türkiye had put her life at risk and had also amounted to inhuman and degrading treatment. She further submitted that no effective remedy had been available

to her in respect of those complaints. She relied on Articles 2, 3 and 13 of the Convention. The relevant parts of Article 2 read as follows:

Article 2

“1. Everyone’s right to life shall be protected by law ...”

294. The applicant submitted, in particular, that any return effected by rubber dinghy, without safety equipment, across the Evros River posed a genuine risk to life and that the river in question was, from that point of view, a deadly route. She further submitted that the manner in which her return had been effected had amounted to inhuman and degrading treatment, a fact corroborated by the relevant reports on “pushbacks” across the Evros River. She alleged that she had been deprived of all her personal belongings, including her mobile phone, money and identity card, and had been wilfully subjected to verbal threats to dissuade her from attempting to return. She added that she had been forced to remove her shoes and walk barefoot to the river in the middle of the night, on a sprained ankle, which had made the injury worse. The applicant submitted that she had been in an extremely vulnerable situation, arguing that she had realised that she had been deprived of any means of subsistence and of any right to prevent her return to Türkiye.

295. The Government denied the applicant’s submissions.

296. The Court reiterates that it has found that the applicant was unlawfully held prior to her “pushback” from Greece to Türkiye during the night of 4 to 5 May 2019, in breach of Articles 3, 13 and 5 of the Convention. In its view, the applicant’s complaints under Articles 2 and 3 of the Convention are closely linked to her complaint alleging a “pushback”. The Court notes in this connection that the relevant documents show that “pushbacks” from Greece to Türkiye, including in the Evros region, are effected in conditions likely to endanger human life, since some victims are left adrift in rubber dinghies. Furthermore, these “pushbacks” adhere to a fairly consistent *modus operandi* involving, in particular, confiscation of the victims’ personal belongings and, in some cases, threats, humiliation and acts of physical abuse (see paragraphs 142, 144, 152-154, 157, 158, 159 and 274 above). It follows that the applicant’s factual allegations as to the breach of Articles 2 and 3 of the Convention during the “pushback” complained of, which are largely consistent with the *modus operandi* described in the relevant reports from national and international institutions, appear plausible at first sight.

297. The Court therefore takes the view that the Government’s objections with regard to the applicant’s victim status and abuse of the right of application must be dismissed.

298. However, while granting that it would seem extremely difficult to prove such breaches in the present case, the Court considers that, unlike the

applicant's "pushback", they cannot be established beyond reasonable doubt for want of clear and concordant evidence.

299. In particular, in the Court's view, the applicant has not furnished prima facie evidence in support of her allegation that her life was actually at risk during her removal to Türkiye across the Evros River.

300. The Court does not deny, moreover, that the applicant may have experienced some distress owing to the manner in which her "pushback" was effected. It nevertheless finds that, even assuming they were established, the "pushback" methods employed did not attain the requisite threshold of severity for the applicant's treatment to be regarded as inhuman or degrading within the meaning of Article 3 of the Convention.

301. Accordingly, there has been no violation of Articles 2 and 3 of the Convention.

302. The Court reiterates that the existence of an actual breach of another provision is not a prerequisite for the application of Article 13 (see *Sergey Denisov v. Russia*, no. 21566/13, § 88, 8 October 2015, with further references). In the present case, even though the Court has ultimately found no violation of Articles 2 and 3 of the Convention, it takes the view that the applicant's complaints in this connection cannot be regarded as prima facie unarguable. It thus finds that the applicant has raised arguable complaints for the purposes of Article 13 of the Convention.

303. The Court further reiterates that the "effectiveness" of a "remedy" within the meaning of Article 13 of the Convention does not depend on the certainty of a favourable outcome for the applicant. However, the remedy required by that Article must be "effective" in practice as well as in law in the sense either of preventing the alleged violation or remedying the impugned state of affairs, or of providing adequate redress for any violation that has already occurred (see *Kudła v. Poland* [GC], no. 30210/96, §§ 157-58, ECHR 2000-XI).

304. In the present case, in examining the Government's objection for failure to exhaust domestic remedies, the Court has found that there was no effective remedy available under the domestic legal system, including in respect of breaches of Articles 2 and 3 of the Convention allegedly committed during a "pushback" (see paragraph 201 above). In addition, it observed that the investigation conducted by the domestic authorities following the applicant's criminal complaint fell far short of satisfying the effectiveness requirements established by the Convention (see paragraph 199 above). Accordingly, it finds that there has been a violation of Article 13, taken in conjunction with Articles 2 and 3 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

305. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

306. The Court notes that the applicant did not make any claims for just satisfaction in her submissions in reply to those of the Government.

307. In a letter dated 24 October 2022 the applicant asked the Court to allow her to submit claims under this head, explaining that, for technical reasons, she had been unable to upload the relevant electronic file to eComms (the system of electronic communication between applicants’ representatives and the Court). Relying on the Court’s case-law, she submitted that exceptional circumstances – in particular the absolute and fundamental nature of the right or freedom infringed – justified the award of a sum under this head in the present case, despite the belated nature of the claim. The applicant therefore claimed 30,000 euros (EUR) in respect of non-pecuniary damage sustained as a result of the alleged violation of Articles 3, 13 and 5 of the Convention.

308. In a letter dated 21 November 2022 the Government asked the Court to dismiss the applicant’s claim, arguing, *inter alia*, that it was out of time in the light of Rule 60 of the Rules of Court and, moreover, that there were no exceptional circumstances to justify its acceptance in the present case.

309. The Court refers to the relevant principles in this regard, as summarised in *Nagmetov v. Russia* ([GC], no. 35589/08, §§ 64-92, 30 March 2017). It notes that where an applicant has failed to comply with the requirements arising under Rule 60 of the Rules of Court, compelling considerations may justify making an award, such as the particular gravity and impact of the violation, the overall context of the case and the unavailability or partial unavailability of adequate reparation at domestic level (see *Nagmetov*, cited above, §§ 80-82).

310. The Court reiterates that it has found a violation of Articles 3 and 13 of the Convention on account of the applicant’s “pushback” to Türkiye, a violation of Article 5 of the Convention on account of her unlawful detention with a view to that “pushback” and a violation of Article 13 of the Convention, taken in conjunction with Articles 2 and 3. In view of the seriousness of the violations found and the complete unavailability of reparation at domestic level (see paragraphs 195-197 above), it finds that there are exceptional circumstances in the present case which call for just satisfaction to be awarded in respect of non-pecuniary damage despite the belated nature of the claim lodged under this head. Ruling on an equitable basis, the Court therefore awards the applicant EUR 20,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

311. As the applicant did not submit any claim in respect of the costs and expenses incurred in the proceedings before the domestic courts or the Court, the Court considers that there is no reason to award her any sum under this head.

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to join to the merits the Government's objections as to the applicant's lack of victim status and abuse of the right of application, and to *dismiss* them;
2. *Declares*, unanimously, the application admissible;
3. *Holds*, unanimously, that there has been a violation of Article 3 and of Article 13, taken in conjunction with Article 3 of the Convention on account of the applicant's "pushback" to Türkiye;
4. *Holds*, unanimously, that there has been a violation of Article 5 §§ 1, 2 and 4 of the Convention on account of the applicant's detention prior to her "pushback" to Türkiye;
5. *Holds*, by six votes to one, that there has been no violation of Articles 2 and 3 of the Convention (risk to life and ill-treatment during "pushback");
6. *Holds*, unanimously, that there has been a violation of Article 13 of the Convention, taken in conjunction with Articles 2 and 3 of the Convention (risk to life and ill-treatment during "pushback");
7. *Holds*, unanimously,
 - a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
8. *Dismisses*, by six votes to one, the remainder of the applicant's claim for just satisfaction.

A.R.E. v. GREECE JUDGMENT

Done in French, and notified in writing on 7 January 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Peeter Roosma
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the statement of dissent of Judge Serghides is annexed to this judgment.

STATEMENT OF PARTIAL DISSENT
BY JUDGE SERGHIDES

As is the right of any dissenting judge under Rule 74 § 2 of the Rules of Court, I simply wish to make a bare statement of dissent on points 5 and 8, respectively, of the operative part of the judgment.