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

THIRD SECTION

DECISION

Application no. 15067/21
G.R.J.
against Greece

The European Court of Human Rights (Third Section), sitting on 3 December 2024 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, decides as follows:

INTRODUCTION

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

PROCEDURE

2. The case originated in an application (no. 15067/21) 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 an Afghan national, Mr G.R.J. ("the applicant") on 3 March 2021.

3. The applicant was born in 2005 and currently lives in Germany. He was represented by Mr P.J. Schüller, lawyer, assisted by Ms S. Rafi, Ms N. Keady-Tabbal and Mr J-H. Seelow, lawyers. 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, and

Mr D. Kalogiros, Ms S. Trekli and Ms Z. Chatzipavlou, Advisers 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 filed written observations 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; the Greek Council for Refugees, jointly with the Hellenic League for Human Rights and Humanrights360; and, lastly, the European Center for Constitutional and Human Rights, jointly with PRO ASYL and Refugee Support Aegean.

6. On 14 November 2023 the Chamber decided to hold a hearing in the case.

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, the National Human Rights Commission and the Office of the United Nations High Commissioner for Refugees (UNHCR) 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*

Mr P.J. Schüller, Lawyer,
Mr S. Rafi,
Ms N. Keady-Tabbal,
Mr J. H. Seelow, Advisers.

The Court heard addresses by Mr P.J. Schüller, Ms N. Keady-Tabbal and Mr S. Rafi, for the applicant, and by Mr 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

A. The applicant's account

11. The applicant was a fifteen-year-old, unaccompanied Afghan minor at the material time. He submitted that, fearing persecution by the Taliban, he had left his country in 2018 and had secretly entered Iran, then Türkiye, with a view to reaching Europe and seeking asylum there.

12. He left the Turkish coast in the early hours of the morning on 8 September 2020 on board a rubber dinghy carrying roughly 18 migrants seeking asylum. After approximately two hours and twenty minutes they landed on the Greek island of Samos at around 6.20 a.m., in a remote wooded area, as shown in the photographs and videos provided by him. They contacted the non-governmental organisation (NGO) Aegean Boat Report ("ABR"), which in turn informed the Samos Port Authority of the group's arrival. Screenshots taken by ABR proved that the call in question had been made.

13. Since the other members of the group were families with children who were unable to move about on the steep and unstable terrain, the applicant and another minor, H., left them to seek assistance on foot. They reached a place near telecommunications masts, which they photographed in order to document their arrival in Greece. The applicant took a photograph of H. with the town of Vathy visible in the background and H. photographed him at the same spot. He subsequently lost this photograph of him when his phone was confiscated by the Greek authorities.

14. After taking the photographs, the applicant and H. walked to the town of Vathy, where the applicant, seeing tents, realised that this was the island's refugee camp (Samos Reception and Identification Centre – "the RIC"). They went to the camp, where they asked the residents for food and water and spent the night in a tent with a group of young Afghans. One of the Afghans said that he would call the officials responsible for registering refugees in the

camp so that the applicant could be registered as an asylum-seeker the following morning.

15. The next morning, on 9 September 2020, the applicant and H. joined the food queue, where the applicant saw two women and a man in United Nations (UN) uniforms. Immediately afterwards the applicant met a relative of H.'s, Z.H., who took them to the showers. At around 9 or 10 a.m. the applicant and H. were approached and given face masks by a person named N., who was the Afghan community representative in the camp. N. was accompanied by two Greek officials, who did not identify themselves but whom the applicant understood to be police officers responsible for registering asylum applications. The applicant and H. told N. that they wished to apply for asylum, to which N., relaying the information given by the officers, replied that, because of the Covid-19 pandemic, the police would place them in quarantine before bringing them back to the camp afterwards and that they could not be issued with an asylum-seeker's card or any other document because the asylum service was closed.

16. The Greek officials took the applicant and H. to an office inside the RIC, where they stayed for about an hour. The office resembled a police station and was equipped with television screens and cameras. The officials were wearing dark uniforms and had handcuffs and guns. They asked them what language they spoke and, when the applicant and H. replied "Dari", they questioned them in that language with the assistance of an interpreter over the telephone. During the conversation, the applicant clearly stated that he intended to apply for asylum and the officials claimed to be the persons responsible for registering asylum-seekers. At the officials' request, the applicant told them his age and nationality, provided them with details concerning his arrival in Greece, such as the number of people with whom he had landed on Samos, and stated that he did not know why the families that had been travelling with them had not come to the camp. The officials provided the applicant and H. with water and further informed them that they would provide them with food, but never did. The applicant submitted that the officials ought to have been aware his status as an unaccompanied minor and ought to have allowed him to apply for asylum. He further submitted that the officials had told them that they would be taken away to be confined for a few days, after which they would be released.

17. The two Greek officials that had been speaking with the applicant and H. then escorted them out of the office and, through an alternative exit, out of the camp, making sure that they were not seen leaving the camp. The applicant alleged that the police station in question, located inside the RIC, was identifiable in a satellite image of the RIC and appended a map to the application from which, in his view, it was clear that at least one alternative route out of the camp was accessible from the police station.

18. The officials then walked with the applicant and H. for about 10-15 minutes to a place where a grey vehicle awaited. Two other individuals, who

were unknown to the applicant, were waiting at the vehicle, along with a third individual on a motorcycle. With the motorcycle following, they were driven in the grey car to Vathy harbour, where a grey vessel which the applicant understood to be a coastguard ship was waiting. The officials took the applicant and H. aboard the ship, on which there were roughly five Greek officials in dark uniforms. The officials searched the applicant and confiscated his phone and money. They then pushed him forcefully, handcuffed him to H. and ordered him to put his head down and keep still. During these events, they slapped his face. The applicant recalled very large waves while at sea.

19. The coastguard ship was headed towards Türkiye when it stopped at sea. One of the officials inflated a rubber raft while another removed their handcuffs. The officials then forced the applicant and H. into the raft and sailed away, leaving them there. The raft, which was not equipped with a motor or any means of steering, drifted for around 35 minutes or more. The applicant recalled that the raft leaked. They were soaked as a result of the waves and the water in the raft and feared for their lives. The applicant recalled that they had despaired and feared for their lives. They managed to reach the Turkish coast by paddling with their hands.

20. The applicant and H. landed on a rocky shoreline and got out of the raft in order to rest. They had spent about 5-7 minutes on the shore when a Turkish Coastguard boat arrived and the crew of some three individuals instructed them to get back into the raft so they could be rescued, since the boat could not access the place where they had landed. The applicant and H. had to paddle with their hands once more in order to reach the Turkish Coastguard boat. As they approached, the coastguard officers threw them a line, which they caught and used to climb aboard. The applicant explained that the Turkish Coastguard officers had made a video recording of this moment.

21. When the applicant arrived at the Turkish Coastguard police station, the group of Afghans with whom he had travelled from Türkiye to Samos on 8 September 2020 were already there, having been “pushed back” separately by the Greek authorities on the same day they had landed on Samos. A member of that group had contacted the ABR NGO before and after their “pushback”, which was evident from the record of a WhatsApp exchange between that individual and ABR. Moreover, according to the applicant, the incident had been reported in detail in a log kept by the Turkish Coastguard.

22. The Turkish officials asked the applicant if he and H. knew these people and they replied that they did. The applicant was registered and fingerprinted. He remained at the police station for almost two and a half hours before being taken to the Aydın removal centre, where he spent nine days. There, he encountered other families who had also been “pushed back” by the Greek authorities after having their money and phones stolen.

23. The applicant was ultimately released. This left him destitute and, as his money had been stolen by the Greek authorities, he could not buy a train ticket. At the Aydın railway station, someone purchased tickets to İzmir for him and those accompanying him. For lack of money, the applicant was forced to sleep in a city park until he and H. were taken by a fellow Afghan to a place where they were given food and shelter.

24. At the time when his application was lodged, the applicant was in Istanbul, working in a factory.

B. Events following the lodging of the application

25. The following can be seen from the case file. The applicant was identified as a homeless unaccompanied minor in Thessaloniki on 26 November 2021. On 7 December 2021 the Thessaloniki Public Prosecutor with responsibility for Minors ordered that he be accommodated in a reception facility for unaccompanied minors in the Epirus region. The Ioannina Public Prosecutor appointed a lawyer to lodge an asylum application on the applicant's behalf. The application was registered on 3 January 2022 and the asylum interview took place on 13 October 2022. On 9 November 2022 the applicant was granted refugee status in Greece.

26. During the asylum interview, the applicant stated that he had left his country of origin (Afghanistan) in November 2018 and had arrived in Greece on 16 November 2021, in Thessaloniki. When asked how he had entered Greek territory, he replied: "On foot".

27. When asked through which countries he passed before arriving in Greece, he replied: "Iran and Türkiye".

28. When asked how long he had remained in those two countries, he replied: "In Iran, for about 10 to 12 months, and in Türkiye, for about a year and 11 months, almost two years".

29. When asked how long he had stayed in Türkiye before coming to Greece, he again replied: "Around two years".

30. When asked for what reasons he had left Türkiye, he replied as follows:

> "For the first year in Türkiye, I was [in contact] with [a] smuggler. During that period, the smuggler would try to send me to Greece by boat every month or two, but each time the coastguard would send us back (*ανάμεσα σε αυτό το χρονικό διάστημα ο διακινητής προσπαθούσε ανά μήνα ή δύο μήνες να με στείλει με βάρκα για να έρθω προς στην Ελλάδα αλλά κάθε φορά μας επιστρέφανε πίσω το λιμενικό*). Every time we came back [to Türkiye], the Turkish police would apprehend us and we would go to a camp where we would sometimes stay for two weeks to a month, and then we would be given a document, which was valid for 15 days, to the effect that we had to leave the country, and I would go back to the flat with that document and the smuggler would try to send me back here again."

31. When asked again why he had left Türkiye, he replied that he had been trying to avoid being returned to Afghanistan.

C. The parties' initial submissions

1. The Government

32. The Government alleged that there was no official document corroborating the applicant's submissions as to his presence on Greek territory during the period alleged. In particular, he had not been held at Samos police headquarters or registered at the Samos RIC on 8 or 9 September 2020. Furthermore, no migrant landings had been recorded on those dates in the maritime zone of the island of Samos.

33. The Government referred to two incidents that had been recorded in the log kept by the Joint Rescue Coordination Centre (*Ενιαίο Κέντρο Συντονισμού Έρευνας και Διάσωσης* – "the JRCC") as having occurred on 9 September 2020, specifying that they had taken place in Turkish territorial waters.

34. Regarding the first incident, they explained as follows. At 3.30 a.m. on 9 September 2020 Hellenic Coastguard vessel 604 alerted the JRCC that an unmanned dinghy (*ακυβέρνητη λέμβος*) carrying some 20 third-country nationals was adrift in a Turkish search and rescue (SAR) region to the east of the island of Samos. The precise geographical coordinates were also given. In accordance with the relevant international procedures, the JRCC immediately notified the competent Turkish SAR Centre to have it take charge of the situation. At 4.40 a.m., the JRCC was advised by vessel 604 that a Turkish patrol boat was in the vicinity of the dinghy in question. The Government submitted that the Turkish patrol boat had rescued the people on board between 4.45 a.m. and 5.30 a.m.

35. As to the second incident, they submitted as follows. At 2.35 p.m. on 9 September 2020 vessel 604 alerted the Samos Coastguard, which in turn informed the JRCC, that a rubber dinghy with two third-country nationals on board had been spotted in Turkish territorial waters. The geographical coordinates were again specified. The Government submitted that, as soon as the two occupants had spotted vessel 604, they had changed course and headed for the Turkish coast, adding that they had been picked up by the Turkish Coastguard at 2.55 p.m., in Turkish territorial waters.

36. In this connection, the Government clarified – assuming that the applicant had been involved in the second incident recorded in the log kept by the JRCC – that the rubber dinghy in question had departed from an unidentified place on the Turkish coast and not from anywhere on Greek territory. They inferred from this that the individuals in question had been attempting to leave the country unlawfully and that responsibility for stopping them had thus fallen to the Turkish authorities. Moreover, noting that the geographical coordinates provided in the incident report indicated that the dinghy had been within Turkish borders, they submitted that it had in any event been for the Turkish authorities to pick up or, if necessary, rescue its occupants.

37. Furthermore, in the Government's view, the applicant's allegations were completely vague, misleading, false and deceitful. In reply to the allegations of a practice of "pushbacks", they submitted that maritime border surveillance operations, in particular those that had been carried out jointly with the European Border and Coast Guard Agency (FRONTEX) since 2008 in the context of Operation Poseidon, were conducted in full compliance with national and international law, including with the fundamental principles of *non-refoulement*, non-discrimination and the protection of human life and dignity, and were so regardless of the migratory status of the persons crossing the border.

38. The Government further questioned the legitimacy of those allegations, arguing that they reproduced the same pattern, were based for the most part on a series of messages or pictures from mobile phones relayed by social media posts and were not supported by credible, well-founded evidence.

39. The Government explained 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 (see paragraphs 129-130 below).

40. The Government further argued that all the documents they had submitted showed that the applicant had not been arrested by the Greek authorities on the dates alleged. The events complained of had resulted from an unsuccessful attempt to enter Greek territory from Türkiye and the applicant's portrayal of them was entirely misleading and false.

41. In the Government's view, the acts complained of by the applicant as life-threatening and amounting to ill-treatment did not correspond to the operational procedures implemented by the Greek coastguard and border police, which consisted in rescuing persons in danger. In particular, they submitted that the Hellenic Coastguard saved lives at sea and intercepted vessels entering Greek territorial waters in full compliance with the principle of *non-refoulement*.

42. The Government submitted that the applicant had not provided any evidence in support of his allegations and criticised his attempt to establish a connection between them and an allegedly systematic use of these unlawful practices, a connection which had by no means been proved or verified. In the present case, the Court was asked to rule on a narrative which, in their view, was unsupported by any kind of evidence, merely hearsay that was reproduced following the same pattern, for the obvious purpose of creating an impression. Moreover, the narrative in question was vague, inconsistent – incoherent, even – and riddled with inaccuracies and generalities, omitting crucial data, such as the exact location of the events in question, the time

when they had taken place and any description of them or the persons involved in the journey from Türkiye.

43. More particularly, the Government strongly contested the legitimacy of the videos submitted by the applicant, arguing that they had not had access to them and had never received them. They further submitted that the photographs that had been submitted were unrelated to the applicant and could not be connected to the persons and places referred to. In the Government's view, photographs and videos taken by mobile devices were of dubious credibility and were usually edited. Those submitted by the applicant in the present case had not undergone an official special verification procedure as to their authenticity, the dates on which they had been taken or the places where they had been recorded, and therefore could not be regarded as reliable evidence. In the Government's view, the applicant was merely repeating a narrative which could be found in various documents concerning alleged "pushbacks" by the Greek authorities, without establishing any facts relating to him in particular or showing that he had been personally affected by an incident of this kind. Consequently, the applicant's claims were not corroborated by credible documentary, testimonial, digital or other evidence.

44. The Government further explained that the applicant had indeed entered Greece after the impugned events and had been arrested by the Greek authorities at that time; that he had undergone the prescribed reception procedures; that he had been accommodated in reception facilities in keeping with his status; that his application for international protection had been registered; and that the relevant procedures had been followed. They noted, moreover, that in his asylum interview the applicant had made no mention of the "pushback" to which, in the present application, he alleged he had been subjected, even though he had been free to do so. The Government thus submitted that the content of the interview cast doubt on the applicant's account.

45. As to the applicant's argument that he was in a "inherently vulnerable evidentiary position", the Government replied that his situation was not comparable to that of detention cases or other cases involving alleged violations of Articles 2 and 3 of the Convention in which it was not in dispute that the applicants were under the authority of the respondent State. On the contrary, the evidence they had provided clearly established that the applicant had never come under Greece's jurisdiction at any time during the events alleged.

46. In this connection, the Government reiterated that the applicant had practically "tailored" various passages taken from NGO reports to fit his narrative, which was thus vague and incoherent from beginning to end.

47. In reply to the third parties' submissions, the Government argued that preventing unauthorised border-crossings was undeniably the State's sovereign right and could not be framed as a "pushback" or confused with any such conduct. They added that the "pushback" allegations that had been

relayed by the media and NGOs in recent years were not supported by any credible, substantiated or verifiable evidence.

48. The Government also noted that the "proof" provided in the context of those allegations had come from the Turkish authorities, namely, the authorities of the country where the applicants had been located prior to their departure, and submitted that such "proof" could not be regarded as credible, coming from sources which, in their view, were neither objective nor reliable.

2. The applicant

49. The applicant submitted that the impugned "pushback" was the consequence of a systematic practice on the part of the Hellenic Coastguard. His case was not an isolated incident but was part of a well-documented pattern of abuses, as was evidenced by numerous reports of "pushbacks" from Greece's land and sea borders by the media, NGOs and international organisations such as the UN.

50. The applicant was of the view that asylum-seekers were in an inherently vulnerable evidential position, especially in "pushback" cases. He had submitted a detailed and thoroughly substantiated account of the facts in the present case, in which he had described both his arrival on Samos, Greece, and his arrest and his unlawful, unregistered detention by the authorities, and had explained that they had summarily removed him and abandoned him at sea on a motorless, inflatable raft, in life-threatening conditions. He submitted that this practice was well-documented and widely acknowledged as the *modus operandi* of the Hellenic Coastguard.

51. The applicant argued that the facts set out in the application were based on his detailed testimony and were corroborated by GPS coordinates and reliable photographic and video evidence, along with an expert opinion from the Forensic Architecture ("FA") research group (see paragraph 60 below). Moreover, the Government had been unable to debunk or refute the evidence and arguments he had provided.

52. The applicant further submitted that the Government's contention that there were no official documents proving his allegations strengthened rather than challenged the arguments he had raised in support of his complaints. He pointed out that, in addition to being coherent and credible, his allegations were also consistent with the practice described in reports by reputable international organisations. He added that the official documents submitted by the Government had come from the very authorities responsible for the personnel implicated in "pushbacks" in the Aegean Sea, including his own, and could not be considered reliable.

53. Regarding the two incidents referred to by the Government, the applicant explained that the first concerned a group of approximately 16 asylum-seekers who had travelled to Samos on 8 September 2020 in the same dinghy as he and H. and had been apprehended and removed on the same day they had arrived in Greece.

54. As to the second incident, which was recorded by the Greek authorities on 9 September 2020, the applicant disputed the Government's contention that the occupants of the boat – namely, the vessel carrying him, which had been a motorless raft of the kind widely used by the Greek Coastguard in similar "pushback" incidents – had voluntarily reversed course upon spotting vessel 604 and had headed towards the territorial waters of Türkiye, where they had been rescued by the Turkish Coastguard. In the applicant's view, by way of such allegations, the Government sought to imply that he and H. had left Türkiye in an attempt to enter Greece, thereby misrepresenting his "pushback" from Greek territory as an attempted unlawful entry.

55. Lastly, the applicant criticised what he alleged was a strategy of denial and concealment by the Greek Government in respect of allegations of systematic "pushbacks" in the Aegean Sea. In his view, the Government thereby sought to erase the reality of such systematic summary returns, wrongly categorising expulsions or "pushbacks" of asylum-seekers as "prevention of departure" and thus as routine and lawful border-control practices. In this connection, the incidents of 8 and 9 September 2020, as described in the log kept by the JRCC, followed a similar pattern.

D. The parties' replies to specific questions put to them in preparation for the hearing

56. 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.

57. The Court further notes that 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. In their view, such an assessment should focus on whether the information and the manner in which it had been gathered could be independently verified or tested. Moreover, referring to two documents from the Forensic Division of the Hellenic Police, the Government argued that no metadata were attached to the audiovisual material submitted by the applicant, with the exception of a photograph supposedly depicting the log kept by the Turkish Coastguard, which contained metadata indicating that it had been created at 10.38 p.m. on 27 September 2020. The Government argued, however, that the document in the photograph gave no indication as to the drafter or the drafting date and for that reason could not be presumed to be an extract from the Turkish Coastguard's log.

1. The identity of the two individuals spotted by the Hellenic Coastguard on 9 September 2020 on board an inflatable boat in Turkish waters

58. The applicant submitted that the two third-country nationals who had been "spotted" by the Hellenic Coastguard at 2.35 p.m. on 9 September 2020 on an inflatable boat in Turkish waters (see paragraph 35 above) had been him and his companion, H. He pointed out, in this regard, that the Turkish Coastguard had reported that at 2.40 p.m. they had rescued two irregular migrants who had been pushed back by the Hellenic Coastguard. The applicant reiterated that the Government had sought to misrepresent his removal from Greek territory as an attempted unlawful entry, implying that he had left the Turkish coast on 9 September 2020 in order to travel to Greece but had changed course after being spotted by the Hellenic Coastguard. His testimony was corroborated by video footage of him and his companion being picked up by the Turkish Coastguard from a motorless raft. Moreover, the respondent State's argument that the two individuals in question had set off from Türkiye on a motorless raft without paddles raised questions as to the credibility of their position.

59. The Government referred to a document from the Security and Policing Division of the Hellenic Coastguard and, explaining that it gave the exact coordinates of the incident recorded in the log, submitted that this incident had taken place on the borderline, within Turkish territorial waters. They reiterated that, at the sight of Hellenic Coastguard vessel 604, the two individuals on board the boat had reversed course and headed for the Turkish coast and had thus been rescued by a Turkish patrol boat at 2.55 p.m. The Government added that they had attached a naval map (in Appendix 23 of their replies) on which they had marked two points to illustrate their allegations: the first, very close to the borderline, indicated the inflatable boat's location when it had been spotted by Coastguard vessel 604 at 2.35 p.m. and the second, close to the Turkish coast, marked the spot where the boat and the people on board had been picked up by a Turkish rescue vessel at 2.55 p.m. The Government reiterated that the boat had set off from the Turkish coast and had been attempting to enter Greece when it had been spotted. The authorities had no information whatsoever about the people on board, however, and it was therefore impossible to know whether the applicant and H. were the two foreign nationals in question. Moreover, as to the photographs allegedly drawn from the Turkish Coastguard's archives, the Government referred to the findings of the Forensic Division of the Hellenic Police, according to which, on account of the very low quality of the files (low resolution, motion, distance, angle, partly masked faces), it could not be concluded that the two individuals resembled or were identifiable as the individuals depicted in the Turkish Coastguard's videos.

2. The expert opinion provided by Forensic Architecture ("FA") on the nature and context of the evidence submitted by the applicant

60. The FA research group drew up an expert opinion, on which the Government were asked to comment, on the nature and context of the evidence submitted by the applicant. The relevant parts of that opinion read as follows (original English):

> "Drift-backs from Samos between 8-9 September
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> The platform documents two verified cases of arrivals which resulted in drift-backs on the island of Samos for the dates 08-09 September 2020:
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> – A case of 16 asylum seekers, including children and a pregnant woman, who were found drifting on a life raft by the Turkish Coast Guard off the coast of Kuşadası, Aydın. They had arrived in the early hours of 08/09/2020 in a group of 18 on an inaccessible shore of Cape Praso, Samos island. From there, they were taken at gunpoint by officers onboard Hellenic Coast Guard vessels ΛΣ 604 and SAR 513. According to their testimonies, they were beaten and made to strip, had their possessions taken from them, and thrown into a life raft and left to drift back to Turkey. They were taken out of the sea by the Turkish Coast Guard at 03:41 on 09/09/2020.
>
> – A case of 2 asylum seekers who were found drifting on an inflatable boat with no engine by the Turkish Coast Guard near the coast of Kuşadası, Aydın. They had arrived in the early hours of 08/09/2020 in the same group of 18 on an inaccessible shore of Cape Praso, Samos Island, from where they walked to the refugee camp in Vathy town. There, they were apprehended and put in an unmarked vehicle and driven to the port, where they were put on a Lambro-type patrol boat of the Hellenic Coast Guard, taken out to sea, and left adrift. They were taken out of the sea by the Turkish Coast Guard at 14:40 on 09/09/2020.
>
> To verify these cases, we considered the following sources:
>
> – For both cases, images, videos and GPS locations shared by the asylum seekers with the NGO Aegean Boat Report were examined, verified and geolocated, confirming the groups landing on Cape Prasso and the surrounding wooded area. In the case of the group of two people, their presence in the hills overlooking Vathy town, as well as inside the RIC in Vathy is verified through a series of photographs (selfies) they took. In footage shared by the group of 16 who remained on Cape Prasso, Hellenic Coast Guard Vessel ΛΣ 604, can be seen observing the group from a distance. The witnesses describe a second vessel approaching, the description of which matches Search and Rescue vessel ΛΣ 513 of the Hellenic Coast Guard, stationed in Samos. The Turkish Coast Guard published images of the two groups in engineless rafts, taken during the two, separate operations they conducted to take the people out of the water. Comparing the clothing and facial features, the people in the rafts were positively identified as the same people who had arrived on Samos the previous day. While the group of 16 was rescued during nighttime, rendering a geolocation impossible, it was possible to confirm that the raft used is a model manufactured by the Greek yachting equipment manufacturer Lalizas. The photos taken during the rescue of the group of two were geolocated to the sea near the shores of Kuşadası, Aydın, in the Kuşadası National Park.
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> – The two incidents also appear in FRONTEX's JORA (Joint Operation Reporting Application) database, where the agency appears to have falsely logged them as 'preventions of entry'. Specifically, the JORA database contains:

– An entry for a ‘prevention of departure’ incident that took place on 09/09/2020, including a group of approximately 20 people traveling on a ‘inflatable/rubber boat/zodiac boat/dinghy’ type vessel.

– An entry for a ‘prevention of departure’ incident that took place on 09/09/2020, including a group of 2 people traveling on a ‘inflatable/rubber boat/zodiac boat/dinghy’ type vessel.”

61. The Government challenged FA’s findings on the following grounds.

62. Firstly, they noted that FA had stated that the boat in question had been spotted by the Turkish Coastguard off the coast of Kuşadası, in the Aydın region, at 2.40 p.m., whereas the Hellenic Coastguard had referred to a boat located near “Karakol Br.” “Poyraz T.” at 2.55 p.m., and they concluded that the event described by FA did not coincide with the incident recorded by the Hellenic Coastguard. In support of its allegation, the Government provided a naval map.

63. Secondly, the Government submitted that the expert opinion was based on open-source information and on two photographs supposedly taken by the applicant and H. from a hill overlooking Vathy, specifying, in this regard, that the photographs were posted on FA’s website as evidence of the applicant’s “pushback”.

64. In particular, the Government argued that the “findings” presented in the expert opinion in question were based on digital media the reliability of which could was not established and amounted to a “reconstruction” of the applicant’s allegations. They argued that the references used by FA were supported solely by information provided by stakeholders acting in the field of migration and were pooled together to produce a “visualisation” of the applicant’s alleged “pushback”. In the Government’s view, however, the analysis thus conducted seemed completely inconclusive and weak, as it was essentially based on a reproduction of the applicant’s testimony. Moreover, noting, for example, that no effort had been made to obtain information from the competent Greek authorities, the Government concluded that the expert opinion lacked impartiality and was far from being thorough, objective and reliable.

65. As to the reliability of the videos derived from open-source information, the Government explained that the National Transparency Authority had been called upon in similar cases to ascertain the authenticity and probative value of a video produced by one of FA’s partner organisations, Lighthouse Reports, and had concluded, after examination of the material in question by the Forensic Division of the Hellenic Police, that the video’s reliability could not be confirmed.

66. The Government added that it had asked the Forensic Division of the Hellenic Police to examine the photograph allegedly depicting the applicant in a place overlooking Vathy, since the expert opinion relied in part on this photograph and it was presented as evidence in the case file posted on FA’s website. They alleged that the Forensic Division’s report showed that the

person depicted in the photograph was not the applicant and that, in both photographs, the person in question appeared to be the applicant's companion, H.

67. In the Government's view, the above considerations raised serious doubts as to the credibility of FA's expert opinion, which could not be considered reliable.

3. The applicant's statements in his asylum interview

68. The Government argued that the applicant's description of the events in his asylum interview (see paragraphs 26-31 above) was a mere assertion which had been made in the context of a procedure through which he had been seeking to achieve a specific aim, namely, the acceptance of his asylum application. Furthermore, they explained that, under domestic law, civil servants were required to transfer to the competent prosecutor any information regarding possible criminal acts as might be disclosed in the performance of their duties, provided certain conditions were met. In the present case, the statements in question had been articulated in a very vague and general manner and had not yielded any credible evidence in respect of the events alleged. The officer conducting the applicant's interview had thus had no grounds to report that a potentially unlawful act might have taken place.

69. Moreover, as to the content of the applicant's statements, the Government submitted that it corresponded to a typical narrative furnished by third-country nationals attempting to cross the Turkish border and enter Greek territory. That narrative described nothing more than an interception by the Hellenic Coastguard. Furthermore, referring to the terms used by the applicant, they did not rule out that what he had described as being "sent back" referred to an event that had taken place before crossing Turkish territorial waters, since the presence of a Hellenic Coastguard vessel constituted sufficient means of preventing irregular entry to the country in such cases.

70. For his part, the applicant pointed out that the question put to the Government implied that every attempt he might have made to enter Greece prior to December 2021 had necessarily been unsuccessful. He explained that he had not stated in his asylum interview that he had unsuccessfully attempted to enter Greece by sea, but rather that he had successfully entered Greece by boat on 8 September 2020 and had been subsequently removed on 9 September 2020.

4. The means by which the applicant obtained the audiovisual material submitted to the Court, given that his mobile phone had allegedly been confiscated by the Greek authorities,

71. The applicant explained that the photographs and videos he had adduced as evidence of his arrival on the island of Samos with some 17 other individuals on 8 September 2020 had been taken by a different member of the group. This person had been one of the approximately 16 individuals who had been summarily removed from Samos in a separate "pushback" operation which had commenced on 8 September and had lasted until that group had been picked up by the Turkish Coastguard on the morning of 9 September. He added that the files (photographs, videos and GPS coordinates) had been sent in real time to the Norwegian NGO ABR on 8 September, as shown by the time stamps that could be seen in the screenshots of the WhatsApp chat between ABR and the sender, which ABR had later sent to his lawyer.

72. Moreover, the applicant submitted that the photograph from inside the camp in Vathy had been taken by Z.H., a relative of H.'s, and had also been sent to ABR, which had in turn sent it to his lawyer. In this connection, he added that this same photograph had subsequently also been provided directly to the lawyer by H.'s relative. As to the photographs taken on a hill overlooking Vathy, he explained that they had also been sent to H.'s relative, who had forwarded them to ABR, which had in turn supplied them to the lawyer.

E. The parties' submissions at the hearing

1. The Government

73. The Government reiterated that there were no metadata attached to the audiovisual material submitted to the Court by the applicant, in particular the photographs and video footage, and that this material was therefore unreliable and had no probative value. In their view, metadata were absolutely necessary in order to establish when and where the photos had been taken and the videos recorded. Furthermore, the open-source information provided by the applicant, such as references to social media or to internet blogs and press cuttings, also lacked any probative value, since it did not derive from direct sources.

74. The Government further observed that the expert opinion by Lighthouse Repots which the applicant had submitted to the Court concerned the reliability of audiovisual material lacking metadata in general. Thus, the authors had not examined the material produced specifically by the applicant in the present case and the Government were therefore of the view that their argument as to that material's lack of probative value was by no means called into question by the expert opinion, since it did not concern the audiovisual material provided in this particular case.

75. As to the consistency and credibility of the applicant's account, the Government noted that in both the application and FA's expert opinion on the alleged incident it was stated that the applicant and H. had arrived on Samos on 8 September 2020 and had each taken a photograph of the other on a hill overlooking Vathy to prove their presence on Greek territory. The Government further noted that, according to FA's expert opinion, the two photographs constituted direct proof of the applicant's presence on Samos. However, relying on an expert assessment by the Forensic Division of the Hellenic Police, the Government submitted that none of the individuals depicted in these photographs was the applicant.

76. Furthermore, as to the applicant's alleged presence in the RIC in Vathy, the Government submitted that the written statement from N. which the applicant had submitted to the Court (see paragraph 102 below) contradicted the applicant's version of events as set out in his application. In support of their claim, the Government explained, in particular, as follows: In his statement, N. testified that he had met the applicant and H. alone, whereas it was stated in the application that their conversations had taken place in the presence of police officers. N. further explained that the applicant and H. had not been authorised to enter the secure area in front of the police station in the camp and that he had therefore gone in alone and talked with police officers before the applicant and H. had entered the police station themselves. In the station, in N.'s submission, it had been N. himself – not, as stated in the application, a remote interpreter over the telephone – who had acted as interpreter between the two boys and the police officers and had told the officers the boys' names and ages. Moreover, nowhere in his statement did N. mention that the applicant had stated that he wished to apply for international protection, as was indicated in the application. Lastly, N. claimed to have accompanied the applicant, H. and the officers out of the camp police station to a car parked in front, which was inconsistent with the claim in the application that the applicant and H. had been taken out of the building through a different door leading out of the camp so that they would not be seen.

77. The Government also submitted to the Court the National Transparency Authority's confidential report no. 205/23 of 30 April 2024 on the applicant's case, which detailed other inconsistences between the applicant's allegations and the evidence submitted concerning the facts of the case. After reviewing the five existing accounts of the alleged incident (namely, the applicant's own version of events as related in the application, that of the UNHCR, that of M.N.A., that of Médecins Sans Frontières (MSF) and, lastly, that of ABR), this document of over 60 pages stated that, on account of the discrepancies identified between these versions and the inspection and audit unit's inability to locate the two alleged victims in order to verify the facts, no conclusion could be reached as to alleged incident's truth. The discrepancies between the various versions of events identified in

the report concerned the following points: the place where the two minors had spent the night of 8 September 2020; whether, and if so, when M.N.A. had met the two minors; the number of UNHCR officials present at the Samos RIC on 9 September 2020 and whether they had met with the two minors; the exact time at which the two minors had been taken to the police station inside the RIC; whether the two minors had been accompanied there by other persons; whether they had expressly requested asylum; the number of individuals involved in the two minors' transfer from the Samos RIC to Vathy harbour and the number and type of vehicles potentially involved in said transfer; whether M.N.A. had acted as interpreter between the police officers and the two minors or whether an interview between them had been conducted by other means; lastly, whether the officers allegedly involved in the incident had used force before or during the two minors' return to Türkiye.

78. In the Government's view, it followed from the above considerations that the facts were substantially different as related in the application and in N.'s testimony and, consequently, that the applicant's account was not convincing.

79. In support of their arguments, the Government submitted to the Court a confidential document dated 15 May 2024 from the Migration Management Department of the Hellenic Police Directorate which, in their submission, showed the following: N. had had regular contact and had cooperated with the then Deputy Director of the Samos Police, D.M., in various cases concerning members of the Afghan community in the Samos RIC, in order to help him resolve a number of issues and conflicts and to assist the Hellenic Police; because of the very frequent contact between the two individuals, the particular incidents or discussions reported by N. in this context could not be detailed precisely; as to the presence of any cameras in the place where the UNHCR conducted its operations and any recordings made by those cameras, the authority in charge of cameras inside the camp at the time had been the Samos RIC, the Head of the UNHCR had been Ms P.K. and no new arrivals of foreign nationals had been recorded by the Samos RIC on 8 and 9 September 2020.

80. When asked at the hearing whether the multiple versions of the same incident – including one prepared by the UNHCR – reported by the National Transparency Authority in its investigation report no. 205/23 (see paragraph 77 above) might not corroborate rather than undermine the truth of the applicant's account, the Government replied that every version of the events reproduced in substance the one given by the applicant himself, which was why they disputed it.

81. As to the credibility of the video footage allegedly recorded by the Turkish Coastguard, the Government argued that there was no evidence that the footage – which showed the applicant and H. arriving in Türkiye – was from the Turkish Coastguard. Furthermore, like all the other audiovisual files submitted by the applicant, that video was not accompanied by any metadata

and, since no information could therefore be obtained as to the time and place of its recording, could not be considered reliable.

82. The Government also submitted to the Court a document from the Security and Police Department of the Hellenic Coastguard dated 10 May 2024, pointing out that it indicated, *inter alia*, that the incident of 9 September 2020 involving minors that had been recorded by the JRCC had nothing to do with the present case. In particular, the Government submitted that, according to that document, at 5.16 p.m. on 9 September 2020 the JRCC had received an incident report from the Samos Maritime Authority, which had reported the presence of two persons in a rubber boat in Turkish waters. They added that the document stated that no information had been provided as to the identity of the two persons on board and that the incident report in question therefore could not be regarded as linked to the applicant's case.

83. In reply to a question from a judge at the hearing concerning the statement contained in the FA research group's expert opinion (see paragraph 60 above) 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 explained 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. They added that, in the expert opinion in the present case, they were merely challenging the passages which the group devoted to the two photographs alleged by the applicant to depict him and H. with the town of Vathy in the background. Reiterating that the applicant did not appear in either of these photographs, they questioned the quality of FA's investigation, given that the institute had found that the applicant appeared in one of these photos, regarding this as proof of his presence in Greece.

84. The Government submitted that the applicant had not been "pushed back" on the dates alleged and, moreover, that they were unable to determine whether he had entered Greece on those dates. In this connection, they explained that it was easy for third-country nationals to cross the Greek border, especially in the Evros region, owing to the topography of that area, arguing that the fact that the applicant could have entered Greece on the dates alleged or on other occasions did not necessarily mean that he had been detected by the Greek authorities and subjected to the treatment complained of by him.

85. In reply to a question from a judge at the hearing, the Government explained that in order for a third-country national to be registered, he or she must either have entered the territory lawfully or been detected and arrested on Greek soil. They added that the applicant had thus been arrested in Thessaloniki in November 2021 and brought before the public prosecutor, before applying for international protection on 3 January 2022.

86. 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.

87. As to investigation report no. OM 3/4 published by the National Transparency Authority in May 2022 (see paragraphs 129-130 below), the Government submitted that this was an independent entity, laid out its methodology for examining complaints and explained that this method had been followed in all the investigations conducted by that Authority, including those having formed the basis for report no. OM 3/4 in 2022 and report no. 205/23 in the applicant's case (see paragraph 77 above). The Government submitted that the second of these reports confirmed both the weakness of the applicant's allegations, in particular with regard to their inaccuracies and inconsistencies, and the existence of effective domestic remedies. Furthermore, 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 the Government's view, such criticisms could therefore not be regarded as well-intentioned or convincing.

88. 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.

89. The Government explained that none of the photographs included in the case file to corroborate the applicant's allegations had been examined to ascertain its authenticity. The same applied, in their view, to the video footage allegedly supplied by the Turkish Coastguard and purporting to depict the

applicant and his companion in a rubber dinghy approaching the Turkish coast. The Government submitted that this was a routine incident for the competent authorities, since the distance between the Greek and Turkish coasts at this particular point was approximately one nautical mile and third-country nationals thus used small vessels to make the journey.

90. The Government further submitted that the argument that the authorities had singled out just two unaccompanied minors among the thousands of others that were managed by them and had mounted such an operation to return them to Türkiye defied logic.

91. Referring, lastly, 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".

2. The applicant

92. The Court notes from the outset that, along with his written replies to the specific questions put to him before the hearing, the applicant provided answers to the general questions put to the parties by the Court at the hearing. It notes that the content of these written replies to the general questions was not identical to that of the oral argument. Consequently, the Court will take account of the content of the oral argument, except where it refers to certain points already addressed in the written replies.

93. The applicant stated that he now lived in Germany.

94. The applicant submitted that his life had been put in danger during his removal and that this was a well-documented practice of the Hellenic Coastguard, known as "drift-backs". In this connection, he explained that, since 2020, asylum-seekers who had been intercepted by the coastguard had been forced onto rafts and left to drift. He added that those who reached the Greek islands were often arbitrarily kept in detention and robbed of their belongings, then taken out to sea and abandoned on rafts. The applicant submitted to the Court several reports on this phenomenon by numerous UN or EU authorities, independent experts and NGOs.

95. The applicant noted that the UNHCR had recorded an incident involving the summary forced return of two Afghan minors from the island of Samos to Türkiye on 9 September 2020, which further corroborated his account. He alleged that the respondent State denied these events and that, by confining itself to the claim that he had been trying to enter Greece unlawfully, the Government had completely misrepresented the manner in which he had ended up in a non-navigable life raft at sea and had disregarded the fact that the authorities had summarily expelled him a day after his arrival on Samos by leaving him adrift at sea. In this connection, he referred to FA's

expert opinion, which demonstrated that the incident in question had been falsely logged as a "prevention of departure" on 9 September 2020.

96. The applicant submitted that the events he had described to the Court were based on his own detailed testimony and were corroborated by GPS coordinates and reliable video and photographic evidence, which had also been verified by FA and by experts in the analysis and verification of digital evidence.

97. As to the probative value of the audiovisual material provided by him, the applicant took note of the fact that the Government had criticised him for providing evidence that lacked metadata or contained incomplete metadata. In this regard, he submitted that Greek officials had actively sought to conceal evidence by confiscating asylum-seekers' phones before removing them and, moreover, that metadata were not the sole determining factor in establishing the probative value of audiovisual evidence, including evidence derived from open-source content. In the applicant's view, the expert opinions he had submitted in the present case demonstrated that widely recognised techniques enabled the authenticity of digital evidence to be accurately verified without relying on metadata. This was an important point since sharing files on messaging platforms like WhatsApp automatically stripped audiovisual files of their metadata, which was exactly what had happened in his case. In the applicant's view, content analysis was the most crucial factor in verifying the authenticity and reliability of digital evidence. This involved examining the information in a digital file to establish unique identifiers, objectively verifiable information, geolocation, chronolocation, internal consistency and external corroboration, and such techniques had been proved to yield an accurate and reliable analysis of online audiovisual content (open-source content) from an unknown source. Thus, where metadata were lacking, geolocation and chronolocation could provide fully adequate authentication. In this regard, the applicant explained that geolocation verified the authenticity of digital evidence by identifying the geographical location of a person, object or event through the comparison of photographs or videos with satellite imagery and that chronolocation identified the time at which an incident had occurred or audiovisual content had been created. In support of his argument, the applicant submitted to the Court the expert opinion by Lighthouse Reports titled "Methods of verifying evidence" and the GLAN/Bellingcat expert opinion titled "Memorandum on the probative value of open-source information as evidence in legal proceedings".

98. The applicant submitted that the evidence submitted to the Court in the present case had been authenticated using these techniques. He explained that by analysing images, videos and GPS locations, FA had verified that evidence and confirmed his presence on Samos before the incident at sea. In particular, through geolocation, FA had established that the group with which he had been travelling had indeed landed on Samos and had moved to Cape Prasso and the surrounding wooded area. He added that FA had further

verified his presence in the hills overlooking the town of Vathy and inside the Vathy RIC using the series of photographs he and H. had taken.

99. The applicant argued that he had submitted a detailed and thoroughly substantiated account of his arrival on Samos, Greece, his arrest and detention – which, in his view, had been unlawful and had not been registered by the Greek officials – and, lastly, his subsequent summary expulsion. The audiovisual material he had provided was all that was available to applicants for international protection who had been the victims of summary expulsion. In his view, to attach less probative value to the extensive evidence he had brought forward than the Court had in other cases would amount to placing him at a substantial disadvantage in relation to the respondent State.

100. The applicant submitted that, as a minor seeking asylum and having suffered serious infringements of his non-derogable rights under Articles 2 and 3 of the Convention, he had been clearly in an extremely vulnerable situation. This being so, requiring him to furnish further evidence, given the particularities of "pushback" cases, would be seriously detrimental to the safeguarding of the *non-refoulement* principle. Moreover, he had successfully furnished more than the necessary prima facie evidence. In particular, he submitted that he had given detailed and consistent testimony of the events alleged; that his arrival on Samos had been confirmed by both the UNHCR and the Afghan spokesperson, M.N.A., who had been an eyewitness to his presence there; that his version of events was corroborated by a large amount of indirect and circumstantial evidence, including GPS coordinates, photographs of him on Samos and videos of him on a raft; and that he had provided a large number of recent reports from civil-society organisations that showed a pattern of breaches by the respondent State similar to those he had alleged. Moreover, he submitted that the Greek authorities had failed to conduct sufficient investigations into the alleged infringements of the rights guaranteed by Articles 2 and 3 of the Convention.

101. The applicant added that he had thus adduced evidence going beyond a prima facie case and concluded that his account of his summary return should be deemed truthful unless the respondent State, to which the burden of proof now shifted, showed that the events in question had not occurred. In this regard, he clarified that it did not suffice for the Government to cast doubt on the value of his evidence.

102. In support of his allegations, the applicant provided the Court with a written statement dated 5 April 2024, in which M.N.A. – who was the Afghan community representative at the Samos RIC at the relevant time and currently resides in the United Kingdom – essentially corroborated the substance of his account. The relevant parts of that statement read as follows (original English):

> "My name is Mr [M.N.A.] I arrived on Samos, Greece, January 2019 and applied for asylum. I resided on Samos until May 2021...

I volunteered with the UNHCR on Samos as a representative of the Afghan Community in the camp, as part of the UNHCR's Community Protection programme. ... It was in my capacity as a community representative that I encountered the two boys, GRJ and his companion, on the morning of 9 September 2020.

On that morning, the boys arrived to the camp and one of the boys' cousins, an asylum seeker from Afghanistan who was living in the camp – [Z.H.] – asked me if I could help the boys. On that day, the police were looking for new arrivals and they were calling me and telling me that Turkey wants to send more refugees who are infected with Covid to the islands in order to spread the disease.

They told me, in order to keep the camp clear from the disease, tell us if there are any new arrivals, we will take them to the hospital, if they don't have Covid they will pass quarantine (the quarantine was located in a hotel, in a place called Malagari), then we will release them back. They told me this over the phone and they invited me to the police station in the camp, in order to help them identify the new arrivals. It was [D.] the *Diftidi* (the director) who called me. He was the head of Samos police...

So I met the boys. They were two unaccompanied minors. They were underage and I knew this because they had no beards, no moustache, nothing. One of the boys' cousins had taken them to a place near the food line in the camp. He took them to take a shower and I saw them around there. When they finished the shower I told them about the quarantine situation. I trusted the police officer because up until that day, he had always followed his word. I told the boys if you have Covid they will keep you for 15 days and the boys agreed to come with me. I brought them to the police station in the camp and there were policemen waiting for them. The police asked me for the boys' age and I translated between the boys and the police and told them their names and ages and the policemen wrote them down. Those police officers were sent by [D.], the police officer from downtown. Those police were not from the camp, they weren't part of the camp police force. The police officers in the camp also knew about the new arrivals. I thought I was delivering the boys to the policemen from the camp, not the police from downtown.

At the time in the camp, there was a 'secure-area' in area in front of the police station. This area was enclosed with a barbed wire fence. I met the policemen there. The boys were not allowed to enter at first. The police let me into the secure area surrounding the police station to talk to them and then I took the boys into the police's 'secure area', where the officers asked for information about the boys including their names and ages, and they wrote them down. Then I escorted the boys with police officers to a car. The car was parked in front of the police station. I believe it was a Citroen C4. There was also a Nissan Navara pickup parked there. The boys were taken into one of the cars and the two cars drove away.

As the cars drove away, I saw UNHCR employee [G.M.] in the cash card renewal line. He was there to deal with UNHCR cash card renewals and I told him, we had new arrivals to the island, did you know? Did you have any other new arrivals? He said no, where are they? I told him they are small little boys and the police took them to hospital. Now they left in police car to go to the hospital. He said why didn't you tell me before. He told me, they will be deported and he ran. He informed [P.K.], the head of UNHCR, right away.

After that, I spoke to [P.], the head of the UNHCR office and she told me don't worry we will sort it out. But then she was on the phone with someone – maybe a colleague of hers – for over an hour. During that time she asked me questions as well, like what the boys looked like, how I found them, how old they are. She asked me if I was sure that they were underage, she asked if I had photos or photos of their ID. I showed her

> the photos which [Z.] sent me. During that time the police was calling me and texting me warning me not to tell UNHCR anything. They could see from the CCTV cameras that I was with [P.] I told [P.] and she said you can go far away from me, in order to avoid getting punished by the police for informing UNHCR about the new arrivals. Until then I had trust in the police there but when they kept telling me not to tell UNHCR about the new arrivals, I realised that the boys will be deported.
>
> After that day, [Z.] asked me where the boys were on a number of occasions. So I eventually asked the police to find out where they were. After a few days, I tried to inquire about where the boys were, to find out where they were. I called the policeman [D.] the Diftidi, I asked him where are the boys he told me they are 'where they belong to' – he didn't say exactly that they were in Turkey. After a long time, maybe a matter of weeks, I asked [Z.] and he told me they were deported to Turkey.
>
> ..."

103. The applicant further submitted that the National Transparency Authority was not a constitutionally independent institution. Nor was it an appropriate investigative or compensatory mechanism in the present case, since the violation he had complained of was flagrant and systematic. In particular, he disputed the methodology and conclusions of investigation report no. OM 3/4, which had obvious shortcomings as to the rigour and quality of the investigation conducted. In this connection, he questioned, by way of example, the institution's choice of sources, explaining that the report was based on the testimony of police officers, governors and religious leaders from the local community. The applicant further alleged that the Authority had relied on assistance from the Greek authorities for the technical assessment of the audiovisual material in question, inferring from this that its assessment of the evidence could not be regarded as independent. Such cooperation – which amounted to involving the alleged perpetrator of the rights infringements in the assessment of the evidence of those very infringements – undermined the Authority's independence.

104. The applicant further noted that in investigation report no. 205/23 (see paragraph 77 above) the National Transparency Authority referred to a number of "discrepancies" in the various accounts of the incident under examination. In the applicant's view, the various accounts available in fact only served to confirm his own account.

105. Moreover, the applicant emphasised that the three organisations which the Court had invited to make submissions as third-party interveners, namely, the UNHCR, the National Human Rights Commission and the Greek Ombudsman, had found that there was a practice of unlawful "pushbacks" at Greece's land and sea borders. The findings in question were consistent, unanimous and clearly relevant, and the Government had not substantively challenged them.

106. In reply to questions put to him at the hearing about the audiovisual material provided to the Court, the applicant submitted that his face was not visible on any of the Samos photographs included in the case file but that he could be seen, however, in the video titled "Arrival to Samos 8_9_2020

(applicant is visible)". He explained that he was the individual wearing a white T-shirt who could be seen for the first five seconds or so of that video. Moreover, his shoulder was also visible in the photograph of H. inside the RIC, where he was wearing a white T-shirt. As stated in the application, the Greek authorities had confiscated his telephone before removing him and the fact that the case file contained no photographs of him on Samos, including any of him on the hill overlooking Vathy, was a result of their conduct. The applicant alleged, moreover, that he was also visible on the video footage recorded by the Turkish Coastguard, wearing a white T-shirt, and that he could be seen clearly in the video in which the Turkish Coastguard helped him get out of the raft in which he had been placed by the Greek authorities. The applicant also pointed out that the photo on his Afghan identity card had been taken just before he had left Afghanistan and therefore dated back to around 2018. He added that there was no official photograph of him from the period under consideration because he had been in Türkiye, where he had lacked any status or protection. Consequently, the only other official photograph available was the one taken upon his re-entry to and registration in Greece, which was affixed to his asylum-seeker's card. Lastly, as to how he had been able to obtain the video footage recorded by the Turkish Coastguard, the applicant replied that it was accessible to the public and that he had received the videos in question from ABR.

F. The parties' submissions following the hearing

107. The Court notes that the Government were invited to reply in writing to a question put to them by a judge at the hearing. The applicant was also invited to submit comments in response to the Government's reply.

108. The Court observes, however, that in addition to replying to that question, the Government submitted additional observations regarding certain points that had been raised at the hearing. For his part, the applicant, taking the view that the Government's observations had gone beyond what had been requested of them, submitted observations in reply to all the Government's observations, as well as addressing other issues raised at the hearing.

109. Bearing in mind the principle of adversarial proceedings and equality of arms, the Court considers it appropriate to add all these observations to the file.

1. The Government

110. The Government submitted that third-country nationals were registered either when they were arrested or when they went to the competent authorities of their own volition. They added that, in such cases, the criminal and administrative procedures provided for by law were followed. The Government clarified, however, that third-country nationals who entered

Greek territory unlawfully were not necessarily arrested at the very moment they crossed the border but could be so 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, owing to the topography of the region where Greece's northern border with Türkiye lay and the maritime borders between the two countries. The Government submitted that, when a person was arrested, he or she was registered and the relevant legal procedures were then applied. Accordingly, when a person had not been registered by the authorities, this meant that he or she had never been detected or managed by them, such that failure to register a third-country national proved that he or she had been neither detected nor processed by the Greek authorities.

111. The Government further submitted that the fact that there were multiple versions of the alleged incident did not confirm the truthfulness of the account given, since all the versions in question were based on the applicant's account. In that connection, they argued that none of the representatives of human rights organisations (the UNHCR, MSF and ABR) had been an eyewitness to the applicant's presence on Samos in general and at the RIC in Vathy in particular. They further submitted that there was no other evidence (photo/video) confirming the applicant's presence there or anywhere else on the island of Samos, adding, in this connection, that they had already used specific arguments to demonstrate that the statements made by M.N.A. – the informal representative of the Afghans at the RIC – lacked credibility. It was therefore clear, in the Government's view, that the multiple versions of the incident complained of discredited the applicant's allegations.

112. As to whether the preliminary investigation in the applicant's case had confirmed that the person shown in the video titled "Arrival to Samos 8_9_2020 (applicant is visible)" was the applicant, on 4 May 2021 the Greek Helsinki Monitor had lodged a criminal complaint with the Public Prosecutor at the Court of Cassation concerning 147 cases of alleged "pushbacks" having occurred throughout Greece at different times, involving 7,000 third-country nationals. The complaint had concerned the applicant's case, *inter alia*, and had been referred to the National Transparency Authority for investigation on 13 December 2021 and, on various other dates, to the prosecutors of the regions where the impugned events had allegedly taken place. As to the applicant's case in particular, the Government submitted that it had initially been dealt with by the Kos public prosecutor, who, in a letter dated 4 October 2021, had transferred it to the Piraeus Naval Court, which had been found to have jurisdiction; the Piraeus Naval Court had conducted a preliminary investigation and, in a letter of 6 February 2024, had transferred the file to the public prosecutor of Samos, where the events had allegedly taken place. In a document of 29 March 2024, the Samos public prosecutor had informed the State Legal Council that a preliminary investigation was ongoing and that the applicant had not submitted any evidence. In a letter of

13 June, the judge in charge of the preliminary investigation had informed the Government's Agent that the only audiovisual material included in the file was the material that the Agent had received on 24 April 2024 and that the National Transparency Authority had also provided its report no. 205/23 on the applicant's case. Lastly, the Government explained that the investigation was ongoing and that the competent prosecutor had yet to assess all the contents of the file, in particular the video submitted by the applicant to the Court, since the latter had not submitted it to the national authorities.

113. The Government concluded that the applicant had not adduced prima facie evidence in support of his allegations and, accordingly, that there were no grounds for shifting the burden of proof such that they would be required to demonstrate that he had not entered Greece and had not been summarily returned to Türkiye. They submitted, in this connection, that they had put forward not just one but an array of arguments capable of rebutting the evidence adduced by the applicant.

2. The applicant

114. As to the Government's challenge to FA's expert opinion, the applicant argued that it rested on the flawed contention that the opinion was based on two photographs taken on a hill overlooking Vathy. In that regard, the applicant noted that the Government had challenged the quality of FA' investigation on the ground that the institute had found that he was depicted in one of the photographs. However, FA had not claimed that its findings were based on his having been identified in a photograph taken from a position overlooking the town of Vathy. In the opinion in question, FA had merely stated that the two boys' presence in the hills surrounding the town of Vathy and inside the Vathy RIC had been verified through a series of photographs (selfies) they had taken. Thus, in the applicant's view, the Government's challenge had no factual or legal basis. The applicant added that the Government's argument disregarded the fact that he was clearly identifiable in a video taken by another member of the group upon their arrival in Samos.

115. The applicant further argued that the Government's contention that metadata were indispensable was unsupported by any substantive evidence or expert testimony and, in particular, was not corroborated by the relevant literature. In the applicant's view, this bare assertion lacked any factual basis and was inconsistent with the well-established principles of digital analysis and open-source investigation techniques. The applicant emphasised that the principles laid down by the experts, including GLAN and Bellingcat, Lighthouse Reports and FA, were also applicable to content not derived from open sources. He further explained that while, in his own case, the source was known, he had nonetheless had to rely on online versions of audiovisual content which he and H. had recorded and transmitted before the Greek authorities had confiscated his phone.

116. As to the alleged discrepancies between the various accounts of the incident documented in the National Transparency Authority's investigation report no. 205/23 (see paragraph 77 above), the applicant argued that marginal differences in several versions of the same incident could be seen as evidence that the account was not fabricated. He submitted that not all the versions in question had been based on his own account of the facts, explaining that the incident had also been reported by M.N.A., who had met him personally, and by the UNHCR. In the applicant's view, such a reputable international organisation would not have submitted a report to the Court without having conducted its own investigation and verified that the account was reliable. Moreover, the applicant alleged that the UNHCR representatives from the Samos Field Office had had knowledge of the incident in near-real time, since M.N.A. had informed at least two employees – G.M. and P.K. – of his and H.'s arrival on Samos, and of their presence at the Vathy RIC.

117. Lastly, arguing that his non-registration was at the core of his allegations and that authoritative sources attested to a systematic and serious pattern of informal forced returns, the applicant submitted that there was no basis or merit to the Government's argument that lack of registration was proof that a third-country national had not been detected or processed by the authorities.

RELEVANT DOMESTIC AND INTERNATIONAL LEGAL FRAMEWORK AND MATERIAL

A. Domestic law

118. The Greek legislation transposing the relevant EU instruments provides that any alien/third-country national has the right to lodge an application for international protection and, moreover, 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 65(1), 68(1), (2)(b) and (3), 85, 86(1)(b), 87(4)(c), 89(9) and 104(4) of Law no. 4636/2019, which was applicable at the material time).

119. 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).

120. 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. The relevant domestic legislation specific to

unaccompanied minors is cited in *O.R. v. Greece* (no. 24650/19, §§ 25-27, 23 January 2024).

121. 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).

B. International and European Union law

122. 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).

C. Material on "pushbacks" from Greece to Türkiye

1. National institutions

(a) The Greek Ombudsman

123. In its capacity as National Mechanism for the Investigation of Arbitrary Incidents (Law no. 4443/2016), the Greek Ombudsman, an independent authority provided for in the Greek Constitution, has investigated a number of alleged "pushbacks" and has published two reports.

124. The relevant parts of its 2021 special report published in June 2022 ("National Mechanism for the Investigation of Arbitrary Incidents (EMIDIPA)", pp. 77-81) read as follows (original English; footnotes omitted):

> "...
>
> 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."

125. 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.

..."

(b) The National Human Rights Commission

126. 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.

127. Following an interim report published in January 2023 ("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).

...

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.

..."

128. In June 2024 the NHRC published its 2023 annual report, which found that the testimony recorded by the Mechanism in 2023 confirmed the findings made 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.

(c) The National Transparency Authority

129. 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 "pushbacks" of irregular migrants at sea by masked groups.

130. In May 2022 the Authority published investigation report no. OM 3/4, titled "Management of immigration flows – Allegations of pushbacks in Greece". The report concluded 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."

2. International institutions

(a) The Council of Europe

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

131. 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):

> "...
>
> 59. The CPT's delegation also received a number of consistent and credible allegations concerning acts by the Greek Coast Guard to prevent boats carrying migrants from reaching any Greek island. For example, in early March 2020, the Greek Coast Guard allegedly stopped a boat with almost 50 persons on board and removed the fuel leaving the migrants and the boat to float about aimlessly. It was apparently only some 15 hours later that the Coast Guard returned to tow the boat to Lesbos island.
>
> Moreover, since the delegation's visit, credible allegations have emerged of migrants having reached the island of Samos from Turkey by boat before being re-embarked on a dinghy by Greek officers and towed by a Greek Coast Guard vessel back to Turkish waters, where they were allegedly left adrift overnight until recovered by the Turkish Coast Guard on the afternoon of the following day.
>
> ..."

132. Furthermore, 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.

...

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.

...

156. As regards alleged pushbacks at sea, persons crossing the Aegean Sea from Türkiye to the Greek islands by boat claimed that they were intercepted by the Hellenic Coast Guard and removed back to Türkiye without any assessment of the risk of *refoulement*. Some alleged that they were forced to board a larger vessel before being placed on an inflatable dinghy and towed back to Turkish waters. Other persons claimed that they were intercepted by speedboats manned with masked persons in black clothes who violently boarded the boat and destroyed the engine or threw it into the sea, towed them farther out to sea and left them adrift in unseaworthy boats. A number of persons alleged that they had been apprehended by police officers or persons wearing masks after having arrived on the islands, notably Kos and Samos, and were thereafter transported to a port area, placed on a vessel and taken out to sea, where they had to disembark onto small life rafts, and were set adrift. Many persons also stated that on one or more occasion prior to successfully reaching a Greek island they had been intercepted by the Turkish Coast Guard and returned to Türkiye.

...

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*...**"

(ii) The Commissioner for Human Rights

133. 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.

...

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.

..."

134. Furthermore, 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."

(b) The United Nations

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

135. On 12 June 2018, 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."

136. 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.

..."

137. Lastly, 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. ..."

(ii) Other UN bodies

138. 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. ..."

139. 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."

140. In its Concluding observations on the report submitted by Greece (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..."

COMPLAINTS

141. The applicant submitted that his removal to Türkiye had been in breach of Article 3, taken alone and in conjunction with Article 13 of the Convention. Arguing that there had been substantial prima facie grounds for believing that such a return would put him at risk of treatment proscribed by Article 3, including a risk of chain *refoulement* from Türkiye to his country of origin, Afghanistan, and alleging, in that connection, that he was a member of the Hazara community and feared persecution as such by the Taliban, especially following their return to power in 2021, he complained that he had not had access to asylum procedures in Greece. Nor had an effective remedy been available to him at domestic level in respect of his arguable complaints under Article 3 of the Convention.

142. Relying on Articles 2 and 3 of the Convention, the applicant was also of the view that his "pushback" by the Greek authorities had put his life and physical integrity in danger and that he had been subjected to inhuman or degrading treatment both before and during his removal to Türkiye, in breach of Article 3 of the Convention. Moreover, under Article 13 of the Convention, he complained that there was no effective remedy in respect of his complaints under Articles 2 and 3 of the Convention.

THE LAW

A. The Government's preliminary objections

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

144. Firstly, they considered the applicant's allegations to be completely vague, misleading, false and deceitful and argued that he had failed to provide any reasonable and convincing evidence that he had been personally affected by the alleged breaches. They inferred from this that the applicant could not claim to be the victim of a Convention violation, arguing that if it were accepted that he had victim status in the present case, this would mean that anyone could complain of a violation of the Convention, including on the basis of completely inaccurate, false and general allegations. In the Government's view, the present application thus amounted to an *actio popularis*.

145. Secondly, reiterating their argument that the applicant's allegations were vague, incomplete, untrue and, consequently, misleading as to the facts of the case, the Government submitted that the application should accordingly be rejected for abuse of the right of application. Explaining, first, that the applicant had chosen to apply directly to the Court even though several effective domestic remedies had in their view been available to him in respect of his complaints and, second, that he had enjoyed all the rights of asylum-

seekers in Greece, they submitted that his conduct was manifestly incompatible with the purpose of the right of individual application under the Convention.

146. Thirdly, the Government was of the view that the domestic legal system had afforded the applicant effective remedies in respect of his alleged "pushback" and criticised him for having failed to make use of them. In particular, they argued that the applicant had omitted to bring a claim for compensation against the State under section 105 of the Introductory Law to the Civil Code and had furthermore neglected to file a criminal complaint with the competent prosecutor against those responsible for the alleged offences.

147. For his part, the applicant submitted that he had not had access domestically to a relevant effective remedy in the light of the Court's case-law.

148. The Court notes that the Government's objection that the applicant lacks victim status is based on their denial of all his factual allegations. Having regard to the parties' diametrically opposed positions as to the facts of the case and the abundance of evidence adduced by both sides, the Court considers it appropriate to examine the objection as a preliminary issue concerning the establishment of the facts (see, *mutatis mutandis*, *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 83, 13 February 2020).

B. The Court's assessment of the evidence and establishment of the facts

1. The parties' submissions

149. The parties' submissions regarding the facts of the case are set out in paragraphs 32-117 above.

2. The third parties' submissions

(a) The European Center for Constitutional and Human Rights, PRO ASYL and Refugee Support Aegean

150. In their joint observations, the third-party interveners submitted that there was a State policy of "pushbacks" in Greece. They explained that the arrest and secret detention of the individuals concerned and the absence of any document proving these facts served to conceal this practice and impede access to the asylum procedure. They emphasised that the authorities had repeatedly ignored calls for an effective investigation into "pushbacks" of foreign nationals and explained that the victims of such acts faced specific hurdles. In particular, the arbitrary nature of their detention and the failure to register both that detention itself and their identity and presence in Greece weakened the evidence available such cases. Moreover, in the third-party interveners' view, the investigating and prosecuting authorities showed

reluctance and passivity, using standard letters to respond to complaints, disregarding obvious lines of inquiry and using the lack of official records to justify the swift dismissal of cases.

151. The third-party interveners concluded that there were long-standing systemic obstacles to conducting an effective investigation into the circumstances of the security forces' actions in Greece, especially with regard to border operations. This was owing to their unrecorded, covert nature, which served to evade any oversight or accountability, and to reluctance on the part of the investigating and prosecuting authorities. Consequently, for applicants complaining of violations of Articles 2 and 3 of the Convention during "pushback" operations, there was currently no access to an effective investigation.

(b) The Greek Helsinki Monitor

152. The Greek Helsinki Monitor pointed out 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".

153. 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.

154. 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 Greek Council for Refugees, the Hellenic League for Human Rights and HumanRights360

155. In their joint observations, the third-party interveners pointed out that although the principle of *non-refoulement* was a fundamental principle of international law there was no legal remedy in the Greek domestic system by which to complain of breaches thereof at any time during a third-country national's stay in Greek territory prior to registration.

156. They submitted that under Greek administrative law a legal remedy could only be pursued in respect of an official administrative decision or failure to perform an obligatory act, a condition which "pushback" cases did not meet. Moreover, the third-country nationals in question were summarily removed from Greek territory upon their first encounter with the Greek authorities, without their entry or presence being registered in an official record, such that there was no remedy available to them to prevent their removal.

157. Regarding the compensatory remedy provided for in section 105 of the Introductory Law to the Civil Code, the third-party interveners explained that a breach of the principle of *non-refoulement*, including where the person concerned had been put at risk of treatment contrary to Article 3 of the Convention, was not a breach of domestic law which could be relied on for such a claim. Furthermore, they noted that in cases of wilful mistreatment, the breach of Article 3 – or, for that matter, of Article 2 of the Convention – could not be remedied only by an award of compensation to the victim. They also pointed out that the remedy provided for in section 105 did not have suspensive effect and was therefore not capable of preventing the removal of an individual alleging a risk of a breach of Articles 2 or 3 in another State.

158. As to criminal proceedings, the third-party interveners submitted that in cases where a criminal investigation was opened, the current system of investigations into allegations of ill-treatment could not be regarded as effective in law or available in practice. They pointed out that Greece had never conducted an effective investigation following the numerous reports, allegations, witness statements and criminal complaints relating to unlawful "pushbacks", whether through the judicial system or at the level of independent authorities or mechanisms. The returns in question were carried out in an informal, expedited manner and, as a result, the persons so returned did not have any opportunity in practice to initiate proceedings challenging their unlawful summary returns. Furthermore, Greek criminal procedure did not provide for any remedy with suspensive effect that could prevent a return whereby the person concerned might face the risk of a breach of Articles 2 or 3 of the Convention in another country.

159. Lastly, the third-party interveners were of the view that there were special circumstances in the situation at issue in the present case that exempted the applicant from his obligation to avail himself of the available domestic remedies, namely, an "administrative practice" consisting in a repetition of acts incompatible with the Convention and official tolerance by the State authorities. In this connection, they added that numerous credible allegations of "pushbacks" had been corroborated by reports from European and international monitoring bodies and reiterated that no investigation had been launched by Greece in this regard, its authorities having remained completely passive. Moreover, the prosecutors responsible for those criminal proceedings that had been brought had dismissed the complaints at the

preliminary stage, after having either remained passive or conducted a deficient and inadequate investigation. There were thus no cases that had gone beyond the preliminary stage of the proceedings.

(d) 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

160. In their joint observations, the third-party interveners referred to a number of international reports on the situation in Türkiye which in their view showed that third-country nationals who were "pushed back" from Greece to Türkiye, in particular Afghan nationals, had insufficient access to international protection in Türkiye and faced a genuine risk of *refoulement* to their country of origin. Afghan nationals, in particular, were systematically removed to Iran.

(e) The Border Violence Monitoring Network

161. The third-party intervener submitted that, in the period after March 2020, it had recorded hundreds of "pushback" incidents, involving thousands of people. Foreign nationals who had arrived on the Greek islands had been arrested by police, forced into life rafts and left adrift at sea. More than half of these incidents had taken place in the vicinity of the two islands of Lesbos and Samos.

162. The third-party intervener emphasised that the authorities thus intentionally and knowingly placed the lives of such persons at risk by abandoning them at sea, without any means of communication, on board unsafe embarkations. They submitted that such a practice was likely to be in breach of Article 2 of the Convention.

163. Moreover, "pushbacks" at sea could be in breach of Article 3 of the Convention as well. Firstly, testimony given by the victims showed that physical force was used against those subjected to "pushbacks", whose personal belongings were also confiscated. Secondly, the foreign nationals in question were at risk of ill-treatment in case of *refoulement*, including chain *refoulement*, to their country of origin, yet they were deprived of any opportunity to apply for asylum. In this connection, the third-party intervener added that when carrying out summary returns at sea, the Greek authorities did not assess the individual situations of the persons concerned, including their country of origin, their specific vulnerabilities and the risk of torture and inhuman or degrading treatment they might face if sent back to Türkiye. In the third-party intervener's view, where the individuals subjected to a "pushback" had clearly expressed that they wished to apply for asylum, such conduct could result in a breach of Article 3 of the Convention.

164. Lastly, the third-party intervener pointed out that, according to its database, all summary returns that had taken place in the Aegean Sea in 2020 had involved minors and were thus carried out against vulnerable people on

a constant basis, which showed the systematic and indiscriminate nature of the acts in question. Greece's repeated "pushback" of minors did not meet the human rights standards applicable to them, whether as migrants or as minors.

(f) The AIRE Centre, the Dutch Council for Refugees and the European Council on Refugees and Exiles

165. In their joint observations, the third-party interveners submitted that, according to the UNHCR's data, six thousand Afghans had been removed from Türkiye to Afghanistan in 2020. They added 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 and the assessment thus carried out should take into consideration whether the individuals in question belonged to vulnerable groups, such as children. Moreover, summary returns of migrants in the absence of an official procedure, individual assessment or other due process guarantees were in breach of the principle of *non-refoulement*.

(g) The Greek Ombudsman

166. The Greek Ombudsman, referring to the 2021 and 2022 special reports it had prepared in its capacity as National Mechanism for the Investigation of Arbitrary Incidents (see paragraphs 123-125 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."

(h) The National Human Rights Commission (NHRC)

167. 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 127 above). It observed, 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."

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

168. In its observations, the UNHCR stated, in particular, as follows (footnotes omitted):

> "During 2020-2022, UNHCR recorded 809 incidents of 'summary forced returns' at land and sea borders (informally referred to as 'pushback') involving at least 28,497 individuals, during which potential human rights violations were reported, including among others, the right to life; integrity of the person; protection from torture, inhuman or degrading treatment; liberty; to seek asylum and protection against refoulement. UNHCR has observed that in most cases, the individuals affected were already on the territory of Greece, including in its territorial waters, or under its jurisdiction, when they were apprehended, placed under the control of the Greek authorities, and ultimately summarily removed. The frequency of incident reports together with the credibility and consistency of the accounts collected by UNHCR are indicative of a systematic practice, while the severity of the alleged incidents means they could amount to serious violations of international and European refugee and human rights law.
>
> ...
>
> In the context of its monitoring role, UNHCR recorded a reported incident of the summary forced return of two Afghan underage boys from the island of Samos to Türkiye on 9 September 2020. The children were part of a larger group who had reached Samos. UNHCR was apprised of their arrival and, as per its standard practice, informed the Greek authorities, with the request that the group, including the two children, be duly channelled to legal procedures. The arrival was not confirmed by the authorities. UNHCR subsequently established contact with the two boys in Türkiye and provided the information at its disposal on the case to the National Transparency Authority ('NTA') and to the prosecuting authorities in Greece, upon their request, to support the investigation.
>
> **Practices at the sea border**
>
> In early 2020, UNHCR observed a notable decrease in sea arrivals followed by a sharp increase of reports and serious allegations of summary forced returns from Greece to Türkiye. During the period of 2020-2022, UNHCR recorded 342 incidents of summary forced returns at sea, or by sea after people had landed on shore. For some of these incidents, UNHCR received direct testimonies from affected individuals. UNHCR has also collected materials, such as audio-visual material, GPS location data or other information indicating that individuals, who were in Greek territorial waters in the Greece search and rescue region ('SRR') or had already landed on a Greek island or shore, were subsequently returned to Türkiye by the [Hellenic Coast Guard – "HCG"].
>
> ...
>
> In some cases, summary forced returns took place after UNHCR (with the concerned individuals' consent) had alerted in real-time the HCG and/or the Hellenic Police about the presence of new arrivals who wished to seek asylum on the islands. In most cases, individuals provided their exact coordinates, which were communicated to the HCG and the Hellenic Police to facilitate the rescue operation and their referral to reception and identification procedures. Of 413 such real-time incidents where UNHCR intervened during the period 2021-2022, the Greek authorities confirmed 233 incidents as arrivals. In another 60 instances, they confirmed the arrival of some members of the group, while for the remaining 120 reported incidents no official arrival was recorded by the authorities. In some of these cases, UNHCR collected post factum information, such as testimonies by the affected persons and other reports, indicating that although

their arrival had not been confirmed by the authorities, they had reached the Greek territory and were summarily returned to Türkiye.

...

In the Eastern Aegean, there is an abundance of photographic material showing individuals, including children, being placed in life rafts in the middle of the sea for the purpose of returning them to Türkiye, placing their lives at risk. In their accounts, individuals who had reached a Greek island or shore and were subsequently forcibly and summarily returned to Türkiye by the HCG, reported the following experiences: upon apprehension, they were taken on board a vessel or speedboat - at times after first being detained in an unidentified building - driven out at sea and forced into life rafts. Men, women, and children - including elderly persons, persons with medical conditions and pregnant women - were forced onto the life rafts and left adrift without paddles and in most instances without lifejackets for several hours, mainly at night, sometimes in rough seas, until their rescue by the Turkish Coast Guard. People to whom UNHCR spoke said that they asked to keep at least one phone to call for help, but their request was ignored. In their testimonies, individuals described the persons involved in such operations as wearing dark/black uniforms, some bearing lines of rank and/or the Greek flag, all wearing full-face masks covering their faces, and sometimes holding guns and/or batons.

Persons to whom UNHCR spoke also stated that they were not informed about their rights and obligations, had no access to the means to claim asylum, they were not asked to sign any documents, were not interviewed, or registered by the HCG or another authority, and were not given information about the length and conditions of their deprivation of liberty in restricted areas on the shores, on vessels, or in other unofficial facilities. They were given no opportunity to resort to any legal remedy. They also stated that they had had no access to food and water, hygiene facilities, medical services or clothes. Most of the incidents reported to UNHCR alleged undue and inappropriate use of force by the HCG and/or Hellenic Police, such as pushing, slapping, hitting with batons (especially when forcing people to embark on a boat, vessel or life raft), and forcing people to remain still and forced to remain in one area for hours. Affected individuals reported to UNHCR that during the return operation they experienced insulting and degrading behaviour by members of law enforcement authorities. Testimonies frequently report intrusive and inappropriate body searches, including for women and children, carried out by male officers. Most affected individuals reported that all or part of their possessions were taken away after they had been apprehended on Greek territory. Most frequently, this concerned money, mobile phones and personal identity or other documents. On some occasions, deception was involved.

...

Conclusion

UNHCR has documented what appears to be a systematic practice by the Greek authorities of arbitrarily denying entry at land and sea borders and/or summarily removing individuals potentially in need of international protection from the Greek territory without evaluating the risk of direct or indirect refoulement. In UNHCR's view, these practices are at variance with Articles 2 and 3 ECHR, as well as the relevant norms of international and European refugee and human rights law."

3. The Court's assessment

(a) The Court's approach in the present case

(i) Specific context of the case

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

170. 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 some instances 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 v. Türkiye*, no. 1557/19, §§ 70-76 and 82-92, 21 June 2022).

171. Secondly, in *N.D. and N.T. v. Spain* (cited above, §§ 80-88) 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.

172. 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 in Greek territory and, in consequence, his "pushback" to Türkiye on the dates alleged.

(ii) Principles governing the standard and burden of proof

173. 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.

174. 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.

175. 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.

176. 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 an explanation the Court can draw inferences which may be unfavourable for the respondent Government.

177. 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).

178. 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).

179. 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).

180. The Court notes that in a number of cases involving the "pushback" and/or collective expulsion of aliens it has taken into account, in particular, 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).

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

182. 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 his 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 Greek islands 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 Greek islands, before turning to the assessment of the evidence adduced by the applicant in support of his 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.

183. 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.

184. 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.

185. 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.

186. 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

(i) Whether there was a systematic practice of "pushbacks" from Greece to Türkiye, including from the Greek islands

187. 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 123-128 and 131-140 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".

188. 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 129-130 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. It notes that the applicant questioned that entity's independence in general and the methodology and findings of investigation report no. OM 3/4 in particular.

189. 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 submissions of the Greek Ombudsman and the Greek NHRC documenting a systematic practice of "pushbacks" from Greece to Türkiye, including from the Greek islands.

190. 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 Greek islands to Türkiye. It finds that the Government have not succeeded in countering these indications by providing a satisfactory and convincing alternative explanation.

(ii) Evidence provided by the applicant and other material before the Court

191. The Court notes at the outset that the applicant's account is largely consistent with the *modus operandi* documented in the competent national and international institutions' reports on "pushbacks" from Greece to Türkiye, including from the Greek islands. 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.

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

(α) Documentary evidence

193. As a preliminary consideration, the Court observes that, in the Government's view, the official documents showed that, prior to November 2021, when he had been tracked down in Thessaloniki (see paragraph 25 above), 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, the Court would point out that the applicant's non-registration by the authorities of the respondent State is at the very core of his allegations that he was subjected to a "pushback" on 9 September 2020. 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 in the case file.

194. In the Court's view, the identity of the two individuals in the rubber dinghy involved in the incident recorded by the Hellenic Coastguard cannot be established with certainty in the light of the documents before it.

195. Admittedly, it finds the Government's argument that the two individuals on board were attempting to enter Greece unconvincing. The Court notes that several reports on "pushbacks" from the Greek islands confirm that the victims of such "pushbacks" are forced into small inflatable boats before being left adrift at sea. It is therefore difficult to accept that the two individuals in question could have departed from Türkiye on a motorless raft without paddles for the purpose of entering Greece and then have changed their minds upon spotting Hellenic Coastguard officers.

196. However, the documents submitted to the Court by the applicant (extract from the Turkish Coastguard's log) and by the Government (log kept by the Hellenic Coastguard concerning an incident potentially involving the applicant), respectively, contain different information.

197. The Court notes, moreover, that the Government have disputed the authenticity of the extract from the Turkish Coastguard's log. It finds, however, that, even assuming that the document in question was provided by the Turkish authorities, it by no means establishes that the applicant was one of the two individuals involved in the incident.

198. Consequently, the existing documents cannot constitute prima facie evidence in support of the applicant's account.

(β) Audiovisual material

199. The Court notes that, in the proceedings before it, the applicant provided some printed photographs, along with a USB drive containing the same photographs, and video footage. The contents of the USB drive were not shared with the Government when the drive was submitted.

200. In view of the fact that some of the photographs on the USB drive could not be viewed, the Court asked that the applicant provide it with another USB drive containing the electronic files corresponding to those indicated in the application. The applicant thus sent a second USB drive, the contents of which, copied on CD-ROM, were sent to the Government. Upon examination, it became clear that, in addition to containing new files, this second drive did not contain all the files referred to in the application. At the Court's request, the applicant sent a third USB drive. By the same occasion, he also requested, for reasons relating to protecting the privacy of the persons concerned, that certain files that had been included by mistake on the second drive be removed from the case file.

201. The content of this third drive was copied onto a CD-ROM and sent to the Government, who were further informed that the audiovisual material contained on the drive would be the only material taken into account in the proceedings before the Court and that the parties would have to rely on that material in their submissions. The Court notes, therefore, that some of the parties' submissions, which concerned audiovisual files on the second USB drive, have been removed from the case file.

202. The third USB drive contained eight files, titled as follows:

(1) Video footage and photographs upon arrival on Samos (4 photographs, 6 videos, including a video in which the applicant claimed he could be seen).

(2) Aerial photograph of the Samos RIC (Reception and Identification Centre) in Vathy (converted to PDF).

(3) Log kept by the Turkish Coastguard (2 images).

(4) Correspondence between asylum-seekers and Aegean Boat Report (ABR) and between ABR and the Samos Port Authority (three screenshots and a video).

(5) Photograph of H. inside the RIC (one photograph).

(6) Photograph of H. with the town of Vathy in the background (one photograph).

(7) Photograph of the applicant's Afghan identity card (one photograph).

(8) Video footage from the Turkish Coastguard (four videos).

203. The Court will now assess the audiovisual material purportedly proving the applicant's presence on Samos and his "pushback" to Türkiye.

204. The Court observes that the applicant submitted in his application that he had taken a photograph of H. in which the town of Vathy could be seen in the background and that H. had taken a photograph of him on the same spot. He also submitted that the photograph in which he appeared had been lost as a result of the confiscation of his phone by the Greek authorities. Moreover, in his written reply to a specific question put to him before the hearing, the applicant submitted that the photograph from inside the Vathy camp had been taken by H.'s relative, Z.H., who had sent it first to ABR and then to the applicant's lawyer. He further submitted that the photographs taken on a hill overlooking Vathy had also been sent to H.'s relative and that Z.H. had then forwarded them to ABR, which had in turn sent them to the applicant's lawyer. The Court notes, lastly, that, in the applicant's submissions to the Court following the hearing, he stated that he had had to rely on online versions of the audiovisual files which he and H. had recorded and transmitted before his phone had been confiscated.

205. The Court cannot but express strong doubts as to the credibility of the applicant's account in the light of the photographs purportedly corroborating it.

206. Firstly, the Court observes that, although the applicant submitted in his oral argument that his account was corroborated by a large amount of indirect and circumstantial evidence, "including photographs [of him] on Samos", he admitted, in reply to a question from a judge, that the case file did not contain any photograph of him on Samos on the dates alleged.

207. Secondly, the Court notes that the applicant did not specify whether he or H., or both, had sent the photographs taken on the hill near Vathy to H.'s relative, Z.H. In this connection, the applicant's explanation for the absence of a photograph of him in that location hardly seems convincing. The argument that the photograph in question was lost when his phone was allegedly confiscated is inconsistent with the claim in the application that it was H. who had taken a photograph of the applicant on that spot, while the applicant, for his part, had taken a photograph of H. there. Nor is it consistent with the applicant's claim that his account was based on audiovisual material which he and H. had recorded and transmitted before the confiscation of his phone. In these circumstances, in addition to the fact that H.'s phone is likely to have been confiscated as well, the Court has difficulty seeing why the case file includes a photograph of H. but no photograph of the applicant.

208. Thirdly, the Court notes that the expert opinion by the FA research group (see paragraph 60 above) is premised on the claim that the presence of the applicant and H. "in the hills overlooking Vathy town, as well as inside the RIC in Vathy, is verified through a series of photographs (selfies) they took". The applicant himself submitted at the hearing that FA had established his presence in the hills overlooking the town of Vathy and inside the Vathy RIC through a series of photographs taken by him and H. However, this claim is contradicted by the applicant's subsequent allegations, in his observations in reply to those of the Government following the hearing, that there was no mention in FA's expert opinion of its findings' being based on his having been identified in a photograph taken on a hill near the town of Vathy. Moreover, FA's statement conflicts with the explanations given in the application, where there is no mention of selfies at all. In addition, there is no photograph of the applicant inside the Samos RIC, apart from a photograph of H. in which only the applicant's shoulder can allegedly be seen. Furthermore, the photograph in question is not a selfie, since it was taken, according to the applicant, by H's relative, Z.H.

209. Fourthly, the allegations laid out in the application and the findings of the expert opinion by FA suggest that there were two photographs, one depicting the applicant and the other H. In this connection, the Court observes that in ABR's Facebook post on the incident, which is part of the open-source information on which FA's expert opinion is based, the faces of the persons depicted in the photographs in question are covered by a pixelate filter and are therefore not visible. It follows that it is impossible, based on ABR's post, to establish whether one and the same person appears in both photographs, or whether each of them depicts a different individual, namely, the applicant and H.

210. Fifthly, the Court notes that two printed photographs were attached to the file, one of which was also included in electronic format on the third USB drive, with the indication "H. Samos". In both photographs, the same person's face – a person designated as H. – is clearly shown. Furthermore, the Court notes that H. is not wearing the same clothes in both photographs. In the first printed photograph, H. is seen wearing a white T-shirt and black trousers, while in the second printed photograph, which was also submitted to the Court in electronic format, H. is seen wearing a black T-shirt and white trousers. It seems highly likely that both photographs were taken on a hill overlooking Vathy.

211. In any event, the Court notes that the two photographs of the applicant included in the case file do not date from the period corresponding to his alleged "pushback". The first dates back to around 2018, as the applicant stated at the hearing, and appears on the copy of his Afghan identity card – a card, moreover, which was submitted to the Court in PDF format, with no accompanying translation. The Court observes that the photograph in question is somewhat blurry. The second photograph is the one affixed to the

applicant's Greek asylum-seeker's card, which was issued on 3 January 2022. That card also gives the applicant's identification details, as follows: first name: G.R.; surname: J.; father's first name: M.Y. Since there is no photograph of the applicant on Samos on the relevant dates, however, no comparison can be made against those two photographs in order to ascertain whether the applicant was actually present in Greece in the period under consideration.

212. Consequently, the absence of any photograph of the applicant on Samos on the dates alleged is such as to cast serious doubt on the credibility of his account.

213. As regards the video footage, the Court is unable to establish whether the applicant, as shown in the two aforementioned photographs from 2018 and 2022, respectively, is the person who, at the hearing, was identified as him both in the video titled "Arrival to Samos 8_9_2020 (applicant is visible)" and in the videos allegedly recorded by the Turkish Coastguard. Above all, it is sufficiently clear from the examination of those videos that the individual alleged to be the applicant in the video titled "Arrival to Samos 8_9_2020 (applicant is visible)" is not the same person as the one shown in the videos allegedly obtained from the Turkish Coastguard.

214. More specifically, the applicant stated at the hearing that he was the person who appeared during the first five seconds or so of the video titled "Arrival to Samos 8_9_2020 (applicant is visible)". The video, which was recorded by an unidentified person, also features three other individuals. The individual wearing a white T-shirt who was identified as the applicant is on the right and his face is only partly visible. As a result, the Court cannot establish that the individual in question is the same person as the applicant, as represented in the two photographs of him from 2018 and 2022 respectively. Furthermore, regarding the two other individuals appearing on the left in the video footage in question, only their backs are visible, not their faces. However, the person furthest to the left can be seen to be wearing a white T-shirt, apparently with a black pattern, and to have closely cropped hair at the neck.

215. The applicant also submitted that he could be seen in the video footage provided by the Turkish Coastguard, indicating that he was the person wearing a white T-shirt. The Court notes that the video footage shows two young men approaching the coast in an inflatable boat, before being rescued. However, their faces are covered by medical masks and are therefore not fully visible. Most importantly, in that video, the individual identified as the applicant is wearing a white T-shirt with a black pattern across the chest, with hair closely cropped at the neck, unlike the person alleged to be the applicant in the video titled "Arrival to Samos 8_9_2020 (applicant is visible)". In addition to its being impossible to determine with certainty whether the young man in question, whose face is masked, is the same person as the applicant, as shown in the two photographs taken respectively in 2018 and 2022, the

Court considers it highly likely that he is the same individual as the one furthest to the left in the video titled "Arrival to Samos 8_9_2020 (applicant is visible)", whose identity is unspecified.

216. It follows that, even assuming that the first video was recorded on Samos on 8 September 2020, it is highly doubtful that the individual whom the applicant identified as himself in that video is the same person as the one shown in the video footage allegedly recorded by the Turkish Coastguard on 9 September 2020.

217. In the light of the foregoing, the Court finds that the applicant has failed to convince it to a sufficient degree that he appeared in the various items of audiovisual material which he submitted to the Court in order to prove both his presence in Greece and his "pushback" to Türkiye. It therefore concludes that the material in question is not such as to corroborate the applicant's account and cannot constitute as prima facie evidence. In the light of the above, the Court finds 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 or techniques) to establish the reliability and probative value of the audiovisual material in issue.

(γ) Testimony and other evidence

218. The Court would point out that in support of their arguments challenging the credibility of the applicant's account, the Government relied on the National Transparency Authority's confidential report no. 205/23 on the applicant's case (see paragraph 77 above), which noted several inconsistencies between the applicant's allegations and the evidence adduced concerning the facts of the case. The applicant relied on M.N.A.'s written statement of 5 April 2024 purportedly confirming his account (see paragraph 102 above). The Court would further point out that, in the Government's view, this statement contradicts the applicant's submissions in the application (see paragraph 76 above)

219. The Court does not consider it necessary to examine the discrepancies between the aforementioned statement, which was taken four years after the events alleged, and the allegations made in the application. Nor does it consider it necessary to undertake a detailed comparison of the different versions of the incident documented in the National Transparency Authority's investigation report no. 205/23. It is of the view that, despite the discrepancies observed, which at times can admittedly be significant, the existence of several versions of the alleged incident would at first sight tend to corroborate the applicant's account. On this point, the Court notes a contradiction in the Government's submissions, in that they emphasised these discrepancies to challenge the truthfulness of the applicant's account, while maintaining that every one of the versions in question was a reproduction of the applicant's account. However, even assuming that these different versions suffice to prove that two Afghan minors were subjected to a "pushback" from

Samos to Türkiye on the dates alleged, it seems extremely doubtful to the Court that the applicant was one of the two individuals concerned, for the following reasons.

220. Firstly, the Court notes that, according to investigation report no. 205/23 (see paragraph 77 above), the National Transparency Authority had an exchange with M.N.A. by videoconference on 19 April 2024. The investigation report states that M.N.A.'s testimony was taken by the Authority before it became aware that he had previously made a written statement, dated 5 April 2024, which the applicant submitted to the Court in the present case (see paragraph 102 above). During the interview with the Authority's investigation unit, M.N.A. confirmed that he had shown the UNHCR official at the Samos RIC the photographs of the two boys which Z.H. had sent him, along with a photograph giving the two boys' names. When asked whether he was in possession of the photographs in question, he replied that he was not, explaining that he had changed phones. The investigative unit also showed M.N.A. two photographs of the applicant it had received from the Ministry of Migration and Asylum and M.N.A. stated that he did not recognise the person in the first photograph, clarifying that the boy he had met was thinner. As to the individual in the second photograph, he submitted that it might have been the boy in question, but he was not 100% certain, pointing out that the skin colour of the person in the photograph was darker than that of the person he had met at the Samos RIC. In addition, M.N.A. was hesitant in view of the four years that had passed since the alleged incident. In the Court's view, these considerations considerably impair the credibility of the account given by the applicant, who, moreover, has failed to provide a convincing explanation on this point.

221. Secondly, the Court notes that, in its observations as a third-party intervener, the UNHCR referred to an incident potentially involving the applicant (see paragraph 168 above), an account of which it had provided to the National Transparency Authority. According to investigation report no. 205/23, however, the UNHCR had provided the Authority with a screenshot of a message sent to it by M.N.A on 9 September 2020, in which he had given the initials of the two minors having allegedly arrived on Samos, namely: (1) first name: H.; surname: R.; father's first name: G.R. and (2) first name: R.; surname: J.; father's first name: R. According to the investigation report, on 26 September 2020 MSF informed the UNHCR that it had resumed contact with the two minors, who were in İzmir. Their initials, as recorded by the Turkish authorities, were provided to the UNHCR by MSF, as follows: (1) H.F.; father's first name: G.R. and (2) R.C.; father's first name: C. Without by any means ruling out the possibility of a clerical error, the Court finds that these two sets of identification details, which are not consistent, make it extremely doubtful that the applicant, whose first name, surname and father's name, as shown on his asylum-seeker's card (see paragraph 211

above) are completely different, was one of the two persons involved in the incident reported by the UNHCR and MSF.

222. In any event, the Court notes that the applicant was located in Thessaloniki in November 2021, then registered as an asylum-seeker (unaccompanied minor). It observes that, contrary to his submissions, the applicant made no reference in his asylum interview to an earlier entry into Greece on the dates alleged but merely stated that he had arrived in Greece in November 2021. Furthermore, when asked why he had left Türkiye, he stated that during his first year there a smuggler had tried to send him to Greece by boat every month or two but the coastguard had sent him back each time (see paragraphs 26 and 30 above). The Court is of the view, however, that these statements cannot be regarded as conclusive, since it is impossible to ascertain whether, during the alleged attempts, the applicant actually entered Greece before being sent back by the coastguard, as he claimed.

223. The Court would emphasise that it does not rule out the possibility that on the relevant dates a group of persons, including minors, landed on Samos and that two of the minors were subjected to a "pushback" to Türkiye. However, even assuming that were the case, the evidence before it does not enable it to establish beyond reasonable doubt that the applicant was part of that group or, more specifically, that he was one of the two minors in question.

224. The Court takes note of the domestic authorities' apparent delays in conducting a criminal investigation into the facts of the case (see paragraph 112 above) which might have shed light on certain aspects of it on which the parties disagree. Nevertheless, it was only at the hearing before the Chamber that the applicant put forward certain arguments for the first time as to alleged shortcomings in the domestic investigation, which is still pending. Be that as it may, the Court is of the view that, in the particular circumstances of the present case, these belated arguments do not affect the general conclusion that the applicant has failed to adduce prima facie evidence in support of his allegation that he was subjected to a "pushback" by the Greek authorities on the date alleged (contrast *M.H. and Others v. Croatia*, cited above, §§ 268-73).

(c) Conclusion

225. The Court reiterates that there is strong evidence to suggest that, at the material time, there was a systematic practice of "pushbacks" from the Greek islands to Türkiye (see paragraph 190 above). Nevertheless, having regard to the foregoing analysis, it is of the view that the applicant, whose statements and allegations appear contradictory and inconsistent at times, has failed to provide prima facie evidence that he was present in Greece and subjected to a "pushback" to Türkiye from the island of Samos on the relevant dates. Accordingly, he cannot claim to be a victim within the meaning of Article 34 of the Convention.

226. Consequently, upholding the Government's objection, the Court concludes that the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4. This conclusion makes it unnecessary for the Court to examine the Government's objections for alleged abuse of the right of application and failure to exhaust domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in French and notified in writing on 7 January 2025.

Milan Blaško Registrar	Peeter Roosma President