

Communication to the United Nations Human Rights Committee

In the case of

FAJ

against

Greece

*Submitted for consideration under the Optional Protocol to the International
Covenant on Civil and Political Rights*

to

The United Nations Human Rights Committee

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I. THE VICTIM

Full name: FAJ
Nationality: Syrian
Date and place of birth: 1995
Address:

II. LEGAL REPRESENTATIVES OF THE VICTIM

1. This claim is submitted by the Global Legal Action Network (GLAN), HumanRights360, and Amanda Brown, Dr Valentina Azarova, and Dr Itamar Mann, who are appointed as legal representatives of the victim. A letter of authority is attached to this communication.
2. Addresses for exchange of confidential correspondence:

Global Legal Action Network (GLAN)
c/o Irish Centre for Human Rights,
National University of Ireland Galway
University Road
Galway, Ireland

HumanRights360
95, Vas. Sofias, 5th floor
Athens 10676, Greece

3. The authors respectfully request the Committee to keep the name of the victim confidential in the disposing of communications related to the decision of the present case.

III. STATE PARTY

4. This communication is submitted against Greece. Greece ratified the International Covenant on Civil and Political Rights (ICCPR) and its Protocol on 05 May 1997.

IV. SUMMARY OF THE CLAIM

5. This case concerns Mr. FAJ's enforced disappearance and untoward exposure to a pattern of summary expulsions (pushbacks) by the Greek government at its Northeastern border. The applicant is a 25-year-old Syrian man who was recognised as a refugee in Germany in 2015. In November of 2016, he travelled with valid documentation from Germany to Greece. The sole purpose of his trip was finding his 11-year-old child brother, who had disappeared earlier during his own perilous journey to seek asylum. Yet the claimant arbitrarily found himself subject to a clandestine illegal deportation apparatus which resulted in his expulsion from Greece to Turkey. Over the course of the following year he made multiple attempts to re-enter Greece, during at least 9 of which he entered Greek territory and was pushed back by Greek authorities, without regard to his existing refugee status in the EU. While the claimant does not know exactly why Greek authorities initially abducted him, as they refused to provide any reason, the long-standing practice of summary expulsions across the Evros-Meriç River in response to increased migrant entries through this external EU border suggests that it is due to xenophobic hostility to his Syrian national origin, Arab appearance and mother tongue. He was singled out amongst other pedestrians in a public space, stopped at random by police and questioned about his national

origin, and was arrested immediately after responding that he was of Syrian origin, despite his refugee status and residency permit in the EU.

6. Specifically, the complaint concerns arbitrary detention, ill-treatment and a summary expulsion (pushback) carried out during the night between 30 November 2016 and 1 December 2016 from Greece to Turkey across the Evros-Meriç River. During this operation (also referred to below as Mr. FAJ's "initial expulsion"), Greek police cooperated with German-speaking commando forces – working with the police and wearing black uniforms and balaclavas – to collectively expel the claimant and approximately other 50 migrants from Greece to Turkey.¹
7. Stranded in Turkey and having had his documentation confiscated by the Greek police, Mr. FAJ was forced to attempt crossing the Evros-Meriç River in order to re-enter Greece and continue his search for his child brother. Over the following year, he attempted 14 times to re-enter Greece: 13 times via the river and one time by sea. Each time, Mr. FAJ was summarily expelled by Greek or Turkish authorities. These 13 subsequent pushbacks that Mr. FAJ endured between February and December of 2017, when taken together, illustrate the systemic nature of summary expulsion in the Evros region during this period.
8. Eventually Mr. FAJ unofficially re-entered and remained in Greece on 19 December 2017, 385 days after the initial pushback. It was not until 30 October 2019 – 1,065 days after his initial expulsion – that he was finally issued a visa to leave Greece, enabling his return home to Germany. Only on 18 May 2020 – 1,266 days after his initial expulsion – did German authorities finally reissue his German residency permit, on the basis of his recognition as a refugee. The severe uncertainty and physical danger he experienced during these 1,266 days, including the series of expulsions he endured, all occurred as a direct consequence of his initial expulsion on 30 November 2016, the events of which are at the heart of this complaint.
9. The detention and summary expulsion (pushback) of Mr. FAJ on 30 November 2016 constituted an enforced disappearance under international law. The Greek officials' arrest and detention of Mr. FAJ on 30 November 2016, and their subsequent refusal to acknowledge the deprivation of his liberty, constituted an enforced disappearance, in violation of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) to which Greece is a State Party.² The ICPPED defines an enforced disappearance as:

“the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”³

The Human Rights Committee has repeatedly considered enforced disappearances as defined in article 7, paragraph 2 (i), of the Rome Statute of the International Criminal Court:

"Enforced disappearance of persons means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a

¹ The role of commandos in pushbacks at the Evros-Meriç has been described by, inter alia, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment following its visit to Greece (10-19 April 2018). See <https://rm.coe.int/1680930c9a>.

² International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 Dec. 2006, entered into force 23 Dec. 2010) 2716 UNTS 3 (ICPPED). Greece signed onto the ICPPED on 1 October 2008 and ratified it on 9 July 2015.

³ ICPPED, article 2.

refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.”⁴

The arrest, incommunicado detention, and clandestine summary expulsion (pushback) to which the Greek police subjected Mr. FAJ fulfil the criteria of an enforced disappearance under the definitions of both the Rome Statute and the ICPPED. The Greek police, acting as authorized agents of the State, excluded Mr. FAJ from the protection of the law by holding him in an unofficial detention centre without access to legal counsel or the outside world.

In confiscating Mr. FAJ’s documentation before expelling him from Greece, the Greek authorities in effect deprived Mr. FAJ of international protection for an entire three years, until the German authorities reissued his legal documents. This is presumably the precise intention of the Greek authorities in stripping him of his documentation. Such *de facto* deprivation of status, in the case of Mr FAJ, is tantamount to denationalisation, since his international protection status comes as a replacement of his nationality, which is the source of his persecution. In disappearing Mr. FAJ on 30 November 2016, the Greek police removed him from the protection of the law for the remainder of his time in Greek territory and in effect both prevented him from formally re-entering the EU, and perpetuated this exclusion from his legal status by repeatedly summarily expelling him as he continued to attempt to seek protection through his physical presence in European jurisdiction.

The Greek authorities have been continuously involved in a systematized practice of this deprivation of liberty, followed by repeated refusal to acknowledge such deprivations of freedom or provide information on the fate and whereabouts of those whom they summarily expelled to Turkey. Summary expulsions (pushbacks), like that of Mr. FAJ, are to be properly understood as enforced disappearances under international law, in the context of which individuals are expelled, often collectively, following their incommunicado arrest and detention, and then deprived of the protection of their human rights in the EU through clandestine re-expulsion from the territory.

The Human Rights Committee has repeatedly reiterated that enforced disappearances violate several substantive ICCPR rights, as well as procedural rights and due process rights due to the removal of the victim’s protection from the law.⁵

10. The detention, violent abuse and summary expulsion of the claimant in a group of others — executed by uniformed Greek police, in cooperation with German-speaking individuals who were masked and dressed in black — breached Mr. FAJ’s rights under Articles 2, 6, 7, 9, 10, 12, 13, 14, 16, 17, and 26 of the International Convention on Civil and Political Rights (ICCPR).⁶ In addition to the violations they committed during the expulsion itself, the Greek police further violated Mr. FAJ’s rights under the ICCPR by stripping him of his German documentation before his removal and thereby placing him in limbo for roughly three years, subjecting him to a prolonged, dangerous condition of rightlessness.
11. During and as a result of the initial pushback by Greek authorities, the claimant suffered repeated and acute threats to his life, risks of serious bodily harm, and consistent violations of his security. He was arbitrarily detained and subjected to torture as well as cruel, inhumane and degrading treatment. He was denied his right to leave a country and re-enter his own and he was denied his recognition as a

⁴ See, for example, *Boucherf v Algeria* (1196/2003), para 9.2; *Sharma v Nepal* (1469/06), para 7.4; *El Hassy v Libya* (1422/05), para 6.6; *Grioua v Algeria* (1327/04), para 7.2.

⁵ See, for example, *Boucherf v Algeria* (1196/2003), para 9.2; *Sharma v Nepal* (1469/06), para 7.4; *Sarma v. Sri Lanka* (950/00), para. 9.3. See also General Comment No 36, Right to life, para 8.

⁶ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

person before the law. The claimant's exposure to each of these human rights violations was a direct result of the incident of pushback which commenced on the 30 November 2016 and continued throughout that night. The University of London-based investigative institute Forensic Architecture has provided a reconstruction of the events based on the claimant's factual account of the incident.

12. The claimant is denied an effective remedy by the Greek government, who has concealed the facts concerning the occurrence of Mr. FAJ's treatment, and therefore relies on the Committee to impose a measure of accountability on the responsible parties.

A. Summary of the facts

13. Mr. FAJ is a Syrian national from the city of Deir az-Zour in eastern Syria. Since the beginning of the war in Syria, his city was divided between government opposition forces and the Assad government forces. ISIL repeatedly attempted to capture Deir az-Zour until it successfully did so in January 2016, in an offensive that killed hundreds and resulted in the kidnapping of hundreds more, and which occurred at a point when most of the city's residents had already been displaced by fighting.
14. Mr. FAJ was granted refugee protection in Germany in 2015 at age 20. At age 21, on 28 November 2016, he travelled lawfully by plane to Greece with the sole purpose of finding his missing 11-year-old brother, who had recently disappeared while traveling to meet Mr. FAJ and seek asylum. At the time, Mr. FAJ was already in possession of a residency permit in the EU issued by Germany; his arbitrary arrest and *de facto* stripping of that status was part of a clandestine operation by the Greek authorities which deprived him of protection by the law and thereby amounted to an enforced disappearance.
15. While looking for his young brother in Didymoteicho, where he had last heard the child to have reached, he was approached at a bus station by uniformed Greek police. After asking Mr. FAJ where he was from, to which he replied that he is Syrian, the officers immediately arrested him, called for a backup vehicle, confiscated his phone and transported him to a detention centre in the forest. After arbitrarily apprehending him, denying him access to information on his rights, depriving him of his liberty, and strip-searching him in front of a member of the opposite sex, the police detained Mr. FAJ with approximately 50 other migrants in two cells for several hours, in unsanitary conditions, and without food or water. Throughout his apprehension and detention, Mr. FAJ tried to tell the officers that he had a German passport and was legally present in Greece, but the officers refused to listen to him, instead shouting at him to follow their orders, refusing to provide any reason for their actions, and beating him on several occasions. While he was detained, the Greek police also confiscated Mr. FAJ's German documentation, passport and house keys.
16. Around midnight, the police transferred Mr. FAJ and his 50 group members into the control of a group of German-speaking commandos, who were armed, masked and dressed in black. The commandos crammed the group in one truck and drove them to the Evros-Meriç River, where they then loaded the detainees onto a rubber boat six at a time, clandestinely brought them across the river, beat anyone who looked at them or moved without permission, and left the group stranded on the Turkish riverbank.
17. This incident on the 30th of November was the first of several summary expulsions (pushbacks) to which Greek officials would subject Mr. FAJ throughout the following year. With the Greek police having seized his legal means of pre-authorized travel, and without accessing assistance from the German Consulate in accessing his documentation, Mr. FAJ was forced to try to re-enter Greece by precarious crossings. Throughout 2017, he tried 12 times to reach Greece by the Evros-Meriç River and one time by sea. During each of these 13 attempts, he was subjected to summary expulsions (pushbacks) and pull-backs by Greek and Turkish officials, respectively, during which he was

repeatedly detained, beaten and mistreated. It was only on his 14th attempt, in December 2017, that Mr. FAJ successfully re-entered Greece. At this point, he had been trapped without legal status in Turkey for 385 days. Mr. FAJ was then trapped without legal status in Greece for an additional 680 days, until his German travel document was issued in November 2019, and he was able to return to Germany in December 2019. Overall, the initial pushback subjected this young man to roughly three years of precarity and legal limbo, stuck in foreign countries without any of his documentation, and unable to return home to his legal residence in Germany.

18. The 1,065 days that elapsed between Mr. FAJ's initial expulsion from Greece and the issuance of his authorization to re-enter Germany brought upon Mr. FAJ severe physical and mental harm, serious bodily injury, toxic stress and significant financial hardship. By subjecting him to an enforced disappearance on the day he was searching to reunite with his child brother in Greece, and rendering him unable to return to Greece for over a year, the Greek authorities actively and knowingly interfered with Mr. FAJ's opportunity to reunite with his brother, who today remains missing. Mr. FAJ continues to face the consequences of these events, which all began with an instance of racial profiling that day at the bus station, and led to his abduction, *de facto* deprivation of his refugee status (following the Greek authorities own failure to recognise his status granted by another EU country), and his expulsion from Greece and the EU, placing him outside the protection of the law in November 2016 and for years to come.

B. Violations of the International Covenant on Civil and Political Rights

19. The claimant's rights were decisively impacted by the activities of the Greek authorities in a direct and foreseeable manner. As Greek officials detained the claimant, confiscated his documentation, and facilitated the collective pushback, Greece exercised direct control over the claimant, triggering the chain of events that led to the violations of his rights under Articles 2, 6, 7, 9, 10, 12, 13, 14, 16, 17, and 26 of the ICCPR:
 - a. *Article 6(1): The right to life.* Mr. FAJ had to receive emergency hospital care for chest pain caused by the expulsion, which led to cardiac surgery and a lifetime of prescribed heart medication; was again hospitalized with severe physical injuries due to a xenophobic attack suffered after being pushed back to Turkey; faced substantiated risks of drowning and hypothermia in the Evros-Meriç River during his initial expulsion from Greece and the subsequent repeated pushbacks; and endured severe mental harm as a result of his treatment by Greece, leading to severe depression, anxiety and suicidal ideations which led to his attempted suicide multiple times.
 - b. *Article 7: The prohibition of torture or cruel, inhuman or degrading treatment or punishment, alone and in conjunction with Article 13: Procedural rights against expulsion.* Greek officials subjected Mr. FAJ to systematic beatings and the infliction of physical pain, including mental distress. His expulsion also exposed him to the risk of torture or cruel, inhuman or degrading treatment or punishment in Turkey or a country of further refoulement.
 - c. *Article 9: The right to liberty and security, including the prohibition on arbitrary arrest or detention.* Mr. FAJ was deprived of his liberty without any explanation of a reason for his apprehension, detention or removal.
 - d. *Article 10: The right to dignity.* The treatment and conditions to which Mr. FAJ was subjected while in custody of the Greek authorities violated Greece's obligations to ensure a standard of humanity and dignity for those in detention.

- e. *Article 12(2): The freedom to leave a country and Article 12(4): the right to enter one's own country.* The Greek police officers' seizure of Mr. FAJ's German documentation during his expulsion to Turkey prevented him from leaving Turkey, and prohibited him from re-entering his own country of residency (Germany) for some 1,065 days.
- f. *Article 13: Procedural rights against expulsion.* The claimant did not receive a chance to appeal his arrest and detention, nor to review and seek legal remedies for his ordered expulsion, which occurred on the night of the day he was arrested. When he re-entered Greece, following 14 attempts and repeated summary expulsions, he was undocumented, as a direct result of the Greek police confiscating his documents. He therefore lived at constant risk of arrest and deportation, and subsequently could not appear before the prosecutor or other authorities. Since returning to his home in Germany, he has not had access to domestic remedies in Greece that would have a chance of success or provide effective remedies for these grave violations which occurred roughly four years ago.
- g. *Article 16: The right to recognition everywhere as a person before the law.* The Greek officials' seizure of Mr. FAJ's German documentation effectively rendered him stateless, forcing him to live as an undocumented person in Turkey and Greece for nearly three years, without legal recognition, without access to basic services, and without access to domestic remedies in Greece without risking deportation.
- h. *Article 17: The right to privacy.* The Greek police officers arbitrarily interfered with Mr. FAJ's privacy by confiscating his legal documentation and the keys to his home in Germany, as well as by arbitrarily and knowingly interfering with his search for his missing child brother. The officers also subjected Mr. FAJ to a body search in the presence of a female officer, contrary to the Human Rights Committee's advice that State officials should ensure that individuals should only be examined by persons of the same sex during personal and body searches.
- i. *Article 26, in conjunction with Article 2: The prohibition of discrimination.* The Greek police's racial profiling of Mr. FAJ and discriminatory treatment based on his Syrian nationality are what commenced his arbitrary arrest, detention and expulsion.
- j. *Article 14: The right to equality before courts and tribunals and to a fair trial.* Mr. FAJ did not have access to sufficiently effective and prompt remedies for the misconduct of Greek officials or for the harm caused to his person before Greek courts. Greece's confiscation of his documentation stripped him of his recognition before the law and effectively barred him from having access to any form of redress against these violent actions until he could successfully regain his German documentation, as he would face immediate risks of indefinite detention and deportation if he were discovered by the Greek police to be undocumented.
- k. *Article 2(3): The right to an effective remedy.* Greek domestic legislation does not include provisions on the illegal expulsion or violation of the principle of non-refoulement, and Greece knowingly expelled Mr. FAJ to Turkey while having substantial grounds for believing he would face a risk of irreparable harm including chain refoulement.

C. Summary of domestic remedies exhausted

20. Since his initial expulsion from Greece in November 2016, Mr FAJ did not have access to any effective domestic remedies in Greece. The Greek state's concealment and denial of summary and collective expulsions (pushbacks) thus makes it impossible for claimants in such cases to prove that their injury was resulted from the Greek state's acts.⁷ Such proceedings would not have a reasonable prospect of redress,⁸ and, even if they did, would not offer the kind of remedy that would account for the gravity and severity of the violations suffered by the claimant.
21. During the time he was undocumented in Greece, Mr. FAJ was unable to access any remedies without his detention and potential deportation from the EU.⁹ The Greek Prosecutor explicitly informed a lawyer at HumanRights360 that she would have to arrest the claimant if he came to testify before her. Since his return to Germany, he has had no access to effective remedies in Greece for the serious violations of his rights. Scores of other cases have been thwarted by the non-cooperation and denial of the Greek authorities of such acts, leaving claimants like Mr. FAJ with no effective remedy to pursue.¹⁰
22. Maintaining a requirement to exhaust all domestic remedies in these circumstances would place an unreasonable burden on the complainant to pursue legal avenues that would not have the effect needed to remedy the harm caused to him from the Greek authorities' unofficial policy of collective expulsion (pushbacks) at the Evros-Meriç border. Notwithstanding their ineffective result, in the best-case scenario such proceedings would drag out and consume the claimant for years, affecting his already weak mental and physical health, and resulting in financial loss beyond that which he incurred as a result of his absence from Germany during the three years after he was stripped his documents by the Greek authorities.¹¹

V. FACTS OF THE CLAIM¹²

23. The following factual account builds on Forensic Architecture's (FA) analysis and on personal statements of the claimant, as well as other public sources listed in Section X. FA, an investigative institute based at the University of London, has provided a reconstruction of the events based on an interview technique called 'Situating Testimony', in which witnesses recreate events and locations with the help of 3D modelling software.¹³ This process has been proved to carefully stimulate memory, bringing to the fore events that are registered spatially, or are attached to specific spaces, objects, etc. In creating the reconstruction, FA also conducted field work and remote sensing analysis, including satellite imagery.
24. With the help of architectural software and architectural researchers, Mr. FAJ described and modelled in 3D the environment and incidents at the heart of the complaint, including the buildings in which he was detained, the vehicles and boats used to transport him the pushback operations, the uniforms and weapons of the operatives involved, and the river conditions and landscape across which he was pushed back to Turkey.¹⁴ Mr. FAJ described the events and environments in great detail, verbally with the

⁷ UN HRC, Annual Report 1984, para 584 (quoted in Moller and de Zayas, *United Nations Human Rights Committee Case Law 1977–2008* (Kehl am Rhein: N.P. Engel Verlag, 2009) 112: "exhaustion of domestic remedies can be required only to the extent that these remedies are effective and available").

⁸ *Thompson v Panama* (438/90), para 5.2.

⁹ Human Rights Committee, *Phillip v. Trinidad and Tobago*, Communication 594/1992, Views of 3 December 1998, U.N. Doc. CCPR/C/64/D/594/1992, para. 6.4.

¹⁰ *MK v France* (222/87), para 8.3. The seriousness of the violation can affect the effectiveness of the remedy: *Vicente et al v Columbia* (612/95), para. 5.2.

¹¹ Similar circumstances have led the ECtHR to cancel this requirement: *McFarlane v Ireland*, Application No 31333/06, GC 10 September 2010 para 125; and *Gaglione et al v Italy*, Application No 45867/07 ECHR 21 December 2012 para 22.

¹² All facts in this section are provided by Forensic Architecture (Exhibit 2) unless otherwise indicated.

¹³ Forensic Architecture, Exhibit 1.

¹⁴ Exhibits 1 and 2.

assistance of an Arabic translator, as well as by sketching certain details on paper for the team. Forensic Architecture then used Unreal Engine, a gaming software, to model the testimony in 3D format.

A. Background of the victim

25. The claimant, FAJ, is a 25-year-old man from Syria, near Deir az-Zour. He is a refugee recognised as such in Germany. At the time of the incidents described in this complaint, he spoke Arabic and some German. He had been learning German from friends since first arriving in Germany and he had started an intensive six-month German course. He had completed 25 days of the course and had basic colloquial knowledge of the German language at the time of the incident.¹⁵
26. Mr. FAJ is one of 23 siblings (13 brothers and 10 sisters). One of his older brothers, born in 1991, lives with him in Germany. All of his other family members, aside from his missing younger brother M described below, remain in Syria.¹⁶
27. Mr. FAJ left Syria at the beginning of July in 2015 to seek safety from the ongoing civil war. ISIL had taken control of the area where he was living, near Deir az-Zour. He fled from Deir az-Zour to the Turkish border in July, and from there he went to Greece by sea. He arrived to the island of Kos by boat on 13 July 2015. From Greece, he travelled through Macedonia, Serbia, Hungary and Austria until he reached Germany. He entered Germany on 20 August 2015 at which point he was detained by the German immigration authorities for 40 days in a camp near the city of Passau.¹⁷ On 16 October 2015, Germany's Federal Office for Migration and Refugees granted Mr. FAJ asylum status and permanent residency.¹⁸ The claimant and his older brother moved to Munich in mid-2016, and now reside in Nuremberg.
28. On 28 November 2016, the claimant left for Greece to find his missing 11-year-old brother, known here for privacy as M. M was born in 2006. He had left Syria due to the war; at that time, ISIL was recruiting child soldiers from ages 11 and above and taking them away from their families. At this point, M's family members had all been displaced from Deir az-Zour and were dispersed across different regions of Syria. To protect M from the war and ISIL's persistent child recruitment, Mr. FAJ and his family decided to send M to seek asylum in the EU and live the remainder of his childhood under Mr. FAJ's guardianship.¹⁹

At 11 years old, M travelled alone to Istanbul, where he met other asylum seekers. They decided to travel together to cross the Evros-Meriç River with the help of a smuggler. Mr. FAJ and his family spoke with this group on the phone before the journey and asked them to look after M.²⁰

M and his group attempted to cross the Evros-Meriç River on 22 November 2016. Mr. FAJ last heard from M before he attempted to cross the river, and he then lost contact with him. Mr. FAJ heard from another asylum seeker in M's group that they had reached Didymoteicho and then M and others had split off into a different group.²¹ From his home in Munich, Mr. FAJ tried for days to locate M remotely by contacting other members of the group, but could not find him. He then flew to Greece on 28 November 2016 to try to find M in person.²²

¹⁵ Interview with Mr. FAJ by GLAN.

¹⁶ Interview with Mr. FAJ by GLAN.

¹⁷ Interview with Mr. FAJ by GLAN.

¹⁸ Exhibits 4-6.

¹⁹ Interview with Mr. FAJ by GLAN.

²⁰ Interview with Mr. FAJ by GLAN.

²¹ Interview with Mr. FAJ by HumanRights360.

²² Interview with Mr. FAJ by GLAN.

29. On 30 November 2016, while in Didymoteicho looking for his missing brother, Mr. FAJ was racially profiled and arbitrarily arrested by Greek police. In an incident of enforced disappearance, he was clandestinely detained, stripped of his documentation, and summarily expelled to Turkey across the Evros-Meriç River that night by boat with about 50 other asylum seekers, refugees and migrants. The claimant endured 13 other pushbacks following this initial incident and was trapped in Turkey and Greece for a combined total of 1,065 days before he was finally issued a visa to return to Germany.
30. The claimant is currently residing in Nuremberg, Germany. His brother M, who would now be 15 years old, remains missing.

B. Interception in Greece, initial pushback to Turkey and subsequent pushbacks

Arrival in Greece

31. At around 16.00 on 28 November 2016, Mr. FAJ travelled by plane from Munich, Germany to Thessaloniki, Greece with his German passport and German resident permit card. His flight on Aegean Airlines (A3503) left Munich (MUC) at 19:40 and arrived in Thessaloniki (SKG) at 22:55.²³ He stayed that night in Thessaloniki at a hotel.
32. On 29 November 2016, he purchased a bus ticket to travel from Thessaloniki to Didymoteicho. He arrived in Didymoteicho, a town in Northern Greece, around midnight on the same day. He stayed in Didymoteicho for one night in a hotel close to the KTEL (the bus station).²⁴

Interception and apprehension by Greek police

33. At around 14.00 the next day, 30 November 2016, Mr. FAJ went to the KTEL station. He held up a photo of his brother on his phone asking if anyone had seen him. Soon, in the open area of the KTEL station, a marked police car arrived with three uniformed officers inside. A policeman approached the claimant and stopped him, while two other policemen sat by the door next to the kiosks of the KTEL.²⁵ The officer who approached him told him to stand by the wall. The officer asked him, in English, “Where are you from?” When the claimant responded that he was from Syria, the officer shouted at him to stand up against the wall.²⁶ Mr. FAJ showed the officer his brother’s photo and explained that he was looking for him, and then the policeman told him something in English that he did not understand.²⁷ Mr. FAJ tried to tell the officer he had a passport and was legally present, but he would not listen; he continued to shout at him to follow their orders and to stop talking.
34. Once Mr. FAJ told the police officer that he was Syrian, the officer started talking in Greek through a mobile phone. When the claimant asked the officers to call someone on the phone, in order to explain his legal status in Greece, they refused, instead yelling at him to be quiet and to stay standing against the wall.²⁸ The claimant noticed that there were security cameras in the station.²⁹ After fifteen minutes, an unmarked white van with blacked-out rear windows arrived. Inside the van, there were two men wearing olive coloured pants and black t-shirts.³⁰ The men from the van (their official status being

²³ Exhibit 7.

²⁴ Interview with Mr. FAJ by HumanRights360.

²⁵ Interview with Mr. FAJ by HumanRights360.

²⁶ Interview with Mr. FAJ by HumanRights360.

²⁷ Interview with Mr. FAJ by HumanRights360.

²⁸ Interview with Mr. FAJ by HumanRights360.

²⁹ Interview with Mr. FAJ by HumanRights360.

³⁰ Interview with Mr. FAJ by HumanRights360.

unclear due to lack of uniform or insignia) took the claimant's mobile phone and, without saying anything to him or asking for his legal documentation, they put him in the vehicle.

35. The van had a glass partition between the driver and the carriage with rails bars behind the glass. There were no other passengers. They began to drive the claimant to an undisclosed location, and he could not hear anything they said, due to the pane of glass separating the driver and the carriage. The van did not have any windows and the claimant could not understand where they were taking him.³¹ They drove on a paved road for about twenty minutes, then continued on a bumpy, uneven dirt road for about 90 minutes. They arrived at a detention centre in the forest.

Detention in Greece

36. When the van arrived at the detention centre, the men from the van pulled Mr. FAJ out of the vehicle onto the dirt road. By this time, it was around 16.00 or 17.00.³² The claimant could not see much, but he could see that the building was yellow and was surrounded by at least half a dozen vehicles. There were small and large cars, green coloured army Jeeps, pick-up trucks and 4x4's. There were six or seven police officers surrounding him.³³

37. The officers brought Mr. FAJ into the building. They first took him to a hall where there were three English-speaking police officers, two male and one female. The room had cameras, security controls, and full-body metal detectors. The claimant was made to sit in a chair for about 30 minutes.³⁴ He waited in the inspection room while the officers searched families who arrived with children.

38. Mr. FAJ attempted to explain that he had his German passport, he was there looking for his missing child brother, and he had entered legally. The officers did not say anything; they just kept telling him to shut his mouth. Eventually they asked him where he lived in Germany, looked at his passport and asked for his name. They took all of his belongings, including his passport, his German documentation, and his house keys from Germany. After taking Mr. FAJ's documents and belongings, the officer did not say anything to him, and just took out a personal cell phone and took a photograph of the claimant. This officer gave the claimant's documents to the female police officer, and she took them to the office next door.³⁵ The claimant reports that he was the only person in the group who had had his picture taken by the officials.³⁶ The officers stripped him completely naked and searched him in front of an officer of the opposite sex.³⁷

39. The building had four gated cells which were connected by a hallway. There were CCTV cameras on the walls. It looked like a proper police office to the claimant. There were armed police officers who had guns and spoke Greek between each other. They walked him down a corridor and placed him into a large cell.

40. At first, Mr. FAJ had been the only detainee in the centre, then the officers brought in other families, until eventually there were about 50 people detained inside. He was held in a cell with about 30 other men. The officers placed women and children in a family cell across the hallway.

³¹ Interview with Mr. FAJ by Forensic Architecture.

³² Interview with Mr. FAJ by Forensic Architecture.

³³ Interview with Mr. FAJ by HumanRights360.

³⁴ Interview with Mr. FAJ by Forensic Architecture.

³⁵ Interview with Mr. FAJ by Forensic Architecture.

³⁶ Interview with Mr. FAJ by Forensic Architecture.

³⁷ Interview with Mr. FAJ by HumanRights360.

41. The officers did not tell the claimant anything about what was happening. It was other detainees who told him that he was about to be deported back to Turkey. Some of the detainees told him that because he had documentation and legal status in Germany, he should not have a problem.
42. The cells were very dirty. They were empty, with no furniture. There was one toilet in the claimant's cell for all 30 men to share. The toilet was filthy, with sewage overflowing onto the ground and with no running water. There were no beds in the cell, so the detainees laid on the floor, but they could not sleep because of the unsanitary conditions and lack of space.³⁸ Through the bars of his cell, the claimant could see the family cell where the women, children and infants were detained.
43. The approximately 50 detainees included Arabs, Pakistanis and individuals of various other ethnicities and nationalities.
44. Mr. FAJ would occasionally knock on the metal bars of the room and ask the officers what right they had to detain him. Rather than answer his questions, they only told him to back up and be quiet.
45. There was no clock in the detention centre, and Mr. FAJ did not have a watch. He estimates that he stayed there from the afternoon until around midnight. The officers did not provide any food. At some point when it was dark, some of the detainees called for the officers to bring milk for the children. The officers refused to bring milk, water or any other supplies. The officers walked in front of the cells and knocked on the bars with a bat.
46. After midnight, the officers opened the cells' doors and told the detainees to gather their belongings. All of the detainees were taken out of the detention centre, one by one, by men dressed in all black. The officers returned the detainees' shoes. They kept the claimant's documents, his phone, and his keys to his flat in Germany. The detainees were made to pull their shirts or sweatshirt hoods over their faces, so they could not see anything as they walked outside.
47. When Mr. FAJ was exiting the centre, he heard two people speaking German in the waiting room. The claimant specifically heard them speaking German to the officials in black t-shirts outside, saying to load the detainees into the car. The people speaking German were dressed in all black, while the officers speaking Greek were all in Greek police uniforms.
48. At this time, the claimant had his sweatshirt hood pulled over his face, which he pulled down to try to speak to the German speakers dressed in black standing outside. He informed them of his German documents and asked why they were doing this to him. They immediately started shouting at him to keep his head down. One man came from behind him and hit him on his leg with a metal baton.
49. There were at least 15 or 20 police officers standing outside, on both sides of the building's entrance. All of these officers wore Greek police uniforms. They again demanded that the detainees cover their faces with their shirts and only look downwards. The officer standing beside the car had a large baton and he was hitting the detainees on the back as they exited the building and got into the truck. All of the detainees (at least 50 people) were put directly into one large olive-green coloured military-style truck that was waiting outside.

Pushback across the Evros-Meriç River

³⁸ Interview with Mr. FAJ by HumanRights360.

50. Two officials drove the truck of migrants to the Evros-Meriç River. There were at least 50 people in the truck's metal cabin, which was completely sealed, except for some small holes that allowed for some air to pass through. The claimant could also see out through the windshield, through a glass opening next to the driver.
51. A white civilian van of officials drove in front of the truck, and a red civilian car of officials followed behind the truck. The three vehicles drove for about two hours until they reached the river. The first approximately 20 minutes of the drive were on a smooth road, and then they continued on a bumpy dirt road until reaching the river. Babies cried throughout the drive. The vehicle in front had its lights on throughout the journey, and then switched them off one kilometre before the river.
52. The vehicles arrived on a long dirt road by the river. There was no light from any vehicle when they parked the cars. They were in a forest with tall, thick trees, though one part near the river was cleared of trees. It was cloudy and very cold. It was too dark to see much, but the claimant could see that people started gathering around the truck behind them. Three commandos – forces working with the police and wearing black uniforms and balaclavas – removed the migrants from the truck onto the ground. All three men were large and muscular, and they were dressed in black clothes and face masks. The commandos surrounded the detainees and made them sit, stay quiet, put their shirts over their faces, and to look down. They would not let anyone move or lift their head up. When anyone did move their head, the commandos would hit that person with their black batons. This happened to Mr. FAJ. The detainees stayed sitting and kneeling there on the ground for around 15 minutes.
53. The three commandos led the group to walk through the forest for about 30 meters or five minutes, continually instructing them to be quiet. The commandos did not carry torches, and they were speaking very quietly and discreetly. The three of them spoke German to each other. They then instructed the group of detainees to stay kneeling or sitting in a circle, with the commandos standing around them.
54. The commandos began taking a couple detainees at a time down the hill to the river. When they reached the shore of the river, there were another four commandos waiting with a black or grey rubber dinghy.³⁹ Two commandos were sitting on the boat and two stood on shore. Most of the commandos had their faces covered and wore black pistols on their waist. When the detainees were walked down to the river, they were handed over to the two commandos standing on the riverbed. One waited by the shore looking towards Turkey with night vision binoculars around his neck. The other two commandos would travel back and forth in the boat, taking the migrants across the river to the Turkish side, six migrants at a time. During the pushback Mr. FAJ saw at least 10 commandos present at the river, all of whom were all wearing the same black clothes with face masks. He could not look closely at them because he was beaten with a baton whenever he looked up from the ground.
55. Mr. FAJ was in the third group to be taken across the river. He stayed kneeling on the ground for 15 minutes before two commandos dragged him and five other male migrants to the boat, where two other commandos had returned from the last trip across the river. The boat was there and ready. Everyone was loaded onto the boat very quickly using physical force. The commandos pushed and shoved them in or grabbed them by the wrist to pull them.⁴⁰
56. Inside the boat, one commando stayed standing, holding a baton. The other sat on the side of the boat and steered the boat. Even though there were some seats on the boat, the standing commando forced everyone to sit down on the floor of the boat, facing the ground with their heads between their legs.

³⁹ An example of the boats used for pushbacks can be seen in Exhibit 15.

⁴⁰ Interview with Mr. FAJ by Forensic Architecture.

They did not let anyone near the edge of the boat. The commandos instructed the detainees to stay quiet and struck anyone who budged or raised their head.

57. It took two minutes for the boat to cross the river and reach the Turkish side. The claimant estimates that the two banks were 40 meters apart when measured straight across,⁴¹ but the boat crossed in a diagonal direction. The commandos would drop them there and turn around and go back. The trip across the river lasted for about 10 or 15 minutes.
58. When the boat reached the Turkish riverbank and the bow pulled up onto land, the commandos hit the migrants on their back with either batons, wooden sticks, or thin metal construction rods. They yelled at them to exit the boat on their own, saying phrases like “Come, quickly, quickly” and “Go, go, go.” Other than this, the commandos did not speak during the pushback, nor did they let the migrants speak; if they did, the commandos would hit them.
59. When Mr. FAJ got off the boat, he did not know where he was. The riverbank had grass and bushes. Group members who had experienced prior pushbacks informed him that he was in Turkey. The claimant was very surprised. He had entered into Greece legally, and he had made his way not from Turkey, but from Germany. Throughout this process, he had tried to make the commandos understand that he was legally present in Greece and that he was searching for his missing child brother, but none of them would listen.
60. Mr. FAJ and his group waited on the Turkish riverbank for the rest of the migrants to be transferred. There was no one to receive them by the shore, and the commandos left them without any information. The group walked up through the woods, which turned into a very large forest. The claimant hoped the Turkish coast guards would find and take them, as it was very cold and they had women and children in their group.⁴² The group stayed together and walked lost in the forest for about 90 minutes. Members of the group began to get worried and make noise in hope of being found.⁴³ They then reached a dirt road, and at the end of it they saw the light of a car coming for them. The Turkish military arrived in an open-top truck and arrested them.⁴⁴
61. The Turkish soldiers took the group to a big military zone, which had several containers where soldiers and officers stayed overnight.⁴⁵ The migrants stayed the night inside the containers, and the next day they were taken to a large military centre where they were detained in rooms.⁴⁶ The claimant and his group stayed here for three days, until they were finally released on 4 December 2016.
62. While he was detained, Mr. FAJ suddenly began to experience chest pain, which he had never experienced before the commandos apprehended and hit him during the 30 November 2016 pushback. On 2 December 2016, Turkish officials brought him to a hospital in Edirne. He stayed at the hospital for four or five hours, but they did not let him stay the night. Instead, he was taken back to the military zone. In the hospital he learned that he had three clogged arteries near his heart. He asked to receive a health report stating his exact health problems and diagnosis, but rather than giving him the health report, the hospital gave his documents directly to the Turkish soldiers. There were no interpreters or Arabic speakers at the hospital to explain to him what was happening.

⁴¹ Interview with Mr. FAJ by Forensic Architecture.

⁴² Interview with Mr. FAJ by Forensic Architecture.

⁴³ Interview with Mr. FAJ by Forensic Architecture.

⁴⁴ Interview with Mr. FAJ by Forensic Architecture.

⁴⁵ Interview with Mr. FAJ by GLAN.

⁴⁶ Interview with Mr. FAJ by GLAN.

63. On 4 December 2016, a doctor asked the Turkish officers if anyone in the group had any health issues. The Turkish officers said no, without checking on anyone in the group, and without acknowledging the claimant's diagnosis from only two days earlier.⁴⁷ The group was then taken to another centre where their fingerprints were taken.⁴⁸ Next, they were put onto large buses. They drove for three hours and were dropped in Istanbul. It was Sunday, so the German Consulate in Istanbul was closed. Mr. FAJ went straight to the Consulate when it opened the next morning. He explained what had happened to him and asked to be returned to Germany. The Consulate scheduled him an appointment for eleven days later, 16 December 2016. Despite asking the German Consulate for help returning to Germany, the claimant received no information from the embassy or help with his return.

After the incident: Attempts to Contact the German Consulate and Cardiac Surgery

64. In Istanbul, the claimant visited the German Consulate every week. They refused to let him in; he only managed to go inside two or three times. The first time he was able to enter was after he had received the medical treatment described below. The person with whom he engaged at the Consulate spoke to and treated the claimant cruelly. He had to pay a third-party agency next to the embassy approximately EUR 160 to set up an appointment for him. Through this he managed to enter the embassy for an appointment, but they did not assist him, despite the phone calls he continued to make. The embassy informed him that his situation was "under review" and requested that the claimant bring a police report regarding the initial pushback. The claimant went to the Turkish police, but they refused to help because the incident had happened in Greece and not in Turkey.

65. Sometime between the 13 December 2016 and 1 February 2017, Mr. FAJ underwent an operation in Istanbul to treat his new aforementioned heart condition by cardiac catheterization. Aseel Hospital, a governmental hospital in Istanbul, would not admit him because he had no papers nor the health card given to registered Syrian refugees, which enables them to get free medical treatment. The claimant asked someone he knew to let him use his health card. The hospital finally admitted him once they were aware of his heart condition. They then transferred him to a specialized cardiac hospital, where he received an operation. He stayed in the hospital for about four days and then was discharged.

66. The doctors prescribed him with blood thinner medication that he will need to take for the rest of his life. The hospital had told him to come back for a medical review two months later, but when he returned, there was no interpreter, so he could not understand what the doctor told him. He stayed on the medication for seven months, paying 130 Turkish Lira for each prescription, until he could not afford it anymore and was forced to stop taking the medication. He had to purchase a new prescription every 25 days, and was able to afford it only 8 or 9 times.⁴⁹ He continued to suffer pain regularly from his heart condition, but he could not access the medication again until 13 July 2020 in Germany, when he went to a hospital in Germany and they re-prescribed him blood thinner pills, instructing him to take them indefinitely.⁵⁰

Stranding in Turkey and Subsequent Pushbacks

67. Mr. FAJ continually attempted to return to Greece to find his brother. He was caught and summarily expelled (pushed back) or pulled back to Turkey 13 times, until he finally entered and stayed in Greece successfully on his 14th attempt. The claimant recalls that of these pushbacks and pull-backs, at least 9 were expulsions conducted by the Greek authorities, with other pullbacks being conducted by Turkish authorities. Of the claimant's 14 attempted crossings into Greece, all were by land across the river, with

⁴⁷ Interview with Mr. FAJ by Forensic Architecture.

⁴⁸ Interview with Mr. FAJ by Forensic Architecture.

⁴⁹ Interview with Mr. FAJ by GLAN.

⁵⁰ Documentation available upon request.

the exception of one sea attempt in November 2017. His first attempt to re-enter Greece by the river was in February 2017. His final and successful attempt was on 19 December 2017.

68. In most of the instances where Greek officials expelled Mr FAJ, he would be intercepted about four or five kilometres from the river in Greece, either by a male and female officer in a white van with red lines (used by the Greek asylum service) or in an army truck. Sometimes he was taken to a police station and detained in a standard cell. He was beaten every time.
69. In one incident, between April and July of 2017, Mr. FAJ was near Didymoteicho in a group of single men and families. Including him, they were a group of 12 migrants (three women and nine men). At around 07.00 or 08.00, a man and woman in civilian clothes drove by in a white van, with blue writing on the driver's door and the UN logo. They told his group that they were from the UN and that they were going to take them to a camp, but they brought the 12 of them to a detention centre instead. They drove about 40 minutes on a highway, and then turned onto a cement road that entered a village. They arrived at a detention centre which had other houses around it, with civilians coming and going from them. The building looked newly constructed and was flying a Greek flag on the fence in front. The road to the building's entrance was curved and fenced in. The two people in the van brought the group here, spoke in Greek to two police officers who were there, and then they left. The group entered a waiting area which was essentially a large cage, made of the same material as the fence, with an open entrance. There were people inside the cage being searched before his group arrived. His group walked through a tall metal turnstile to enter the cage. He spent about a half hour in the cage, where police officers searched him and his bags. They were then brought to a room packed with metal beds, where the 12 of them stayed and waited for the day. There was one policeman in charge, who would enter from the corridor. Around lunchtime, he asked if the detainees wanted lunch, collected money from them and brought them food. There was one toilet accessible in the room. They were detained in the centre until the sun set. The policemen then took them outside to a car, drove them to the river and pushed them back to Turkey in a boat after dark.⁵¹
70. In one of the other incidents in which Mr. FAJ was summarily expelled from Greece while attempting re-entry, he was detained in an abandoned building, with no doors, where he stayed for two to three hours in the dark with Greek police officers standing guard.⁵²
71. The claimant noted that some of the buildings in which he was detained during his repeated summary expulsions by the Greek authorities bore no official insignia, despite their clearly being in regular use by Greek border forces.⁵³
72. In another incident, Greek officials intercepted the claimant's group of 11 or 12 people immediately after crossing the river. The officials tied up the group's smuggler and threw him in the river. The claimant does not know if the smuggler survived.⁵⁴
73. On another occasion, after many failed attempts, Mr. FAJ, along with others, attempted to re-enter Greece by jumping over a wall about three or four kilometres away from an official border crossing. They were almost immediately caught by the Greek authorities and transferred back to Turkey on the same day.⁵⁵

⁵¹ All facts in this paragraph were provided in an interview with Mr. FAJ by Forensic Architecture.

⁵² Interview with Mr. FAJ by Forensic Architecture.

⁵³ Interview with Mr. FAJ by Forensic Architecture.

⁵⁴ Interview with Mr. FAJ by Forensic Architecture.

⁵⁵ Interview with Mr. FAJ by Forensic Architecture.

74. In November 2017, the claimant attempted entering Greece by sea, despite hearing that it was more difficult, because he had been attacked and hit by the commandos on his prior land attempts. With a group he met in Turkey, he travelled through Izmir on a 7-meter long inflatable boat, which had about 45 or 50 people on board, including men, women and children. The group travelled on the boat approximately one or one-and-a-half kilometres offshore, before the boat broke down. The Turkish authorities retrieved the passengers. They detained the claimant in Izmir for three days and then sent him back to Istanbul.⁵⁶
75. Throughout the series of summary expulsions (pushbacks), Mr. FAJ noted that while crossing the river he and his group were arrested by masked officials in black uniforms, whereas inside the Greek villages, they were arrested by officials in off-white uniforms. Mr. FAJ further noted that male-only groups arrested by Greek border officials would be subject to beating and severe ill-treatment, which was not always the case with groups of families with women and children.⁵⁷
76. Throughout Mr. FAJ's summary expulsions (pushbacks), he noted, both the Greek and Turkish officials refused to permit him and other migrants they were detaining or expelling to ask any questions or make pleadings concerning their status. Those who tried to speak to the Greek officials, and especially to members of the commando forces, would be subject to beatings. Some officials took pictures of the claimant and the other migrants using what in some cases appeared to be their personal mobile phones. The officials would conduct full body searches of the migrants and seize all their documentation and belongings, including on one of the instances, EUR 150 taken from Mr FAJ by a Greek commando.⁵⁸
77. Mr. FAJ's final attempt to reach Greece was on 19 December 2017. A smuggler drove his group towards the Evros-Meriç River in a civilian car, which was more like a taxi, fit for four passengers. While the smuggler drove, four migrants rode in the backseat, one rode in the front seat, and three were in the trunk. After parking, they walked for a further hour to reach the river, where they stayed overnight in an abandoned house before proceeding to cross the river the following day. They then reached a small uninhabited patch of land forming a small island in the river, where they stayed overnight. They then crossed the rest of the river and entered Greece near the town of Kornofolia. After one or two hours, a civilian car (arranged by the smuggler from Turkey) came to pick the group up and drove them for about 4.5 hours to reach Thessaloniki. This time, they were not arrested.⁵⁹

Stranding in Greece

78. During the following two years that Mr. FAJ spent in Greece, he was homeless, living in poverty, without legal status and at constant risk of arrest and deportation. He made repeated appeals to the German authorities and undertook lengthy and burdensome procedures to retrieve the documentation that was stripped of him by the Greek authorities in November 2016.
79. For fear of arrest and deportation, it was not until 30 January 2018 that the claimant was able to declare the loss of his documents with the Greek police in Athens.⁶⁰ On 16 February 2018, the claimant submitted an application to the German Embassy in Athens in order to return to Germany.⁶¹ He made further requests in the absence of a response on 9 July 2018.⁶² In August 2018 the Embassy informed

⁵⁶ All facts in this paragraph were provided in interviews with Mr. FAJ by GLAN and Forensic Architecture.

⁵⁷ Interview with Mr. FAJ by Forensic Architecture.

⁵⁸ All facts in this paragraph were provided in interviews with Mr. FAJ by GLAN and Forensic Architecture.

⁵⁹ All facts in this paragraph were provided in interviews with Mr. FAJ by GLAN and Forensic Architecture.

⁶⁰ Exhibit 8.

⁶¹ Exhibit 9.

⁶² Documentation available upon request.

the claimant's legal representatives that additional documents were required, which they proceeded to provide on 16 September 2018.⁶³

80. In October 2018, HumanRights360 made several attempts to represent the claimant's case before the German embassy in Athens, and with the UNHCR. Both informed the claimant's representatives that the German authorities were reviewing his case for re-admission against restrictions on travel by refugees recognised by Germany to Turkey.⁶⁴
81. Only on 25 October 2018 was the Asylum Service (Regional Asylum Office of Alimos) able to finally certify that the claimant's fingerprints had been recorded on 7 October 2015 at Bingen Am Rhein with Eurodac code DE115007ING00829. The office told HumanRights360, "If another EU member state has granted international protection status to the applicant and he wishes to return to the country that granted the status, no new asylum application is registered. The person in question should contact the German Embassy in order to be informed about the loss of his documents as well as his return to the country."⁶⁵ The claimant finally received his travel document through the German Embassy in Athens on 30 October 2019.⁶⁶
82. One night in January of 2019, while living homeless and undocumented in Athens, Mr. FAJ was physically assaulted by three men who spoke to him but whom he could not understand. One of them hit him, breaking his lower jaw and two teeth. Another pulled out a knife and stabbed him in his right thigh. In the hospital he received 35 stitches. He was hospitalized in the Oral Surgery Department of Gennimatas Hospital in Athens. He was unable to pay his medical expenses (EUR 3,750) and was allowed to leave the hospital in exchange for leaving his medical documents. HumanRights360 paid for his visit to a private surgery orthodontist for further treatment.⁶⁷
83. In April 2019, Mr. FAJ attempted to reach Germany from Greece without documentation, when he was apprehended and arrested by Greek authorities in Thessaloniki. A deportation order was issued against him on 23 April 2019, which was apparently then suspended due to a moratorium on returns to Syria.⁶⁸
84. On 19 September 2019, Mr. FAJ was almost arrested when police entered the squat he was residing. He managed to hide from the police and avoid arrest.⁶⁹
85. Throughout these two years in Greece, the claimant was living in a constant state of fear and anxiety about the whereabouts of his young brother, his precarious status and condition of destitution in Greece, and the extent to which his expulsion and forced stay in Turkey may have compromised his ability to return to Germany. In 2018, Mr. FAJ was referred to the organisation Médecins du Monde by a refugee program in Athens due to his "suicidal ideation and severe attempt to kill himself."⁷⁰ On 27 and 29 June 2018, medical professionals from Médecins du Monde documented their psychological assessments of Mr. FAJ, after having clinically observed him since 09 May 2018. The first psychological assessment begins with a description of the 30 November 2016 incidents and notes Mr. FAJ's ongoing struggle to

⁶³ At this time, Mr. FAJ was represented by the Ecumenical Refugee Program of the Church of Greece (KSPM-ERP), who initially undertook his case. In August 2018, KSPM-ERP was managing Mr. FAJ's case in coordination with HumanRights360. On 23 November 2019, KSPM-ERP officially handed over his case to HumanRights360 to manage.

⁶⁴ Documentation available upon request.

⁶⁵ Exhibit 22.

⁶⁶ Documentation available upon request.

⁶⁷ Mr. FAJ did not receive a receipt for this surgery, as he was undocumented at the time, and the issuance of formal paperwork would have placed him at risk of arrest.

⁶⁸ Exhibit 31.

⁶⁹ Interviews with Mr. FAJ by GLAN and Forensic Architecture.

⁷⁰ Exhibit 12.

access his documentation. As the report summarizes, “He is still experiencing persistent ideas to harm himself due to hopelessness, depression and major anxiety for the future. Mr. Alali FAJ also deals with lack of appetite (he is extremely underweight). He is also mentioning frustration and aggressiveness towards others.”⁷¹ Médecins du Monde diagnosed him with clinical depression, finding a “depressive episode of moderate severity with significant syndrome”, and describing his signs to include “grief, guilt, short-tempered, anger, despair, anxiety, suicidal thoughts, worsening of mood, difficulties sleeping, waking up early in the morning, social exclusion, incapable of completing any activities and a decrease in productivity.”⁷² Médecins du Monde prescribed him Olanzapine, Venlafaxine and Quetiapine to improve his mental health alongside psychotherapy.⁷³ They also noted, “Mr. Alali FAJ is in high need of a support network which already existed in Germany.”⁷⁴

VI. CONTEXT OF THE VIOLATIONS

A. *The Fortressing of the Evros-Meriç Border by Greece and the EU*

85. The pushback at the heart of this complaint occurred across the Evros-Meriç River, which forms the land border between Turkey and Greece and thus one of the EU’s external borders.⁷⁵ The river border has been increasingly militarized and violently governed by Greece with EU and Member State financial and technical support,⁷⁶ including through the reinforcement of active and consistent presence of Frontex border guards.
86. Between January and September 2010, Greece arrested 31,219 immigrants for unlawful entry across the Evros-Meriç River, compared to 6,615 between January and September of 2009.⁷⁷ Frontex began deploying Rapid Border Intervention Teams (RABIT) along the Evros-Meriç River in 2010, sending guest officers from 26 Member States to assist Greek authorities “in controlling the border areas as well as in identifying the apprehended irregular immigrants.”⁷⁸ The impact of Frontex cooperation with Greek forces in reducing arrivals to Greece has been significant and became quickly evident. Within four months of deploying the RABIT operation in November 2010, arrivals had decreased by approximately 75 percent.⁷⁹
87. Greece initiated Operation Aspida (*‘Shield’*) in 2012, deploying a further 1,800 law enforcement officials to patrol the border, and constructing a 3-meter-high border fence along more than 10 kilometres of the river.⁸⁰ This fence, constructed as a deterrent for border crossings, pushes individuals

⁷¹ Exhibit 12.

⁷² Exhibit 13.

⁷³ Exhibit 13. Olanzapine is an atypical antipsychotic primarily used to treat schizophrenia and bipolar disorder. Venlafaxine is an antidepressant medication used to treat major depressive disorder, generalized anxiety disorder, panic disorder, chronic pain and social phobia. Quetiapine is an atypical antipsychotic medication used for the treatment of schizophrenia, bipolar disorder, and major depressive disorder.

⁷⁴ Exhibit 12.

⁷⁵ The river is known as the Evros in Greek, the Meriç in Turkish, and the Maritsa in Bulgarian. The Evros-Meriç refers to the 192-kilometer portion of the river separating Greece and Turkey. An additional 310 kilometers are in Bulgaria, where the river begins.

⁷⁶ European Commission, ‘Managing Migration: EU Financial Support to Greece’ (July 2020) https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/202007_managing-migration-eu-financial-support-to-greece_en.pdf.

⁷⁷ Hellenic Police, ‘Statistics of illegal immigration for 2020’

http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=3665&Itemid=429&lang=EN.

⁷⁸ European Commission, *Frontex and the RABIT operation at the Greek-Turkish border*, MEMO/11/130 (02 March 2011) https://ec.europa.eu/commission/presscorner/detail/en/MEMO_11_130.

⁷⁹ *Ibid.*

⁸⁰ Eric Reidy, ‘An open secret: Refugee pushbacks across the Turkey-Greece border,’ *The New Humanitarian* (08 Oct. 2018) <https://www.thenewhumanitarian.org/special-report/2018/10/08/refugee-pushbacks-across-turkey-greece-border-Evros>. Exhibit 19, p. 7.

towards crossing at more dangerous parts of the river.⁸¹ The area surrounding the river is a closed military zone, which strictly regulates entry and forbids photography, thereby largely preventing journalists, researchers, advocates and migrants themselves from documenting the expulsions across the border.

88. Although the EU has attempted to curb the migration flow across the Evros-Meriç River, it should be noted that this flow itself is due to, *inter alia*, the EU's own agreement with Turkey: following the March 2016 signing of the EU-Turkey Deal, attempted crossings to Greece across the river have increased as a result.⁸² The Deal, which created a Fast Track Border Procedure to return asylum seekers from the Greek islands to Turkey, did not apply the same legitimate basis for removal for those who arrive via the Evros-Meriç land border.⁸³ As the EU-Turkey Deal stifled migration to Greece through the sea route, river crossings increased in direct response.⁸⁴ EU officials have openly applauded the fortressing and “weaponising” of the Evros-Meriç border as a “European shield”,⁸⁵ and have provided increasing amounts of funding to Greece's management of the EU's external border.⁸⁶
89. Today, Frontex continues to enforce the border of the Evros-Meriç River border in cooperation with Greek officials. In March 2020, there were at least 600 Frontex border guards deployed in Greece.⁸⁷ The number of Frontex personnel deployed at the Evros-Meriç border has increased significantly since 2016.⁸⁸ As of 3 March 2020, Frontex officers are deployed along the full length of the Evros-Meriç border, but the precise number of forces deployed and their locations remains unknown.⁸⁹ Frontex deployment has come hand-in-hand with the increase of EU funding for border infrastructure and surveillance technology, as well as personnel.⁹⁰ The agency has not been transparent either about the scope of its presence at the Evros-Meriç border or the nature of its functions, let alone to the presence of its personnel on the site of such incidents. In response to investigative findings of the involvement of Frontex in pushbacks in the Aegean,⁹¹ the agency's director announced the opening of an investigation, noting that “Frontex does not have the power to investigate and must rely on Member States.”⁹² The success of this investigation too hinges on the cooperation of the Greek authorities, and

⁸¹ Exhibit 28.

⁸² Lizan Nijkrake, ‘Greek prosecutor investigating allegations of ‘systematic’ violence against migrants at Evros River’, *CBC News* (06 March 2019) <https://www.cbc.ca/news/world/greek-prosecutor-investigating-allegations-of-systematic-violence-against-migrants-at-evros-river-1.5043460>.

⁸³ See, for example, Refugee.Info, ‘Crossing through the land border: What are the risks?’ (25 Jan. 2019) <https://blog.refugee.info/crossing-through-the-land-border-what-are-the-risks/>.

⁸⁴ Exhibit 27.

⁸⁵ See the statement of European commission president Ursula von der Leyen: Jennifer Rankin, “Migration: EU praises Greece as ‘shield’ after Turkey opens border,” *The Guardian* (03 March 2020), <https://www.theguardian.com/world/2020/mar/03/migration-eu-praises-greece-as-shield-after-turkey-opens-border>.

⁸⁶ Amnesty International, *Europe's Gatekeeper Unlawful Detention And Deportation Of Refugees From Turkey* (Dec. 2015), pp. 8-9, <https://www.amnesty.org/download/Documents/EUR4430222015ENGLISH.pdf>.

⁸⁷ Frontex, ‘Frontex launches rapid border intervention on Greek land border,’ (13 March 2020) <https://frontex.europa.eu/media-centre/news-release/frontex-launches-rapid-border-intervention-on-greek-land-border-J7k21h>.

⁸⁸ Lena Karamanidou and Bernd Kasperek, ‘What is Frontex doing about illegal pushbacks in Evros?’, *Respond Migration* (01 Aug. 2020) <https://respondmigration.com/blog-1/what-is-frontex-doing-about-illegal-pushbacks-in-evros>.

⁸⁹ Even to Human Rights Watch who wrote to Frontex in relation to the March 2020 use of force against migrants at the Evros border, and is on the Frontex consultative forum: *Human Rights Watch*, ‘Greece: Violence against Asylum Seekers at Border’ (17 March 2020) <https://www.hrw.org/news/2020/03/17/greece-violence-against-asylum-seekers-border>.

⁹⁰ Frontex, ‘State of Play of the Implementation of the EBCG 2.0 Regulation in View of Current Challenges’, CAB/ANRA/2020 (27 April 2020) <https://www.statewatch.org/media/documents/news/2020/may/eu-council-frontex-ECBG-state-of-play-7607-20.pdf>.

⁹¹ Exhibit 23.

⁹² Frontex, ‘Frontex launches internal inquiry into incidents recently reported by media’ (27 Oct. 2020) <https://frontex.europa.eu/media-centre/news-release/frontex-launches-internal-inquiry-into-incidents-recently-reported-by-media-ZtuEBP>. See also ECRE, ‘Frontex: Commission Calls for Urgent Meeting over Complicity in Pushbacks, Critique of 100 Million

their willingness to conduct *ex officio* investigations without prior access to key evidentiary detail about the timing of the events and the persons involved.

B. Greece's Systematized Collective Expulsions (Pushbacks) at the Evros-Meriç Border

90. The incident at the heart of this complaint is one event in a decades-long pattern of routine and systematic pushbacks perpetuated by the Greek authorities against refugees, migrants and asylum seekers. According to Konstantinos Tsitselikis, human rights law professor and former director of the Hellenic League for Human Rights, Greek authorities have been conducting pushbacks across the Evros-Meriç River since at least the mid-1990s⁹³ with Human Rights Watch reporting on systematic pushbacks since as early as 2008.⁹⁴ Human Rights Watch reports have become more frequent over the past few years, and especially since early 2020, when it condemned the Greek government for denying and failing to investigate scores of reported pushbacks in coalition with other organisations.⁹⁵ The frequency and organized coordination of these pushbacks have been well-substantiated by various local and international organizations over recent years.⁹⁶
91. The details of the pushback operations described by Mr. FAJ in this communication are reflected in many other testimonies of pushbacks during this time period.⁹⁷ Testimonies have detailed thousands of expulsions (pushbacks) by Greece across the Evros-Meriç River throughout the last few years, of individuals from various countries, including Afghanistan, Algeria, Egypt, Iran, Iraq, Morocco, Pakistan, Palestine, Somalia, Sudan, Syria, Tunisia, Turkey and Yemen. Greece has detained men, women (including women in various stages of pregnancy⁹⁸), children, infants, persons with disabilities⁹⁹ and persons with serious injuries.¹⁰⁰
92. Multiple organizations have distilled a similar pattern from testimonies collected from unrelated persons who suffered completely separate pushbacks, highlighting distinct themes and consistencies in Greece's pushback operations.¹⁰¹ The general pattern is as follows. Migrants are caught by Greek police, either during the river crossing, immediately after reaching the Greek side of the river, or while walking in a nearby village. They are apprehended by Greek police and brought to a detention centre or other unofficial detention facilities in the form of confined spaces such as warehouses. They are

Euro Investment in Drone Surveillance' (30 Oct. 2020) <https://www.ecre.org/frontex-commission-calls-for-urgent-meeting-over-implicity-in-pushbacks-critique-of-100-million-euro-investment-in-drone-surveillance/>.

⁹³ Eric Reidy, "An open secret: Refugee pushbacks across the Turkey-Greece border," *The New Humanitarian* (08 Oct. 2018) <https://www.thenewhumanitarian.org/special-report/2018/10/08/refugee-pushbacks-across-turkey-greece-border-Evros>.

⁹⁴ Human Rights Watch, *Stuck in a Revolving Door: Iraqis and Other Asylum Seekers and Migrants at the Greece/Turkey Entrance to the European Union* (26 Nov. 2008) <https://www.hrw.org/report/2008/11/26/stuck-revolving-door/iraqis-and-other-asylum-seekers-and-migrants-greece/turkey>.

⁹⁵ Human Rights Watch, *Greece: Investigate Pushbacks, Collective Expulsions* (16 July 2020) <https://www.hrw.org/news/2020/07/16/greece-investigate-pushbacks-collective-expulsions>.

⁹⁶ Exhibit 26, p. 1.

⁹⁷ Exhibit 16.

⁹⁸ Exhibit 16 p. 24; Exhibit 18, pp. 6-7; Vassilis Tsarnas, 'και όχι μόνο: Καταγγελίες βίαιων, παράνομων και συστηματικών επαναπροσθήσεων αιτούντων άσυλο, στον Έβρο', *Racist Crimes Watch* (29 Jan. 2018) <https://racistcrimeswatch.wordpress.com/2018/01/29/2-88/>. IPA News, 'Another group of Turkish asylum seekers who arrived in Greece pushed back to Turkey' (30 April 2019) <https://ipa.news/2019/04/29/another-group-of-turkish-asylum-seekers-who-arrived-in-greece-pushed-back-to-turkey/>. IPA News, "'We were beaten and pushed back by masked men at Turkish-Greek border' – Turkish journalist and asylum seeker' (05 May 2019) <https://ipa.news/2019/04/28/we-were-beaten-and-pushed-back-by-masked-men-at-turkish-greek-border-turkish-journalist-and-asylum-seeker/>. Watch The Med, '08/07: 19 travellers at Turkish-Greek landborder, pushed-back to Turkey' (09 July 2018) <https://watchthemed.net/index.php/reports/view/943>.

⁹⁹ Exhibit 16, pp.11-12; IPA News (30 April 2019) (n 98).

¹⁰⁰ Watch The Med (n 98).

¹⁰¹ For example, between August 2018 and August 2019, Mobile Info Team collected 27 first-hand testimonies from individuals who had been pushed back across the Evros-Meriç. The organization was "struck by the similarity of the stories by respondents who never met or spoke to one another". Exhibit 26, p. 1.

detained for hours, in unsanitary conditions, without access to food or water, even for infants.¹⁰² The Greek police fail to provide a reason for their detention, they ignore requests for legal representation including to seek asylum, and they instruct the migrants to remain silent.¹⁰³ Migrants are stripped and searched, and the officials confiscate and/or destroy the migrants' phones and other personal belongings,¹⁰⁴ sometimes including money and documentation.¹⁰⁵ Officials regularly beat the migrants in detention, sometimes including pregnant women and children.¹⁰⁶

93. At night, the officials then transfer the migrants to a group of commandos, who wear black and/or camouflage, with their faces covered, and speak softly or not at all, and who push the migrants back to Turkey across the Evros-Meriç on small inflatable boats, often beating them along the way.¹⁰⁷ As explained by the organization Mobile Info Team:

“Many of [the pushbacks] follow [this] general pattern, demonstrating the high probability that migrants are being expelled from the country in a systematic and coordinated fashion. The consistent and repeated nature of these pushbacks demonstrate the fact that these testimonies are neither rare occurrences nor very random in nature. Instead, as the testimonies below will illustrate, there appears to be a well-established practice utilized by Greek authorities to handle irregular entry into the country.”¹⁰⁸

In addition to the general pattern tying together most testimonies, several have also revealed other common details. For example, of the 26 pushback survivors whom Human Rights Watch interviewed in 2018, seven individuals reported that Greek police or commandos stole their clothes or shoes and pushed them back across the river in their underwear.¹⁰⁹ Other aspects, such as the use of stun guns and mock executions,¹¹⁰ have been fortunately less ubiquitous but remain of extreme concern.

Most individual testimonies state that the officials who conducted their pushback were speaking Greek, which is to be expected of the Greek police. However, various individuals have also reported that the police officers and commandos who pushed them back were also speaking other languages to detainees and amongst themselves, namely German¹¹¹ and English.¹¹² Commandos in particular have been heard speaking German in multiple instances. This implies that some of the officials responsible for the collective expulsions (pushbacks) are not themselves Greek officials, although they always work in close cooperation with those who are speaking Greek.

¹⁰² Exhibit 26, p. 9; GCR, ‘Administrative detention in Greece: Findings from the field (2018)’ (Feb. 2019) https://www.gcr.gr/media/k2/attachments/GCR_Ekthesi_Dioikitik_Kratisi_2019_en.pdf. Exhibit 27. Committee on Migration, Refugees and Displaced Persons, ‘Pushback policies and practice in Council of Europe member States’ (Doc. 14645, Reference 4414: 21 Jan. 2019) <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=27728>.

¹⁰³ Exhibit 26, pp. 8, 20.

¹⁰⁴ Exhibit 16; Exhibit 26, p. 8; Greek Helsinki Monitor, ‘Unprecedented systematic police violence and illegal deportation of asylum seekers in Evros’ (09 Sep. 2018) <https://greekhelsinki.wordpress.com/2018/09/09/1-191/>. Watch The Med, ‘05/07: Two groups at the Turkish-Greek landborder, 14 travellers pushed back’ (06 July 2018) <https://watchthemed.net/reports/view/942>. Dimitris Angelidis, ‘Επαναπροώθηση χωρίς... εισιτήριο’ (19 Oct. 2017) https://www.efsyn.gr/ellada/dikaionomata/127452_epanaproothisi-horis-eisitirio. Watch The Med (n 98). Tsarnas (n 98).

¹⁰⁵ Exhibit 16, pp. 6-7, 10, 13, 16, 17, 25. Watch The Med, ‘11/08: 13 travellers pushed back by Greek police at the land border!’ (12 Aug. 2018) available at <http://watchthemed.net/index.php/reports/view/1003>.

¹⁰⁶ Exhibit 26, p. 15.

¹⁰⁷ Exhibit 26, pp. 11, 13, 15; Exhibit 17.

¹⁰⁸ Exhibit 26, p. 5.

¹⁰⁹ Human Rights Watch, *Greece: Violent Pushbacks at Turkey Border* (18 Dec. 2018)

<https://www.hrw.org/news/2018/12/18/greece-violent-pushbacks-turkey-border>. Hurriyet Daily News, ‘Turkish villagers warmly welcome migrants after Greek police beat them naked’ (13 Nov. 2018) <https://www.hurriyetdailynews.com/turkish-villagers-warmly-welcome-migrants-after-greek-police-beat-them-naked-138823>. Exhibit 16, pp.17-18.

¹¹⁰ Human Rights Watch (n 109).

¹¹¹ Exhibit 16, pp. 4-7.

¹¹² Exhibit 16, pp. 14, 18.

94. Mr. FAJ is one of several known Syrian individuals whom Greek police apprehended, detained and pushed across the Evros-Meriç River to Turkey despite being a recognized refugee in the EU and in possession of a German residency permit. In 2017, another Syrian refugee with German refugee status flew from Hamburg to Thessaloniki to meet his relative, where he was arrested by Greek officials who stripped him of his German residence card and passport. In an incident very similar to that of Mr. FAJ, he was expelled from Greece across the river to Turkey at night along with around 40 other people, at least one of whom was also, like the claimant, a German residency permit holder having been recognised as a refugee in the EU.¹¹³ Like Mr. FAJ, he was left stranded in Turkey without documentation, and at risk of being subject to “chain refoulement”.¹¹⁴ The Hellenic Police indicated that the complaint was extreme and based on unsubstantiated claims stating, “There is no way to take someone who has asylum in Germany and return him to Turkey, especially with 40 others.”¹¹⁵

C. The Dangers of the Evros-Meriç Border

95. Greek officials and commandos have pushed back thousands of migrants across the Evros-Meriç River over the last several years, subjecting individuals to severe human rights violations with both acute and long-term consequences.¹¹⁶ Mr. FAJ is one of these individuals.

96. When Greek officials expel (push back) an individual across the Evros-Meriç River, they subject him/her to the dangers of the river during the pushback operation in itself, and they put him/her in a situation where to re-enter Greece, he/she is forced to face these same dangers again. Attempting to cross from Turkey to Greece is a life-threatening task, sought out of desperation and a lack of safe legal pathways. The Evros-Meriç River itself is incredibly dangerous, for weak and strong swimmers alike, due to its strong currents, cold temperatures and high amounts of debris.¹¹⁷

In 2018, at least 29 migrants drowned crossing the river or died immediately after¹¹⁸ — a sharp rise from the 9 deaths UNHCR recorded in 2017.¹¹⁹ It is suspected that the deaths in the river are extremely underreported. Forensic doctor Pavlos Pavlidis has taken hundreds of drowned bodies into his Alexandroupolis morgue but predicts that there are many more who are never found: “The Evros pulls most of the bodies under water. The migrants wear a lot of clothes against the cold and sink straight to the bottom where they are held by tree branches.”¹²⁰ Thousands of migrants have disappeared while crossing the river in recent years, and have likely drowned or succumbed to hypothermia.¹²¹ One of the

¹¹³ See *EU equal treatment system for asylum applications: Regulation (Eu) No 604/2013 of The European Parliament and of the Council*, establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), of 26 June 2013.

¹¹⁴ International Crisis Group, ‘Turkey’s Syrian Refugees: Defusing Metropolitan Tensions,’ Europe Report N°248 (29 Jan. 2018) <https://d2071andvip0wj.cloudfront.net/248-turkey-s-syrian-refugees.pdf>. HarekAct, ‘Harekact’s Weekly Digest 08/07/2019’ (08 July 2019) available at <https://harekact.bordermonitoring.eu/2019/07/08/harekacts-weekly-digest-08-07-2019/>. Sertan Sanderson, ‘Istanbul expels more than 15,000 undocumented migrants,’ InfoMigrants (01 Aug. 2019), <https://www.infomigrants.net/en/post/18545/istanbul-expels-more-than-15-000-undocumented-migrants>. See also, Angelidis (n 104).

¹¹⁵ Angelidis (n 104) (unofficial translation from Greek).

¹¹⁶ Exhibit 26, p. 21.

¹¹⁷ For a comprehensive summary of the river’s dangerous ecology, see Exhibit 28.

¹¹⁸ Sarah Souli, ‘Greece’s man in the migrant morgue’, *The New Humanitarian* (20 Sep. 2018) <https://www.irinnews.org/feature/2018/09/20/greece-evros-river-migrant-morgue>.

¹¹⁹ Leo Dobbs, ‘Fewer refugees arriving in Greece’s Evros region, but problems remain’ UNHCR (12 June 2018) <https://www.unhcr.org/news/latest/2018/6/5b1e69744/fewer-refugees-arriving-greeces-evros-region-problems-remain.html>.

¹²⁰ Carljine Vos, *De ijskoude rivier Evros slokt migranten op*, *De Volkskrant* (13 Feb. 2019) <https://www.volkskrant.nl/kijkverder/v/2019/de-ijskoude-grensrivier-de-evros-slokt-migranten-op/>.

¹²¹ *Ibid.*

deaths recorded in 2017 was that of an 18-year-old Pakistani migrant who died from hypothermia after he fell out of the Greek border authorities' boat into the water during a pushback to Turkey.¹²²

97. Greece's unofficial policy of collective expulsion (pushbacks) is an issue of ongoing concern; though the number of individuals that have been expelled by Greece remains unknown. In widely challenged reports by Turkey's Interior Ministry from November 2019, it held that Greece expelled (pushed back) 25,404 migrants in the first 10 months of 2019 – more than double the 2018 figure of 11,867 reported by the same source. The Turkish Ministry did not explain how these figures were collected nor whether they pertain to all of Greece, or specifically to pushbacks across the Evros-Meriç River.¹²³ There are no official numbers, due to the absence of a formal practice of recording the entry of individuals into the territory and the operation of an unofficial practice of summary expulsion.
98. Following the Turkish government's announcement that it would not prevent migrants from crossing the Evros-Meriç border, Turkish police assisted in the transportation of individuals and facilitated their crossing. The Greek government responded with brute force by reinforcing its deployment of personnel, who proceeded to use teargas and rubber bullets, as well as live ammunition on a number of occasions.¹²⁴ Groups of migrants crossing the river on boats were intercepted, detained, and summarily expelled after being stripped of their belongings, and in many cases subjected to beatings and other forms of ill-treatment.¹²⁵ In March 2020, the Greek government proceeded to suspend its asylum system, which ended on 1 April 2020,¹²⁶ and has since prevented new arrivals from applying for asylum.¹²⁷
99. The Greek government has also intensified measures to fortify the Evros-Meriç River border. In March 2020, Greece announced the addition of 40 kilometres to the border fence; the deployment of 4,000 additional police and military officers to the border; additional helicopters and unmanned aircrafts; increased resources for surveillance and message broadcasting; and a new "joint operations centre" for the Greek Police and Greek Army in Nea Vryssa.¹²⁸ It was estimated that more than 1,000 soldiers, 1,500 police officers, and two commando squads had already been deployed before these further increases.¹²⁹ During the same period, Greek officials also began collaborating with civilian militia and with local National Guard battalions, composed of civilians who are trained, organized, armed and deployed by the Greek military to conduct border patrol and "catch refugees and migrants" who have crossed the river into Greece.¹³⁰

D. Chain Refoulement from Turkey

100. Asylum seekers pushed back to Turkey face direct and persistent threats of apprehension, detention and "chain refoulement" to their countries of origin, where they may be subjected to torture, persecution, and other direct threats to their lives. As explained by an individual interviewed by Mobile

¹²² Daily Sabah, 'Pushed back by Greece, migrant dies of hypothermia' (20 Dec. 2017)

<https://www.dailysabah.com/turkey/2017/12/20/pushed-back-by-greece-migrant-dies-of-hypothermia>.

¹²³ Daily Sabah, 'Turkey looks after refugees beaten by Greece' (22 Nov. 2019) <https://www.dailysabah.com/eu-affairs/2019/11/22/turkey-looks-after-refugees-beaten-pushed-back-by-greece>.

¹²⁴ Exhibit 17.

¹²⁵ Exhibit 17.

¹²⁶ Exhibit 17.

¹²⁷ HRW, 'Greece/EU: Allow New Arrivals to Claim Asylum' (10 March 2020) <https://www.hrw.org/news/2020/03/10/greece/eu-allow-new-arrivals-claim-asylum>.

¹²⁸ KeepTalkingGreece, 'Evros: Greece to extend the fence on the borders with Turkey to 40km' (06 March 2020) <https://www.keeptalkinggreece.com/2020/03/06/evros-greece-fence-borders-turkey-extension/>.

¹²⁹ *Ibid.*

¹³⁰ Kostas Simeonidis, 'Greek civilian militias patrol border amid migrant and refugee crisis', *DW* (09 March 2020) available at <https://p.dw.com/p/3Z6xj>.

Info Team, who had been detained in Turkey: “The Turkish authorities seem to have a clear system for these chain pushbacks [...] The last time the Gendarmerie caught me, they almost deported me back to Idlib. But luckily, they only deport people Monday and Thursdays. They have a whole system for this, especially for the Syrians and Iraqis.”¹³¹ Following the March 2019 elections, deportations increased even further. Between March and August of 2019, Turkish officials apprehended approximately 15,000 migrants, including at least 2,630 Syrian nationals; some were sent to detention, and others were pushed back into Syria.¹³² Those who do remain in Turkey live in constant fear of detention, apprehension and refoulement to Syria,¹³³ and also face racism and xenophobic treatment from civilians.¹³⁴ Turkey has continually violated its obligations as a “safe third country” and cannot be regarded as such.

E. Documentation of Pushbacks, Detention and Border Violence in the Evros-Meriç Region

101. Although officials have interfered with documentation of detention and pushbacks by seizing and destroying migrants’ phones, photos and video footage of the operations and injuries sustained have increasingly surfaced over recent years.¹³⁵ In March 2020, the New York Times exposed a secret detention centre in a rural area between the Greek border village of Poros and the Evros-Meriç, where migrants were kept incommunicado by Greek officials before being pushed back across the river.¹³⁶ Former UN Special Rapporteur on the human rights of migrants François Crépeau said that the extrajudicial centre — which he deemed a domestic “black site” — constitutes a violation of the right to seek asylum and a violation of the prohibition of cruel, inhuman or degrading treatment.¹³⁷
102. A multi-organisational expert investigations and media reporting thereon showing that Greek officials shot dead two migrants, Muhammad al-Arab¹³⁸ and Muhammad Gulzar,¹³⁹ at the Evros-Meriç border on 2 March 2020 and 4 March 2020, respectively, were dismissed by Greece as fake news.¹⁴⁰

F. Regional and International Condemnation of Greek Pushbacks

103. The Greek authorities’ widespread and systematic practice of collective summary expulsion (pushbacks) of refugees, asylum-seekers, and migrants across the Evros-Meriç border has been documented and condemned by international authorities for several years. Most prominently, in March 2016, then Commissioner for Human Rights of the Council of Europe, Nils Muižnieks, called on Greece and Turkey to ensure that human rights are upheld in the context of the 2016 EU-Turkey Statement,

¹³¹ Exhibit 26, p. 23.

¹³² Exhibit 26, p. 4; Sertan Sanderson, ‘Istanbul expels more than 15,000 undocumented migrants’ InfoMigrants (01 August 2019) <https://www.infomigrants.net/en/post/18545/istanbul-expels-more-than-15-000-undocumented-migrants>.

¹³³ Exhibit 26, pp. 21-22.

¹³⁴ HarekAct, ‘Harekact’s Weekly Digest 08/07/2019’ (08 July 2019) <https://harekact.bordermonitoring.eu/2019/07/08/harekacts-weekly-digest-08-07-2019/>. Hrant Dink ‘Medyada Nefret Söylemi ve Ayrımcı Söylem 2018 Raporu yayımlandı’ (2018) https://hrantdink.org/tr/asulis/faaliyetler/projeler/medyada-nefret-soylemi/2002-medyada-nefret-soylemi-ve-ayrimci-soylem-2018-raporu-yayimlandi?fbclid=IwAR3y9VvKfWHaPOdf-k-3vBBXq_f6NdErhlvmLv1jZ6sbp6SXobj8QkB9xag. BirGün, ‘İHD’den Seyhan’daki ırkçı saldırılarla ilgili rapor: Birçok Suriyeli hâlâ evinden dışarı çıkamıyor’ (22 Sep. 2019) <https://www.birgun.net/haber/ihd-den-seyhan-daki-irkci-saldirilarla-ilgili-rapor-bircok-suriyeli-hala-evinden-disari-cikamiyor-269600>.

¹³⁵ See, e.g., Tsarnas (n 98).

¹³⁶ Exhibit 29.

¹³⁷ Exhibit 29.

¹³⁸ Forensic Architecture, *The Killing of Muhammad al Arab* (03 July 2020) <https://forensic-architecture.org/investigation/the-killing-of-muhammad-al-arab>.

¹³⁹ Forensic Architecture, *The Killing of Muhammad Gulzar* (08 May 2020) <https://forensic-architecture.org/investigation/the-killing-of-muhammad-gulzar>.

¹⁴⁰ Tweet by Greek Government @govgr (04 March 2020) <https://twitter.com/govgr/status/1235159908653445120?s=20>.

including by the prohibitions of refoulement and collective returns.¹⁴¹ Muižnieks expressed concern again the following year, in a 7 July 2017 Facebook post addressing Greece’s collective expulsion of Turkish asylum seekers.¹⁴²

104. Following an ad hoc visit to Greece from 10 to 19 April 2018, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) reported receiving “several consistent and credible allegations of informal forcible removals (push-backs) of foreign nationals by boat from Greece to Turkey at the Evros-Meriç River border by masked Greek police and border guards or (para-)military commandos.”¹⁴³ The previous government initially refused to permit the report to be published, and it was only published in April 2020 by the current government, who has perpetuated the practice in aggravated form while similarly denying this to be the case. The CPT’s descriptions of the allegations illustrate a pattern into which Mr. FAJ’s experience closely fits:

“In a number of these cases, the persons concerned alleged that they had been ill-treated and, in particular, subjected to baton blows after they had been made to kneel face-down on the boat during the push-back operations. These allegations, which were obtained through individual interviews with 15 foreign nationals carried out in private, all displayed a similar pattern and mainly referred to incidents that had taken place between January and early March 2018, whereas some dated back to 2017.”¹⁴⁴

105. Additionally, following her visit to Greece from 25 to 29 June 2018, Human Rights Commissioner Dunja Mijatović released a report expressing concerns about the “consistent allegations of summary returns (“push-backs”) to Turkey, often accompanied by the use of violence, preventing migrants from accessing the asylum procedure.”¹⁴⁵ Mijatović called on Greece to stop its systematic practice of collective expulsion (pushbacks) and to open an investigation into “any allegations of ill-treatment perpetrated by members of Greek security forces in the context of such operations,” noting specifically that “the information available points to the existence of an established practice in this field.”¹⁴⁶

106. The UNHCR has also described and condemned Greece’s systematic pushbacks across the Evros-Meriç border. On 12 June 2020, UNHCR spokesperson Babar Baloch called on Greece to investigate multiple allegations that Greek authorities had pushed back migrants and asylum seekers to Turkey at Greece’s land and maritime borders.¹⁴⁷

107. Despite the prevalence of first-hand testimonies and international condemnation, the Greek government itself has maintained a practice of denying the pushbacks at the Evros-Meriç border,¹⁴⁸ and

¹⁴¹ Council of Europe - Commissioner for Human Rights, ‘The implementation of the EU-Turkey deal must uphold human rights’ (21 March 2016) <https://www.coe.int/en/web/commissioner/-/the-implementation-of-the-eu-turkey-deal-must-uphold-human-rights>.

¹⁴² Facebook post by Council of Europe Commissioner for Human Rights (07 June 2017) <https://www.facebook.com/CommissionerHR/posts/806097949566117>.

¹⁴³ Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Greece from 10 to 19 April 2018 (1 June 2018), para 24, <https://rm.coe.int/16808afaf6>.

¹⁴⁴ *Ibid.*

¹⁴⁵ Commissioner for Human Rights, *Report of the Commissioner for Human Rights of the Council of Europe Dunja Mijatović following her Visit to Greece from 25 To 29 June 2018* (6 Nov. 2018) p. 3, <https://rm.coe.int/report-on-the-visit-to-greece-from-25-to-29-june-2018-by-dunja-mijatovic/16808ea5bd>.

¹⁴⁶ *Ibid.*, p. 12.

¹⁴⁷ Babar Baloch, ‘UNHCR calls on Greece to investigate pushbacks at sea and land borders with Turkey’ UNHCR (12 June 2020) <https://www.unhcr.org/en-us/news/briefing/2020/6/5ee33a6f4.html>.

¹⁴⁸ See, e.g., Kouti Pandoras, ‘Απάντηση Γεροβασίλη για τις επαναπροωθήσεις’ (05 May 2019) <https://www.koutipandoras.gr/article/apantisi-gerobasili-gia-tis-epanaproothiseis>. See also, Patrick Kingsley, ‘Greek Government

the Director of the Hellenic Police has categorically denied the practice.¹⁴⁹ On 28 October, Greece's Migration and Asylum Minister affirmed this position stating that "Greece does not participate in so called push-backs."¹⁵⁰

VII. ADMISSIBILITY

A. Jurisdiction

108. The ICCPR and the first Optional Protocol to the ICCPR entered into force for the Hellenic Republic on 5 May 1977.¹⁵¹ The violations concerned in this communication commenced on 30 November 2016 and are yet to be remedied. The complainant waited until he was back in Germany to initiate this complaint. This communication therefore falls within the jurisdiction of the Committee.

B. No Other International Complaint

109. No complaint has been submitted to any other procedure of international investigation or settlement regarding this case. This communication therefore satisfies the admissibility requirement in Article 5(2)(a) of the first Optional Protocol to the ICCPR.

C. Exhaustion of Domestic Remedies

110. The complainant does not have access to effective domestic remedies in the Greek legal system for the harm he incurred from his initial illegal expulsion from Greece and repeated summary expulsions (pushbacks) over the course of years, as well as the resultant state of rightlessness and destitution for three years. The Greek authorities' persistent denial of thoroughly documented allegations of summary expulsion (pushback), and non-cooperation with administrative and criminal investigations, make clear that such proceedings do not have a reasonable prospect of success in Greece.¹⁵² Even if they did, they would not offer the type of remedy needed to secure redress for the gravity of the conduct that resulted in serious violations of the basic human rights of the complainant and many others who cross the Evros-Meriç border.¹⁵³ He was unable to testify before the Greek Prosecutor during his time in Athens, as such attempts would have risked his arrest and potential deportation from Europe.¹⁵⁴ Since his return to Germany, he has not initiated any proceedings, since these would not have a reasonable prospect of success, be unreasonably prolonged, and would in all cases be ineffective, as has been true to scores of legal cases similar to that of the claimant's before the Greek courts and prosecutors.

111. The remedies currently available to the claimant under Greek administrative and criminal law, discussed below, are ineffective and inadequate for the particularly serious nature of the violations of basic human rights he incurred, and the systemic practice of the Greek authorities that resulted in repeated injury to his rights and their prolonged effects. Maintaining a requirement to exhaust domestic remedies in these circumstances would place an unreasonable burden on the complainant to pursue legal avenues that would not have the effect needed to remedy the harm caused to him by the Greek

Accused of Deporting Turkish Asylum Seekers' New York Times (08 June 2017). Laurence Lee, 'Evros river: 'Forced pushback' of refugees at the edge of EU' Al Jazeera (28 Jan. 2018).

¹⁴⁹ Exhibit 17.

¹⁵⁰ Tweet by Minister of Immigration and Asylum Notis Mitarakis @nmitarakis (28 Oct. 2020) <https://migration.gov.gr/tweet-dilosi-ypovrgoy/>.

¹⁵¹ See OHCHR, Status of Ratifications, <https://indicators.ohchr.org/>. OHCHR, UN Treaty Body Database, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx.

¹⁵² Thompson v Panama (438/90), para 5.2.

¹⁵³ MK v France (222/87), para 8.3. The seriousness of the violation can affect the effectiveness of the remedy: Vicente et al v Columbia (612/95), para. 5.2.

¹⁵⁴ Phillip v. Trinidad and Tobago (594/1992), para. 6.4.

authorities, thus effectively leaving him with no remedy at all for the serious human rights violations he incurred and for Greece's serious breaches of its obligations under the Covenant.¹⁵⁵

Inadequate and burdensome remedies for victims of pushbacks

112. As an individual who was seriously injured and harmed by the actions of Greek border forces, the claimant can turn to the Greek administrative courts to claim compensation for his injury from these illegal actions.¹⁵⁶ To initiate such proceedings, the claimant, who bears the burden of proof, must demonstrate that an agent of the state acted in abuse of power, as well as provide the prosecutor with evidence that can identify the specific officers involved in his detention and expulsion. In other words, to be successful, an administrative case must demonstrate that the summary expulsion was state-sanctioned action (and not state agents in their personal capacity).
113. This evidentiary burden is wholly unreasonable in the claimant's case, who is unable to identify the state agents who perpetrated his abduction and expulsion, since they either ordered him to cover his face with his shirt or were themselves masked. Greek authorities engaged in such clandestine operations, unofficially abducted and expelled by commando forces, without any institutional trail, there is no possibility to either obtain documentation from state authorities about such actions, or prove with a sufficient degree of objective evidence (beyond the victim's testimony), that these were acts of state. This avenue of recourse therefore does not meet the requirement upheld by the Committee that domestic remedies must offer "a reasonable prospect of redress."¹⁵⁷ The Committee has held that victims of serious violations of basic rights, such as the enforced disappearance through summary expulsion, are not required to pursue remedies such as the compensation claim available to the claimant under Greek administrative law.¹⁵⁸ Specifically the Committee has maintained that "if the alleged offense is particularly serious, as in the case of violations of basic human rights, in particular the right to life, purely administrative and disciplinary remedies cannot be considered adequate and effective."¹⁵⁹
114. The other route available to the claimant is to request the Greek public prosecutor to investigate and prosecute specific state officials in their *personal* capacity – that is, not as state agents – for physically assaulting and injuring the claimant.¹⁶⁰ In a request to initiate a criminal investigation against a state official, the complainant must meet a high threshold of evidence about the actions of specific officers, which are unknown to the claimant and those who face his circumstances as noted above.¹⁶¹ If the perpetrators are unknown, the Public Prosecutor's Office, has the option to either close (archive) the case under the label "unknown perpetrators", or to use its investigative powers *ex officio*,¹⁶² and proceed to request the Directorate of Internal Affairs to investigate the case,¹⁶³ which depend on their and relevant border forces' cooperation and willingness to undertake an internal inquiry into this

¹⁵⁵ Similar circumstances have led the ECtHR to lift this requirement: *McFarlane v Ireland* (31333/06), para 125; and *Gaglione et al v Italy* (45867/07), para. 22.

¹⁵⁶ This avenue must be triggered within five years "commencing at the end of the fiscal year that the claim was born, and its legal pursuit was available": Art. 105, Introductory Law of the Greek Civil Code (ΕισΝΑΚ), and Art. 91 L. 2362/1995 and art. 140 L. 4270/2014.

¹⁵⁷ *Patiño v. Panama* (437/1990), para 5.2; *Potter v. New Zealand* (632/95), para 6.3; *Torres Ramirez v. Uruguay* (4/1977), para. 5; and *Yuzepchuk v. Belarus* (1906/2009), para 7.4.

¹⁵⁸ Art. 105, Introductory Law to the Greek Civil Code and article 38 of the current Civil Servants Code (Law 3528/2007, as amended by Law 4753/2020), https://www.kodiko.gr/nomologia/document_navigation/152582/nomos-3528-2007 and https://www.oenet.gr/media/k2/attachments/arthra_104_106_eisagogikos_nomos_astikos_kodikas.pdf.

¹⁵⁹ *Vicente et al. v. Colombia* (612/1995) para 5.2; *Coronel et al. v. Colombia* (778/1997) para 6.2.

¹⁶⁰ See on the prosecutor's *ex officio* investigative powers: Article 37(1), Law 4620/2019, https://www.kodiko.gr/nomologia/document_navigation/530491/nomos-4620-2019#Apo_37/530608.

¹⁶¹ Article 23, Disciplinary Law of Police Personnel 120/2008.

¹⁶² Article 245, Law 4620/2019 https://www.kodiko.gr/nomologia/document_navigation/530491/nomos-4620-2019#Apo_245/531196.

¹⁶³ Article 22, Disciplinary Law of Police Personnel 120/2008.

matter.¹⁶⁴ If such requests prove fruitless, the prosecutor can proceed to close the investigation if she deems that there is insufficient evidence to initiate a criminal prosecution, and can reject an appeal against such decision on similarly reasoned grounds.¹⁶⁵

115. The gravity of the violations incurred by the claimant demand that the Greek authorities conduct an *ex officio* investigation, which could provide the necessary evidence for the Prosecutor to issue an indictment against specific border officers allegedly responsible for the above criminal acts, as well as for the Greek state to remedy the policy behind them.¹⁶⁶ Given the structural shortcomings outlined below, such investigations have not been forthcoming, and have been thwarted in scores of previous cases by the Greek government's persistent denial that such incidents are taking place, and thus closed for failure to identify the perpetrators. The proceedings could be terminated if the claimant is unable to confirm their identity in court proceedings.¹⁶⁷ The prosecutor could consider the case to be 'unfounded' and proceed to close until such time that there are new facts that justify its re-examination.¹⁶⁸
116. Previous cases have laid bare the insurmountable barriers that bar victims if pushbacks from access to an effective remedy in Greece. In June 2017, the Hellenic League for Human Rights (HLHR) lodged a criminal complaint before the Supreme Court Prosecutor, submitting the information it collected regarding the summary expulsion to Turkey of a group of Turkish citizens seeking international protection from persecution by the Turkish authorities.¹⁶⁹ Nearly four years after, no perpetrator has been brought to justice. The case has been pending for four years, after being transferred back from the Orestiada region Prosecutor, but no one has been summoned to testify in the case. This approach to the investigation of such cases highlights the unacceptable delays and serious shortcomings in the conduct of the investigation, which risks that critical evidence that is not collected promptly, and that itself lacks an institutional trail, perishes.
117. In January 2019, Prosecutor of Orestiada region commenced an *ex officio* investigation of 64 incidents of summary expulsion (pushbacks) similar to the claimant's, that had been documented in a report by HumanRights360 and two other NGOs. As part of this investigation, the Prosecutor requested for the victims of these incidents to come before her to testify. With none of the victims being in a position to do so due to their vulnerability to arrest, legal representatives from three NGOs testified before the prosecutor. Following the publication of evidence of collective expulsions at the Evros-Meriç border by HumanRights360, the Greek Council of Refugees (GCR) and Human Rights Watch, amongst other NGOs, the Public Prosecutor of Orestiada (Evros) initiated an investigation in March 2019.¹⁷⁰ Nearly two years after the crimes, no perpetrator has been brought to justice while the case remains pending.
118. Lawyers at the Greek Council of Refugees (GCR) have made submissions to the Greek courts and prosecutors on behalf of scores of victims of summary expulsion that have had no success in initiating proceedings against state bodies or individual perpetrators. One of these submissions on behalf of several cases of repeated summary expulsions (pushbacks) during April-June 2019, was filed with the

¹⁶⁴ Article 1(3), Law 2713/1999 https://www.kodiko.gr/nomologia/document_navigation/194881/nomos-2713-1999.

¹⁶⁵ See, on the grounds of rejection, Article 51(3), Greek Penal Code.

¹⁶⁶ According to the Convention on Enforced Disappearances, and its Guiding Principles for the search for disappeared persons, this must occur "as soon as the competent authorities become aware, by any means, or have indications that a person has been subjected to disappearance": UN, Committee on Enforced Disappearances (2019), Principle 1, Principle 6.

¹⁶⁷ Article 254(3), Greek Penal Code. The claimant would be unable to identify either witnesses or defendants to facilitate the investigation as is expected under Article 243(3), Greek Penal Code.

¹⁶⁸ Article 43(3) and (6), Greek Penal Code.

¹⁶⁹ Hellenic League for Human Rights, 'More refoulements of Turkish asylum seekers in Evros' (06 June 2017) <https://www.hlhr.gr/en/refoulements-turkish-asylum-seekers-evros/>.

¹⁷⁰ Asylum Information Database, 'Access to the territory and push backs' (2020) <https://www.asylumineurope.org/print/2678>.

Athens Prosecutor. It includes a case that concerns five Turkish citizens, including a child – and including a school teacher who has been persecuted and imprisoned by the Turkish authorities on political grounds since her summary expulsion by the Greek authorities, which deprived her of the right to seek asylum in the EU.¹⁷¹ The group made repeated public appeals throughout their journey into Greece in an attempt to pre-empt their clandestine summary expulsion.¹⁷² The Prosecutor ordered the Internal Affairs department of the police to carry out the preliminary investigation. Following this order, the Police took a deposition from the complainant, inquiring specifically whether he recognizes specific police officers involved in the incident. Since most of the perpetrators had their faces covered and did not wear uniforms, the complainant was not in a position to identify those who assaulted him or those who transferred him across the border. The Athens Prosecutor decided to archive the case in September 2020 due to lack of evidence and failure to recognize the identities of the perpetrators, noting in its decision the absence of evidence about cross-border summary expulsions by Greek forces, and the fact that such forces are mandated by law to inquire into and inform competent Greek prosecutors about such cases. The instances from the April-June 2019 period, as well as reports from preceding years redocumented by GCR, were also submitted to the Supreme Court Prosecutor in June 2019, whose office has not initiated any investigations further to those conducted by the Athens prosecutor, but is expected to face a similar impasse when dealing with the relevant authorities.

119. To date successive Greek governments have persistently and adamantly denied the occurrence of cases of summary expulsion at the Evros-Meriç border, despite a growing overwhelming body of evidence of summary expulsions at the Evros-Meriç border, and recently also on the Aegean sea.¹⁷³ The experience of Greek lawyers litigating these cases makes apparent that the Greek law enforcement authorities, with the mandate to investigate these events, endorse the Greek government’s practice of concealing and denying their very occurrence, and accordingly refuse to initiate and cooperate in their investigation and prosecution. This is the foremost obstacle – according to Greek legal practitioners that have animated such challenges over many years – to criminal proceedings in cases of pushbacks.
120. The unwillingness of Greek authorities to investigate such cases is enabled by the fact that the severity and gravity of the violations as a matter of international and European human rights law is not reflected in the Greek Criminal Code, which does not include any provisions criminalising expulsions as such. Depending on the incident, a criminal complaint against the perpetrators of a pushback is essentially a complaint about physical assault, illegal detention, exposure to danger, as well as breach of duty and abuse of power – acts that are defined as misdemeanours (and not crimes) under the Greek Criminal Code. Critically, therefore, criminal proceedings offer only a limited form of remedy through monetary compensation for physical assault and injury, leaving both the gravity of the abuses of basic human rights – e.g. the fact that the expulsion of the person may result in her being persecuted, and imprisoned, and otherwise endanger her life – and the ongoing and widespread unofficial policy of collective expulsion at the Evros-Meriç border, from which they result, without an effective remedy.
121. Other non-judicial remedies, such as the Greek ombudsman, have also been seized of this matter. Since the measures such complaint mechanisms can adopt are of a recommendatory value, these

¹⁷¹ See Exhibit 18.

¹⁷² See Forensic Architecture, *Pushbacks Across the Evros/Meriç River: The Case of Ayşe Erdoğan* (08 Feb. 2020) <https://forensic-architecture.org/investigation/pushbacks-across-the-evros-meric-river-the-case-of-ayse-erdogan>.

¹⁷³ Itamar Mann and Niamh Keady-Tabbal, ‘Torture by Rescue: Asylum-Seeker Pushbacks in the Aegean’, *Just Security* (26 Oct. 2020) <https://www.justsecurity.org/72955/torture-by-rescue-asylum-seeker-pushbacks-in-the-aegean/>. Niamh Keady-Tabbal and Itamar Mann, ‘Tents at Sea: How Greek Officials Use Rescue Equipment for Illegal Deportations’, *Just Security* (22 May 2020) <https://www.justsecurity.org/70309/tents-at-sea-how-greek-officials-use-rescue-equipment-for-illegal-deportations/>. See also, Bashar Deeb and Leone Hadavi, ‘Bellingcat Masked Men on A Hellenic Coast Guard Boat Involved in Pushback Incident’, *Bellingcat* (23 June 2020) <https://www.bellingcat.com/news/uk-and-europe/2020/06/23/masked-men-on-a-hellenic-coast-guard-boat-involved-in-pushback-incident/>.

complaint mechanisms do not constitute an effective remedy for the purposes of article 5(2)(b) of the Optional Protocol, which must have a binding obligatory effect.¹⁷⁴ Their experience of seeking the relevant authorities cooperation in the investigation of such incidents does however attest to the unwillingness of such relevant authorities to investigate and to their active concealment of their illegal acts. On 13 December 2018, lawyers from HumanRights360 submitted the claimant’s case along with 38 other cases of alleged pushbacks at the Evros border to the Greek Ombudsman.¹⁷⁵ On 3 January 2018, the Ombudsman requested further information on “the first and last names of the aliens who are complaining to have fallen victims of illegal pushbacks, exact dates of entry in the country, of arrest, and of their pushback, as well as the location where all of the aforementioned took place” (unofficial translation).¹⁷⁶ With such information not available to the public, the Ombudsman closed and archived the case on 2 April 2019.¹⁷⁷ Though the Ombudsman remains seized of the broader issue of pushbacks pending, in the absence of evidence from the relevant authorities, who are actively concealing such acts, it is unlikely that this mechanism can meaningfully influence the government’s actions. The Ombudsman will thus likely face similar investigative obstacles to those set out above.¹⁷⁸ HumanRights360 and other Greek non-governmental organisations have also made similar submissions to the National Commission for Human Rights, Greece’s national human rights institution.

Structural shortcomings to the investigation and prosecution of push-back cases

122. There are several structural shortcomings to the way the Greek authorities have handled cases of border violence and complaints filed by certain foreign nationals with the result of shielding state officials from racist crimes.¹⁷⁹ Greek lawyers with expertise in such complaints explain that it is commonplace for the Greek police to treat complaints by foreign nationals with contempt and to proceed to either dismiss them summarily or draw out the proceedings with the intention to render them moot.¹⁸⁰ The Court’s decision blames the Athens police for treating the facts as an isolated case and neglecting to link them with a pattern of similar incidents.¹⁸¹ The inability to identify specific law enforcement officers would result in the closure of the case or in its indefinite delay for remaining open under the label “unknown perpetrators”.
123. Critically, successive Greek governments have consistently denied pushback practices for years at the highest ranks, including by high-ranking Greek police official in a June meeting with Human Rights Watch, despite the systematic and widespread nature of such practices having been extensively and routinely documented and condemned by various international and European authorities and leading independent non-governmental organisations, who have repeatedly called on Greece to investigate and redress these acts.¹⁸² In December 2018, for instance, the Hellenic Police Director categorically denied that Hellenic Police carry out forced summary returns. He said all procedures for the detention and identification of migrants entering Greece were carried out in line with relevant legislation, and that

¹⁷⁴ Kanganamge v Sri Lanka (909/00), para 6.3. A.S. v. Nepal (2077/2011), para. 7.3.

¹⁷⁵ Greek Ombudsman, 2019 report, p. 32, https://www.synigoros.gr/resources/emhdipa_2019_en.pdf.

¹⁷⁶ On file with the communication’s authors; available upon request.

¹⁷⁷ *Ibid.*

¹⁷⁸ Earl Pratt and Ivan Morgan v. Jamaica (210/1986 and 225/1987), para 12.3.

¹⁷⁹ Racist Violence Recording Network, Annual Report 2018, http://rvrn.org/wp-content/uploads/2019/04/RVRN_report_2018en.pdf. Racist Violence Recording Network, Annual Report 2016, http://rvrn.org/wp-content/uploads/2017/04/Report_2016eng.pdf.

¹⁸⁰ *Ibid.* See also, ECtHR, Sakir v Greece, Application No 48475/09, judgment of 24 June 2016, paras 70-72.

¹⁸¹ Eva Brehm, ‘Sakir v Greece: Racist violence against an undocumented migrant’, *Strasbourg Observers* (6 April 2016) <https://strasbourgobservers.com/2016/04/06/sakir-v-greece-racist-violence-against-an-undocumented-migrant/>. In *Betros and Koutropoulos v Greece* (15250/02), para. 69, the court held that the state was obligated to investigate the racist motive.

¹⁸² Exhibit 17.

they “thoroughly investigate” any incidents of misconduct or violation of migrants’ and asylum seekers’ rights.¹⁸³

124. The same pattern of denials has persisted throughout 2020. Independent and detailed investigative reports of serious cases of illegal pushbacks in the Aegean sea, such as expert investigations of the killings at the Evros-Meriç border in March 2020,¹⁸⁴ have been persistently met with responses that seek to stigmatise them as ‘fake news’ and ‘anti-government propaganda’ including in extensive accounts before members of the European Parliament’s LIBE committee by the Greek ministers of citizen protection, migration, and the deputy minister of migration.¹⁸⁵ The Greek Prime Minister has also denied “that Hellenic Republic personnel was involved” and expressed only a “willing[ness] to investigate any isolated incident”¹⁸⁶ in relation to expert analysis of video evidence of a push-back along the Evros-Meriç.¹⁸⁷ Further calls for investigation made by the Commission had asked for a thorough investigation to be conducted in December 2019,¹⁸⁸ and by over a hundred MEPs who signed a letter calling for the Head of the European Commission to investigate the events of 4 March 2020.¹⁸⁹

125. These persistent denials have harboured a culture of impunity around such acts in Greece and are a strong indication of the unwillingness of the Greek authorities to undertake investigations into the potentially complex systems failure that has led to the proliferation of pushbacks at Greece’s land and maritime borders. Adding to such denials, in April 2020, the Greek prosecutor commenced an investigation on the basis of inflated charges, including serious offenses against national security such as espionage, against some 33 individuals part of different humanitarian groups operating on the Greek islands that have been involved in the documenting and reporting on pushback cases.¹⁹⁰ Such actions obstruct the documentation and investigation of such incidents and ultimately in concealing the facts perpetrated by Greek authorities committing pushbacks.

No recourse to general remedies

126. The structural shortcomings and obstacles that prevent victims of border violence from obtaining an effective remedy for their harm in the Greek legal system attest to the ways in which the Greek authorities’ systematic unofficial practice of summary expulsions (pushbacks) at the Evros border is shielded and enabled by a disregard for the rule of law.¹⁹¹ The manifestly unlawful policy of arbitrary

¹⁸³ Exhibit 17.

¹⁸⁴ Mark Stone, ‘Death on the border’ Sky News (2020) <https://news.sky.com/story/death-on-the-border-who-was-muhammad-gulzar-and-what-happened-to-him-11985513>.

¹⁸⁵ European Parliament Multimedia Center, LIBE Committee meeting (06 July 2020) https://multimedia.europarl.europa.eu/en/libe-committee-meeting_20200706-1645-COMMITTEE-LIBE_vd?fbclid=IwAR1b2v-pjXhVGeeOu-4JrIWhlCzXM2B8rFXHnG0JRo2taCKSNtYNZmldmsk.

¹⁸⁶ Prime Minister Kyriakos Mitsotakis, ‘Συνέντευξη του Πρωθυπουργού Κυριάκου Μητσοτάκη στην εφημερίδα Bild’ (15 Dec. 2019) <https://primeminister.gr/2019/12/15/22745>.

¹⁸⁷ Exhibit 15. See also Eva Cossé, ‘Greece Is Still Denying Migrant Pushbacks’ Human Rights Watch (21 Aug. 2020) <https://www.hrw.org/news/2020/08/21/greece-still-denying-migrant-pushbacks>.

¹⁸⁸ Giorgos Christides, Steffen Lüdke und Maximilian Popp, ‘EU-Kommission setzt griechische Behörden unter Druck’, Der Spiegel (14 Dec. 2019) <https://www.spiegel.de/politik/ausland/eu-kommission-fordert-griechische-untersuchung-zu-mutmasslichen-pushbacks-a-1301325.html>.

¹⁸⁹ Forensic Architecture, The Killing of Muhammad Gulzar (n 139), citing: Tweet by Tineke Strik @Tineke_Strik (12 May 2020) https://twitter.com/Tineke_Strik/status/1260177579815899137.

¹⁹⁰ Washington Post, ‘Greek police accuse 33 people of helping migrant smuggling’ (28 Sep. 2020) https://www.washingtonpost.com/world/europe/greek-police-accuse-33-people-of-helping-migrant-smuggling/2020/09/28/bf3265bc-017b-11eb-b92e-029676f9ebec_story.html.

Euronews, ‘Greek police accuse 33 NGO members of helping migrant smugglers’ (29 Sep. 2020) <https://www.euronews.com/2020/09/29/greek-police-accuse-33-ngo-members-of-helping-migrant-smugglers>.

¹⁹¹ Torres Ramirez v Uruguay (4/77), Grille Motta et al v Uruguay (11/77), and Martínez Machado v Uruguay (83/80). See also, Avandanov v Azerbaijan (63377/07).

detention and collective summary expulsion of individuals across the Evros border and the lack of access to judicial review and legal representation for migrants in Greece – also amounting to a serious breach of the EU Asylum Acquis¹⁹² – cannot be effectively addressed through the facts of one case. The state of denial of justice in which these large-scale systematic violations of the fundamental rights of thousands of individuals are taking place in Greece, thus, necessitate that the Committee become seized of this matter and offer remedies both to the claimant as well as in relation to the general practice of summary expulsion and enforced disappearance.

127. Given the unavailability of effective domestic remedies to the claimant in Greece, all available and accessible remedies capable of providing redress and offering reasonable prospects of success to the claimant in the case at hand should be considered to have been exhausted.

VIII. VIOLATIONS OF THE ICCPR

128. The Greek government, in the course of the pushback operation and by sparking the chain of events that followed, impacted upon the following rights contained in the ICCPR:

- *Article 6(1): The right to life*
- *Article 7: The prohibition of torture or cruel, inhuman or degrading treatment or punishment, alone and in conjunction with Article 13: The prohibition of collective expulsions*
- *Article 9: The right to liberty and security, including the prohibition on arbitrary arrest or detention*
- *Article 10: The right to dignity*
- *Article 12(2): The freedom to leave a country and Article 12(4): The right to enter one's own country*
- *Article 13: The prohibition of collective expulsion*
- *Article 16: The right to recognition everywhere as a person before the law*
- *Article 17: The right to privacy*
- *Articles 2 and 26: The prohibition of discrimination*
- *Article 14: The right to equality before courts and tribunals and to a fair trial*
- *Article 2(3): The right to an effective remedy*

A. State jurisdiction

129. The Greek officials who apprehended, detained and beat Mr. FAJ were Greek police acting in their official capacity as agents of the state, on Greek territory.

130. The Greek police then transferred Mr. FAJ directly into the custody of German-speaking commandos, who, while accompanied by suspected Frontex officers, drove him to the riverbanks and expelled him across the border. Even if it could be established that these commandos were private actors, the Greek officials who handed Mr. FAJ over to them would remain liable for the violations that ensued because they were under direct control of the Greek authorities.

¹⁹² See arguments made in a recent infringement procedure complaint against Greece to the EU Commission maintains: De Brauw Blackstone Westbroek, WeMove Europe, and Oxfam International, *Complaint to the European Commission Concerning Infringements of EU Law by Greece* (22 Sep. 2020), <https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/2020-09/wemove-oxfam-complaint-to-ec-asylum-greece-eu.pdf>.

B. Article 6(1): The right to life

131. In various cases, the Human Rights Committee has found that enforced disappearances constituted a violation or grave threat to the right to life. For example, in *Saker v Algeria*, where Mr. Saker disappeared after having last been seen in the custody of the police, and where the State failed to provide any information or evidence on his release, the Committee found a violation of Article 6(1) as “the State party failed to protect the life of Mr. Saker.”¹⁹³ The death of the disappeared individual is not required for the Committee to find a breach of the right to life.¹⁹⁴ In *Benaziza v Algeria*, the Committee recalled that “in several cases of enforced disappearance the Committee has found that the victims’ rights under article 6 of the Covenant had been violated, even though it was not entirely clear what had happened to them.”¹⁹⁵

When considering enforced disappearances, in the context of Article 6, the Human Rights Committee has reaffirmed that “the burden of proof cannot rest on the author of the communication alone, especially considering that the author and the State party do not always have equal access to the evidence and frequently the State party alone has the relevant information.”¹⁹⁶

132. Mr. FAJ faced substantiated risks of drowning and hypothermia during his initial expulsion from Greece and was subsequently repeatedly summarily expelled (pushback) by the Greek authorities while he was re-attempting to return to Greece. Mr. FAJ, who does not know how to swim, was forced to cross the dangerous Evros-Meriç River while repeatedly attempting to re-enter Greece, and each subsequent summary expulsion (pushback) he experienced between December 2016 and December 2017. Hundreds of migrants have died attempting to cross the Evros-Meriç to Greece in recent years, including in attempts following pushbacks and during the course of the pushback operations themselves.¹⁹⁷ By forcing Mr. FAJ onto a rubber boat and transporting him across the river in late November, the commandos subjected Mr. FAJ to an immediate risk of drowning and hypothermia. Moreover, by pushing him across the river into Turkey without his identification, the Greek authorities forced Mr. FAJ into a situation in which his only means to re-enter Greece were to cross the Evros-Meriç River, a journey that could take up to several days at a time, again and again. By continually subjecting him to repeated pushbacks and forcing him to risk his life each time he attempted re-entry into Greece, Greece continuously endangered Mr. FAJ’s physical integrity, seriously violating his right to life.

133. The physical and mental injury to Mr. FAJ caused by his initial expulsion led him to develop chest pain and resulted in his emergency hospitalization in Turkey for cardiac surgery and a lifetime of prescribed heart medication.

134. During the three years he was rendered de facto undocumented and rightless by the Greek authorities, the claimant had no formal access to medical care – which he forced to seek out informally and without access to his medical record, first in Turkey, and then in Greece. One of several xenophobic attacks experienced by the claimant, resulted in his hospitalisation with a broken jaw, two broken teeth,

¹⁹³ *Saker v Algeria* (992/01), para 9.11.

¹⁹⁴ See *Joseph and Castan* 9.145.

¹⁹⁵ *Benaziza v Algeria* (1588/07), para 23.

¹⁹⁶ *El Hassy v Libya* (1422/2005), para 6.7. See also, for example, *Conteris v. Uruguay* (139/1983), para 7.2; and *Medjnoune v. Algeria* (1297/2004), para 8.3.

¹⁹⁷ See Carlijne Vos, “De ijskoude rivier Evros slokt migranten op,” *de Volkskrant* (13 Feb. 2019)

<https://www.volkskrant.nl/kijkverder/v/2019/de-ijskoude-grensrivier-de-evros-slokt-migranten-op/>. In 2017, an 18-year-old Pakistani migrant died from hypothermia after he fell out of the Greek border authorities’ boat into the river while they were pushing him back to Turkey: Daily Sabah, “Pushed back by Greece, migrant dies of hypothermia,” *Daily Sabah* (20 Dec. 2017), <https://www.dailysabah.com/turkey/2017/12/20/pushed-back-by-greece-migrant-dies-of-hypothermia>.

and 35 stitches in his leg. Yet, he was neither able to pay and thus obtain the medical documents for this treatment, nor to seek protection from the law for such attacks.

135. The destitution and uncertainty that ensued from the violence Mr. FAJ was subjected to by the Greek authorities, accompanied by worries about the whereabouts of his brother, cause him to develop severe depression and anxiety, as well as serious suicidal ideations, which led to his attempted suicide on multiple occasions. As previously expressed by the Human Rights Committee, “Self-harm is an important cause of death and serious injury for persons deprived of their liberty and human rights mechanisms have repeatedly expressed concern regarding its prevalence.”¹⁹⁸ By causing Mr. FAJ to develop suicidal ideations and attempt several times to take his own life, the Greek officials responsible for the manifestly unlawful expulsion of the claimant from Greece on 30 November 2016, following his effective arbitrary and unlawful deprivation by Greek officials of his refugee recognition and legal status in the EU, thus directly threatened Mr. FAJ’s right to life.

C. Article 7: The prohibition of torture or cruel, inhuman or degrading treatment or punishment, alone and in conjunction with Article 13: The prohibition of collective expulsions

136. Article 7 prohibits the use of systematic beatings¹⁹⁹ and the infliction of physical pain. The unofficial systemic practice of summary expulsion by the Greek authorities at the Evros-Meriç border, to which Mr. FAJ was subjected on multiple occasions, have been well-documented by civil society organizations.²⁰⁰

137. The Human Rights Committee and CAT Committee have both held that the infliction of mental distress can constitute torture or cruel, inhuman or degrading treatment or punishment.²⁰¹ The mental distress to which the Greek authorities subjected Mr. FAJ through their physical violence, their infliction of a years-long period of uncertainty and destitution, which also interfered with his ability to locate his brother, caused Mr. FAJ to develop severe depression and anxiety, to the point of attempting suicide multiple times.

138. On 30 November 2016, Mr. FAJ had just arrived in Didymoteicho to search for his missing then 11-year-old brother M, with whom he had lost contact days before, during his journey to Greece. The Greek police apprehended Mr. FAJ in the KTEL station right after he arrived in the border area and was trying to find out about the whereabouts of his brother by showing a photo of M on his phone to individuals at the station. By arbitrarily arresting Mr. FAJ, bringing him to a detention center, seizing his phone and documentation and proceeding to summarily expel him to Turkey, the Greek officials directly interfered with Mr. FAJ’s search for his brother and their reunification. The anguish, stress and uncertainty that Mr. FAJ subsequently experienced, and continues to experience, because he was prevented from attempting to find or reunite with his brother, violates his Article 7 right to be protected against inhuman and degrading treatment. The Committee upheld this view in *Quinteros v Uruguay* (107/81), where it found that Uruguay had violated Article 7 with regard to both Elena, who was

¹⁹⁸ Human rights in the administration of justice - Report of the United Nations High Commissioner for Human Rights, A/HRC/42/20, 21 August 2019, para 26.

¹⁹⁹ See Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights (3rd Edition): Cases, Materials and Commentary* (2013), p. 240. For examples of cases discussing systematic beatings, see, e.g., *Osmani v Republic of Serbia* (CAT 261/05), *Grille Motta v Uruguay* (11/77), *López Burgos v Uruguay* (52/79), *Sendic v Uruguay* (63/79), *Angel Estrella v Uruguay* (74/80), *Arzuago Gilboa v Uruguay* (147/83), *Cariboni v Uruguay* (159/83), *Berterretche Acosta v Uruguay* (162/83), *Herrera Rubio v Colombia* (161/83), *Lafuente Peñarrieta v Bolivia* (176/84). See also, Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (1993) p. 131 and p. 162; PR Gandhi, ‘The Human Rights Committee and Articles 7 and 10(1) of the International Covenant on Civil and Political Rights, 1966’ (1990) 13 *Dalhousie Law Journal* 758, 762–6.

²⁰⁰ See, e.g., Exhibits 15, 16, 17, 19, 26, 27.

²⁰¹ General Comment No. 20, Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment, para. 5.

abducted by Uruguayan officials, and to her mother, María, who endured “psychological torture” that María as a result of not knowing of her daughter’s whereabouts.²⁰² Mr. FAJ too experienced severe and continued anguish, stress and anxiety for having been effectively prevented from lawfully approaching the authorities in Greece and Turkey to request the investigation of the whereabouts and fate of his brother, as a direct result of Greek officials’ actions that stripped the claimant of his legal status and protection by the law.²⁰³

139. Other relevant jurisprudence has examined the mental anguish caused by detention, such as that which Mr. FAJ experienced and continues to live with, after being arbitrarily deprived of his liberty during his initial expulsion, as well as during a number of his subsequent summary expulsions (pushbacks) by the Greek authorities. In *Jensen v Australia*, where the claimant alleged the detention caused undue emotional and psychological trauma, the HRC did not find a violation of Article 7, reasoning that the author “must demonstrate an additional exacerbating factor beyond the usual incidents of detention” and reasoning that Jensen “failed to demonstrate, for the purposes of admissibility, that he has been treated in any way which departs from the normal treatment accorded a prisoner.”²⁰⁴ Mr. FAJ’s case can be distinguished from that of Jensen, as Mr. FAJ’s detention experience did depart from the normal treatment of a detained individual: he was continually beaten, he was never given any reason for his detention, and his documentation was seized and never returned thereby barring his access to fundamental rights in the years-long period following his detention. Mr. FAJ’s case can also be distinguished from Jensen’s in that the State Party argued that Jensen suffered “only periodic anxiety and mild depression from time to time.”²⁰⁵ As demonstrated by the psychologists’ reports (enclosed in the supporting documents), the impact of the Greek authorities’ actions on Mr. FAJ’s mental state were significantly more severe than that diagnosis, with his depression and anxiety labelled as “severe” and giving rise to several suicide attempts.²⁰⁶

As such, Mr. FAJ’s case is similar to that of *C v Australia* (900/99), in which the author developed a serious mental illness as a result of his protracted experience in immigrant detention, and for which the Committee found a violation of Article 7. Although the time that Mr. FAJ spent in detention was shorter than was the case in *C v Australia*, the three-year period of precarity, reduced mobility, repeated arbitrary detention in degrading conditions and ill-treatment during several summary expulsions (pushbacks) effectively rendering Mr. FAJ stateless and thus in a protracted state of rightlessness – by *de facto* depriving him of protection by the law – is of at least comparable severity. Like with C’s detention, Mr. FAJ’s deprivation of his status was arbitrary and unlawful for *de facto* stripping him of his international protection as refugee, granted to him by the German authorities in accordance with EU law. It also rendered him *de facto* stateless given that his original Syrian nationality is the source of his persecution, and basis for his claim to international protection. In addition, both C and Mr. FAJ attempted suicide, and both were psychologically diagnosed to have developed severe mental illness. It follows that the mental anguish to which Greek authorities subjected Mr. FAJ constitutes a breach of Article 7.

140. The expulsion of Mr. FAJ to Turkey across the Evros-Meriç River also violated his rights under Article 7 by exposing him to the risk of torture or cruel, inhuman or degrading treatment or punishment in Turkey *and* a country of further refoulement,²⁰⁷ after he had benefited from special protection for

²⁰² *Quinteros v Uruguay* (107/81), para 1.9.

²⁰³ For more cases discussing mental anguish as a violation of Article 7, and specifically that of individuals separated from or denied access to information about their family members, see, e.g., *Titiahonjo v Cameroon* (1186/03), para 6.4; *Sarma v. Sri Lanka* (950/2000), para 9.5; *Kimouche v Algeria* (1328/2004), para 7.7; *Grioua v Algeria* (1327/2004), para 7.7.

²⁰⁴ *Jensen v Australia* (762/97), para 6.2.

²⁰⁵ *Jensen v Australia* (762/97), para 4.2.

²⁰⁶ Exhibits 12-13.

²⁰⁷ *Ibid.*

these very rights through his recognition as a refugee by the German authorities. In *Korban v Sweden* (CAT 88/97), the Committee found that deportation of the claimant from Sweden to Iraq would violate Article 3 CAT.²⁰⁸ It further found that deporting him to Jordan would also violate Article 3, even though he did not face a risk of being subject to torture in Jordan, but because of the likelihood of his ‘chain refoulement’ from Jordan to Iraq.²⁰⁹ Because the claimant did not have a Jordanian residence permit, and considering the close collaboration between the Jordanian police and Iraqi authorities, the Committee concluded that Sweden was obligated to refrain from expelling the claimant to Jordan, due to the risk of subsequent deportation to Iraq.²¹⁰ In Mr. FAJ’s case, Greece expelled him to Turkey where he did not have a residence permit, and where the Turkish authorities were deporting Syrians *en masse* back to Syria.

Greece thus subjected Mr. FAJ to a similar risk of ‘chain refoulement’ that the Committee found to constitute a violation in *Korban v Sweden*. The severe risks that Mr. FAJ would face if subsequently deported to Syria are substantiated risks that were recognized in Germany’s authorization of his refugee status. The Greek authorities knew that Mr. FAJ was a recognized refugee in Germany, as they even seized and maintained possession of his asylum document and German documentation. As such, they knew or reasonably should have known that he would face severe and substantiated risks of harm if returned to Syria. The Greek authorities either knew, or reasonably should have known that by removing him to Turkey, they were exposing him to these dangers, as well as the dangers of being subsequently refouled to Syria, against which he was protected by his refugee status in the EU.

The risks faced in Mr. FAJ’s expulsion both mirrored the risks caused by ‘chain refoulement’ in *Korban*, and entailed additional risks of torture or cruel, inhuman or degrading treatment or punishment in Turkey itself, where the claimant faced containment for being refused to leave the country, experienced several xenophobic attacks, and had no access to medical care for the physical and mental harm.²¹¹

141. The clandestine and violent actions that led to Mr. FAJ’s summary expulsion from Greece violated Greece’s obligations under Article 13, which allows for expulsion of a lawfully present non-citizen only where the expulsion is required by law and where it offers certain procedural safeguards including a right of appeal.²¹² The deportation order issued against him in April 2019,²¹³ when he tried to travel to Germany without his legal document to hand, perpetuated his deprivation of his legal status in the EU by the Greek authorities in November 2016 and formalised his exclusion from protection by the law exposing him to the risk of imminent deportation back to Syria.

142. The Greek authorities also violated the claimant’s rights under Article 7, as understood by the Committee Against Torture, by placing the claimant directly in harm’s way. Greece’s actions exposed him to the risk of drowning, serious bodily injury and death from hypothermia, and by subjecting him to the condition of abject vulnerability as an undocumented migrant in Turkey, and to repeated incidents of border violence including arbitrary detention, ill-treatment and summary expulsion during his attempts to re-enter Greece – all while he had already benefited from international protection in the EU.

In *Sonko v Spain*, Mr. Sonko drowned during the course of a pushback operation in which the Spanish Civil Guard was pushing him back to Morocco on a dinghy. The Committee found that the “subjection

²⁰⁸ *Korban v Sweden* (88/1997), para. 7.

²⁰⁹ *Ibid.*

²¹⁰ *Id.*, paras. 3.1, 7.

²¹¹ See Section VI on ‘Context of the Violations’ for a discussion of the risks faced by the claimant in Turkey.

²¹² OHCHR, “Expulsions of aliens in international human rights law: OHCHR Discussion paper,” OHCHR Geneva (Sep. 2006), p. 10, <https://www.unhcr.org/en-us/4bf6813a9.pdf>.

²¹³ Exhibit 31.

of Mr. Sonko to physical and mental suffering prior to his death, aggravated by his particular vulnerability as a migrant” constituted cruel, inhuman or degrading treatment or punishment in violation of Article 16 of the Convention Against Torture.²¹⁴ Article 16(1) of CAT states, “...Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity...” The Greek authorities, in instigating the pushback and ordering the commandos to transport Mr. FAJ, therefore bear responsibility for the cruel, inhuman or degrading treatment or punishment to which the commandos subjected Mr. FAJ by and during the course of his pushback.

143. The Committee has found in various cases that enforced disappearances, like that of Mr. FAJ, breach Article 7. For example, in *Celis Laureano v Peru*, the Committee found that the “abduction and disappearance of the victim and prevention of contact with her family and with the outside world constitute cruel and inhuman treatment, in violation of article 7.”²¹⁵ The Committee similarly found, in *Tshishimbi v Zaire*, that the State’s abduction of the victim under unclear circumstances and incommunicado detention without contact to his family or the outside world constitute cruel and inhuman treatment, in violation of Article 7.²¹⁶

In General Comment No. 27 on Article 7, the Committee wrote that in order to “guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends.”²¹⁷ The Committee also added that “[p]rovisions should also be made against incommunicado detention”, and that the “protection of the detainee also requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members”.²¹⁸ Recalling this recommendation, the Committee in *Sharma v Nepal* again found that for the State to “keep the [victim] in captivity and to prevent him from communicating with his family and the outside world constitutes a violation of article 7 of the Covenant.”²¹⁹

D. Article 9: The right to liberty and security, including the prohibition on arbitrary arrest or detention

144. By subjecting Mr. FAJ to enforced disappearance, the Greek authorities violated both substantial and procedural aspects of their obligations under Article 9.²²⁰ The Human Rights Committee has repeatedly found enforced disappearances and cases that include circumstances similar to those experienced by the claimant to constitute an Article 9 violation.²²¹
145. The chain of events described in this complaint began with Mr. FAJ’s arbitrary arrest and detention. The Greek police first violated Article 9(1) by arbitrarily arresting Mr. FAJ without proper grounds or

²¹⁴ *Sonko v Spain* (368/2008), para. 10.4.

²¹⁵ *Celis Laureano v Peru* (540/1993), para. 8.5.

²¹⁶ *Tshishimbi v Zaire* (542/1993), para 5.5.

²¹⁷ General Comment No. 20, para 11.

²¹⁸ *Ibid.*

²¹⁹ *Sharma v Nepal* (1469/2006), para. 9.2.

²²⁰ See Joseph and Castan, para. 11.105.

²²¹ See, for example, *El Hassy v Libyan Arab Jamahiriya* (1422/05), para 6.5; *Grioua v Algeria* (1327/04), para 7.5; *Kimouche v Algeria* (1328/04), para 7.5; *Sharma v Nepal* (1469/06), para 7.3; *Benaziza v Algeria* (1588/07), para 9.7; and *Chihoub v Algeria* (1811/08), para 8.7.

accordance with any procedure established by law. They then arbitrarily detained him – incommunicado and in unofficial detention facilities²²² – for at least ten hours. While that there is no minimum time limit expressly required in order to find that a detention period violates Article 9(1). For example, in *Spakmo v Norway*, the Committee found a violation of Article 9(1) where the State Party failed to demonstrate that Spakmo’s eight-hour detention period after his arrest was reasonable.²²³ The Committee also found a violation of Article 9(1) in *Tshionga a Minanga v Zaire* (366/89), where the State detained the claimant for half a day.²²⁴

In *Saker v Algeria*, the Committee found a violation of Article 9(1) where the State Party arrested Mr. Saker and transferred him into military custody, and then failed to provide a legal basis for his detention, as well as to document his release (at all, let alone with conditions of safety), or to provide evidence that his detention was not arbitrary or illegal.²²⁵ It follows that, on similar grounds, Greece would be liable for the same violations in Mr. FAJ’s case, where the State actors repeatedly failed to communicate a legal basis for his arrest or detention, did not register his detention or release, released him contrary to conditions of safety, and failed to provide evidence suggesting that his arrest and detention were legal and non-arbitrary.

In *A v Australia*, the Committee noted that “the notion of “arbitrariness” must not be equated with “against the law” but be interpreted more broadly to include such elements as inappropriateness and injustice.”²²⁶ The arrest and detention to expel a legally-present foreign national without legal basis is manifestly inappropriate and contrary to notions of justice. While the Committee in *A v Australia* indicated that it may be reasonable to detain for a period individuals suspected of illegal entry, in order to consider factors such as the likelihood of absconding, it also noted that “detention should not continue beyond the period for which the State can provide appropriate justification.”²²⁷ The facts of Mr. FAJ’s case suggest that the Greek police assumed, based on his racial appearance and Syrian national origin, that he was in the country unlawfully. Even if Greece could establish a basis for detaining him to investigate if he was lawfully present or not, there is no appropriate justification for continuing to detain Mr. FAJ on this basis after he provided his documentation to establish his legal presence. Mr. FAJ tried repeatedly to show the officers his German passport and documentation to establish that he had not entered Greece illegally. After initially refusing to look at his documents, the police did take them at the beginning of his detention period, at which point they would have been made aware of his status as a refugee in the EU and a resident of Germany. There was no appropriate justification for continuing to detain him after this point, and it follows that Greece thereby violated Article 9(1).

146. The Greek officials’ failure to provide a legal basis for Mr. FAJ’s arrest and detention also violate Article 9(2), which requires that the State provide precise reasons for the deprivation of liberty. Despite repeatedly asking the officers why he was being arrested and transported, Mr. FAJ was deprived of his liberty without being given *any* reason — let alone a precise reason — for his apprehension, detention or removal. The Committee has found in past cases a violation of Article 9(2) where the reasons for arrest were not provided with enough precision, promptly, or at all. For example, in *Iombe and*

²²² The detention of the claimant in unofficial detention facilities that are neither established nor governed by Greek law is a systemic feature of the culture of impunity of Greece’s unofficial policy of collective expulsion at the Evros-Meriç border, also contravening relevant Greek laws.

²²³ *Spakmo v Norway* (631/1995), para 6.3 (highlights that even where an arrest is not arbitrary, the following detention might still be arbitrary in violation of 9(1)).

²²⁴ See also, minority opinion in *Giry v Dominican Republic* (193/85), finding a violation of article 9(1) where the claimant was detained for 2 hours and 40 minutes.

²²⁵ *Saker v Algeria* (992/2001), para 9.5.

²²⁶ *A v Australia* (560/1993), para 9.2.

²²⁷ *Ibid.*, para 9.4

Shandwe v Democratic Republic of the Congo, the Committee found a violation of Article 9(2) where the State Party failed to provide a precise reason for the claimants' arrest beyond later stating the reason of "State security".²²⁸ The Committee also found an Article 9(2) violation in *Ismailov v Uzbekistan*, where the claimant was not informed of the charges against him until two days after his arrest.²²⁹ In *Ashurov v Tajikistan*, the Committee found a breach of 9(2), as well as 9(1), where the victim was arrested and detained without ever being informed of the reason.²³⁰ As Mr. FAJ was never given a reason for his arrest at any time, it follows the precedence of the Committee that a violation of Article 9(2) would also be found in his case.

147. The expedited and clandestine nature of Mr. FAJ's detention and removal also led to violations of Articles 9(3) and 9(4). Contrary to 9(3), the claimant was denied his right to prompt judicial review of his detention. Contrary to 9(4), he was also deprived of the right to legal representation and hence the opportunity to effectively challenge his detention or the official decision to summarily expel him. The Article 9(4) right to challenge the unlawfulness of one's detention in court without delay applies to any individual whose liberty is deprived for any reason.²³¹ The Committee has found violations in several cases in which the claimant was detained incommunicado and transferred without access to a lawyer, like Mr. FAJ was. For example, in *Berry v Jamaica*, the Committee found that Article 9(4) was violated as the claimant "was not, in due time, afforded the opportunity to obtain on his own initiative, a decision by a court on the lawfulness of his detention."²³² In *Hammel v Madagascar*, the Committee again found that detention incommunicado made accessing the 9(4) right of habeas corpus impossible.²³³ In *Saker v Algeria*, the claimant was arbitrarily detained, held incommunicado and then transferred to military custody without the possibility of accessing counsel, resulting in violations of Articles 9(1), 9(3) and 9(4).²³⁴

148. Article 9(5) enshrines a right to compensation for an individual who experiences a violation of any of Article 9's provisions.²³⁵ The violations experienced by the claimant were particularly egregious as evidenced by his exposure to the real risk of deportation from Greece to Syria in April 2019, when a deportation order was issued against him by Greek authorities who apprehended the claimant when he attempted to travel to Germany without his document to hand.

E. Article 10: The right to dignity

149. The degrading treatment to which Mr. FAJ was subjected while in custody of the Greek authorities violates Greece's obligations to ensure a standard of humanity and dignity for those in detention. For hours, officials detained Mr. FAJ, along with 50 other men, women and children, without any food or water, in filthy conditions without proper sanitation.

150. The Greek authorities also violated Mr. FAJ's right to dignity by preventing him from making his case that he was lawfully present in the country and in possession of a valid German residency permit, as well as of refugee status. The non-recognition of his person and the lack of possibility to be heard and treated as such constitutes a violation of the right to dignity.

²²⁸ *Iombe and Shandwe v Democratic Republic of the Congo* (1177/03), para 6.2.

²²⁹ *Ismailov v Uzbekistan* (1769/08), para 7.2.

²³⁰ *Ashurov v Tajikistan* (1348/05), para 6.4.

²³¹ See *Joseph and Castan*, para 11.70.

²³² *Berry v Jamaica* (330/88), para 11.1.

²³³ *Hammel v Madagascar* (155/83), para 20.

²³⁴ *Saker v Algeria* (992/01) paras 9.6 and 9.7.

²³⁵ See, e.g., *Santullo Valcada v Uruguay* (9/77) (compensation was payable for a violation of art 9(4)); *Portorreal v Dominican Republic* (188/84) (compensation was payable for violations of 9(1) and 9(2)); *Bolaños v Ecuador* (238/87) (compensation was payable for violations of 9(1) and 9(3)).

F. Article 12(2): Freedom to leave a country and Article 12(4): Right to enter one's own country

151. The Greek police officers' seizure of Mr. FAJ's German documentation, followed by his expulsion to Turkey by German-speaking commando forces, prohibited him from returning to his own country of residency (Germany) for three years. By effectively stripping Mr. FAJ of his legal status, the action of the Greek authorities also prevented him from leaving Turkey.
152. In interpreting the right to leave any country in Article 12, the Human Rights Committee stated, "Since international travel usually requires appropriate documents, in particular a passport, the right to leave a country must include the right to obtain the necessary travel documents."²³⁶ By permanently confiscating Mr. FAJ's residency permit, and repeatedly failing to examine his status in the EU upon his re-entry to Greece, the Greek authorities deprived Mr. FAJ of his right to remain in and return to Greece and the EU more broadly.

G. Article 13: The prohibition of collective expulsions

153. By failing to recognise the claimant's international protection as refugee in the EU, both during his initial expulsion and during his repeated pushbacks when attempting to re-enter Greece, Greek authorities acted in manifest violation of their obligations under Article 13, which prohibits states from expelling any person without "a decision reached in accordance with law", or without allowing the person to have "full facilities for pursuing his remedy against expulsion". This includes allowing the person to submit the reasons against their expulsion, receive legal representation, and have the decision reviewed by a competent authority. This right can only be limited on the basis of "compelling reasons of national security" that require the state to do otherwise. State authorities must implement the right in conjunction with other requirements under the Covenant such as equality before the law (Article 26), and the prohibition on discrimination.²³⁷

H. Article 16: Right to recognition everywhere as a person before the law

154. The Greek officials' seizure of Mr. FAJ's German documentation effectively rendered him stateless, forcing him to reside without any documentation, first in Turkey and then in Greece, without legal recognition or access to basic services, for nearly three years. The claimant's loss of recognition as a person before the law is a directly foreseeable consequence of the confiscation of Mr. FAJ's documentation by the Greek authorities. The effects of this loss of protection materialised throughout his state of precarity in Turkey and Greece, including when he was nearly deported from Greece in April 2019, when Greek authorities again failed to recognise his international protection status in the EU after stripping him of his documentation in November 2016.
155. The Human Rights Committee has repeatedly found instances of enforced disappearances to constitute an Article 16 violation.²³⁸ In *Grioua v Algeria*, it recognized, "Forced disappearance is essentially a denial of that right insofar as a refusal by the perpetrators to disclose the fate or whereabouts of the person concerned or to acknowledge the deprivation of liberty places that person outside the protection of the law."²³⁹ In finding an Article 16 violation in *El Abani v Libyan Arab Jamahiriya*, the Committee "reiterate[d] its established case law, according to which intentionally removing a person from the protection of the law for a prolonged period of time may constitute a refusal

²³⁶ General Comment No 27, Freedom of movement, para 9.

²³⁷ General Comment No 15, The position of aliens under the Covenant, paras 9-10.

²³⁸ See, for example, *Aboussedra v Libyan Arab Jamahiriya* (1751/08); *Benaziza v Algeria* (1588/07); *Chihoub v Algeria* (1811/08); *Ouaghliissi et al v Algeria* (1905/09); *Grioua v. Algeria* (1327/2004), para 7.8; *Zohra Madaoui v. Algeria* (1495/2006), para 7.7.

²³⁹ *Grioua v Algeria* (1327/04), para 3.4.

to recognize that person before the law if the victim was in the hands of State authorities when last seen and if the efforts of his or her relatives to obtain access to potentially effective remedies, including judicial remedies (art. 2, para. 3, of the Covenant) have been systematically impeded.”²⁴⁰ The claimant was deprived of protection by the law both for being stripped of his documents, and for being denied the chance to ascertain the fate and whereabouts of his brother.

I. Article 17: Right to privacy, alone and in conjunction with Articles 23 and 24

156. Article 17(1) prohibits arbitrary or unlawful interference with his privacy, family, home or correspondence, and Article 17(2) complements this negative right with the positive right to protection of the law against such interference or attacks. During his initial illegal expulsion from Greece on 30 November 2016, Greek officials arbitrarily interfered with Mr. FAJ’s privacy, family, home and correspondence.

157. In General Comment 16, the Committee asserted that individuals should only be examined by persons of the same sex during personal and body searches. When he was brought by Greek police into the detention centre, Mr. FAJ was subjected to a body search in the presence of a female officer, which constitutes a violation of his privacy under Article 17.²⁴¹ Further, in Concluding Observations on the United Kingdom, the Committee maintained that strip searches should be conducted only in proportionate circumstances, rather than in situations of low security risk.²⁴² Mr. FAJ did not present a security risk yet was strip searched by the Greek authorities in the detention centre.

158. Greece also arbitrarily interfered with Mr. FAJ’s right to privacy as it regards family life, violating Article 17 in conjunction with Article 23 and Article 24. According to General Comment 19, “Protection of the family and its members is also guaranteed, directly or indirectly, by other provisions of the Covenant. Thus, Article 17 establishes a prohibition on arbitrary or unlawful interference with the family. In addition, Article 24 of the Covenant specifically addresses the protection of the rights of the child, as such or as a member of a family.”²⁴³

159. By apprehending and detaining Mr. FAJ, seizing his phone and documentation and then expelling him to Turkey, Greek officials arbitrarily and unlawfully interfered with his search for his brother at a crucial moment for their reunification, thus violating his rights under Article 17(1). Mr. FAJ was at the KTEL station that day for the sole purpose of finding his missing then 11-year-old brother. He made the purpose of his presence openly known to others during the brief period of time that he was able to inquire about his brother’s whereabouts before being racially profiled and arrested. The Greek authorities had a negative obligation to refrain from arbitrary interference with Mr. FAJ’s family life on that day, and yet proceeded to arbitrarily violate his Article 17 rights beginning with his arrest without cause.

160. The Committee recognised the importance of respecting the perseverance and reunification of the family unit, for instance, in *Dauphin v Canada*, where it held that the family unit includes siblings: “Given that this is a young man who has not yet started a family of his own, the Committee considers that his parents, brothers and sisters constitute his family under the Covenant.”²⁴⁴ In fact, the claimant’s

²⁴⁰ *El Bani v Libyan Arab Jamahiriya* (1640/07), para 7.9.

²⁴¹ General Comment No. 16, The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, 8 April 1988, para 8.

²⁴² Concluding Observations of the Human Rights Committee on United Kingdom of Great Britain and Northern Ireland, 27 Jul 1995, para 11.

²⁴³ General Comment No. 19, Protection of the Family, para 1.

²⁴⁴ *Dauphin v Canada* (1792/08), para 8.3.

family's intention was to have the claimant look after then 11-year-old M as he set out alone to seek asylum in the EU. Mr. FAJ's relationship to his brother at the time of his disappearance was thus not only that of a close sibling, but also that of a guardian.

161. In *Stewart v Canada*, the Committee found no Article 17 or 23 violation, reasoning that the claimant's "deportation cannot be regarded as either unlawful or arbitrary when the deportation order was made under law in furtherance of a legitimate state interest and due consideration was given in the deportation proceedings to the deportee's family connections."²⁴⁵ Unlike in *Stewart*, Mr. FAJ's expulsion from Greece was arbitrary. The Greek police's decision to clandestinely remove a legally present EU resident and recognized refugee was not made in furtherance of a legitimate state interest. And, unlike in *Stewart*, the State's removal order did not take into due consideration the impacts on the removed individual's family connections: if it had, the Greek authorities reasonably would have recognized that forcibly removing Mr. FAJ to Turkey -- and confiscating his documentation, thereby preventing his return -- directly interfered with his active search for his child brother, leaving the 11-year-old child missing with no other relatives in Greece, and effectively prohibiting the child's reunification with Mr. FAJ, his intended guardian.

162. The expulsion of Mr. FAJ from Greece, which interfered with his efforts to find his 11-year-old brother, also implicates Article 24 of the Convention. In *Madafferi v. Australia*, the Committee considered that "that the removal by the State party of Mr. Madafferi would, if implemented, constitute arbitrary interference with the family, contrary to article 17, paragraph 1, in conjunction with article 23, of the Covenant in respect of all of the authors, and additionally, a violation of article 24, paragraph 1, in relation to the four minor children due to a failure to provide them with the necessary measures of protection as minors."²⁴⁶ The Committee recognized that Mr. Madafferi's expulsion would have had detrimental impacts on the protection of his children, and gave substantial weight to this consideration in finding that his expulsion would violate Article 24. It must be similarly recognized that Mr. FAJ's expulsion caused significant harm to his then 11-year-old brother M, who, as an unaccompanied minor traveling alone to seek asylum without the company of other siblings or guardians, was relying on Mr. FAJ's presence in Greece for his protection. By forcibly removing Mr. FAJ from Greece, where he was lawfully present with a view to find and care for his 11-year-old brother, the Greek officials interfered with M's reunification with his only family present in Greece and his subsequent protection.²⁴⁷

163. Greek police further violated Article 17 when they confiscated Mr. FAJ's passport, ID and the keys to his home in Germany. In *Yklymova v Turkmenistan*, the Committee found that the State's confiscation of the claimant's apartment, passport and ID, without pertinent explanation, constituted arbitrary interference with her privacy, family, and home in violation of Article 17.²⁴⁸ It follows that such a seizure of Mr. FAJ's apartment keys, passport and ID without pertinent explanation from the Greek authorities would constitute a violation of Article 17 as well.

164. The Greek police officers arbitrarily interfered with Mr. FAJ's privacy when they confiscated his mobile phone upon apprehending him on 30 November 2016. The UNHCR's Preliminary Legal Observations on the Seizure and Search of Electronic Devices of Asylum-Seekers offer valuable guidance regarding the standards that Greece would have had to meet to lawfully seize Mr. FAJ's phone that day (although Mr. FAJ was a registered refugee, no longer an asylum seeker). According to the

²⁴⁵ *Stewart v Canada* (538/93), para 12.

²⁴⁶ *Madafferi v. Australia* (1011/2001), para. 9.8.

²⁴⁷ For information on Greece's obligations to enable reporting and inquiry into missing children, see UNHCR, *Guidance note for reporting missing refugee and migrant children in Greece* (25 May 2020) <https://www.unhcr.org/gr/en/14725-international-missing-childrens-day-guidance-note-on-reporting-missing-refugee-and-migrant-children.html>.

²⁴⁸ *Yklymova v Turkmenistan* (1460/06), para. 7.6.

UNHCR's observations, in order to conform with international legal obligations, including Article 17, "any seizure or search must be conducted for a *legitimate* purpose, provided for by law, and be *necessary* and *proportionate* to achieve that specific purpose, while ensuring that appropriate procedural safeguards are in place and respected in practice."²⁴⁹ The Observations outline specific considerations and safeguards that the UNHCR finds necessary for any seizure and search of electronic devices to be legitimate, including, inter alia, that the seizure and search: is undertaken based on the individual's free and informed consent; serves a legitimate purpose, provided for by law, based on a case-by-case assessment by a competent authority, including an assessment of its necessity and its impact on the individual; is the least intrusive measure available to fulfil the legitimate purpose; is limited in time, with the seized property returned to the individual; and allows the individual access to appropriate legal safeguards and an effective remedy to challenge the legality of the seizure and ensure the return of their device.²⁵⁰

J. Articles 2 and 26: Prohibition of discrimination

165. Under Article 26, "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." The Human Rights Committee has interpreted discrimination in the ICCPR to mean "any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms."²⁵¹ As this includes both purpose *and* effect, it can be seen that intent is not required for establishing discrimination.

166. The events described in this complaint began when Mr. FAJ was racially profiled and arrested by the Greek police on 30 November 2016. It was directly after the Greek officer asked Mr. FAJ where he was from, and Mr. FAJ disclosed that he is Syrian, that the officer called for the van to come and take Mr. FAJ to the detention centre. Mr. FAJ's nationality, therefore, formed the decisive grounds for his arrest.

167. As explained by the High Commissioner for Human Rights, "Racial profiling refers to the process by which law enforcement relies on generalizations based on race, colour, descent or national or ethnic origin, rather than objective evidence or individual behaviour, to subject people to stops, detailed searches, identity checks and investigations, or for deciding that an individual was engaged in criminal activity."²⁵²

168. *Lecraft v Spain* is an example of apparent racial profiling, in which a woman was stopped by police to have her identity papers checked. The Committee found a violation of Article 26, holding that when authorities conduct such identity checks, "the physical or ethnic characteristics of the persons subjected thereto should not by themselves be deemed indicative of their possible illegal presence in the country. Nor should they be carried out in such a way as to target only persons with specific physical or ethnic characteristics. To act otherwise would not only negatively affect the dignity of the persons concerned,

²⁴⁹ Exhibit 24, p. 2.

²⁵⁰ Exhibit 24, pp. 2-3.

²⁵¹ UN Human Rights Committee (HRC), *CCPR General Comment No. 18: Non-discrimination* (10 November 1989), <https://www.refworld.org/docid/453883fa8.html>.

²⁵² United Nations, *Preventing And Countering Racial Profiling Of People Of African Descent Good Practices And Challenges* (2019), p. V. <https://www.un.org/sites/un2.un.org/files/preventracialprofiling-en.pdf>.

but would also contribute to the spread of xenophobic attitudes in the public at large and would run counter to an effective policy aimed at combating racial discrimination.”²⁵³ In *Lecraft*, the officer “referred to her [Lecraft’s] physical features in order to explain why she, and no one else in the vicinity” were stopped. In the case of Mr. FAJ, the officer’s immediate questioning of his nationality indicated the same. The Committee in *Lecraft* could “only conclude that the author was singled out for the identity check in question solely on the ground of her racial characteristics and that these characteristics were the decisive factor in her being suspected of unlawful conduct.”²⁵⁴ It noted that differentiation of treatment might not always constitute discrimination, “if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant,” but found that in Lecraft’s case, “the criteria of reasonableness and objectivity were not met” and therefore found “a violation of article 26, read in conjunction with article 2, paragraph 3, of the Covenant.”²⁵⁵ It follows that in Mr. FAJ’s case, such criteria of reasonableness and objectivity have also not been met.

K. Article 14: Right to equality before courts and tribunals and to a fair trial

169. Mr. FAJ did not have access to sufficiently effective and prompt remedies for the misconduct of Greek officials or for the harm caused to his person before Greek courts. Having confiscated his documentation and stripped him of his recognition before the law, the Greek authorities effectively barred Mr. FAJ from having access to any form of redress against these violent actions until he could successfully regain his German documentation, without his detention and risk of deportation. Since his return to Germany, the remedies available to the claimant, as discussed in the exhaustion of remedies section above, are ineffective for being limited to an administrative claim that hinges on the claimant being able to prove the very actions that Greek authorities persistently deny and actively conceal, or to the criminal prosecution of specific officers on charges that do not account for the gravity of these serious violations.

L. Article 2(3): The right to an effective remedy

170. Greece violated Article 2 by expelling Mr. FAJ from Greece where there was a “real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant”²⁵⁶, without granting him the chance to effectively appeal and challenge his initial and subsequent repeated clandestine expulsions from Greece. The Committee further held that “The relevant judicial and administrative authorities should be made aware of the need to ensure compliance with the Covenant obligations in such matters”.²⁵⁷ As noted, Greek law does not provide effective remedies for the injury caused to the claimant by the systemic abuse of power by Greek authorities for perpetrating the illegal acts of enforced disappearance and summary expulsion, and actively concealing the facts and denying access to remedies for these serious violations of basic rights.

IX. REMEDIES

A. Violence and Threats to Life Arising from the Actions of the Greek Authorities

171. The claimant incurred a series of physical injuries to his bodily integrity for a period of at least three years following his initial enforced disappearance and expulsion from Greece. Since the claimant does not know how to swim, each of the claimant’s attempts to return to Greece by crossing the fast-

²⁵³ *Lecraft v Spain* (1493/06), para. 7.2.

²⁵⁴ *Lecraft v Spain* (1493/06), para. 7.4.

²⁵⁵ *Ibid.*

²⁵⁶ General Comment No. 31, The nature of the general legal obligation imposed on States Parties, para. 12.

²⁵⁷ *Ibid.*

moving Evros-Meriç river, and on one occasion also the Aegean Sea, were life-threatening. His other attempts to re-enter Greece also jeopardized his life and safety, e.g. when he had to climb a high wall and jump down to the ground.

172. As a result of the initial expulsion, the claimant's illegalized status in Greece exposed him to further danger to his physical integrity, for example, when he was forced to jump from a height of two floors to escape a police raid in the squat where he was living. The xenophobic attack he endured in January 2019, moreover, resulted in his hospitalisation with severe injuries, requiring he undergo jaw surgery.

173. Following the severe injury to his physical and personal integrity during his initial expulsion to Turkey in November 2016, Mr. FAJ developed a serious cardiac condition that he continues to suffer from till this day. During a hospital visit back in Germany, on 13 July 2020, he was prescribed similar blood-thinning medication to that which he started taking after his medical treatment in Turkey, shortly after his summary expulsion from Greece, and which he was told at the time that he will likely be required to continue taking for the rest of his life.

174. In addition to his physical injuries, Mr. FAJ incurred severe harms to his mental health, which persists till this day, including severe sleeping disorders and deep pain. He began seeing a mental health specialist in Athens while undocumented and living in destitution, homelessness, unemployment and lack of formal access to health care. He suffered suicidal ideations and attempted suicide on several occasions.²⁵⁸ He continues to demonstrate dissociative behaviour, and suffers from attention deficit and social inhibition.²⁵⁹ He is often drowned by thinking about the violent incidents that he had experienced throughout the years he was in Turkey and Greece following his expulsion, but faces considerable difficulty when trying to speak about them openly.²⁶⁰ Those who knew him before these experiences say that the events have had a deeply traumatising effect on his person, dramatically affecting his previously social personality.²⁶¹

B. Pecuniary Damages

175. **EUR 75 for new German residence card**, to replace the card the Greek police officers stole from Mr. FAJ during the initial pushback.²⁶²

176. **EUR 67 for new German passport**, to replace the passport the Greek police officers stole from Mr. FAJ during the initial pushback.²⁶³

177. **EUR 160 for an appointment with the German consulate in Istanbul**, which the claimant had to pay to a third-party agency to obtain an appointment with the consulate.

178. **EUR 119.62, for heart medication required in Turkey as a direct result of the initial pushback:** The claimant paid 130 Turkish Lira per month for eight months for his prescription following the initial incident, until he could no longer afford it. This amounted to a total of 1,040 Turkish Lira (approximately EUR 297 at the time).²⁶⁴

²⁵⁸ Exhibits 12-13.

²⁵⁹ Interview with Mr. FAJ by GLAN.

²⁶⁰ *Ibid.*

²⁶¹ *Ibid.*

²⁶² Exhibit 9.

²⁶³ Exhibit 10.

²⁶⁴ His original prescription and medical paperwork were transferred by doctors to the Turkish officials, rather than given to him; he has since been re-prescribed this medication in Germany, documentation of which is available upon request.

179. **EUR 6,300 in fees paid to attempt to return to Greece:** To try to cross back into Greece from Turkey, Mr. FAJ paid an average of EUR 350 a trip (as opposed to their standard rate of EUR 1,500, because they sympathized with him when they heard his story and that of his brother). This is excluding the transportation to the locations of the crossings, which amounted to an average of 350 Turkish Lira each trip (valuing at the time at roughly EUR 100 a trip). An estimate for these costs can be calculated by multiplying the fees paid for transportation and smuggling services by the number of attempts to re-enter Greece, which the claimant recalls was 14. As such, the pecuniary damages requested for the costs of attempting to return and being continually summarily expelled (pushed back) is EUR 4,900 paid to smugglers and EUR 1,400 for transportation.
180. **EUR 150, stolen by commandos during a pushback:** During one of the pushbacks, the commandos found and confiscated EUR 150 from Mr. FAJ.
181. **EUR 320, for rent paid while stranded in Turkey:** During his year trapped in Turkey, Mr. FAJ had to move around several times. At first, when he was in poor health, he stayed with acquaintances in Turkey for about one month. When that was no longer possible, he stayed in a non-profit organization's home for elderly and homeless individuals for a couple of weeks. For about five months, he stayed in youth housing for young men, which charged 225 Turkish Lira (approximately EUR 64 at the time) per month. A friend of Mr. FAJ paid a sum of 1,125 Turkish Lira (approximately EUR 320 at the time) for those five months, and has since asked him to return this money.²⁶⁵
182. **EUR 3,750, remaining hospital fees:** After the xenophobic attack in Greece in January 2019, Mr. FAJ was admitted to a hospital in Athens for 15 days resulting in a bill for EUR 3,750, which he told them he could not afford. The hospital kept all of his medical records, including ones that they requested the hospital in Turkey to share with them, in exchange for allowing him to leave the hospital. He has not paid the hospital bill, so all of his medical records remain with them.²⁶⁶
183. **EUR 12,000, sought in a private lawsuit that would not have occurred but for the initial pushback:** When he was living in Germany, the claimant had established an internet line with the internet provider Vodafone. He could not pay the bills or cancel while he was trapped in Turkey and Greece. Vodafone has initiated pending enforcement proceedings against the claimant for the sum of EUR 12,000. This has affected his creditor record, e.g. barring him from being able to rent an apartment.²⁶⁷

C. Effective Remedies Requested

184. The authors hereby respectfully request that the Committee:
- a. Declares a violation of Mr. FAJ's rights under Articles 2, 6(1), 7, 9, 10, 12(2), 12(4), 13, 14, 16, 17 and 26 of the ICCPR;
 - b. Urges Greece to acknowledge the violations of Mr. FAJ's rights and the role of its border forces in such violations, to publish the decision of the Committee, and to issue a public apology to Mr. FAJ for the grave, repeated and continuous violations of his rights;

²⁶⁵ Documentation available upon request.

²⁶⁶ *Ibid.*

²⁶⁷ *Ibid.*

- c. Ensures that Mr. FAJ, as well as any individual who has suffered harm as the direct result of a summary expulsion (pushback) at the Evros border specifically, but also at its other land and maritime borders, receives full and adequate reparation for the harm they suffered, including compensation and rehabilitation;
- d. Urges Greece to admit its systemic and widespread practice of collective expulsion (pushbacks) at the Evros border, introduce safeguards such as lawful procedures for the apprehension and processing of migrants, adopt measures to guarantee the non-repetition of the type of violation in question, including by investigating and prosecuting involved officials and border forces and establishing effective monitoring and accountability mechanisms;
- e. Urges Greece to introduce proper monitoring and review procedures, including human rights due diligence requirements, to ensure that Greece's human rights obligations are met in any cooperation it undertakes with third countries and the EU for the purpose of border control, with a view to the termination of such cooperation when it has irretrievably damaging impacts for human rights or when it fundamentally impacts Greece's ability to uphold the EU Asylum Acquis;
- f. Urges Greece to ensure transparency regarding its border enforcement activities, including by publicly reporting on the results of the aforementioned measures, publishing border reception procedures and any investigations and prosecutions of those responsible for these illegal acts in abuse of power;
- g. Urges Greece to guarantee the collection of evidence and provision of protection to potential victims of expulsion in proceedings before Greek courts through cooperation between police and other border forces (and any non-state actors operating at the border), governmental investigative bodies and non-governmental organizations and migrant communities to ensure the registration and processing of arrivals and the provision to them of access to legal representation, interpretation services as well as medical and social assistance;²⁶⁸
- h. Consider the obligations of third parties, including EU institutions and agencies such as Frontex providing financial and technical assistance and personnel to the Greek border forces in the Evros region, including Joint Operations Poseidon Land and Poseidon Sea and any form of cooperation with Greece's border enforcement forces, until and unless the Greek authorities can effectively demonstrate that "they are seriously tackling the widespread practice of push-backs along the Greece-Turkey border".²⁶⁹

²⁶⁸ Greece is obligated to do so by Law 4478/2017 transposing Directive 2012/29/EU ("Victims Directive").

²⁶⁹ See also recommendations from Amnesty International: Exhibit 19, p. 6 and p. 30.

X. LIST OF SUPPORTING DOCUMENTS

- Exhibit 1 Forensic Architecture, Methodology Report
- Exhibit 2 Forensic Architecture, *Pushbacks Across the Evros-Meriç River: Situated Testimony*, 19 November 2020, <https://forensic-architecture.org/investigation/evros-situated-testimony>
- Exhibit 3 Mr. FAJ's New German Passport, issued 27 November 2019
- Exhibit 4(a) Mr. FAJ's Asylum Certificate, Germany, 16 October 2015 – GERMAN
Exhibit 4(b) Mr. FAJ's Asylum Certificate, Germany, 16 October 2015 – ENGLISH
- Exhibit 5(a) Mr. FAJ's Authorization of Residency, Germany, 16 October 2015 – GERMAN
Exhibit 5(b) Mr. FAJ's Authorization of Residency, Germany, 16 October 2015 – ENGLISH
- Exhibit 6(a) Mr. FAJ's German residence permit, valid from 25 November 2015 to 24 November 2018 – GERMAN
Exhibit 6(b) Mr. FAJ's German residence permit, valid from 25 November 2015 to 24 November 2018 – ENGLISH
- Exhibit 7(a) Travel receipt from Mr. FAJ's flight from München to Thessaloniki, Aegean Air, 28 November 2016 – GERMAN
Exhibit 7(b) Travel receipt from Mr. FAJ's flight from München to Thessaloniki, Aegean Air, 28 November 2016 – ENGLISH
- Exhibit 8 Mr. FAJ's Loss Declaration report submitted to the Greek police in Athens on 30 January 2018, registering the loss of his German residence permit, passport and refugee documentation
- Exhibit 9(a) Receipt for the issuance of Mr. FAJ's new German residence permit, charged on 16 February 2018, costing 75 euros – GERMAN
Exhibit 9(b) Receipt for the issuance of Mr. FAJ's new German residence permit, charged on 16 February 2018, costing 75 euros – ENGLISH
- Exhibit 10(a) Receipt for the issuance of Mr. FAJ's new German passport, charged on 30 October 2019, costing 67 euros – GERMAN
Exhibit 10(b) Receipt for the issuance of Mr. FAJ's new German passport, charged on 30 October 2019, costing 67 euros – ENGLISH
- Exhibit 11 Email from Embassy of the Federal Republic of Germany Athens to Eleni Takou 16 October 2018
- Exhibit 12 Mr. FAJ's psychological assessment report, issued by Médecins du Monde on 27 June 2018
- Exhibit 13(a) Mr. FAJ's psychological assessment report, issued by Médecins du Monde on 29 June 2018 – GREEK
Exhibit 13(b) Mr. FAJ's psychological assessment report, issued by Médecins du Monde on 29 June 2018 – ENGLISH
- Exhibit 14(a) National Committee for Human Rights (EEDA), Statement on reported pushbacks, 09

- July 2020 – GREEK
http://www.nchr.gr/images/pdf/apofaseis/prosfuges_metanastes/Dilosi%20EEDA_Anaferomenes%20praktikes%20epanaproothiseon.pdf.
- Exhibit 14(b) National Committee for Human Rights (EEDA), Statement on reported pushbacks, 09 July 2020 – ENGLISH
- Exhibit 15 Forensic Architecture, ‘Pushbacks Across the Evros/Meriç River: Analysis of Video Evidence’, 13 December 2019, <https://forensic-architecture.org/investigation/pushbacks-across-the-evros-Meriç-river-analysis-of-video-evidence>.
- Exhibit 16 HumanRights360, Greek Council for Refugees, ARSIS-Association for the Social Support of Youth, *The new normality: Continuous push-backs of third country nationals on the Evros river* (December 2018) https://www.humanrights360.org/wp-content/uploads/REPORT_EN.pdf.
- Exhibit 17 Human Rights Watch, ‘Greece: Violent Pushbacks at Turkey Border. End Summary Returns, Unchecked Violence’ (18 December 2018) <https://www.hrw.org/news/2018/12/18/greece-violent-pushbacks-turkey-border>.
- Exhibit 18 Greek Council for Refugees, ‘To the Supreme Court Prosecutor: Complaints on Push-Back Incidents in the Region of Evros During the Months of April-June 2019’ (2019) <https://www.statewatch.org/media/documents/news/2019/jul/greek-council-for-refugees-Push-backs%20April-June%202019.pdf>.
- Exhibit 19 Amnesty International, *Greece: Frontier of Hope and Fear - Migrants and Refugees Pushed Back at Europe’s Border* (2014) <https://www.amnesty.org/download/Documents/8000/eur250042014en.pdf>.
- Exhibit 20(a) Mr. FAJ’s testimony before the Ombudsman, 19 July 2019 – GREEK
 Exhibit 20(b) Mr. FAJ’s testimony before the Ombudsman, 19 July 2019 – ENGLISH
- Exhibit 21 HumanRights360, *During and After Crisis: Evros Border Monitoring Report: November 2019 - April 2020* (May 2020), <https://www.humanrights360.org/wp-content/uploads/2020/05/During-After-Crisis-Evros.pdf>.
- Exhibit 22(a) Email exchange between Georgios Papadimitriou and the Greek Asylum Service (Regional Asylum Office of Alimos), 25 October 2018 – GREEK
 Exhibit 22(b) Email exchange between Georgios Papadimitriou and the Greek Asylum Service (Regional Asylum Office of Alimos), 25 October 2018 – ENGLISH
- Exhibit 23 Nick Waters, Emmanuel Freudenthal and Logan Williams, ‘Frontex at Fault: European Border Force Complicit in ‘Illegal’ Pushbacks’, Bellingcat, 23 October 2020, <https://www.bellingcat.com/news/2020/10/23/frontex-at-fault-european-border-force-implicit-in-illegal-pushbacks>.
- Exhibit 24 UNHCR, ‘UNHCR Preliminary Legal Observations on the Seizure and Search of Electronic Devices of Asylum-Seekers’, 04 August 2017, <https://www.refworld.org/pdfid/59a5231b4.pdf>.
- Exhibit 25 European Union Policy Department, Directorate-General for External Policies, *EU External Migration Policy and the Protection of Human Rights* (September 2020)

[https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/603512/EXPO_IDA\(2020\)603512_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/603512/EXPO_IDA(2020)603512_EN.pdf).

- Exhibit 26 Mobile Info Team, *Illegal Pushbacks in Evros: Evidence Of Human Rights Abuses at The Greece/Turkey Border* (November 2019)
https://static1.squarespace.com/static/597473fe9de4bb2cc35c376a/t/5dcd1da2fefabc596320f228/1573723568483/Illegal+Evros+pushbacks+Report_Mobile+Info+Team_final.pdf.
- Exhibit 27 HumanRights360, 'No End In Sight: The Mistreatment of Asylum Seekers in Greece' (August 2019)
https://www.humanrights360.org/wp-content/uploads/RRE_NoEndInSight.pdf.
- Exhibit 28 Ifor Duncan and Stefanos Levidis, 'Weaponizing a River', 11 April 2020,
<https://www.e-flux.com/architecture/at-the-border/325751/weaponizing-a-river/>.
- Exhibit 29 [Matina Stevis-Gridneff](#), [Patrick Kingsley](#), [Haley Willis](#), [Sarah Almukhtar](#) and [Malachy Browne](#), 'We Are Like Animals': Inside Greece's Secret Site for Migrants,' New York Times (14 August 2020)
<https://www.nytimes.com/2020/03/10/world/europe/greece-migrants-secret-site.html>.
- Exhibit 30(a) Power of attorney document authorizing representation from HumanRights360 – ARABIC
- Exhibit 30(b) Power of attorney document authorizing representation from HumanRights360 – ENGLISH
- Exhibit 30(c) Power of attorney document authorizing representation from GLAN, Dr. Valentina Azarova, Dr. Itamar Mann and Amanda Brown
- Exhibit 31(a) Note communicating the administrative decision to remove Mr FAJ issued on 23 April 2019 following his attempt to travel to Germany without a legal document to hand – GREEK
- Exhibit 31(b) Note communicating the administrative decision to remove Mr FAJ issued on 23 April 2019 following his attempt to travel to Germany without a legal document to hand – ENGLISH