EUROPEAN COURT OF HUMAN RIGHTS

Application No. 17622/21

BETWEEN:

F.M. and Others

Applicant

v.

Greece

Respondent

WRITTEN SUBMISSIONS ON BEHALF OF THE INTERVENERS

The AIRE Centre (Advice on Individual Rights in Europe) and ECRE (the European Council on Refugees and Exiles).

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pursuant to the Registrar's notification dated 29th March 2022 on the Court's permission to intervene under Rule 44 § 3 of the Rules of the European Court of Human Rights

4th May 2022

Executive summary

I. In order to comply with the substantive obligations under Article 2 ECHR and protect the right to life including of vulnerable migrants:
   a. States must put in place an adequate legislative and administrative framework to secure the right to life, which should include safeguards relating to the adequate planning and control of operations of State agents. These safeguards should include the use of clear practical guidelines to enable agents of the State to carry out their work in a manner that minimises the risk to the right to life;
   b. States must conduct an official effective investigation into the deprivation of life. Contracting State will fall below the procedural standard of Article 2 ECHR where there are deficiencies or omissions in an investigation which undermine the authorities' ability to establish the cause of death or to identify the person(s) responsible for the deprivation of life;
   c. Special consideration should be given to the condition of vulnerable migrants including asylum-seekers in general and to the specific circumstances of each individual.

II. Article 3 ECHR similarly places a procedural obligation on Contracting States to conduct an effective investigation into alleged ill-treatment. The minimum standard for an effective investigation requires that it be independent, impartial, and subject to public scrutiny, and that the competent authorities act with exemplary diligence and promptness.

III. The Convention does not exist in a vacuum and Contracting Parties remain bound by their obligations under international law by virtue of Article 53. When considering whether the States discharged their obligations under the Convention, the Court is invited to consider the relevant provisions of other international instruments including the United Nations Conventions on the Right of the Child and the United Nations International Covenant on Civil and Political Rights together with the relevant General Comments. The Court is further invited to consider the provisions of the international law of the sea, especially the duty to rescue.

I. Article 2 ECHR – substantive obligations

1. Contracting States have an obligation to secure Convention rights to all those who fall within their jurisdiction under Article 1 ECHR. Article 2 of the European Convention on Human Rights (ECHR) ranks as one of the most fundamental provisions of the Convention and enshrines one of the basic values of democratic societies making up the Council of Europe.[1] The Court has also noted that protection under other conventions and international agreements (discussed in this intervention below from § 26) affirms the pre-eminence of the right to life: "*it indicates that the right to life is an inalienable attribute of human beings and forms the supreme value in the hierarchy of human rights*".[2] As such, the right to life must be interpreted and applied, in accordance with the object and purpose of the Convention, in a manner that enables its safeguards to be both practical and effective.[3]

2. Article 2 ECHR is composed of three substantive obligations: (i) **the general obligation to protect the right to life and prohibit the intentional deprivation of life; (ii) the obligation to ensure that agents of the state are appropriately trained and that operations which entail risks to life are properly planned and; (iii) the procedural obligation to carry out an effective investigation into alleged breaches of the right to life.**

3. Contracting States are obliged to not only to refrain from the intentional and unlawful taking of life but also to take appropriate steps to safeguard the lives of all those within their jurisdiction.[4] The positive obligations under Article 2 must be construed as applying in the context of any activity, whether public

[1] *Salman v. Turkey* [GC], no. 21986/93, § 97, ECHR 2000-VII.
[2] *Streletz, Kessler and Krenz v. Germany* [GC], nos. 34044/96 and 2 others, § 92-94, ECHR 2001-II.
[3] *Salman v. Turkey* [GC], no. 21986/93, § 97, ECHR 2000-VII; *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324; *Boychenko v. Russia*, no. 8663/08, § 76, 12 October 2021.
[4] *Osman v. the United Kingdom*, 28 October 1998, § 115, Reports of Judgments and Decisions 1998-VIII.

or not, in which the right to life may be at stake.[5] This provision also covers situations where it may be permitted to use force and where the ***unintended*** outcome of using said force is the deprivation of life.[6] The absence of any direct State action responsible for the death of an individual does not exclude the applicability of Article 2.[7] This Court has therefore found that a Contracting State's obligations under Article 2 may be engaged in various contexts, including, *inter alia,* in the context of a shipwreck where no violation of Article 2 was found, as the wreck had occurred off the coast of Spain and the regulatory framework imposed by the French authorities had been adjudged adequate.[8]

4. Contracting States have an obligation to take **preventive operational measures** to prevent risks from materialising and to **adopt a legislative and administrative framework** for the prevention, suppression and punishment of breaches of such provisions.[9] This obligation further requires that States put in place an independent judicial system which secures the legal means capable of establishing the facts of a case or an incident leading to death, and holding those at fault accountable and providing appropriate redress to victims.[10]

5. This Court has confirmed that the general obligation of Article 2 may be invoked not only in cases of violent acts, but also in situations where an activity or specific conduct, **whether by private or public persons**, puts the life of an individual at a **real and imminent risk that they would suffer life threatening injuries or loss of life**.[11] In such cases, this Court has considered, *inter alia,* whether the nature and intensity of the conduct was likely to endanger a person's life.[12] Deprivations of life will be subject "to the most careful scrutiny" and the Court will take into consideration both the actions of the agents of the State and the surrounding circumstances leading to the loss of life, including consideration of the planning and control of the agents' actions.[13] In such circumstances, the Court will have regard for "*whether the operation was regulated and organised in such a way as to minimise to the greatest extent possible any risk*" to life.[14]

<u>The planning and conduct of a specific operation – or of a number of similar operations</u>

6. The Court has rarely found a violation of Article 2 ECHR substantively as a consequence of the acts of state agents, but has frequently found that the absence of appropriate training of the relevant personnel or the proper planning of operations led to responsibility under Article 2.[15] Where operations take place which expose civilians to danger, the requirements are particularly exigent. In *Ergi v Turkey,*[16] the Court agreed with the Commission's findings that it could reasonably be inferred that insufficient precautions had been taken to protect the lives of the civilians in the absence of direct evidence provided by the state about the planning and conduct of the operation. In *Isayeva v Russia,*[17] the Court emphasised that the state must plan its operations so as to make the necessary efforts to avoid civilian casualties.

7. States have an obligation to secure the right to life by putting in place an appropriate legal and administrative framework capable of protecting the right to life and defining the limited circumstances

[5] *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, no. 47848/08, § 130, ECHR 2014.
[6] *Salman v. Turkey* [GC], no. 21986/93, § 98, ECHR 2000-VII.
[7] *Angelova and Iliev v. Bulgaria*, no. 55523/00, § 93, 26 July 2007.
[8] *Leray and Others v. France*, no. 44617/98, 20 December 2001 *(decision).*
[9] *Tërshana v. Albania*, no. 48756/14, § 147, 4 August 2020.
[10] *Sinim v. Turkey*, no. 9441/10, § 59, 6 June 2017.
[11] *Tërshana v. Albania*, no. 48756/14, § 132, 4 August 2020.
[12] *Tërshana v. Albania*, no. 48756/14, § 132, 4 August 2020.
[13] *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 150, Series A no. 324; *Makaratzis v. Greece* [GC], no. 50385/99, § 59, ECHR 2004-XI.
[14] *Makaratzis v. Greece* [GC], no. 50385/99, § 60, ECHR 2004-XI.
[15] For example, see *Trévalec v. Belgium*, no. 30812/07, 14 June 2011; *Shchiborshch and Kuzmina v. Russia*, no. 5269/08, 16 January 2014; Ataykaya v. Turkey, no. 50275/08, 22 July 2014.
[16] *Ergi v. Turkey*, 28 July 1998, Reports of Judgments and Decisions 1998-IV.
[17] *Isayeva v. Russia*, no. 57950/00, 24 February 2005.

in which law enforcement may use force, in light of the relevant international standards.[18] In the case of *Makaratzis v. Greece,* where the applicant was seriously injured by gun shots, the Court found that Greece's domestic law did not provide law-enforcement officials with clear guidelines and criteria governing the use of force in peacetime.[19]

8. In *Celniku v Greece*[20]: "*la Cour estime que le fait que la situation dégénéra à ce point est d'autant plus inexcusable qu'il s'agissait en l'occurrence d'une opération programmée par la police. Il ne s'agissait donc pas d'une opération menée au hasard, qui aurait pu donner lieu à des développements inattendus auxquels les policiers auraient pu être appelés à réagir sans y être préparés".*[21] The Court went on to observe that "*L'absence de règles claires peut également expliquer pourquoi le policier I.R. a pris des initiatives inconsidérées, ce qui n'eût probablement pas été le cas s'il avait bénéficié d'une formation adéquate sur la façon de réagir dans une situation d'urgence comme celle qui s'est présentée à lui*."[22] As such, the Court concluded that the way in which the operation in *Celniku v Greece* was conducted demonstrated a failure to exercise due care and to minimise the danger posed to the applicant.[23]

9. The Court in *Celniku* repeated the importance of having clear practical guidelines to enable agents of the state to carry out their work in a manner which minimised the risk of endangering the lives of civilians. The interveners submit that the Court's findings in the *Makaratzis* and *Celniku* cases should apply *mutatis mutandis* in the present case. Indeed, in those cases the Court found that the absence of clear guidelines was evidence of the State's failure to put in place an adequate legislative and administrative framework.[24] As such, the State had not done all that could be reasonably expected to put in place safeguards to avoid the real risk to life, particularly in operations where the State knew the risk to life was liable to arise.[25]

10. **The interveners submit that Contracting States have a positive obligation to protect the right to life and prohibit the intentional deprivation of life. This obligation requires that States put in place an adequate legislative and administrative framework, including requiring the proper planning and execution of operations, to secure this right. Where a loss of life has occurred, the Court is invited to consider the safeguards in place to avoid the loss of life together with the planning and control of operations and the actions of State agents.**

<u>The procedural obligation to conduct an effective investigation</u>

11. The obligation to protect the right to life read in conjunction with the State's general duty under Article 1 ECHR requires that the relevant authorities conduct an **effective official investigation** in cases where individuals have died in a situation where inappropriate force may have been used by both agents of the State and private individuals.[26] The Court has observed that the general legal prohibition of killing by agents of the State would be ineffective if there existed no official investigation into the loss of life.[27] Such an investigation should include an examination of whether operations led by State agents were planned in such a manner to ensure that the risk of the loss of life was minimised and that the agents had received appropriate training.[28]

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[18] *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 209, ECHR 2011 (extracts); *Makaratzis v. Greece* [GC], no. 50385/99, § 57-59, ECHR 2004-XI.
[19] *Makaratzis v. Greece* [GC], no. 50385/99, § 70, ECHR 2004-XI.
[20] *Celniku v. Greece*, no. 21449/04, 5 July 2007.
[21] *Celniku v. Greece*, no. 21449/04, § 56, 5 July 2007.
[22] *Celniku v. Greece*, no. 21449/04, § 57, 5 July 2007.
[23] *Celniku v. Greece*, no. 21449/04, § 58, 5 July 2007.
[24] *Makaratzis v. Greece* [GC], no. 50385/99, § 71, ECHR 2004-XI.
[25] *Makaratzis v. Greece* [GC], no. 50385/99, § 71, ECHR 2004-XI.
[26] *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 161, Series A no. 324.
[27] *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 161-162, Series A no. 324.
[28] *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 162 and 194, Series A no. 324; *İlhan v. Turkey* [GC], no. 22277/93, § 91-92, ECHR 2000-VII; Šilih v. Slovenia [GC], no. 71463/01, § 153-154, 9 April 2009.

12. The procedural obligation to conduct an effective investigation will arise in a **variety of situations** where an individual has died in violent or suspicious circumstances, irrespective of whether those allegedly responsible are State agents or private persons.[29] The form of this investigation is not prescribed, but this obligation under Article 2 has been recognised to be a **distinct obligation**.

13. An investigation into the deprivation of life should aim to secure the **effective implementation of the domestic laws** which safeguard the right to life and, in those cases involving agents of the State operating in an official capacity, to ensure that they are held accountable for deaths occurring under their responsibility or actions.[30] Where negligence has been shown, the obligation may be satisfied if the legal system affords victims a remedy in the administrative or civil courts, either alone or in conjunction with a remedy in the criminal courts.[31] Article 2 of the Convention will not be satisfied if the protection afforded by domestic law exists only in theory: above all, **any investigation must also operate effectively in practice**.[32]

14. In the case of *Lapshin,*[33] which addressed Article 2 obligations in the context of deaths in custody, this Court observed that where it is not clearly established that a death occurred from an accident or unintentional act and where there is an **arguable claim** of an unlawful killing, the Convention requires an investigation into the death which satisfies the Court's **minimum threshold of effectiveness.**[34] To meet this minimum threshold, an investigation into the deprivation of life must have the **purpose of establishing the facts leading to death and be capable of leading to the identification and punishment of the persons responsible**. **In such circumstances, the relevant authorities of the Contracting State must take reasonable steps to secure all evidence in the case.**[35]

15. To be adequate,[36] an investigation must be capable of determining whether the force used which lead to death was or was not justified in the circumstances and be capable of punishing the persons responsible.[37] In accordance with this, the relevant authorities must take whatever reasonable steps they can to secure evidence including, *inter alia,* eyewitness accounts and an autopsy which determines the cause of death.[38] In the context of accidents, the Court has found a State to have failed in meeting its Article 2 procedural obligations where, *inter alia*, there were shortcomings in the manner in which evidence was collected which negatively affected any prospect of establishing the facts of the case and the responsibility of the accused in subsequent proceedings.[39]

16. Any investigation under Article 2 must also be **independent**. Investigations have been found to lack independence in various contexts, including *inter alia,* where the investigating authorities failed to carry

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[29] *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 171, 14 April 2015. For example, concerning inter-prisoner violence: *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 69, ECHR 2002-II; concerning homicides by prisoners benefiting from early release or social re-integration schemes: *Maiorano and Others v. Italy,* no. 28634/06, § 123-126, 15 December 2009; concerning high-profile assassinations: *Kolevi v. Bulgaria*, no. 1108/02, § 191-215, 5 November 2009; concerning domestic violence: *Opuz v. Turkey*, no. 33401/02, § 150, ECHR 2009; concerning suspicious deaths or disappearances: I*orga v. Moldova*, no. 12219/05, § 26, 23 March 2010; *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 226, ECHR 2004-III; concerning suicide: *Trubnikov v. Russia*, no. 49790/99, 5 July 2005.

[30] *Hugh Jordan v. the United Kingdom,* no. 24746/94, § 105, 4 May 2001; *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 110, ECHR 2005-VII; *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 163, ECHR 2011.

[31] *Ciechonska v. Poland*, 19776/04, § 66, 14 June 2011.

[32] *Ilbeyi Kemaloğlu and Meriye Kemaloğlu v. Turkey*, no. 19986/06, § 38, 10 April 2012; *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 53, ECHR 2002-I.

[33] *Lapshin v. Azerbaijan*, no. 13527/18, § 97, 20 May 2021.

[34] *Lapshin v. Azerbaijan*, no. 13527/18, § 97, 20 May 2021.

[35] *Lapshin v. Azerbaijan*, no. 13527/18, § 98, 20 May 2021; *Makaratzis v. Greece* [GC], no. 50385/99, § 74, ECHR 2004-XI.

[36] *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 324, ECHR 2007-II.

[37] *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 243, 30 March 2016. See also *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 324, ECHR 2007-II.

[38] *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 233, 30 March 2016; *Makaratzis v. Greece* [GC], no. 50385/99, § 74, ECHR 2004-XI.

[39] Ciechonska v. Poland, 19776/04, § 75, 14 June 2011*; Antonov v. Ukraine*, no. 28096/04, § 50, 3 November 2011; *Vovk and Bogdanov v. Russia,* no. 15613/10, § 77, 11 February 2020.

out certain measures or actions which would be capable of establishing the facts or sequence of events[40] or where the authorities failed to explore obvious or necessary lines of inquiry.[41]

17. **The Grand Chamber of this Court has found that a Contracting State will fall below the procedural standard of Article 2 ECHR where there are deficiencies or omissions in an investigation which undermine the authorities' ability to establish the cause of death or to identify the person(s) responsible for the deprivation of life.[42] In *Makaratzis,* "striking omissions in the conduct of the investigation" were found which resulted in the failure to identify individuals responsible for the death. Where such omissions prevent the authorities finding the full extent of the facts, it points towards the incomplete and inadequate character of an investigation.[43]**

18. The conclusions of an investigation into death "must be based on thorough, objective and impartial analysis of the relevant elements".[44] As such, the authorities must make a serious attempt to determine the facts and should not rely on hasty or ill-founded conclusions.[45] An investigation must nevertheless be prompt and the authorities must proceed expeditiously.[46] Indeed, in *Sergey Shevchenko*, this Court found that the investigating authorities "must act with exemplary diligence and promptness" and initiate an investigation into a death of their own motion.[47] The Court has further observed that delays in investigations may not only undermine their effectiveness but may compromise the chance of the investigation being completed.[48]

19. **The interveners note that civil proceedings initiated by the surviving family member or next of kin which do not result in the identification or punishment of the persons responsible cannot be considered to fulfil the procedural obligation to investigate within the meaning of Article 2 ECHR.[49] An effective investigation must have a sufficient element of public scrutiny, including allowing the next-of-kin of victims to be involved in the investigative procedure to the extent necessary to safeguard their legitimate interests.[50] To safeguard these legitimate interests, the investigative authorities should take steps to, *inter alia,* provide the assistance of a lawyer where the applicants may not have knowledge of the relevant language or legal system.[51]**

<u>The right to life and obligations towards vulnerable persons including children</u>

20. This Court has also attached considerable importance to an applicant's status as an asylum-seeker and, as such, a member of a particularly underprivileged and vulnerable population group in need of special protection.[52] This Court has further observed that "*it is true that asylum-seekers may be considered vulnerable because of everything they might have been through during their migration and the traumatic experiences they are likely to have endured previously*".[53] The Court has also noted the existence of a broad consensus at the international and European level concerning this need for special protection.[54] **The interveners submit that, in order to treat all individuals compatibly with**

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[40] *Sergey Shevchenko v. Ukraine*, no. 32478/02, § 72-74, 4 April 2006.
[41] *Oğur v. Turkey* [GC], no. 21594/93, § 90-91, ECHR 1999-III.
[42] *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 233, 30 March 2016; *Makaratzis v. Greece* [GC], no. 50385/99, § 76, ECHR 2004-XI.
[43] *Makaratzis v. Greece* [GC], no. 50385/99, § 76, ECHR 2004-XI.
[44] *Lapshin v. Azerbaijan*, no. 13527/18, § 99, 20 May 2021.
[45] *Lapshin v. Azerbaijan*, no. 13527/18, § 99, 20 May 2021.
[46] *Makaratzis v. Greece* [GC], no. 50385/99, § 74, ECHR 2004-XI.
[47] *Sergey Shevchenko v. Ukraine*, no. 32478/02, § 65, 4 April 2006.
[48] *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 337, ECHR 2014 (extracts).
[49] *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 141, 4 May 2001.
[50] *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 235-326, 30 March 2016; *Iorga v. Moldova,* no. 12219/05, § 28, 23 March 2010; *M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, § 162, 18 November 2021.
[51] *M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, § 162, 18 November 2021.
[52] *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 251, ECHR 2011.
[53] *M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, § 207, 18 November 2021.
[54] *Tarakhel v. Switzerland* [GC], no. 29217/12, § 97, ECHR 2014 (extracts).

the Convention, special consideration should be given to the vulnerable condition of asylum-seekers in general and to the specific circumstances of each individual.

21. The interveners note that the Parliamentary Assembly of the Council of Europe (PACE), in its 2018 resolution on International obligations of Council of Europe Member States to protect life at sea, has expressed concern at the high numbers of asylum-seekers losing their lives in the Mediterranean Sea and called on States to respect international obligations to coordinate efforts to protect lives at sea.[55] In this resolution, PACE noted that "*Saving lives at sea, and on land, is a moral as well as legal obligation for member States, as set out in the legal provisions which serve to regulate the implementation of the fundamental duty to respect human rights, including the right to life".*[56]

22. In its reply to the PACE resolution on International obligations of Council of Europe Member States to protect life at sea, the Committee of Ministers found it necessary to devote special attention to asylum seeking children arriving in Europe by sea.[57] In its reply, the Committee of Ministers noted that *"Children are particularly vulnerable due to their limited capacities to ensure their own protection and survival and their vulnerability is undeniably increased during maritime travel, regularly involving exposure to violence, exploitation, abuse, smuggling, illness, drowning and/or death. This leads to an increased responsibility for their protection and requires careful consideration from a human rights perspective, taking into account States' positive obligations to protect children at risk of losing their lives at sea, whether stemming from the law of the sea or human rights treaties".*[58] It considers that this leads to an increased responsibility for their protection on the part of the State and requires careful consideration from a human rights perspective, taking into account States' positive obligations to protect children at risk of losing their lives at sea.[59]

II. Article 3 – procedural obligation to conduct an investigation

23. Article 3 ECHR similarly places a procedural obligation on Contracting States to conduct an effective investigation into alleged ill-treatment, regardless of whether said ill-treatment has been inflicted by public or private individuals.[60] A refusal to open a criminal investigation into credible allegations of serious ill-treatment is indicative of that State's failure to comply with its procedural obligation under Article 3 ECHR.[61]

24. **The minimum standards of an effective investigation include the requirements that it be independent, impartial, and subject to public scrutiny, and that the competent authorities act with exemplary diligence and promptness**.[62] Regardless of the final outcome, the protection mechanism provided for in domestic law must operate in practice within a reasonable time so as to conclude the examination on the merits of specific cases submitted to the authorities. When considering whether an investigation was effective, this Court has referred to, *inter alia*, the time taken to open the investigation and delays in identifying witnesses or taking statements.[63]

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[55] PACE, Resolution 2229 (2018) International obligations of council of Europe member states to protect life at sea, available at: https://bit.ly/3KJm9x0 § 2; See also PACE, Recommendation 2046 (2014)1; The "left-to-die boat": actions and reactions, available at: https://bit.ly/3yiqeFX
[56] PACE, Resolution 2229 (2018) International obligations of council of Europe member states to protect life at sea, § 3.
[57] Committee of Ministers, Reply to Recommendation, Doc. 14831 (14 February 2019), available at: https://bit.ly/3LMbT8k § 5.
[58] Committee of Ministers, Reply to Recommendation, Doc. 14831 (14 February 2019), available at: https://bit.ly/3LMbT8k § 5.
[59] Committee of Ministers, Reply to Recommendation, Doc. 14831 (14 February 2019), available at: https://bit.ly/3LMbT8k § 5.
[60] *M.C. and A.C. v. Romania*, No. 12060/12, §110-111, (12 April 2016); *X and Others v. Bulgaria*, No. 22457/16, § 184, (2 February 2021).
[61] *Volodina v. Russia,* no. 41261/17, § 95, 9 July 2019.
[62] *M. and Others v. Italy and Bulgaria*, Application No. 40020/03, § 100, (31 July 2012); *C.A.S. and C.S. v. Romania*, No. 26692/05, § 69, (20 March 2012).
[63] *M. and Others v. Italy and Bulgaria*, Application No. 40020/03, § 100, (31 July 2012), § 100; *C.A.S. and C.S. v. Romania*, No. 26692/05, § 69, (20 March 2012).

25. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident,[64] including, inter alia, a detailed statement of the allegations from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical reports.[65] A failure to pursue an obvious line of inquiry can decisively undermine the investigation's ability to establish the circumstances of the case and the identity of those responsible.[66] **The interveners also recall that this Court has previously concluded that adversarial criminal proceedings before and independent and impartial judge[67] provide the best guarantees for establishing facts and the attribution of criminal responsibility.[68]**

III. Article 53 and other international obligations

26. This Court has held that the Convention does not exist in a vacuum and the Contracting Parties remain bound by their obligations under international law by virtue of Article 53 ECHR.[69] EU Law and UN treaty bodies also recognise a child's right to life and have particular regard to the vulnerability of children in the context of the right to life.

27. Article 6 of the United Nations Convention on the Rights of the Child (UNCRC)[70] provides for a child's right to life, survival and development. The Committee on the Rights of the Child ('the Committee') has further identified a child's right to life, survival and development as one of the four general principles of the UNCRC.[71] The protection to life afforded by Article 6 comprises not only the right of a child to not be killed but also a positive obligation on States to "*ensure to the maximum extent possible the survival and development of the child*" pursuant to Article 6(2) UNCRC. In its General Comment (GC) No. 6 on the Treatment of unaccompanied and separated children outside their country of origin, the Committee has stated that "*the **survival of the child is of paramount importance** and a precondition for the enjoyment of any other rights"*[72] (emphasis added). The Committee emphasises that States "*must ensure full respect for his or her inherent right to life, survival and development".*[73] The Committee has further stated, in the context of the treatment of unaccompanied and separated children, that Contracting States should take practical measures to ensure that the child's right to life is protected at all levels and such measures should be regularly evaluated to ensure their effectiveness.[74] The particular vulnerability of a child seeking asylum is recognised by Article 22 of the UNCRC (right to receive appropriate humanitarian protection and assistance) and elaborated on by the Committee in its GC No. 14.[75] In light of Articles 3, 4, 6, 19, 22 and 24 (3) of the UNCRC, States parties are expected to take all effective measures to eliminate all acts and activities which threaten the right to life of children.

28. The right to life of all human beings is similarly recognised and protected under the International Covenant on Civil and Political Rights (ICCPR).[76] Pursuant to Article 6 ICCPR, States should adopt

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[64] *X and Others v. Bulgaria*, No. 22457/16, § 184, 2 February 2021.
[65] *M. and Others v. Italy and Bulgaria*, Application No. 40020/03, 31 July 2012, § 100; *C.A.S. and C.S. v. Romania*, No. 26692/05, 20 March 2012, § 69; *Denis Vasilyev v Russia*, Application no. 32704/04, 17 December 2009, § 100.
[66] *M. and Others v. Italy and Bulgaria,* Application No. 40020/03 (31 July 2012), § 186; *M.N. v. Bulgaria*, No. 3832/06 (27 November 2012), § 48.
[67] See also, in the context of Article 6(1) ECHR, Krčmář and Others v. the Czech Republic, no. 35376/97, § 40, 3 March 2000.
[68] *E.M. v. Romania*, No. 43994/05, § 65, (30 October 2012).
[69] *Pini and Ors v. Romania*, no. 78028/01, § 138, (22 June 2004).
[70] UN 1989 Convention on the Rights of the Child, 20 November 1989, available at: https://bit.ly/3MOEDgP
[71] UN Committee on the Rights of the Child (CRC), *General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child*, 27 November 2003, CRC/GC/2003/5, § 12.
[72] CRC, *General comment No. 6 (2005) (GC No. 6) Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, § 82.
[73] CRC, *General comment No. 14 (2013) (GC No. 14) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 29 May 2013, CRC/C/GC/14, § 42.
[74] CRC, *GC No. 6* § 24.
[75] CRC, *GC No. 14,* § 75-76. See also, Article 22, UNCRC.
[76] Article 6, UN *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 (ICCPR).

special measures to protect the life of the child and, in doing so, should be guided by the principle of the best interests of the child which is another of the fundamental values of the UNCRC.[77]

29. Paragraph 1 of article 6 of the Covenant provides that no one shall be arbitrarily deprived of life and that this right shall be protected by law.[78] The right to life and the obligations imposed upon States is further detailed in the Human Rights Committee (the HRC) General Comment No. 36. The HRC notes that Article 6 ICCPR constitutes a fundamental right of crucial importance both for individuals and society and that its protection is a prerequisite for the enjoyment of all other rights and it does not allow for any derogation.[79] According to the HRC, Article 6 ICCPR "*concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity".*[80]

30. The obligation to investigate unlawful deprivations of life or potential deprivations of life is similarly elaborated on in General Comment No. 36. Indeed, the duty to protect the right to life requires that States parties "organise all State organs and governance structures through which public authority is exercised in a manner consistent with the need to respect and ensure the right to life, **including establishing by law adequate institutions and procedures for preventing deprivation of life, investigating and prosecuting potential cases of unlawful deprivation of life".**[81] The investigation must be independent; impartial; prompt; thorough; effective; credible; and transparent with the possibility that reparation be provided.[82] As is similarly indicated in the jurisprudence of this Court, the objective of the investigation should establish the truth surrounding the loss of life, including the procedures employed by State forces[83] and should be aimed at ensuring the persons responsible for the loss of life are brought to justice.[84] The HRC has further commented that the loss of life which occurs in 'unnatural circumstances' "*creates a presumption of arbitrary deprivation of life by State authorities, which can only be rebutted on the basis of a proper investigation which establishes the State's compliance with its obligations under Article 6*" ICCPR.

31. According to Article 3 of the (recast) Directive 2013/32/EU**, the territorial waters of a Member State[85] are included in the territorial scope of the EU Common European Asylum System. EU law and the EU Charter of Fundamental Rights (CFR) are thus applicable under Article 53 ECHR to asylum related operations which occur in the territorial waters of a Member State.** The right to life and the right to respect for physical integrity are expressly guaranteed by Articles 2 and 3 of the CFR and must be read together with the principle in Article 24 of the CFR which provides that, as a matter of EU law, the best interests of the child must be a primary consideration. Article 24 also provides for a right to protection and care as is necessary for the well-being of the child.[86]

Article 53 and the Law of the Sea

32. In accordance with Article 53, the interveners invite the Court to consider the relevant provisions of the international law of the sea and the obligation of States to assist persons in distress. This includes the 1982 UN Convention on the Law of the Sea (UNCLOS),[87] the 1974 International Convention for

[77] UN Human Rights Committee (HRC), *General comment no. 36, Article 6 (Right to Life)*, 3 September 2019, CCPR/C/GC/35, § 60; CRC, *GC No. 14,* § 1.
[78] HRC *General comment no. 36, Article 6,* § 3 and 4.
[79] HRC *General comment no. 36, Article 6*, § 2.
[80] HRC *General comment no. 36, Article 6,* § 3.
[81] HRC *General comment no. 36, Article 6,* § 19.
[82] HRC *General comment no. 36, Article 6,* § 28.
[83] HRC *General comment no. 36, Article 6,* § 28.
[84] HRC *General comment no. 36, Article 6,* § 27.
[85] Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), L 180/60, Article 3.
[86] European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02
[87] United Nations Convention on the Law of the Sea, adopted on 10th December 1982 (UNCLOS), available at: https://bit.ly/37Wtyfb

the Safety of Life at Sea (SOLAS),[88] and the 1979 International Convention on Maritime Search and Rescue (SAR Convention).[89] The interveners note that these instruments are all binding and applicable to Greece: UNCLOS was signed on 10 December 1982 and ratified on 21 July 1995;[90] Greece acceded to SOLAS on 25 May 1980;[91] and the SAR Convention was ratified on 4 October 1989.[92]

33. Article 98 of the ***UNCLOS***[93] codifies into law a long-observed principle of maritime tradition: the duty of shipmasters to render assistance to *any person* found at sea in danger of being lost and to proceed to the rescue of persons in distress, if informed of their need of assistance. Moreover, coastal States are required to promote the establishment, operation and maintenance of adequate and effective search and rescue services.[94]

34. These obligations are further supported by the ***SOLAS***, the object and purpose of which is "promoting safety of life at sea by establishing in a common agreement uniform principles and rules".[95] The international law of the sea is linked with a State's obligations to protect the right to life as previously recognised by this Court relying on this body of law to interpret Convention obligations.[96] SOLAS also imposes obligations on States in relation to distress messages: where a master of a ship receives a distress signal from a ship, they are bound to proceed with speed to the assistance of those in distress and where it is not possible to provide assistance, they must provide reasons in the ship logbook for failing to assist persons in distress.[97] On search and rescue, SOLAS provides that States must ensure there are necessary arrangements for the rescue of persons in distress at sea and around its coast. According to SOLAS, "these arrangements should include the establishment, operation and maintenance of such maritime safety facilities as are deemed practicable and necessary having regard to the density of the seagoing traffic and the navigational dangers and should, as far as possible, afford adequate means of locating and rescuing such persons".[98]

35. These search and rescue obligations are similarly outlined in the **SAR Convention**, which requires that States Parties put in place the necessary arrangements for search and rescue of persons in distress at sea and ensure that they are able to provide prompt responses to distress calls.[99] If a distress call is made in the area in which a State is responsible for coordinating search and rescue, that relevant authorities "shall take urgent steps to provide the most appropriate assistance available".[100] It also makes clear that States owe this duty to *all persons* at sea regardless of nationality or legal status.[101]

36. The SAR Convention also stipulates the operating procedures for States, including the requirement for immediate action in the event of distress calls. As part of these operating procedures, the authorities coordinating search and rescue should have access to information regarding the availability and speed of vessels within its area of operation that may be able to provide assistance to persons in distress as well as detailed plans of operation as to how search and rescue operations will be conducted.[102] Search and rescue authorities should be capable of receiving distress calls on a

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[88] International Convention for the Safety of Life At Sea (SOLAS), 1 November 1974, 1184 UNTS 3, available at: https://bit.ly/3s7AooU
[89] International Maritime Organization (IMO), *International Convention on Maritime Search and Rescue* (SAR Convention) 27 April 1979, 1403 UNTS, available at: https://bit.ly/3yaIfG3
[90] See UNCLOS Status: https://bit.ly/3MJZ8eG
[91] See SOLAS Status: https://bit.ly/3vGuDR0
[92] See SAR Convention status: https://bit.ly/3KxxVKM
[93] Article 98.1, UNCLOS.
[94] Article 98 (2) UNCLOS.
[95] SOLAS, preamble.
[96] *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 77, ECHR 2012.
[97] SOLAS, Chapter V Regulation 10 (a).
[98] SOLAS, Chapter V Regulation 15(a).
[99] SAR Convention, § 2.1.1 and 2.1.8.
[100] SAR Convention, § 2.1.9.
[101] SAR Convention, § 2.1.10.
[102] SAR Convention, § 4.1.2. See also: § 4.4.3.

24-hour basis[103] and take immediate action if it is in a position to assist or otherwise notify a more appropriate rescue co-ordination centre.[104]

37. States Parties should also follow the International Maritime Organisation (IMO) Guidelines on the Treatment of Persons Rescued at Sea, which affirm that shipmasters should "comply with any relevant requirement of the Government responsible for the [Search and Rescue] SAR region where the survivors were recovered, or of another responding coastal State, and seek additional guidance from those authorities where difficulties arise in complying with such requirements."[105]

38. **The interveners submit that the obligation of States to protect the right to life should be interpreted, under Article 53, in light of the international law of the sea. In this context, such protection should include, *inter alia*, the duty to provide immediate assistance to any person in distress at sea regardless of their nationality and to ensure and promote the operation and maintenance of adequate and effective search and rescue services.**

39. **Moreover, the interveners submit that the adherence of all states and their relevant authorities to international human rights law and standards is necessary for the establishment of a new global framework of best practice in relation to the duties owed towards the deceased, the missing and their relatives.**[106] Finally, the interveners would like to bring to the Court's attention the work of the Last Rights project, along with over 50 international experts with an extensive expertise in working on the rights of those who lost life at sea and their families. In May 2018, the Last Rights project developed, agreed and signed the text of The Declaration For The Dignified Treatment Of All Missing And Deceased Persons And Their Families As A Consequence Of Migrant Journeys – thereafter known as "The Mytilini Declaration".[107]

40. The Mytilini Declaration sets out the minimum standards and practical measures required to provide dignity, truth and access to justice in relation to any migrant death, not just at sea but in all situations of transit, precarious and impermanent status. It is founded on well accepted international human rights law norms and jurisprudence and also on humanitarian practices, which is set out within the declaration's supporting legal commentaries and documentation.[108] The Greek National Commission for Human Rights (GNCHR) officially adopted the Mytillini Declaration in 2019.[109]

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[103] SAR Convention, § 4.2.1.
[104] SAR Convention, § 4.3.
[105] IMO Guidelines on the Treatment of Persons Rescued at Sea, MSC.167(78), 20 May 2004, available at: https://bit.ly/3kBJfuK, § 5.1-6.7.
[106] See www.lastrights.net
[107] The Declaration For The Dignified Treatment Of All Missing And Deceased Persons And Their Families As A Consequence Of Migrant Journeys (Mytilini Declaration), agreed on Lesvos (Greece) on 11 May 2018 with the initiative of the Last Rights Project, available at: https://bit.ly/3FiDOdU [Original English text]; , https://bit.ly/3LLm790 [Greek translation]; https://bit.ly/3w0N4it [French translation].
[108] Last Rights Project, Extended Legal Statement and Commentary, The Dead the Missing and the Bereaved, Statement of the International Legal Obligations of States together with Commentary, [hereafter Extended Legal Statement], 30 January 2019, available at: https://bit.ly/3FhYcvK
[109] Greek National Commission for Human Rights, Dignified Treatment of all the Missing and Deceased Persons and their Families as a Consequence of Migrant Journeys, The Greek National Commission for Human Rights adopts the Mytilini Declaration, Position, 7 February 2019, available at: https://bit.ly/3MOxYmT. In doing so it said "*In this framework, the GNCHR proceeds to the adoption of the Mytilini Declaration and calls upon the Greek state, when drafting migration policies or adopting legislation on third country nationals' rights and also upon local authorities, who are competent to exercise their powers on deceased and missing migrants, to take into account the rights and obligations that are thoroughly listed in this Declaration and are compatible with the international obligations of states, as these (obligations) have been stated in international instruments and have been interpreted by international and regional judicial bodies.*"