

Subject: Response to request for information received from the FRALO

24 February 2021

The Consultative Forum received a request on 9 February 2021, from the Secretariat of the Frontex Management Board Working Group on Fundamental Rights and Legal Operational Aspects of Operations in the Aegean Sea (FRALO). In the request, FRALO invited the Consultative Forum to provide relevant reference or information that would bring additional light to six incidents and help the Working Group to draw further conclusions.

The Consultative Forum's response to this request contains fundamental rights considerations in the context of search and rescue operations and interception at sea. Given the limited time available, these observations are preliminary and do not cover the issue of operational cooperation with third countries. The Consultative Forum previously submitted recommendations on that issue on 21 May 2019 and these are annexed to this letter.

The Consultative Forum members do not have direct verified information on the six alleged incidents. To facilitate the work of the inquiry, it has, however, reviewed publicly available sources reporting incidents, which occurred at that time in the relevant geographical area and has compiled this in an annex. The Consultative Forum has not verified the information reported in the annex.

1. Search and Rescue (SAR) operations

The key points which can be drawn from the information below are:

- a SAR situation applies whenever a vessel is in distress;
- a vessel must be considered to be in distress when it is in danger and in need of immediate assistance, or where its operating efficiency is impaired to the extent that such distress is likely; and,
- in addition to the obligation to deliver persons in distress to a “place of safety”, Member States must comply with applicable EU law, including the Charter of Fundamental Rights.

1.1. Definition of distress

Under EU law, a SAR situation is understood as a maritime operation of EU Member States in fulfilling “their obligation to render assistance to any vessel or person in distress at sea [...] in accordance with international law and respect for fundamental rights.”¹

As for the definition of “distress”, EU law provides that a “vessel or the persons on board shall be considered to be in a phase of distress in particular:

- i. when positive information is received that a person or a vessel is **in danger and in need of immediate assistance; or**
- ii. when, following a phase of alert, further unsuccessful attempts to establish contact with a person or a vessel and more widespread unsuccessful inquiries point to the **probability** that a distress situation exists; **or**
- iii. when information is received which indicates that the **operating efficiency of a vessel has been impaired to the extent that a distress situation is likely.**²

Under Article 9 (2) (f) of Regulation (EU) No. 656/2014, for the purpose of considering whether a vessel is in a phase of uncertainty, alert or distress, Member States must “take into account and transmit all relevant information and observations to the responsible Rescue Coordination Centre including on:

- (i) *the existence of a request for assistance, although such a request shall not be the sole factor for determining the existence of a distress situation;*
- (ii) *the seaworthiness of the vessel and the likelihood that the vessel will not reach its final destination;*
- (iii) *the number of persons on board in relation to the type and condition of the vessel;*
- (iv) *the availability of necessary supplies such as fuel, water and food to reach a shore;*
- (v) *the presence of qualified crew and command of the vessel;*
- (vi) *the availability and capability of safety, navigation and communication equipment;*
- (vii) *the presence of persons on board in urgent need of medical assistance;*
- (viii) *the presence of deceased persons on board;*
- (ix) *the presence of pregnant women or of children on board;*
- (x) *the weather and sea conditions, including weather and marine forecasts.*³

Under the international law of the sea – as reflected in Article 9 of Regulation (EU) No. 656/2014 – ‘distress’ is the highest emergency phase, preceded by the “uncertainty phase” and then the “alert phase”.⁴

In determining whether or not a vessel is in distress, the context in the Aegean must be taken into consideration. Deaths at sea in the Aegean have been regularly reported by a range of

FRONTEX CONSULTATIVE FORUM ON FUNDAMENTAL RIGHTS

reputable sources, including during the period under review by the FRALO.⁵ Members of the Consultative Forum have repeatedly expressed concern about loss of life in the Aegean Sea.⁶

1.2. Obligations during SAR operations

The international law of the sea provides that states must require the shipmaster of any navigating vessel to render assistance to any person in distress at sea, in so far as s/he can do so without serious danger to the ship, the crew or the passengers.⁷ Prompt assistance is an essential element of the integrity and effectiveness of SAR activities. It must remain a top priority for shipmasters, shipping companies and flag States.⁸

EU law incorporates the obligation to provide assistance in Article 9 of Regulation (EU) No. 656/2014, which applies to Frontex-coordinated border surveillance operations carried out by Member States at their external sea borders. According to it:

“Member States shall observe their obligation to render assistance to any vessel or person in distress at sea and, during a sea operation, they shall ensure that their participating units comply with that obligation, in accordance with international law and respect for fundamental rights. They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found.”

Under international maritime law and EU law,⁹ rescued persons must be delivered to a ‘place of safety’. This is a location where rescue operations are considered to terminate, and where: the rescued persons’ safety of life is no longer threatened; basic human needs (such as food, shelter and medical needs) can be met; and transportation arrangements can be made for the rescued persons’ next or final destination.¹⁰ In delivering a person to such a place of safety, the party responsible for the SAR should take into account the particular circumstances of the case and the guidelines of the International Maritime Organisation (IMO).¹¹ IMO’s Maritime Safety Committee adopted non-binding guidelines to assist states and shipmasters in this regard.¹² The guidelines:

- specify that “the responsibility to provide a place of safety, or to ensure that a place of safety is provided, falls on the Government responsible for the search and rescue region in which the survivors were recovered.” (at 2.5);
- clarify the need to avoid disembarkation of asylum seekers and refugees in territories where their lives and freedoms would be threatened (at 6.17); and
- discourage any screening and status assessment procedures that would unduly delay disembarkation (at 6.20).

The Human Rights Committee noted that States’ obligation to respect the right to life under Article 6 of the International Covenant on Civil and Political Rights (ICCPR) includes an obligation to take action in the case of foreseeable threats to the right to life and in life-threatening situations, even where those threats and situations are not caused directly by the State.¹³ Moreover, under Article 6 (1) read in conjunction with Article 2 (3) of the ICCPR, States have “*the duty to provide an effective remedy to victims of human rights violations and their relatives*”, which includes a “*duty to conduct a prompt investigation of the allegations relating to a violation of the rights to life*”, including death and disappearance.¹⁴

For Frontex-coordinated sea operations, Article 10 of Regulation (EU) No 656/2014 requires the host Member State and the participating Member States to cooperate with the responsible Rescue Coordination Centre to identify a place of safety and ensure that disembarkation of the rescued persons is carried out rapidly and effectively. Under Article 4 (1) of the regulation, this must fully comply with fundamental rights.¹⁵ Article 4(4) of the same Regulation provides that

“[t]hroughout a sea operation, the participating units shall address the special needs of children, including unaccompanied minors, victims of trafficking in human beings,

persons in need of urgent medical assistance, disabled persons, persons in need of international protection and other persons in a particularly vulnerable situation.”

2. Interception at sea

The key points which can be drawn from the information below are:

- The duty on Member States to prevent unauthorised border crossings under the Schengen Border Code is subject to respect for international and EU law obligations.
- The principle of *non-refoulement* and the prohibition of collective expulsion require an individual assessment of each person on an intercepted vessel;
- State actors (in this context border guards) must inform sea arrivals about the right to asylum wherever there are indications that they might wish to seek asylum. The context in the Aegean should inform any assessment of whether such indications are present.
- Where there are indications that intercepted person may wish to seek asylum, they must be disembarked on land and have their applications assessed in accordance with the Asylum Procedures Directive 2013/32/EU.

2.1. Fundamental Rights in the Schengen Borders Code

Under the Schengen Borders Code (SBC),¹⁶ Member States have a duty to prevent unauthorised border crossing. However, this obligation is subject to respect for the EU Charter of Fundamental Rights, as clearly stated in Article 4 of the SBC. The Charter obliges EU institutions and Member States when they implement EU law to respect, among other rights, the right to asylum (Article 18 of the Charter), the principle of *non-refoulement* and the prohibition of collective expulsion (Article 19 of the Charter) and the right to an effective remedy (Article 47 of the Charter).

The **principle of *non-refoulement*** prohibits the return of a person in any manner whatsoever to a risk of persecution and other serious harm.¹⁷ The principle of *non-refoulement* not only prohibits the return to a country where a person may be at risk of persecution or other serious harm (direct *refoulement*), but also to countries where individuals would be exposed to a serious risk of onward removal to such a country (indirect *refoulement*).¹⁸ Under Article 15 of the European Convention of Human Rights (ECHR), read together with the case law of the European Court of Human Rights (ECtHR) on Article 3 of the ECHR,¹⁹ this principle is absolute and cannot be derogated from even in time of emergency.

The **prohibition of collective expulsion**²⁰ prevents States from returning third-country nationals in a group, without an individual assessment of their situation and, therefore, without enabling them to put forward their arguments against the measure.

The prohibition of *refoulement* as well as collective expulsion apply also to non-admission and rejection at borders²¹ and on the high seas.²²

The SBC must be applied without prejudice to “the rights of refugees and persons requesting international protection, in particular as regards *non-refoulement*” (Article 3 (b)). Article 4 of the SBC requires that border controls must be carried out:

“in full compliance with relevant Union law, including the Charter of Fundamental Rights of the European Union (‘the Charter’), relevant international law, including the Convention Relating to the Status of Refugees done at Geneva on 28 July 1951 (‘the Geneva Convention’), obligations related to access to international protection, in particular the principle of non-refoulement, and fundamental rights. In accordance with the general principles of Union law, decisions under this Regulation shall be taken on an individual basis.”

Article 4 of Regulation (EU) No. 656/2014, quoted above, specifies this obligation for Frontex-coordinated maritime border surveillance operations.

Where physically non-admitting a person would violate the principle of *non-refoulement*, the prohibition of collective expulsion, the right to asylum, or the right to an effective remedy under the Charter and under international human rights law, Member States must refrain from doing so. Rather, in Article 6 (5) (c), the SBC explicitly authorises them to allow entry “because of international obligations”.

2.2. No need for expressly requesting asylum

Pursuant to Article 52 (3) of the EU Charter of Fundamental Rights, when Charter rights correspond to rights guaranteed by the ECHR, their meaning and scope must be the same as in the ECHR. Under the case law of the ECtHR, the prohibition of *refoulement* applies also to persons who have not requested asylum, where the risks of ill-treatment that an individual may face as a result of the interception “were known *or ought to have been known* to the Contracting State”.²³ If they are aware of factors that could put individuals at risk, authorities must examine such risks on their own motion.²⁴ As the ECtHR clearly held in *Hirsi Jamaa*, “the fact that the [applicants] had failed expressly to request asylum did not exempt Italy from fulfilling its obligations under Article 3.”²⁵

Under EU law, Article 4 (2) of Regulation (EU) No. 656/2014 prohibits Member States to disembark, force to enter, conduct to or otherwise hand over an intercepted or rescued person to a third country, where they are “aware *or ought to be aware*” (italics added) of a risk of torture or ill-treatment or other serious violations of human rights in the third country. This obligation applies irrespective of any request for asylum by the individual.

It is important to keep in mind the context in the Aegean Sea when applying the relevant legal framework. Members of the Consultative Forum have repeatedly expressed concern about pushbacks in the Aegean during the period in which the cases under review by the Working Group occurred (April 2020 – November 2020). Members also frequently recalled the need to ensure that asylum applicants are guaranteed access to an individual assessment.²⁶

The high recognition rate for the main nationalities of persons crossing the Aegean and the fact that persons arriving to the island by boat invariably apply for asylum are also of relevance to determinations of whether persons on rubber boats are likely to be asylum applicants.²⁷

2.3. Individual assessment

Article 4 of the SBC recalls that any decisions under its purview must be taken on an individual basis, in accordance with the general principles of EU law.

Under the ECHR, the safeguards for the individual examination differ between risks of violations of Articles 2 and 3 of the ECHR (*non-refoulement*) and risks of collective expulsion under Article 4 of Protocol No. 4 to the ECHR.

- a) Under the ***non-refoulement obligation***, a state must undertake an independent and rigorous scrutiny of any arguable claim entailing a real risk of ill-treatment.²⁸ The ECtHR will particularly look at whether the applicant had an effective possibility to seek asylum.²⁹ The State has to ascertain that any person under its jurisdiction is not *refouled*. As the ECtHR has pointed out, it is only by means of a legal procedure resulting in a legal decision that a finding on this issue can be made and relied upon. The expelling State cannot merely assume that the individual will be treated in the receiving third country in conformity with ECHR standards.³⁰ There will be a violation of the ECHR, if a person is returned without individual assessment.³¹
- b) Also under the **prohibition of collective expulsion**, a State must undertake an examination which takes into account the specific situation of the individual. It must identify the person, establish his or her nationality and provide him or her with a

genuine and effective possibility of submitting arguments against the expulsion, which must be examined in an appropriate manner by the relevant authorities.³²

In its ruling on the so-called “hot returns” in the Spanish enclave of Melilla, the ECtHR considered that the applicant’s behaviour may play a role in assessing a violation of the prohibition of collective expulsions. It held that a State does not violate the ECHR if the absence of an individual expulsion decision can be attributed to the applicant’s own culpable conduct. The Court set out a two-tier test for compliance with Article 4 of Protocol No. 4 of the ECHR in such circumstances:

- 1) Firstly, whether the State provided genuine and effective access to means of legal entry, in particular border procedures, to allow all persons who face persecution to submit an application for protection, based in particular on Article 3 of the ECHR, under conditions which ensure that the application is processed in a manner consistent with international norms, including the ECHR.
- 2) Secondly, where the State provided such access but an applicant did not make use of it, the ECtHR will examine whether there were cogent reasons for not doing so, which were based on objective facts for which the State is responsible. The absence of such cogent reasons could lead to a conclusion justifying the lack of individual identification, this being the consequence of the applicants’ own conduct.³³

The circumstances which led to the finding of no violation of Article 4 of Protocol No. 4 in that case do not seem likely to apply to situations at sea. Compliance with Article 4 of Protocol No. 4 presupposes that an applicant had a genuine and effective access to means of legal entry in the country (in the “hot returns” from the Spanish enclave of Melilla), the applicants could not show “cogent reasons” why they had not approached the asylum office at the nearby border crossing point). This appears different from the case of border guards in the Aegean Sea being faced with unseaworthy dinghies, where there is no option of turning to a point for legal entry.

Fundamentally, the judgment concerned the prohibition of collective expulsions in Article 4 of Protocol 4 and the applicants did not have an arguable claim under Articles 2 or 3 of the ECHR upon return.

In addition, where the individual has an “arguable complaint” that his or her removal would represent *refoulement*, s/he must have an effective remedy, in practice as well as in law, at the domestic level in accordance with Article 13 of the ECHR, which imperatively requires, *inter alia*, independent and rigorous scrutiny of any claim that there exist substantial grounds for fearing a real risk of treatment contrary to Articles 2 or 3 and automatic suspensive effect.³⁴ The scrutiny should include an assessment of vulnerability and needs of potential victims of human trafficking and of unaccompanied and separated children.

2.4. Referral to asylum procedures and the duty to inform

Under EU law, border guards must refer asylum applicants to national asylum procedures.³⁵ Pursuant to its Article 3, the Asylum Procedures Directive (2013/32/EU) applies to territorial waters. Recital 26 of the Directive clarifies that persons seeking international protection present in the territorial waters of a Member State should be disembarked on land and have their applications examined in accordance with the Directive. Under Article 8 (1) of the Asylum Procedures Directive, wherever there are “indications that third-country nationals [...] may wish to make an application”, the border guards must inform them how to do so.

There are no formal requirements for an asylum application. As the Court of Justice of the EU (CJEU) pointed out, “making” an application means that an individual declares his or her wish to receive asylum, “without the declaration of that wish being subject to any administrative formality whatsoever”.³⁶ From the moment the individual has expressed the wish to apply for asylum, he or she enjoys the status of an ‘asylum applicant’.³⁷ Under Article 9 (1) of the Asylum

FRONTEX CONSULTATIVE FORUM ON FUNDAMENTAL RIGHTS

Procedures Directive, applicants must be allowed to remain in the Member State until the relevant authority has made a decision on the asylum application.

To ensure effective access to the asylum procedure, Article 6 (1) of the Asylum Procedures Directive also contains the obligation to ensure that border guards receive the necessary level of training which is appropriate to their tasks and responsibilities and instructions to inform applicants as to where and how applications for international protection may be lodged.

3. Conclusion

The prohibitions of *refoulement* and of collective expulsion as well as the right to an effective remedy set out in international and EU law, including the Charter of Fundamental Rights, apply irrespective of persons having expressed a wish to seek asylum.

The Consultative Forum recalls that wherever an individual is under the jurisdiction of a Member State, and there are substantial grounds to believe that s/he might wish to seek asylum and/or be at risk of serious violations of human rights upon return, the Member State must inform them how to seek asylum and facilitate access to an independent and effective status determination procedure. Under EU law, "indications" suffice; in such a case, a Member State must inform how to apply for asylum and facilitate access to the asylum procedure in the EU. In the Aegean context, such indications are currently clearly present. The Consultative Forum further recalls that where a person expresses a wish to receive asylum, which does not require any formalities whatsoever, s/he must be disembarked on land and have his or her application examined in accordance with the Asylum Procedures Directive.

The Consultative Forum reserves the right to submit further and more detailed considerations, should the circumstances or the Working Group so require.

Kind regards,

Aydan Iyigüngör
Chair of the Consultative Forum

Sophie Magennis
Chair of the Consultative Forum

Annexes:

Annex I: Consultative Forum recommendations on the fundamental rights implications of the Agency's engagement with third countries, 21.05.2019

Annex II: Overview of five serious incidents, which are subject to FRALO's inquiry and which are referred to in reports or posts by civil society organisations

-
- ¹ Regulation (EU) No. 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 189, 27 June 2014, pp. 93–107, Article 9.
- ² Regulation (EU) No. 656/2014, Article 9 (2)(e) emphasis added. Under international law of the sea, “distress” is defined as follows: „A situation wherein there is a reasonable certainty that a person, a vessel or other craft is threatened by grave and imminent danger and requires immediate assistance”, 1979 International Convention on Maritime Search and Rescue (SAR Convention), Annex, Chapter 1.3.13.
- ³ Regulation (EU) No 656/2014, Article 9 (2) (f).
- ⁴ SAR Convention, Annex, Chapter 1, at 1.3.8 – 1.3.11.
- ⁵ IOM, Missing Migrants Project, see specifically the documented number of deaths in the Eastern Mediterranean, https://missingmigrants.iom.int/region/mediterranean?migrant_route%5B%5D=1377.
- ⁶ See, for example, Frontex Consultative Forum on Fundamental Rights, [Seventh Annual Report](#), 2019, October 2020.
- ⁷ United Nations Convention on the Law of the Sea, Article 98.
- ⁸ International Maritime Organisation (IMO), Guidelines on the Treatment of Persons Rescued at Sea, IMO Doc. Resolution MSC. 167(78), Annex 34, adopted by the Maritime Safety Committee on 20 May 2004, para. 3.1
- ⁹ Regulation No. (EU) 656/2014, Article 2 (12).
- ¹⁰ As specified further below, as soon as the person is in the territorial waters of an EU Member States, asylum obligations become applicable. See Article 3(1) Asylum Procedures Directive 2013/32/EU.
- ¹¹ SAR Convention, Annex, Chapter 3.1.9 amended by International Maritime Organisation, Resolution MSC. 155(78), Annex 5 adopted on 20 May 2004.
- ¹² International Maritime Organisation, Guidelines on the Treatment of Persons Rescued at Sea, Maritime Safety Committee, Resolution MSC. 167(78), 20 May 2004.
- ¹³ Human Rights Committee, CCPR/C/GC/36 para. 7
- ¹⁴ Ibid, para 27; Human Rights Committee, CCPR/C/130/D/3042/2017, paras. 8.6, 8.7, 10.
- ¹⁵ Regulation (EU) No. 656/2014, Art 4 (1) “*no person shall, in contravention of the principle of non-refoulement, be disembarked in, forced to enter, conducted to or otherwise handed over to the authorities of a country where, inter alia, there is a serious risk that he or she would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where his or her life or freedom would be threatened on account of his or her race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another country in contravention of the principle of non-refoulement.*”
- ¹⁶ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 77, 23 March 2016, pp. 1–52, Article 13.
- ¹⁷ Charter of Fundamental Rights of the European Union, Articles 18 and 19; see also Treaty on the Functioning of the EU (TFEU), Article 78 (1) and CJEU, Joined cases C-411/10 and C-493/10, *N. S. v. Secretary of State for the Home Department and M. E. and Others v. Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform*, 21 December 2011, para. 75. European Convention on Human Rights, Articles 2 and 3 as interpreted by the European Court of Human Rights (ECtHR), in e.g. *Soering v. the United Kingdom*, No. 14038/88, 7 July 1989, para. 91 and *Vilvarajah and Others v. United Kingdom*, Nos. 13163/87 and others, 30 October 1991, para. 107ff; Convention relating to the Status of Refugees (1951), Article 33; United Nations Convention Against Torture (1984), Article 3; International Covenant on Civil and Political Rights (1966), Article 7, as interpreted by the United Nations Human Rights Committee.
- ¹⁸ ECtHR, *Ilias and Ahmed v. Hungary* [GC], No. 47287/15, 21 November 2019.
- ¹⁹ ECtHR, *M.A. v. France*, No. 9373/15, 1 February 2018; ECtHR, *Saadi v. Italy* [GC], No. 37201/06, 28 February 2008 ECtHR, *Salah Sheekh v. the Netherlands*, No. 1948/04, 11 January 2007, para. 135; ECtHR, *Soering v. the United Kingdom*, No. 14038/88, 7 July 1989; ECtHR, *Vilvarajah and Others v. the United Kingdom*, Nos. 13163/87 and 4 others, 30 October 1991.
- ²⁰ Charter of Fundamental Rights of the European Union, Article 19; European Convention on Human Rights, Protocol No. 4, Article 4.
- ²¹ ECtHR, *N.D. and N.T. v. Spain* [GC], Nos. 8675/15 and 8697/15, 13 February 2020, paras. 185 and 187; ECtHR, *M.K. and Others v. Poland*, Nos. 40503/17, 42902/17 and 43643/17, 23 July 2020, paras. 200 and 204.

-
- ²² ECtHR, *Hirsi Jamaa and Others v. Italy* [GC], No. 27765/09, 23 February 2012; ECtHR, *N.T. and N.D. v. Spain* [GC], Nos. 8675/15 and 8697/15, 13 February 2020, para. 178, 185, 187.
- ²³ ECtHR, *Hirsi Jamaa and Others v. Italy* [GC], para. 121. Italics added
- ²⁴ ECtHR, *F.G. v. Sweden* [GC], No. 43611/11, 23 March 2016, para. 127, ECtHR *M.A. and Others v. Lithuania* No. 59793/17, 11 December 2018, para. 81, ECtHR *Hirsi Jamaa and Others v. Italy* [GC], para. 133. ECtHR, *J.K and others v. Sweden* [GC] No.59166/12, para. 98.
- ²⁵ ECtHR, *Hirsi Jamaa and Others v. Italy* [GC], para. 133.
- ²⁶ See UNHCR, [UNHCR calls on Greece to investigate pushbacks at sea and land borders with Turkey](#); Amnesty International, Human Rights Watch, and 27 other NGOs, [Open letter to Members of the Hellenic Parliament calling for an investigation into border abuses](#); IOM, [IOM Alarmed over Reports of Pushbacks from Greece at EU Border with Turkey](#).
- ²⁷ [UNHCR data shows](#) that out of the approx. 10.000 sea arrivals in 2020, – which is down by 84% compared to the approx. 60.000 sea arrivals in 2019 – over 70% came from nationalities which received a high [protection rate in the EU in 2020](#) (mainly Syrians, Somalis, Afghans, and Palestinians).
- ²⁸ ECtHR, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, paras. 288 and 291, ECHR 2011; for an overview of the Court’s case-law as to the requirements under Article 13 taken in conjunction with Articles 2 or 3 in removal cases, see, in particular, *ibid.*, paras. 286-322. ECtHR, *Hirsi*, para. 198; ECtHR, *Ilias and Ahmed v. Hungary* [GC], para. 127.
- ²⁹ ECtHR, *M.K. and Others v. Poland*, Nos. 40503/17, 42902/17 and 43643/17, 23 July 2020, paras. 174-186.
- ³⁰ ECtHR, *M.S.S. v. Belgium and Greece* [GC], para. 359; *Ilias and Ahmed v. Hungary* [GC], para. 141.
- ³¹ ECtHR, *Hirsi Jamaa and Others v. Italy* [GC], paras. 113-115.
- ³² ECtHR, [Khlaifia and Others v. Italy](#) [GC], para. 248.
- ³³ ECtHR, *N.D. and N.T. v. Spain* [GC], para. 201.
- ³⁴ *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, §§ 288 and 291, ECHR 2011; for an overview of the Court’s case-law as to the requirements under Article 13 taken in conjunction with Articles 2 or 3 in removal cases, see, in particular, *ibid.*, §§ 286-322.
- ³⁵ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180, 29 June 2013, pp. 60–95. The directive applies in territorial waters, see Article 3 (1).
- ³⁶ CJEU, *European Commission v. Hungary*, [C-808/18](#), 17 December 2020, para. 97; CJEU, *Ministerio Fiscal v VL*, [C-36/20 PPU](#), 25 June 2020, para. 93. See also Asylum Procedures Directive, Article 2 (b).
- ³⁷ Asylum Procedures Directive, Article 2(c).