

No Court and No Justice in the EU – CJEU Ruling in *ST v. Frontex*

BREAKING No Court, No Justice in the EU – CJEU Ruling in the Case *ST v. Frontex*.

#CJEU – The Court of *Justice* of the EU has just ruled that the hundreds of thousands of asylum seekers affected by Frontex’ policy of collective expulsions & abandonment at sea cannot **ACCESS** the CJEU in pursuit of legal remedy!

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On 28 November, the General Court ruled that *front-LEX*’s case against Frontex’s Joint Operation in the Aegean is inadmissible, ordering the Applicant to carry the legal costs of Frontex. By doing so the CJEU blocked the *second* out of only three legal procedures open to refugees seeking to challenge the violence they are exposed to because of Frontex’s criminal border policies.

front-LEX brought the case *ST v. Frontex* on behalf of JK, a Congolese asylum seeker stranded in Turkey. JK tried three times to seek international protection in the EU. However, each time he arrived on EU territory, European agents abducted, collectively expelled, and ultimately abandoned him to drown in Turkish waters. Greek officers laughed while his friend drowned to death during one of these ‘push-backs’.

This case is the follow-up to *SS and ST v. Frontex*, the 1st ever case brought against the Agency by *front-LEX*. *SS and ST* closed the *first* procedure that is formally open to asylees seeking to access justice (legal action for Frontex’s failure to act – Art. 265 TFEU). But the Court accepted *front-LEX*’s argument, that in order to avoid accountability gaps, individual victims are allowed to instead request the annulment of Frontex’s refusal to comply with its human rights obligations (Art. 263 TFEU).

After the EU Anti-Fraud Agency OLAF concluded its damning report on Frontex, corroborating all the factual and legal allegations *ST* made before the Court, *front-LEX* filed *ST v. Frontex*. Based on the factual finding of the EU’s own law enforcement agency, and the legal framework that was established in the previous case, *ST* requested the Court to assess and adopt the report by ordering Frontex to comply with its own human rights obligations under its regulations and terminate its Joint Operation (JO) with Greece in the Aegean Sea. **The very same judge that rendered the first ruling, however, now decided once again not to let refugees access judicial review, protection, and remedy under the EU legal order.**

front-LEX collected **five key take-aways** that manifest the extent to which this ruling failed to acknowledge the very basic factual & legal circumstances of the case:

- 1) **The ruling entirely ignores an abundance of factual evidence, including the OLAF report.** Among others, the Court ignores that Frontex's activities in Greece are still ONGOING, that Frontex is involved in the 'push-back' operations, and that the applicant is an asylum-seeker and not an "illegally staying third country national".
- 2) **The Court stipulates that an asylum-seeker at risk of being drowned, must prove that this risk is "certain" in order to have a demonstrated "interest" in the annulment of the challenged action.** In the context of forced displacement, however, the expectation that asylum-seekers will prove that the prejudice to their life is "certain" for the Court to even hear the case, runs counter to the complete system of legal remedies established by the EU Treaties. As JK had already experienced three 'push-backs', this certainty requirement introduced by the Court leaves one wondering when the risk of drowning is "certain" enough to declare an action for annulment admissible.
- 3) Relying on NO EVIDENCE, the **Court factually determines that the abandonment at sea operations ("expulsions" as the Court mislabels them) in the Aegean Sea are performed exclusively by Greece, and not JOINTLY with Frontex.** Ignoring overwhelming evidence of Frontex's shared responsibility for 'push-backs' in the Aegean Sea (such as the OLAF report), the Court holds that these "intervention(s)" were all carried out by Greek police authorities. Because the Court fails to acknowledge that the applicant is an asylum-seeker affected by a JO of Frontex and not by a Greek "intervention", the Court also fails to address Regulation 656/14, rather than the Return Directive relating to illegally staying third-country nationals.
- 4) **The Court ruled that, even if successful, an Action for Annulment provides no effective legal remedy to challenge Frontex's operations.** The CJEU clarifies that an annulment of an action, would only lead to Frontex's re-examination of the challenged act, not to a termination. Even if the Court would annul a challenged action, it "would only have the effect of **leading Frontex to re-examine the conditions for** adopting a decision under Article 46(4) of Regulation 2019/189 [...]". It follows that, for the Court, the Applicant does not have interest in the annulment of Frontex's decision not to suspend its activities in the Aegean.
- 5) **Lastly, and shamefully, the Court ignored our arguments to the contrary and ordered the Applicant, an asylum-seeker stranded in Turkey, to pay the cost of Frontex,** a coercive EU border control agency whose budget for the period between 2021-2027 is € 11bn.

To conclude, the Court ignores that the “Treaty established a complete system of legal remedies”.

In the context of forced migration, potential victims have only three available legal avenues: legal action for failure to act, annulment and damages. Following the judgements in *SS and ST*, as well as *ST v. Frontex*, according to the Court, 2 out of the 3 are inaccessible to asylees knocking on its door.

According to the Court, even winning these cases won’t “certainly” guarantee that the defendant institution will follow the Court’s judgement, and so asylum-seekers do not even have an interest in bringing proceedings.

Notwithstanding this judgement, *front-LEX* continues its strategic litigation campaign with the aim of, finally, holding Frontex to account and re-establishing the rule of law at the EU’s external border. The Court still has to decide whether the third **and last** avenue available to victims of Frontex’s crimes is accessible to them – an action for damages, filed by *front-LEX* on behalf of [Alaa Hamoudi](#), is still pending.

To read the entire ruling:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=280268&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=3789077>

To follow updates on our strategic litigation campaign, visit our website: www.front-lex.eu

To support our work: <https://www.front-lex.eu/donate>

Contact Information

front-LEX

- Website: www.front-lex.eu
- Updates on the Case: <https://www.front-lex.eu/aija-kalnaja>
- Twitter/X: @front_LEX

Legal Team

- Adv. Omer Shatz, Legal Director *front-LEX*, omer.shatz@front-lex.eu, Twitter/X: @shatzomer
[English, French]
- Adv. Iftach Cohen, Senior Legal Advisor *front-LEX*, iftach.cohen@front-lex.eu
[English, Italian]
- Adv. Francesco Luigi Gatta, Legal Advisor *front-LEX*, francesco.gatta@front-lex.eu
[English, Italian]
- Adv. Sarah Easy, Legal Advisor *front-LEX*, sarah.easy@front-lex.eu
[English, Spanish]

Advocacy Team

- Ms. Nike Hüttermann, Advocacy Officer *front-LEX*, nike.huttermann@front-lex.eu
[English, German]