

**MARIA PARASKEVA**

# The Militarization of EU Borders

**THE GREEK CASE  
STUDY WITHIN  
THE EUROPEAN  
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# Introduction

Greece, due to geopolitical changes and its historical relations, has been at the centre of policy developments in the fields of immigration and integration in recent decades. Immigration has become a matter of politics in a rapidly changing manner and the situation of third country nationals (TCNs) arriving at the external borders of the European Union (EU) a long-standing challenge. In its recent history, Greece has faced at least three major migration waves. First, following the collapse of socialist regimes in Central and Eastern Europe at the beginning of the 1990s, which triggered massive migration waves, mostly of Albanians into Greece. Second, geopolitical developments in the region (regional conflicts, war on terror, etc.) triggered new population movements. By the beginning of 2000s, new waves of migrants from the Middle East, Pakistan and African countries started arriving. Third, the escalation of the war in Syria after the Arab Spring in 2011 increased even more the number of people seeking international protection in Europe, either through Turkey or through the central Mediterranean. The shift in asylum policies towards securitization and the absence of a concrete migration strategy has led to several violations of fundamental human rights. The ever-changing policy on migration in recent years does not comply with the principles of treaties and international law and focuses on a deterrent policy, creating an “invisible enemy” under the term “refugee”. This analysis is focused on the Greek and EU policy regarding migration, in particular on the long-standing operation of “pushbacks” and collective expulsions as a regulatory factor that seeks to control the rapidly changing migration flows and to outsource the dealing with refugees and migrants to third countries, including Turkey. The analysis summarizes the political and legislative developments with a focus on the EU policy framework, which has gradually resulted in an escalation of human rights violations, including pushbacks and collective expulsions. Greece, as will be shown below, has a history of pushbacks and summary expulsions without the assessment of individual TCN’s human rights protection needs, on land and at sea, whether it be territorial or international waters, when they attempt to cross or crossed an international border. The criminalization of human rights defenders and NGOs working in the field also facilitates this policy of chipping away at fundamental human



rights and keeping as many asylum seekers away from EU territory as possible. Greece has repeatedly denied the existence of these operations, while the EU has – quite hypocritically – been calling for investigations and rewarding Greece’s position as the “shield of Europe” at the same time. Seeking legal redress remains a challenge and several applications have been submitted to the European Court of Human Rights (ECtHR) and United Nations Committees. This analysis also attempts to document and analyse decisions that have created concerns about the future of these applications.

# The state of play that resulted in the “normalization and legalization” of pushbacks and collective expulsions

The process of strengthening border control has gone hand in hand with a decades-long pattern of routine and systematic pushbacks perpetuated by the Greek authorities against refugees, migrants and asylum seekers. According to Konstantinos Tsitselikis,<sup>1</sup> a human rights law professor, the Greek authorities have been conducting pushbacks across the Evros River since at least the mid-1990s. Human Rights Watch has reported on systematic pushbacks since as early as 2008: it confirmed the routine and systematic nature of the expulsions across the Evros River by Greek police and security forces in 41 testimonies of migrants and asylum seekers interviewed in Greece and Turkey.<sup>2</sup> The increase of flows in the last decade worsened the situation and resulted in the normalization and legalization of pushbacks and collective expulsions. In 2010 Europe began registering increased numbers of refugee arrivals due to a confluence of conflicts in parts of the Middle East, Asia and Africa,<sup>3</sup> particularly the wars in Syria, Iraq and Afghanistan, but also terrorist insurgencies in Nigeria and Pakistan, and long-running human rights abuses in Eritrea. In 2010, Greece arrested 47,079 immigrants for unlawful entry across the Evros,<sup>4</sup> compared to 8,887 in 2009.<sup>5</sup> Within this context, the European Border and Coast

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1. <https://www.thenewhumanitarian.org/special-report/2018/10/08/refugee-pushbacks-across-turkey-greece-border-Evros>

2. <https://www.hrw.org/report/2008/11/26/stuck-revolving-door/iraqis-and-other-asylum-seekers-and-migrants-greece/turkey>

3. <https://cadmus.eui.eu/handle/1814/38226>

4. <https://www.astynomia.gr/statistik-es-etirides/statistika-stoicheia-2/statistika-stoicheia-paranomis-metanastefsis/>

5. <https://www.astynomia.gr/file/2009/06/300110meta2.pdf>

Guard Agency (Frontex) began deploying Rapid Border Intervention Teams (RABIT) along the Evros 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”. The significant impact of Frontex’s cooperation with Greek forces in reducing arrivals to Greece became quickly evident. Within four months of deploying the RABIT operation in November 2010, arrivals had decreased by approximately 75%.<sup>6</sup> Greece initiated Operation Aspida (“Shield”) in 2012, deploying a further 1,800 law-enforcement officials to patrol the borders, and constructing a 3-metre-high border fence along 12 kilometres of the river; this fence, constructed as a deterrent for border crossing, rerouted flows to the sea borders and, also, individuals towards crossing in more dangerous parts of the river. The area surrounding the river is a closed military zone, which strictly regulates entry and forbids the taking of photographs, thereby largely preventing journalists, researchers, advocates and migrants themselves from documenting the expulsions across the borders. In 2015, the flows increased further and the so-called “refugee crisis” caught Greece and Europe totally unprepared.<sup>7</sup> In May 2015, the European Commission announced a package of “immediate actions” to counter the unfolding crisis, which included the “hotspot approach” and “relocation measures”.<sup>8</sup> However, in September 2017, at the end of the two-year relocation period, only 19,244 persons had been relocated from Greece against an initial target of 60,400,<sup>9</sup> while TCNs were trapped in insecure and unsanitary camps lacking the most basic necessities and residing in dire conditions in the hotspots.<sup>10</sup> The closure of the Balkan route in 2016<sup>11</sup> and the failure of an effective, efficient and permanent relocation scheme<sup>12</sup> resulted in several human rights violations at the borders in the name of border protection and upset a precarious balance between Greece’s right to protect its European borders and its obligation under international treaties and human rights law. In March 2016, the EU introduced and Greece implemented the EU-Turkey Statement,<sup>13</sup> which aimed to stop the irregular mi-

6. [https://ec.europa.eu/commission/presscorner/detail/cs/MEMO\\_11\\_130](https://ec.europa.eu/commission/presscorner/detail/cs/MEMO_11_130)

7. <https://www.icmpd.org/blog/2015/2015-in-review-how-europe-reacted-to-the-refugee-crisis>

8. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015DC0240>

9. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52017DC0465>

10. <https://rsaegean.org/en/the-hotspots-experiment/>

11. <https://ecre.org/closure-of-balkans-route-leaves-thousands-stranded-in-greece-without-access-to-shelter-or-information/>

12. <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52017DC0212>

13. <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/pdf>

gration flow via Turkey to Europe. According to the statement, all new irregular migrants and asylum seekers arriving from Turkey to the Greek islands and whose applications for asylum have been declared inadmissible should be returned to Turkey in accordance with the concept of the safe third country. This was despite the concerns raised regarding Turkey's compatibility with EU and international refugee and humanitarian law. Through this policy, the EU attempted to pass on its humanitarian and legal obligations towards the refugees to Turkey, sending a clear message to TCNs that they are not welcome in Europe, thus worsening their situation, trapping them in a dire situation in the Greek islands<sup>14</sup> and reinforcing the notion of the militarization and securitization of the borders. Furthermore, according to a report to the Greek government on a visit to Greece by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in April 2018, foreign nationals could still be readmitted to Turkey based on the bilateral Greek-Turkish Readmission Protocol, which was ratified in 2002.<sup>15</sup> However, as the CPT notes, the protocol was no longer operating effectively, and had been suspended by the Turkish government. Further, pending the effective implementation by Turkey of the TCN clause, the EU–Turkey Readmission Agreement, which entered into force on 1 October 2014, only allows for the re-admission to Turkey of Turkish nationals. Consequently, the only operational legal basis for returning foreign nationals to Turkey is the EU–Turkey Statement<sup>16</sup> with the consequent effects on TCNs. The EU and Turkey agreed that for every Syrian being returned to Turkey from Greek islands, another Syrian would be resettled from Turkey to the EU taking into account the UN Vulnerability Criteria, including migrants who applied for asylum or whose applications were determined to be unfounded or inadmissible. In exchange, Turkey would receive €6bn to assist the vast refugee community hosted in the country; Turkish nationals would be granted visa-free travel to Europe; and, once the number of irregular arrivals dropped, a “voluntary” humanitarian scheme to transfer Syrians from Turkey to other European countries would be activated. The latter resulted in more strict policies and legislation in the migration field, dented people's solidarity towards this population and fostered and promoted a tolerated status as regards the violations of human rights at the borders and the mainland including pushbacks and collective expulsions. The incidents of February

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14. <https://www.gcr.gr/en/news/press-releases-announcements/item/793-almost-two-years-after-eu-turkey-statement-people-are-still-trapped-on-the-islands>

15. <https://www.kodiko.gr/nomothesia/document/178975/nomos-3030-2002>

16. <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>

2020,<sup>17</sup> when Turkey announced that it would no longer stop refugees trying to cross its borders into Europe, led to further rights violations against asylum seekers at the Turkey-Greece border<sup>18</sup> and to an increase in the securitization of Greece's borders as a deterrence measure against TCNs applying for international protection. TCNs seeking international protection became an imminent threat as potential enemies who are jeopardizing the country's sovereignty. Border surveillance, drones and the militarization of the Greek border with Turkey,<sup>19</sup> including the extension of a barbed-wire fence,<sup>20</sup> followed. In addition, the strengthening of Frontex with the aim to "combat migratory flows" increased the constant and steady practice of pushbacks and created a political environment in which persons on the move are considered an "enemy" and a "hybrid threat". Under pressure from developments, in September 2020 the EU launched the long-awaited proposal on the new EU Pact on Migration and Asylum,<sup>21</sup> which introduces very rapid screening procedures directly at the border and focuses on externalization, deterrence, containment and return, with serious risks of violation of the principle of non-refoulement and the prohibition of collective expulsions and pushbacks. In this context, in October 2020 and taking into consideration the pressure of many actors in the field, the investigation by the European Anti-Fraud Office (OLAF) into possible irregularities in Frontex resulted in a 123-page report confirming the credibility of the allegations against the agency.<sup>22</sup> The failings of the persons deployed by Frontex were grouped into three main categories; failure to follow procedures and processes, failure in their duty of loyalty and failure in their managerial responsibilities. The investigation was followed by the resignation of Frontex's executive director, Fabrice Leggeri, in April 2022. Meanwhile, a separate investigation by OLAF found that Leggeri tried to cover up information that Greek officials carried out pushbacks in the Aegean Sea.<sup>23</sup> On the top of this, the Covid 19 outbreak in 2020 wors-

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17. <https://www.theguardian.com/world/2020/feb/29/erdogan-says-border-will-stay-open-as-greece-tries-to-repel-influx>
  18. <https://www.ohchr.org/en/press-releases/2020/03/greece-rights-violations-against-asylum-seekers-turkey-greece-border-must>
  19. <https://www.statewatch.org/analyses/2021/border-surveillance-drones-and-militarisation-of-the-mediterranean/>
  20. <https://www.infomigrants.net/en/post/43132/eu-border-states-extend-physical-barriers-to-stop-migrants>
  21. [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/new-pact-migration-and-asylum\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/new-pact-migration-and-asylum_en)
  22. [https://cdn.prod.www.spiegel.de/media/00847a5e-8604-45dc-a0fe-37d920056673/Directorate\\_A\\_redacted-2.pdf](https://cdn.prod.www.spiegel.de/media/00847a5e-8604-45dc-a0fe-37d920056673/Directorate_A_redacted-2.pdf)
  23. <https://www.infomigrants.net/en/post/38907/frontex-leaders-concealed-pushbacks-watchdog-reports>

ened the situation. States across Europe imposed border closures and travel restrictions to counter the spread of the virus, while further restrictive measures were imposed in camps and at the borders. These measures resulted in more restrictions on liberty, restrictions on accessing legal support and further pushbacks and collective expulsions.<sup>24</sup> Amid these developments, Greece proceeded with legal fragmentation, which reduced legal certainty, and turned a blind eye to the reversal of solidarity towards TCNs seeking international protection. In particular, the policy shift during 2016 affected the reformed asylum system<sup>25</sup> already wracked by the 2015 refugee influx.<sup>26</sup> Multiple legislative amendments were introduced in 2016,<sup>27</sup> 2018,<sup>28</sup> 2019,<sup>29</sup> 2020<sup>30</sup> and 2022,<sup>31</sup> in several cases fragmentarily transposing EU legislation with the aim to restrict in practice international protection to asylum seekers. In the run-up to the 2023 parliamentary elections, the government presented a new migration bill that reformed, among other provisions, the immigration code,<sup>32</sup> after a short, one-week consultation with no “sufficiently substantiated grounds” for this shortcoming of the procedure. Law 5038/2023 introduced new processes and requirements for the entry and residence of non-EU nationals in Greece.<sup>33</sup> The constant rewriting of legislation and the unsatisfactory laws it creates jeopardizes the functioning of the rule of law while contributing to the maladministration of law in practice. Furthermore, the constant allegations that police and border police are directly involved in pushbacks has threatened the functioning of the rule of law.<sup>34</sup> More restrictions were introduced by the establishment in April 2020 of a discriminatory NGO registry for organizations working on migration.<sup>35</sup> This registry escalated human rights violations, impeded the civil society space and disregarded Greece’s obligations to respect freedom of association. The disproportionate and strict requirements imposed by the registry, in conjunction with the obligation on NGOs in the field of migration to register with the Minis-

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24. <https://www.hrw.org/news/2020/07/16/greece-investigate-pushbacks-collective-expulsions>

25. <https://www.refworld.org/docid/572855764.html>

26. <https://www.unhcr.org/news/stories/more-one-million-refugees-travel-greece-2015>

27. <https://www.refworld.org/docid/573ad4cb4.html>

28. <https://www.kodiko.gr/nomothesia/document/367593/nomos-4540-2018>

29. <https://www.kodiko.gr/nomothesia/document/572171/nomos-4636-2019>

30. <https://www.kodiko.gr/nomothesia/document/619937/nomos-4686-2020>

31. <https://www.kodiko.gr/nomothesia/document/797068/nomos-4939-2022>

32. <http://www.opengov.gr/immigration/?p=1742>

33. <https://www.kodiko.gr/nomothesia/document/873766/nomos-5038-2023>

34. [https://www.gcr.gr/media/k2/attachments/JOINT\\_STATEMENT\\_GR\\_NGOS.pdf](https://www.gcr.gr/media/k2/attachments/JOINT_STATEMENT_GR_NGOS.pdf)

35. <https://www.kodiko.gr/nomothesia/document/678034/yp.-apofasi-3063-2020>

try of Migration and Asylum in order to provide legal and other assistance to asylum seekers and migrants in the facilities where they are held, has resulted in a further restriction of civil society<sup>36</sup> and in a significant and disproportionate control of the state over the work of NGOs in the field of migration. Last but not least, the escalation of the criminalization of human rights defenders and organizations has diminished the effectiveness of civil society in the migration field and undermined the rule of law in a democracy (see “Criminalization of migration: different views of the same side” below).

Within this framework, in an incredibly cynical manner, Notis Mitarakis, Greek migration minister from 2020 to 2023, constantly denied that Greece was pushing migrants back to Turkey or preventing them from applying for asylum, while maintaining that allegations of Greek pushbacks were “part of the comprehensive fake news strategy” promoted by Turkey.<sup>37</sup> For its part, the European Commission has proposed that member states establish independent mechanisms to monitor fundamental rights and EU laws at their borders.<sup>38</sup> “The Commission expects national authorities to investigate any pushbacks and violence allegations, with a view to establishing the facts and properly follow-up any wrongdoing, if identified,” a spokesperson told *The New Humanitarian*. “We have a close dialogue with all Member States, including Greece on migration and border management.” Human rights groups have raised concerns that the mechanisms sketched out by the EU are too narrow in scope and will lack true independence from national authorities<sup>39</sup> – as was the case with a monitoring mechanism established in Croatia in 2021.<sup>40</sup> Following heavy criticism in regard to human rights violations, Greece’s National Transparency Authority (NTA) announced an in-depth investigation into claims that Greek coast guard authorities were involved in illegal pushbacks of asylum seekers.<sup>41</sup> After a three-month investigation, the NTA published a press release, and not a full report, stating that the investigation had found no evidence to support the allegations and that accusations of

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36. <https://hias.org/news/strict-new-regulations-limit-ngos-helping-refugees-in-greece/>

37. <https://www.infomigrants.net/en/post/30272/greek-migration-minister-calls-allegations-of-migrant-pushbacks-fake-news>

38. <https://fra.europa.eu/en/publication/2022/border-rights-monitoring>

39. <https://ecre.org/wp-content/uploads/2020/11/FINAL-Statement-IBMM-November-2020.pdf>

40. <https://www.amnesty.org/en/latest/news/2022/02/eu-ombudsman-finds-commission-failed-to-ensure-rights-at-croatian-border/>

41. <https://www.infomigrants.net/en/post/39535/greek-authority-finds-no-evidence-of-migrant-pushback-claims>

“informal forced returns” of asylum seekers by masked men “were not confirmed.” The delegation of the investigation to this authority called into question the government’s intention to conduct an in-depth investigation. In particular, the NTA does not have the required specialization on border issues, it does not fulfil the requirements to operate as an independent national border monitoring mechanism and its role is not enshrined in the constitution.<sup>42</sup> In light of the above, in 2022 NGOs and organizations working in the field of migration established the Recording Mechanism of Informal Forced Returns,<sup>43</sup> which constitutes a synergy between the Greek National Commission for Human Rights (GNCHR) and civil society organizations active in offering legal, medical, psychosocial and other services to TCNs. The recording mechanism aims to monitor, record and report informal forced return incidents of TCNs from Greece to other countries. It seeks to promote and consolidate respect for the principle of non-refoulement as well as to safeguard guarantees and compliance with legal procedures and to boost accountability for reported human rights violations alleged to have occurred during informal forced returns through the adoption of a standardized, transparent and scientific recording methodology. Thus, the recording mechanism seeks to contribute to increasing the credibility of reported incidents. In January 2023 the mechanism published its first interim report.<sup>44</sup> The Migration Ministry welcomed the establishment of this mechanism in a rather peculiar comment on the requirements of NGOs participating in it, in particular the prerequisite to be enrolled in the ministry’s NGO Registry.<sup>45</sup> In 2023, the elections put migration and border security under the spotlight, regardless of the voices warning of the consequences, such as facilitating far-right opinions and jeopardizing social cohesion. In particular, on 31 March 2023, Prime Minister Kyriakos Mitsotakis made the border wall extension an election pledge,<sup>46</sup> stating:

Who will stand against a neighbor who has proved that he can be very aggressive against Greece, who can also negotiate with a neighbor, under the conditions that we can really find a field of understanding,

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42. <https://www.unhcr.org/gr/en/23391-ten-points-to-guide-the-establishment-of-an-independent-and-effective-national-border-monitoring-mechanism-in-greece.html>

43. <https://www.nchr.gr/en/recording-mechanism.html>

44. [https://www.nchr.gr/images/pdf/nea\\_epikairothta/deltia\\_tupou/2023/Interim\\_Report\\_Mechanism\\_en.pdf](https://www.nchr.gr/images/pdf/nea_epikairothta/deltia_tupou/2023/Interim_Report_Mechanism_en.pdf)

45. <https://migration.gov.gr/en/scholio-grafeio-typoy-ypoyrgeioy-metanasteysis-kai-asyloy/>

46. <https://apnews.com/article/greece-border-wall-migration-election-turkey-5dbbe19c49cd07cef5066b6bd8b29d24>



always guided by international law. Just yesterday, a Syriza MEP supported an amendment asking the European Commission not to finance the Evros fence. Listen to them all ... No disapproval is needed, just judgment and a right choice for the next day is needed. With or without European money, the fence on the Evros will be finished.

Border protection became part of the election campaign, reinforcing the notion of the hybrid threat. The switch of all the political parties to a more conservative approach to the securitization of the borders during the election period, in conjunction with the very limited reference to integration strategies or strategies to effectively implement the migration flows in line with EU standards and law, became emblematic. A few days before the elections, on 19 May 2023, a video published by the *New York Times* pointed to a slew of Greek, EU and international law violations on the borders.<sup>47</sup> The coast guard vessel shown in the footage was financed mostly by EU funds, a fact that could also open up the country to investigations by EU authorities. The European Commission formally asked Greece to hold an investigation: “My services have sent a formal request to Greek authorities that this incident be fully and independently investigated,” European Commissioner for Home Affairs Ylva Johansson said on Twitter.<sup>48</sup> “The European Commission stands ready to take formal steps, as appropriate,” she added. Notably, Prime Minister Mitsotakis, in a briefing with the *Times* just ahead of the elections, claimed his approach had won his government “reasonable goodwill” with the EU and defended his migration policies as “tough but fair”. Amid this pressure and following negotiations with the European Commission, in September 2023 the Fundamental Rights Officer (FRO) at the Ministry of Migration and Asylum launched a complaints mechanism to handle and examine allegations of alleged human rights violations during entry to Greece, in reception centres and during asylum procedures.<sup>49</sup> The FRO transfers the complaints, if declared admissible, to the National Transparency Authority, or other to competent authorities, in accordance with the applicable legislation and he is kept informed of the progress of the complaints. It remains to be seen whether this mechanism will guarantee the “independent and effective monitoring of violations of the human rights of refugees and migrants”.

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47. <https://www.nytimes.com/2023/05/19/world/europe/greece-migrants-abandoned.html>

48. <https://twitter.com/YlvaJohansson/status/1660581189487296514>

49. <https://migration.gov.gr/en/fro-complaints/>

# The practice of pushbacks and collective expulsions of migrants, refugees and asylum seekers: The core of the Greek “migration strategy”

For the purposes of the present analysis and taking into consideration that there is no internationally agreed definition of the term “pushbacks” in the area of migration, this study will rely on the one proposed by the special rapporteur on the human rights of migrants at the Office of the United Nations High Commissioner for Human Rights.<sup>50</sup>

“Pushbacks” [are] various measures taken by States, sometimes involving third countries or non-State actors, which result in migrants, including asylum seekers, being summarily forced back, without an individual assessment of their human rights protection needs, to the country or territory, or to sea, whether it be territorial waters or international waters, from where they attempted to cross or crossed an international border. Pushbacks generally involve practices relating to the removal of non-nationals from the territory of a State, such as “arbitrary expulsion” or “collective expulsion”, which are established legal notions under international law. A demonstration of the arbitrariness of such practices is that pushbacks may also entail the summary removal of non-national from a country to a third country other than a previous country of transit or the country of origin ... Pushbacks deny migrants their fundamental rights by depriving them of access to protection defined in international and national law, as well as procedural safeguards. Pushback practices are variously carried out by State actors (regular and

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50. <https://www.ohchr.org/en/special-procedures/sr-migrants/report-means-address-human-rights-impact-pushbacks-migrants-land-and-sea>

border police, specialized units, and military and security agents), as well as in cooperation with non-State actors (unidentified paramilitaries, carriers, transport personnel and contractors, operators of commercial vessels, private security personnel and others) acting with the authorization, support or acquiescence of the State. Some States conduct pushback operations with the acquiescence, and sometimes the cooperation, of third States to which migrants are forcibly removed; elsewhere, pushbacks are carried out secretly, giving rise to disputes regarding responsibility, as well as to political conflict ... In the absence of an individualized assessment for each migrant concerned and other procedural safeguards, pushbacks result in human rights violations incompatible with States' obligations under international human rights law, in particular, the prohibition of collective expulsion and refoulement.

Despite the fact that Greece has not as yet acceded to the 1963 Protocol No. 4 to the European Convention for Human Rights (ECHR),<sup>51</sup> which, *inter alia*, proscribes the collective expulsion of aliens, the latter are also prohibited by both the EU Charter of Fundamental Rights<sup>52</sup> and the ECHR.<sup>53</sup> Refoulement – the act of forcibly returning someone to a country where they risk being tortured or could face other serious human rights violations – is prohibited under a number of EU laws and codes<sup>54</sup> as well as the UN's 1951 Refugee Convention.<sup>55</sup>

In this context there is no legal basis for returning irregular migrants to Turkey prior to their identification/registration without an individualized assessment; therefore, the practice of “pushbacks” is widespread and long standing. A historical review of constant allegations regarding pushbacks and collective expulsions that deprive TCNs from access to their rights is attempted below (see Appendix), demonstrating that pushbacks entail serious violations of human rights and that the scale of its operations is now official EU policy. Various reports confirm that such operations have always been a standard practice that aim to put barriers on accessing the territory of the EU for people seeking international protection, and present a specific pattern that is widespread and continuous, implying state participation in and tolerance of these illegal practices on the EU's borders. The increase in recording in recent years has resulted in the disclosure of these

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51. <https://www.refworld.org/docid/4ecc9462.html>

52. [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf)

53. [https://www.echr.coe.int/documents/d/echr/convention\\_eng](https://www.echr.coe.int/documents/d/echr/convention_eng)

54. [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-coe-2020-european-law-land-borders\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-coe-2020-european-law-land-borders_en.pdf)

55. <https://www.unhcr.org/en-us/1951-refugee-convention.html>

violations while many cases have been brought before the courts. The reports highlight that the practice of pushbacks and collective expulsions at Greece's land and sea borders with Turkey is a long-standing practice outside of any legal framework and it has been subject to impunity over the years. These illegal practices, which display common patterns, are widespread and continuous. This pattern, in conjunction with the description of the uniforms and languages implying state and EU participation and/or tolerance, creates concerns regarding the level of the protection of human rights in Greece. Over the years, pushbacks have remained "invisible" to the authorities, who deny they conduct and tolerate such illegal operations at the borders. Moreover, following the February 2020 incidents,<sup>56</sup> state authorities enforced the securitization and militarization of the borders and strengthened the rhetoric of "a hybrid threat" and border security. At the same time, EU bodies urged Greece to end pushbacks while allocating more funds to securitization and militarization. TCNs seeking international protection are scorned, arrested, humiliated and their rights are violated, while the rule of law and social cohesion is threatened. The creation of an "invisible enemy" and the vague and false dilemma of having to choose between border security and the reception of persons seeking international protection is a very peculiar condition for Greece. Covid restrictions, poverty, elections and the, far-right threat resulted in the legalization of pushbacks and amounted to the systematic violation of human rights as well as of domestic, EU and international laws and conventions. At the same time, they have acted as a counterweight to solidarity by increasing hate speech and racist violence incidents. Pushbacks became a de facto policy throughout the country despite the fact that in recent years the reports providing documentation on systematic pushback practices at Greece's land and sea borders have increased.<sup>57</sup> Investigations by independent authorities appointed by the government have failed to do justice to the victims, raising questions about transparency, accountability and the rule of law. Illegal pushbacks at the borders have closed any legal and safe route for people on the move, necessitating the use of smuggling networks to cross borders. The EU and member states claim that all policies they have initiated, such as the EU–Turkey Statement in 2016, are aimed at stopping the smugglers. However, the statement at issue has resulted in the increased militarization of the borders and the deterrence of migration to Europe – making for even more precarious journeys for people crossing borders.

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56. [https://borderviolence.eu/app/uploads/Report-on-Greece\\_March-2020.pdf](https://borderviolence.eu/app/uploads/Report-on-Greece_March-2020.pdf)

57. <https://forensic-architecture.org/location/greece>



# The European Agenda on Migration in the murky waters of anti-immigration

The EU's policy on the migration situation is constantly changing and politically motivated, allowing scope for further violations of human rights, including pushbacks and collective expulsions. In response to the increasing migration numbers to the EU after 2011 and the well-established need to reform the Dublin Regulation, the European Commission reacted with temporary measures and ad hoc legislative proposals. These measures included the reinforcement of controls the reinforcement of controls at the internal Schengen borders aiming to restrict access to the EU borders and subsequently to international protection. The already contested Common European Asylum System (CEAS) was challenged by the large number of TCNs arriving in the EU in 2015. Especially in Greece's case, in 2011 the ECtHR had already identified and condemned malfunctions in the asylum and reception system. The Asylum and Reception Services, established in accordance with the 2011 judgment, were struggling to become operational in 2015, when there was an increase in arrivals. In May 2015, the Commission presented its European Agenda on Migration,<sup>58</sup> introducing measures aiming to tackle the migration flows, including the new "Hotspot" approach,<sup>59</sup> the mobilization of an additional €60 million in emergency funding, and a temporary relocation scheme.<sup>60</sup> However, the emergency relocation mechanisms, in conjunction with the hotspot approach, resulted in leaving people stranded on the islands for several months and raised issues concerning the right to liberty and access to asylum under the international human rights framework.<sup>61</sup> In particular, the emergency relocation mechanism experienced a number of

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58. [https://home-affairs.ec.europa.eu/system/files/2020-09/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](https://home-affairs.ec.europa.eu/system/files/2020-09/communication_on_the_european_agenda_on_migration_en.pdf)

59. <https://www.statewatch.org/media/documents/news/2015/jul/eu-com-hotspots.pdf>

60. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015D1523>

61. <https://blogs.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2018/04/eu-hotspot-0>

operational challenges, including the refusal of many countries to implement the relocation scheme, and failed to achieve its goal. Following the “closure of the Balkan route” in February 2016,<sup>62</sup> the EU policy towards migration flows shifted. The EU–Turkey Statement in March 2016,<sup>63</sup> and the subsequent restrictions on movement imposed for its implementation created a lasting humanitarian crisis on the Greek islands.<sup>64</sup> In 2016, refugees and migrants were stuck in inhumane conditions in the islands<sup>65</sup> and by 2017 the situation became unbearable. The member states, which are divided between North and South, but also East and West, have proved themselves incapable of agreeing on a common position concerning the relocation mechanism proposed by the Commission for solidarity measures.<sup>66</sup> In May 2016, the Commission launched an overall reform of the CEAS,<sup>67</sup> which included a first package of reforms aimed at establishing a sustainable and fair Dublin system, reinforcing the Eurodac system and establishing a genuine European Agency for Asylum.<sup>68</sup> In addition, the Commission introduced the very concerning obligation for member states to apply the “safe third country”, “first country of asylum” and “safe country of origin” concepts<sup>69</sup> and tabled a proposal for an EU Resettlement Framework with the aim to “provide a common approach to safe and legal arrival in the Union for third-country nationals in need of international protection”.<sup>70</sup> Besides the fact that the concept of Turkey as a safe third country is a very contentious issue,<sup>71</sup> the president of the European Commission acknowledged that the agreement was fragile and could fail,<sup>72</sup> which is exactly what happened, due to Turkey’s threats to unilaterally cancel the deal amid a diplomatic spat with the EU. In such a

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- 62. <https://www.unhcr.org/news/news-releases/refugees-and-migrants-face-heightened-risks-while-trying-reach-europe-unhcr> and [https://www.asgi.it/wp-content/uploads/2020/09/The-Balkan-Route-Report-2020-by\\_-Rivolti-ai-Balcani\\_-italian-network.pdf](https://www.asgi.it/wp-content/uploads/2020/09/The-Balkan-Route-Report-2020-by_-Rivolti-ai-Balcani_-italian-network.pdf)
  - 63. <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>
  - 64. <https://rsaegean.org/en/stophthetoxicdeal-turkey-as-a-safe-third-country/>
  - 65. <https://www.theguardian.com/world/2016/oct/03/vulnerable-refugees-to-be-moved-from-squalid-camps-on-greek-islands>
  - 66. <https://www.unhcr.org/news/briefing-notes/situation-greek-islands-still-grim-despite-speeded-transfers>
  - 67. [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_16\\_2433](https://ec.europa.eu/commission/presscorner/detail/en/IP_16_2433)
  - 68. [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_16\\_1620](https://ec.europa.eu/commission/presscorner/detail/en/IP_16_1620)
  - 69. <https://ecre.org/european-commission-new-package-of-reforms-of-the-common-european-asylum-system/>
  - 70. [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_16\\_2434](https://ec.europa.eu/commission/presscorner/detail/en/IP_16_2434)
  - 71. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680699e93](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680699e93)
  - 72. [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_15\\_5614](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_15_5614)

political environment, in February 2020 Turkish President Recep Tayyip Erdoğan opened his country's borders,<sup>73</sup> encouraging thousands of refugees to enter Europe. Greece closed its border and suspended all asylum applications initially for one month and finally until 31 March 2020,<sup>74</sup> while reports of illegal actions at the borders to prevent individuals' access to asylum increased.<sup>75</sup> In addition, the fire that destroyed the Moria refugee camp in Lesbos on 8 September 2020 put more pressure on the European Commission.<sup>76</sup> In light of the above and after a number of postponements and lengthy negotiations, on 23 September the Commission presented the new Pact on Migration and Asylum,<sup>77</sup> which included the asylum and return reforms proposed by the Commission in 2016 and 2018, the negotiations on which had not been concluded in many cases (Qualification Directive, Reception Conditions Directive, EU Asylum Agency Regulation, Union Resettlement Framework and Return Directive). In this context the Dublin Regulation was redesigned as part of the Asylum and Migration Management Regulation.<sup>78</sup> The Commission's proposed alternative is rather a compromise that satisfies the part of the more nationalist approach of the Visegrád Group (V4),<sup>79</sup> as the Commission adopts the concept of flexible or effective solidarity while criticising the member states for remaining divided about providing asylum.<sup>80</sup> The Commission also proposed amendments to its 2016 proposal for an Asylum Procedure Regulation and to the Recast Eurodac Regulation. The amended proposal documents adopted on 23 September,<sup>81</sup> including the Asylum Procedures Regulation (APR), proved to be significantly below initial expectations as they failed to develop legal pathways to Europe and invested in deterrence, closed borders, detention, restriction of movement, limited solidarity mechanisms and returns without providing safeguards for the fundamental human rights and for the legal rights

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73. <https://www.nytimes.com/2020/02/29/world/europe/turkey-migrants-eu.html>

74. <https://www.nytimes.com/2020/03/01/world/europe/greece-migrants-border-turkey.html>

75. <https://www.hrw.org/news/2020/07/16/greece-investigate-pushbacks-collective-expulsions>

76. <https://www.politico.eu/article/commission-germany-push-forward-migration-pact-after-moria-lesvos-refugee-camp-fire/>

77. [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1706](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1706)

78. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:610:FIN>

79. <https://www.visegradgroup.eu/>

80. <https://eumigrationlawblog.eu/corrective-allocation-or-effective-solidarity-the-slovak-presidency-non-paper-on-the-revision-of-the-dublin-system/>

81. [https://commission.europa.eu/publications/migration-and-asylum-package-new-pact-migration-and-asylum-documents-adopted-23-september-2020\\_en#files](https://commission.europa.eu/publications/migration-and-asylum-package-new-pact-migration-and-asylum-documents-adopted-23-september-2020_en#files)



of persons seeking international protection. Moreover, this fragmented legal framework, *inter alia*, builds on the Recast Return Directive,<sup>82</sup> linking return policies to asylum policies within the Pact on Migration and Asylum. In particular, it focuses on the return border procedure proposing that member states issue a return decision as part of or in a separate act but, at the same time, and together with the decision rejecting the application for international protection in the border procedures (Art. 35a, Recital 31a). In addition, it inserts return-related provisions in the new legislative proposals on asylum and treats asylum seekers as detainees by linking the detention of asylum seekers to pre-removal detention during border procedures (recital 40(i) and Art. 41A(5)). In this context, it limits the procedural guarantees by restricting the access to the asylum procedures and by reducing the time period for appeal, while it allows, and in some cases, obliges member states to examine “asylum claims with low chances of being accepted rapidly without requiring legal entry to the Member State’s territory”. In this way, it introduces a return model based on a screening procedure and a two-phased border procedure.<sup>83</sup> This return model is designed to prevent entry into the EU and to accelerate returns at the borders without ensuring the monitoring of border activities and effective legal complaint mechanisms. Simultaneously, it jeopardizes the principle of non-refoulement, gives up on the demand for mandatory relocation of asylum seekers and puts more flexible measures such as the possibility of taking over the responsibility to return migrants, in so-called “return sponsorships”.

On 29 September 2021, the European Commission published a detailed Report on Migration and Asylum,<sup>84</sup> which showed how little progress had been made, while the EU Commissioner announced a new delay on the deal for a Pact on Migration.<sup>85</sup> Around the same time and within this political and legal environment, the Commission concluded the negotiations on the next Multiannual Financial Framework (MFF) for the period 2021–2027 by setting priorities in the field of migration. The funding priorities and the fragmented and incoherent funding allocations highlight the broader political dynamic. Although the overall amount for commitments was increased significantly compared to the MFF 2014–2020, the increase

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82. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52018PC0634>

83. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:612:FIN>

84. [https://home-affairs.ec.europa.eu/news/new-pact-migration-and-asylum-reporting-developments-and-stepping-fight-against-migrant-exploitation-2021-09-29\\_en](https://home-affairs.ec.europa.eu/news/new-pact-migration-and-asylum-reporting-developments-and-stepping-fight-against-migrant-exploitation-2021-09-29_en)

85. [https://www.euractiv.com/section/politics/short\\_news/eu-commissioner-deal-on-migration-pact-expected-after-french-elections/](https://www.euractiv.com/section/politics/short_news/eu-commissioner-deal-on-migration-pact-expected-after-french-elections/)

is focused on military spending, further externalization of the EU's borders while underpinning the expansion of Frontex. Internal security, border and migration budgets were also increased substantially through the Integrated Border Management Fund (IBMF) and the Border Management and Visa Instrument (BMVI).<sup>86</sup> The IBMF comprises two separate instruments, which concern funding for border controls and visa processing (the "border and visa" fund, worth some €5.2bn) and customs control equipment (worth just over €1bn). Funding for the BMVI, the main scope of which is "to ensure strong and effective European integrated border management at the external borders", presented the highest increase, going up 131% to €6.24bn, while the Asylum and Migration Fund was increased by 43% to €9.9bn,<sup>87</sup> and the Internal Security Fund by 90% to €1.9bn.<sup>88</sup> Notable increases were also made to the European Defence Fund and the European Peace Facility.<sup>89</sup> The former has a budget of €8bn, a massive 1,256% increase on its predecessor. The latter has a total budget of €5.7bn, an increase of 119% on its predecessor. Despite this substantial increase in spending, the transparency, accountability and democratic input will remain strictly limited, particularly in the case of the new military funds; the European Peace Facility is not funded by the EU budget and thus remains excluded from standard control methods.<sup>90</sup> Priorities for the European Defence Fund are drawn up by a committee made up of representatives of the member states and the European Defence Agency, with no role for national parliaments or the European Parliament. Elected representatives and civil society groups are also generally excluded from having a say over the priorities of the other budgets examined by the report, with the exception of the Internal Security Fund: the legislation establishing the budget says the European Commission "shall endeavour to take into account" its recommendations for certain types of spending. Greece's budget allocation under the BMVI is the highest among EU member states.

The above underlines once again the doublespeak of EU bodies which, on the one hand, point the finger at Greece and condemn the policy applied at the Greek and European external borders (violations of human rights and unlawful pushbacks) and, on the other, carry out projects initiated and financed by the EU Commission to securitize the borders, to increase the controls at the borders, to enforce border management, to purchase surveillance and weapon systems and to reinforce human resources on the

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86. <https://eubudgets.tni.org/section4/#2>

87. <https://eubudgets.tni.org/section4/#5>

88. <https://eubudgets.tni.org/section4/#1>

89. <https://eubudgets.tni.org/section4/#7>

90. <https://eubudgets.tni.org/section4/#8>

borders, including Frontex. This way, they leave no space for safe and legal routes to Europe, pushing people on the move into taking longer and more risky routes in order to avoid Greece and, in practice, sentencing them to certain death. Another very concerning aspect regarding the funding, besides the total allocation for migration and asylum policies, is also the lack of transparency. An investigation by Solomon reveals a telling example of such a lack of transparency, highlighting that the Migration Ministry spent €1.7m in secret funds before 2021 without ever informing Parliament and that documents related to the specific expenses were destroyed within six months.<sup>91</sup> In June 2023, Margaritis Schinas, vice-president of the Commission, during a meeting of the LIBE Committee, remarked on the secret fund thus: “Is there a secret fund? I don’t know and it would surprise me if there was, honestly.”

Meanwhile, amid the fragile negotiations of the New Pact on Migration and Asylum, rapid policy developments resulted in further delays in concluding the Pact and strengthened the notion of securitization and militarization at the borders. The main developments can be summarized as follows:

- a) The Taliban’s takeover of Afghanistan on 15 August 2021<sup>92</sup> brought new dimensions to the political crisis and further flows of people seeking asylum in Europe. The UNHCR called on states to suspend the forcible return of nationals and former habitual residents of Afghanistan,<sup>93</sup> including those who have had their asylum claims rejected.
- b) In June 2021, the number of people entering EU territory from Belarus began to increase. The humanitarian emergency reached its peak in November, when the Belarusian security forces escorted thousands of asylum seekers to the Polish border in an escalation of the crisis. Witnesses told the *Guardian* how Belarusian troops gathered groups of up to 50 people and cut the barbed wire to allow them to cross.<sup>94</sup> The Lithuanian foreign minister said that refugees crossing the border from Belarus are “a hybrid weapon being used against the European Union” to try to force the EU to drop sanctions against Belarus introduced after Alexander Lukashenko’s election “victory” the previ-

91. <https://wearesolomon.com/mag/focus-area/accountability/migration-ministry-secret-funds-follow-up/>

92. <https://eu.boell.org/en/2021/08/27/taliban-are-back-control-what-next-afghan-migration-and-outside-country>

93. <https://www.refworld.org/pdfid/611a4c5c4.pdf>

94. <https://www.theguardian.com/global-development/2022/feb/08/in-limbo-refugees-left-on-belarusian-polish-border-eu-frontier-photo-essay>

ous year, and the state's repression of protests that followed.<sup>95</sup> Most of the asylum seekers were caught, and illegally and violently pushed back to Belarus by Polish border guards.<sup>96</sup> EU Commission Vice President Margaritis Schinas accused Belarusian leader Lukashenko of “weaponizing human suffering” to attack the EU by facilitating a standoff between migrants and Polish authorities at the Polish-Belarusian border.<sup>97</sup> This pattern is identical or similar to the one that occurred in February 2020 in Evros, Greece, when the Turkish government announced that it would allow refugees to cross the border into Greece and Bulgaria, a move that led to shocking violence from the Greek and Bulgarian governments against those attempting to make the crossing and a wholesale abandonment of EU and international refugee law, with the full backing of EU institutions and other member states.<sup>98</sup>

- c) In summer 2021, thousands of people began arriving at Lithuania's borders with Belarus with the intention of seeking asylum in the EU.<sup>99</sup> Lithuania began to use pushbacks and other methods, claiming that the influx in migrants was a threat to its security. The EU Court of Justice in Luxembourg condemned Lithuania for its decision to detain the asylum seeker known as MA after he crossed the Lithuanian border, saying that the state denying the applicant's right to asylum violated EU law, including the bloc's Fundamental Rights Charter.<sup>100</sup>
- d) On 24 February 2022, Russia initiated a war of aggression against Ukraine.<sup>101</sup> As per March 2023 5,008,482 refugees from Ukraine were registered for temporary protection or similar national protection schemes in Europe.<sup>102</sup> Notably, in this case the EU demonstrated solidarity towards Ukraine asylum seekers, welcoming them in a way that was reminiscent of that of Syrian refugees in 2015.<sup>103</sup>

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95. <https://www.statewatch.org/observatories/immigration-and-asylum-in-europe/2021/lithuanian-fm-belarus-using-refugees-as-hybrid-weapon-against-eu/>

96. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

97. <https://edition.cnn.com/videos/world/2021/11/10/poland-belarus-border-migrants-margaritis-schinas-intv-anderson-ctw-intl-ldn-vpx.cnn>

98. <https://www.statewatch.org/analyses/2020/eu-greece-turkey-crisis-not-averted-security-policies-cannot-solve-a-humanitarian-problem-now-or-in-the-long-term/>

99. <https://www.amnesty.org/en/documents/eur53/5735/2022/en/>

100. [https://www.euractiv.com/section/politics/short\\_news/eu-court-slams-lithuanias-belarus-migrant-pushbacks/](https://www.euractiv.com/section/politics/short_news/eu-court-slams-lithuanias-belarus-migrant-pushbacks/)

101. <https://www.ohchr.org/en/news/2022/05/ukraine-civilian-casualty-update-27-may-2022>

102. <https://data.unhcr.org/en/situations/ukraine>

103. <https://www.bbc.com/news/world-europe-35027951>

Following these developments, on 4 March 2022 the EU Council unanimously activated the Temporary Protection Directive (TPD) for the first time since it was adopted in 2001.<sup>104</sup> The EU also adopted further border checks and a set of Commission Guidelines on visa restrictions in relation to Russian applicants.<sup>105</sup> Poland,<sup>106</sup> Finland<sup>107</sup> and Latvia<sup>108</sup> closed the EU's external border and the Schengen area to Russian citizens. On 4 June 2022, the Council adopted the revision of the Schengen Code defining an incident of instrumentalised migration as “a situation where a third country instigates irregular migratory flows into the Union by actively encouraging or facilitating the movement of TCNs to the external borders, onto or from within its territory and then onwards to those external borders”.<sup>109</sup> The revision states that such actions need to be “indicative of an intention of a third country to destabilize the Union or a Member State, where the nature of such actions is liable to put at risk essential State functions, including its territorial integrity, the maintenance of law and order or the safeguard of its national security”. This revision creates an ever-more hostile environment and restricts human rights since it allows member states to limit the number of border crossing points as well as their opening hours when confronted with the instrumentalization of migration, and has punitive effects aiming to address the increased threat by increasing “the resources and technical means to prevent an unauthorised crossing of the border”. There is no reference though to the obligation to save lives or protect people. At the same time, the recording and documentation of violent pushbacks of asylum seekers from the Middle East, Africa, Syria and Afghanistan, even with state and EU participation, continued, showing it to be a legalized and normal situation at the borders. It has to admitted that the high number of Ukrainians applying for international protection, in conjunction with the inundated asylum and reception systems and EU member states' economic problems, have pushed systems to their limits and served to dampen the welcome policy towards Ukrainians, another reminder of how migration policy has changed since 2016. Although the

104. [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection_en)

105. [https://home-affairs.ec.europa.eu/system/files/2022-09/communication-providing-guidelines-visa-issuance-relation-russian-applicants\\_en.pdf](https://home-affairs.ec.europa.eu/system/files/2022-09/communication-providing-guidelines-visa-issuance-relation-russian-applicants_en.pdf)

106. <https://www.gov.pl/web/eu/joint-statement-of-the-prime-ministers-of-estonia-latvia-lithuania-and-poland>

107. [https://um.fi/current-affairs/-/asset\\_publisher/gc654PySnjTX/content/suomirajoittaa-voimakkaasti-venalaisten-matkustamista-turismitarikoituksessa-suomeen-valtionuuvoston-periaatepaatoksella](https://um.fi/current-affairs/-/asset_publisher/gc654PySnjTX/content/suomirajoittaa-voimakkaasti-venalaisten-matkustamista-turismitarikoituksessa-suomeen-valtionuuvoston-periaatepaatoksella)

108. <https://www.rs.gov.lv/en/article/entry-citizens-russian-federation-restricted-external-border>

109. <https://data.consilium.europa.eu/doc/document/ST-9937-2022-INIT/en/pdf>

Ukraine crisis has shown that a different political approach based on solidarity is possible, short-term solutions are not sufficient or effective and the transition to a more durable scheme is a looming challenge.

In light of the above, very limited progress has been made towards the principle of shared responsibility and protection from a rapid return without safeguards. The reforms do little to address the key challenges of the unfair Dublin rules on responsibility sharing or to tackle the lack of compliance, giving succour to member states as they refuse to apply the law. From the launch of the pact, the working assumption has been that it will be quite difficult to get support from all member states as the same blocking minorities of 2016 continue to put pressure on the procedure. The V4 members are openly hostile to a common EU asylum policy and insist on prevention and securitization policies, thus blocking the process furthermore.

On 8 March 2023, in a joint statement, the interior and migration ministers of Austria, Belgium, Denmark, France, Germany, Switzerland and the Netherlands expressed their concerns on the current state of the Common European Asylum System (CEAS) and in particular of the Dublin system.<sup>110</sup> They reiterated that these negotiations should lead to a future-proof and workable system with clear criteria and balanced mechanisms for determining the member state responsible for examining an application for international protection.

On 9 March 2023, Swedish Migration Minister Maria Malmer Stenergard, who chaired the rotating Council presidency, said that ministers were “committed to making substantial progress” on laws dealing with asylum and migration management and asylum procedure.<sup>111</sup> “Our aim is to agree a council position at our next meeting in June with a view to opening negotiations with the European Parliament,” she added. Ylva Johansson, the European Commissioner for Home Affairs, added that there was “strong commitment from almost all ministers to adopt the whole pact before the end of this mandate”. Johansson said that the Commission would present a European integrated border management strategy the following week to address one of the main bottlenecks that have made it easy for asylum seekers to submit applications in more than one state.

In this context, and as the time is running out for legislation to be passed before the end of the mandates of the Commission and Parliament in

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110. <https://www.rijksoverheid.nl/documenten/publicaties/2023/03/08/joint-statement>

111. <https://www.euractiv.com/section/migration/news/migration-ministers-promise-to-agree-asylum-bill-stance-by-june/>

2024, the main challenges in the adoption of the regulation remained: (a) eleven legislative proposals remained outstanding, with limited progress having been made on many of them; (b) the planned change in the council presidency from Sweden, Spain and Belgium to Hungary, Poland and Denmark; (c) the European Parliament and the EU Council set out on 7 September 2022 a joint roadmap on the organization, coordination and implementation of the timeline for the negotiations between the co-legislators on the CEAS and the new EU Pact on Migration and Asylum,<sup>112</sup> with the aim to finish negotiating all the asylum and migration laws currently on the table by February 2024 and to have them enter into force by April 2024 at the latest.<sup>113</sup> The agreed roadmap comprises the following legislative proposals: Regulation for Asylum and Migration Management,<sup>114</sup> Regulation for Crisis and force majeure,<sup>115</sup> Screening Regulation,<sup>116</sup> Qualification Regulation,<sup>117</sup> Reception Conditions Directive (recast),<sup>118</sup> Amended Asylum Procedures Regulation,<sup>119</sup> Return Directive (recast),<sup>120</sup> Amended EURODAC Regulation,<sup>121</sup> and Union Resettlement Framework Regulation.<sup>122</sup> It also includes the reform of two related proposals, the Schengen Border Code (SBC) and the Instrumentalization Regulation.

In light of the above, in March 2023, the Civil Liberties Committee approved

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112. <https://www.europarl.europa.eu/resources/library/media/20220907RES39903/20220907RES39903.pdf>

113. <https://www.statewatch.org/news/2022/july/eu-tracking-the-pact-parliament-and-council-want-all-new-asylum-and-migration-laws-approved-by-spring-2024/>

114. [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/0279\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/0279(COD)&l=en)

115. [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/0277\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/0277(COD)&l=en)

116. [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/0278\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/0278(COD)&l=en)

117. [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0223\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0223(COD)&l=en)

118. [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0222\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0222(COD)&l=en)

119. [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0224\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0224(COD)&l=en)

120. [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2018/0329\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2018/0329(COD)&l=en)

121. [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0132\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0132(COD)&l=en)

122. [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0225\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0225(COD)&l=en)

its negotiating positions on several legislative reports,<sup>123</sup> namely on new screening procedures,<sup>124</sup> rules on asylum and migration management, and crisis response<sup>125</sup> as well as long-term residents.<sup>126</sup> The plenary agreed in April 2023 to open talks with member states on several migration and asylum policy files, particularly the screening of TCNs, asylum and migration management, crisis situation and the long-term resident directive.<sup>127</sup> Negotiations on the Crisis Regulation proposal have highlighted the very alarming provisions under which member states could derogate from parts of EU law in relation to registration timelines (up to 4 weeks) (Article 6) and length of border procedure (additional 4 weeks, so 16 weeks in total) (Article 4 and 5) in times of crisis. The latter means that when a country has processed the set number of people in the border procedure, then it will be allowed to derogate from the law. Greece and Italy, having external borders, support such an agreement although the latter could result in undermining the rule of law. Another contradictory aspect remains the notion of “secondary movement” and the pressure of the northern member states to deal with it. Thus, they suggest the concept of “adequate capacity” – a very tricky and dangerous concept for asylum seekers rights since it sets a numerical target with no reference to the characteristics of arrivals or the nature of the cases. The latter represents a completely different logic to the one in the pact proposals where the mandatory use of the border procedure was intended for people from places where the average protection rate is 20% or less.

On 8 June 2023 the EU Council announced that they had reached an agreement on key asylum and migration laws.<sup>128</sup> In particular, it agreed on a negotiating position concerning the asylum procedure regulation and the asylum and migration management regulation foreseen to replace Dublin III. This position will form the basis of the negotiations between the Council presidency and the European Parliament. As was expected, following relevant leaks, the asylum regulation expands the use of border procedures, making them mandatory for people from countries where the protection rate is 20% or less. The latter means more people in detention centres at the external borders and an increased risk of pushbacks. Regret-

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123. [https://www.europarl.europa.eu/cmsdata/267562/Vote%20results\\_28%20March.pdf](https://www.europarl.europa.eu/cmsdata/267562/Vote%20results_28%20March.pdf)

124. <https://www.europarl.europa.eu/news/en/press-room/20230327IPR78519>

125. <https://www.europarl.europa.eu/news/en/press-room/20230327IPR78520>

126. <https://www.europarl.europa.eu/news/en/press-room/20230327IPR78518>

127. <https://www.europarl.europa.eu/news/en/press-room/20230419IPR80906>

128. <https://www.consilium.europa.eu/en/press/press-releases/2023/06/08/migration-policy-council-reaches-agreement-on-key-asylum-and-migration-laws/>



tably, the rules on responsibility remain as under Dublin, while the vague notion of “safe third concept” remains a member-state responsibility to be determined by national law. Although a solidarity mechanism has been included in a mandatory manner, it is flexible. Member states could contribute in other ways instead of assuming responsibility for people, for example through capacity-building and other supports or financial contributions. This proposed solidarity mechanism will put more pressure on countries with external borders and limit the legal pathways to access asylum procedures. The fact that it took several session breaks to convince the last recalcitrant countries, such as Spain, Greece and Italy, to support the political agreement is indicative of the difficulties in the negotiations.<sup>129</sup> The Med5 countries (Italy, Cyprus, Greece, Malta and Spain) gained very little and had many reasons to oppose this position. Finally, they agreed to manage the border procedures without an efficient solidarity mechanism (flexible relocation) and with the above malfunctions, raising questions whether they gained advantages in return.

The developments have moved even faster in the attempts to hinder the activities of search and rescue (SAR) organizations and, subsequently, to prevent persons from applying for international protection at EU borders. In May 2023, Statewatch leaked a draft European Commission roadmap towards a “European Framework for Operational Cooperation on Search and Rescue in the Mediterranean Sea”.<sup>130</sup> The draft roadmap aims at the “standardisation/convergence of registration and certification rules on private vessels carrying out SAR as their predominant activity”. The draft roadmap raises many concerns.<sup>131</sup> In particular, the responsibilities of states to coordinate and carry out SAR are very limited. In addition, the SAR deliverables do not include many concrete commitments that would contribute to states actually meeting their SAR responsibilities, despite the flagrant refusal of certain states to do so. There is also no mention of the contentious issue of disembarkation or the urgent need to have SAR managed under the auspices of the EU, thus allowing also the involvement of non-coastal states. On 4 October 2023, shortly before completion of this analysis, the European Council announced that EU member states’ representatives had reached an agreement on the final component of a common

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129. [https://www.lemonde.fr/en/international/article/2023/06/11/eu27-finally-reach-agreement-on-migration-policy-reform\\_6030837\\_4.html](https://www.lemonde.fr/en/international/article/2023/06/11/eu27-finally-reach-agreement-on-migration-policy-reform_6030837_4.html)

130. <https://www.statewatch.org/news/2023/may/european-commission-wants-common-rules-on-registration-and-certification-for-mediterranean-search-and-rescue-organisations/>

131. <https://ecre.org/editorial-sar-draft-roadmap-state-responsibility-absent/>

European asylum and migration policy.<sup>132</sup> At a meeting of the Council's permanent representatives committee, member states sealed their negotiating mandate on a regulation on crisis situations, including the instrumentalization of migration, and force majeure in the field of migration and asylum. This position will form the basis of negotiations between the Council presidency and the European Parliament. The agreement was reached through a qualified majority, with Hungary and Poland vetoing and Austria, the Czech Republic and Slovakia abstaining.<sup>133</sup>

Taking the above into consideration, there can be little optimism regarding either the future of the Common European Asylum System since the new pact allows member states to derogate from EU law at will and in periods of "crisis" or regarding the solidarity notion in the EU. Member states, too, seem afraid of secondary movement and want to also avoid any possible enforcement of Dublin. Without legal routes and fair and effective procedures at the EU borders, detention will increase, creating horrible situations at the borders and resulting in further violent and illegal expulsions. Smugglers will follow more complex and longer journeys, charging higher fees and risking lives even more. The essential requirement of member-state solidarity is not reflected in the wording, excluding in practice people on the move from accessing protection in Europe.

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132. <https://www.consilium.europa.eu/da/press/press-releases/2023/10/04/migration-policy-council-agrees-mandate-on-eu-law-dealing-with-crisis-situations/>

133. <https://uk.finance.yahoo.com/news/breakthrough-eu-countries-agree-rules-110209027.html>



# Criminalization of migration: Different views of the same side

In recent years in the migration field, non-governmental organizations (NGOs) and international organizations have been invited to address the weaknesses in the state's capacity in regards to humanitarian and legal protection towards refugees and migrants. Many civil society organizations have provided support to people on the mainland, at hotspots, camps, reception and detention centres, while they advocate in order to address gaps in services and to change the mentality towards this population. Some of these organizations have been involved with search and rescue at sea. The relations between state authorities and NGOs/organizations have experienced several ups and downs during this time. On the one hand structural problems and the complexity of the mandates in the field, and the unwillingness on the part of the state to define standard operational procedures, responsibilities and obligations among actors in a fair and effective manner according to EU standards, and, on the other, the mandate of NGOs/organizations to protect fundamental rights, have strained their relationship and coordination. Initially, when the migrant flows increased in 2015, the state treated NGOs and organizations as allies in dealing with the overwhelming situation. The switch in migration policy to a strict securitization and militarization of borders, in which the migrant is designated as a "hybrid threat", coincided with the shift in the hardening of how the state views NGOs and organizations. Claims by state authorities that some NGO activities encourage TCNs to enter Europe through Greece and that they collaborate with smugglers for this purpose became an everyday point of discussion in an effort to deflect attention away from the violations of human rights at the borders and to stop the litigation and advocacy efforts against these illegal practices. Human right defenders/NGOs/organizations have highlighted the lack of adequate monitoring at the borders, the gaps in the protection scheme for the migrant population, and the discrimination in law and practice against this population, which gradually became "unwelcome" in state-run camps and a potential "enemy" to national security. The constant concern of NGOs at the increase in EU funding for the militarization of borders as a measure to stem migra-

tion flows, along with the constant reporting, documentation and litigation before the ECtHR on pushbacks and collective expulsions, was another parameter that tested the relationship between the state and NGOs. The initial criminalization of migration through the false dilemma between the notion of a “hybrid threat” and “border protection” gave rise to the criminalization of NGOs, organizations and human rights defenders working in the field, that included criminal charges for facilitation of entry, migrant smuggling, conspiracy, abuse of office, fraud, abetting irregular immigration, illegally obtaining state secrets and complicity in human trafficking. Soon the criminalization took the form of money laundering, espionage and membership of criminal organizations. Such policies and practices, which cultivate negative attitudes towards migrants, also affected the human right defenders supporting this population, denying them fundamental rights and being labelled as a threat to national security, for example. In parallel, the deterioration of the policy concerning the immigration population brought further restrictions on their rights, raising questions on the policy’s compliance with EU and international law. The restrictions of rights were not only imposed on TCNs but also on NGOs/international organizations/human rights defenders.

In 2018 a registry of Greek and foreign NGOs was established,<sup>134</sup> which was followed, a year later, by the publication of the registration requirements for NGOs in the field of asylum, migration and integration. The provisions of this registry did not create particularly onerous requirements at the time. In the context of reforms of asylum and migration under laws 4636/2019,<sup>135</sup> 4662/2020<sup>136</sup> and 4686/2020,<sup>137</sup> which gradually restricted asylum seekers’ and migrants’ rights, further restrictions were placed on NGOs, including in terms of registration requirements. In particular, the law 4686/2020 makes registration in the registry a key precondition for access to reception and detention centres, transit zones or border crossing points, including other transit zones, at external borders, stating that those that do not register “cannot participate in the materialization of activities of international protection, migration and social integration within the Greek territory and particularly in the provision of legal, psychosocial and medical services, in the provision of material reception conditions and in the provision of information and updates”. While setting minimum conditions for NGOs registration, the

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134. <https://www.kodiko.gr/nomothesia/document/718129/yp.-apofasi-7586-18-2018>

135. <https://www.kodiko.gr/nomothesia/document/572171/nomos-4636-2019>

136. <https://www.kodiko.gr/nomothesia/document/595716/nomos-4662-2020>

137. <https://www.kodiko.gr/nomothesia/document/619937/nomos-4686-2020>

same article reserves the right of the Minister of Migration and Asylum to set further requirements.

Following these legislative amendments, in 2020 the Ministry of Migration and Asylum introduced a new discriminatory registry to address alleged irregularities and suspected fraud/mismanagement. According to Joint Ministerial Decision 3063/2020,<sup>138</sup> as replaced by 10616/2020,<sup>139</sup> all Greek and foreign NGOs, as well as their members, staff and volunteers, have to register with the NGO Registry to work in the fields of asylum, migration or integration. The registry undermined NGOs' transparency and accountability and aimed in practice to increase state control over the work of NGOs in the field of asylum, over migration and social inclusion, and to prevent these various partners from protecting fundamental rights by excluding them in many cases from the borders and state-run centres. Most NGOs were concerned that this policy would further control civil society and limit their space of action.<sup>140</sup> These concerns were confirmed by an opinion of the expert council on NGO law of the Council of Europe, which found that "onerous registration and certification requirements, coupled with the wide discretions on the competent authorities to refuse to register or certify applicant NGOs", will further restrict civil society space in Greece, and increase "significantly and disproportionately the control of the State over the work of NGOs in the field of asylum, migration and social inclusion".<sup>141</sup> Furthermore, in June 2020 the UN Special Rapporteur for the Rights of Human Rights, after a visit to Greece, published a report on the situation of human rights defenders, highlighting that "Law No. 4662/2020 and Law No. 4686/2020, as well as the Joint Ministerial Decision 3063/2020, subsequently replaced by Joint Ministerial Decision 10616/2020, introduced progressively stringent requirements for NGOs and individuals working in those fields, producing a chilling effect on civil society".<sup>142</sup> She also underlined that the "Ministry of Migration and Asylum has the power to deny registration to NGOs on vague, arbitrary and ambiguous grounds, which, potentially, leave the registration process subject to abuse". In addition, an expert opinion by the European Council on Refugees and Exiles (ECRE), released in December 2021, found the Greek legal framework on the registration of NGOs working with refugees and migrants (Joint Ministerial De-

138. <https://www.kodiko.gr/nomothesia/document/678034/yp.-apofasi-3063-2020>

139. <https://migration.gov.gr/wp-content/uploads/2021/04/10616.pdf>

140. [https://hias.org/wp-content/uploads/jmd\\_3063.2020\\_ngo\\_registry-version\\_4.pdf](https://hias.org/wp-content/uploads/jmd_3063.2020_ngo_registry-version_4.pdf)

141. <https://rm.coe.int/expert-council-conf-exp-2020-4-opinion-ngo-registration-greece/16809ee91d>

142. <https://www.ohchr.org/en/documents/country-reports/ahrc3525add2-report-special-rapporteur-human-rights-migrants-his-mission>

cision 10616/2020) to be in “in clear violation” of international law, EU law and the ECHR as regards the rule of law guarantees, the free movement of services under EU law, the freedom of association and the restriction of the rights of asylum applicants and persons in return proceedings, including under deportation.<sup>143</sup> In May 2021, the Greek authorities stated, in reply to the Council of Europe, that the “objective of the Register is not to set barriers to the NGOs and in no case the registration procedure is intended to be excessive or cumbersome”.<sup>144</sup> They added that “the objective is to set the same rules for all NGOs operating in Greece ... as well as to verify that they offer high quality services to the beneficiaries”. Following this opinion, the NGOs, in their majority, while recognizing the need for the Ministry of Migration and Asylum to centralize the registration of organizations active in the field of international protection, migration, asylum and social integration of TCNs, underlined that the current laws “should be substantially revised so that they are brought into line with European standards”.<sup>145</sup> The latter would ensure that the registration and certification procedure does not create unnecessary and disproportional barriers on the work of NGOs and does not impede freedom of association. NGOs, in an effort to continue to provide beneficiaries with important assistance, enrolled in the registry, despite the above significant issues, and experienced more disproportionate delays, financial and bureaucratic strain and unjustified rejections. Human rights defenders were excluded from the registration process, thus depriving their beneficiaries of important assistance. The legal provisions granting the Minister of Migration and Asylum the power to set further requirements has proved a vague area that allows too much scope for interpretation and abuse. In an information note released in May 2021, the ministry said the registrations of 36 organizations had been approved while 78 had been rejected.<sup>146</sup> In the case of Refugee Support Aegean (RSA), whose application was rejected, the Ombudsman, in an important intervention, called on the ministry to re-examine its application.<sup>147</sup> In particular, it stated that “the decision to reject the registration of a civil society organization on the NGO Registry of your Ministry on account of the development of activity in support of persons under deportation and, due to – according to your assessment – a contravention of Greek legislation,

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143. <https://ecre.org/wp-content/uploads/2021/12/Expert-opinion-NGO-Registry-final.pdf>

144. <https://rm.coe.int/commdh-govrep-2021-7-reply-of-the-greek-authorities-en/1680a27094>

145. <https://www.solidaritynow.org/en/registration/>

146. <https://www.scribd.com/document/507637744/%CE%A0%CE%B1%CF%81%CE%BF%CF%85%CF%83%CE%AF%CE%B1%CF%83%CE%B7>

147. <https://rsaegean.org/el/aporripsi-engrafis-sto-mitroo-mko/>

infringes the aforementioned acquis of international, EU and national law". Furthermore, this decision was considered wrong and unlawful by the UN Special Rapporteur on human rights defenders<sup>148</sup> as well as by civil society organizations active on refugee issues in Greece.<sup>149</sup> RSA submitted a new application for registration on 26 February 2022.<sup>150</sup> The new application was accepted by the ministry, without any amendment of the organization's statute. RSA provided the clarifications that it had also submitted at the previous application review stage. In other cases, the assessment of registration applications in practice gives rise to grounds to believe that the criteria are not applied transparently, fairly, consistently and lawfully. For example, the ministry has issued negative decisions to certain organizations on the grounds that they have not provided financial reports for the two years preceding their applications.<sup>151</sup> However, it has approved the applications of several NGOs founded less than two years previously and, thereby, are unable to provide such documentation. Investigative research by outlets such as Solomon<sup>152</sup> and Inside Story<sup>153</sup> raises particular concerns about "ghost organizations" being added to the registry: One of the approved organizations, founded in September 2020, successfully applied for EU funding under the ESTIA programme one week later. Parliamentary questions on the registration of the said NGO were submitted on at least three occasions. In its replies, the ministry has refrained from responding to the above questions and failed to provide the documents requested. Only at the end of April 2021 did the ministry issue a circular to specify that organizations founded less than two years prior to the submission of their registration application are not barred from requesting inclusion in the registry.<sup>154</sup> In addition, while 78 NGOs had their applications rejected and the applications from another 97 were pending by December 2020, the Special Secretary for Stakeholder Coordination at the Ministry of Migration and Asylum granted exceptional permission to 9 NGOs, through the use of the derogation set out in Article 16 of Joint Ministerial Decision 10616/2020.<sup>155</sup> The UN Special Rapporteur has as pointed out that the

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148. <https://twitter.com/MaryLawlorhrds/status/1468197778853617666>

149. <https://rsaegean.org/en/joint-statement-by-19-org-ngo-registry-rejection/>

150. <https://rsaegean.org/el/aporrips-i-engrafis-sto-mitroo-mko/>

151. [https://rsaegean.org/wp-content/uploads/2021/03/RSA\\_RoL2021\\_Submission.pdf](https://rsaegean.org/wp-content/uploads/2021/03/RSA_RoL2021_Submission.pdf)

152. <https://bit.ly/2Zk2Bd5>

153. <https://insidestory.gr/article/ngos-come-out-nowhere-and-ghost-organizations-mitarakis-register>

154. <https://diavgeia.gov.gr/doc/6%CE%A5%CE%95946%CE%9C%CE%94%CE%A8%CE%9F-%CE%940%CE%95>

155. <https://migration.gov.gr/wp-content/uploads/2021/04/10616.pdf>



ministry has the power to deny registration to NGOs on vague, arbitrary and ambiguous grounds, which, potentially, leaves the registration process subject to abuse. She has also said that a review of the certification of at least one NGO previously admitted to the register left the organization in a situation of extreme uncertainty as to how it might continue its operations (Report A/HRC/52/29/Add.1). Three applications for annulment were submitted to the Plenary Session of the Council of State due to their major importance and were heard together on 14 May 2021. The compatibility of the legal framework of the Registry of NGOs (JMD 10616/2020) is being examined in the context of applications for judicial review lodged with the Council of State and the decision, to our knowledge, is pending.<sup>156</sup>

Simultaneously, the criminalization of NGOs and human right defenders has escalated, with the aim to expose and blacken the reputation of the people involved in them and to switch the public debate from the main matter to hand – the violation of human rights at the borders. Persons are being criminalized because of who they are and others because of what they do. Added to the criminal charges of facilitation of entry, migrant smuggling, conspiracy, abuse of office, fraud, abetting irregular immigration, illegally obtaining state secrets, and complicity in human trafficking were accusations of money laundering, espionage and membership of a criminal organization. More specifically, the Anti-Money Laundering Authority (AMLA), a national unit aiming at combatting the legalization of proceeds from criminal activities and terrorist financing, proliferation of weapons of mass destruction financing, and assisting in the security and sustainability of fiscal and financing stability, has compiled several reports on NGOs activities accordingly. Following the composition of the reports, the AMLA in several cases ordered the freezing of all assets of managers of the NGO (personal bank accounts, safe deposit boxes and similar assets) and the decision also affects all assets of the NGO. The investigation's conclusions have been reportedly forwarded to the head of the Athens First Instance Prosecutor's Office. These reports have been fragmentarily leaked to the press in a rather systematic manner, creating negative impressions and turning the public space against NGOs and human rights defenders. Simultaneously, the prosecutor's criminal investigation remains pending, with the accusations left hanging over NGOs and human rights defenders. In what follows, we illustrate three different cases that are indicative of the escalation of criminalization:

- a) In January 2023, the long-awaited trial of 24 human rights defenders charged over their role in helping to rescue migrants in distress at sea

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156. <https://rsaegean.org/en/rsa-completes-registration-ngo-registry/>

began on Lesbos.<sup>157</sup> The latter were criminalized because of their life-saving work in 2018 while the charges were in connection with their actions in rescuing migrants at sea and included several alleged misdemeanours related to the facilitation of migrant smuggling.<sup>158</sup> The judge threw out the charges for espionage against some defendants, including Sean Binder, a German-Irish national, and Sara Mardini, a Syrian refugee, who, together with her sister, inspired the film *The Swimmers* by Sally El Hosaini. The decision came after significant procedural flaws were identified, namely the failure to translate the indictment for the foreign volunteers of the NGO Emergency Response Center International (ERCI) as well as the omission of a page in the documents provided to the defence. In February 2023, a Supreme Court deputy prosecutor appealed the decision. The appeal hearing took place on 16 May 2023 and the decision is pending.<sup>159</sup>

- b) In December 2020, Panayote Dimitras, a well-known human rights defender, was criminally charged for “setting up a criminal organization with the purpose of facilitating the illegal entry and stay in Greece of third country nationals”.<sup>160</sup> The investigating magistrate and the prosecutor agreed to impose a prohibition on his involvement (contrary to the Greek constitution, the ECHR and all national and international provisions safeguarding freedom of expression, personal development, as well as the freedom of association) with Greek Helsinki Monitor, a civil society organization of which he is a founding and core member since 1993. In addition, the prosecutor proposed the defendants be placed under house arrest, with permitted exit only for medical visits, while the investigating magistrate proposed a travel ban, coupled with reporting to a police station twice a month, and bail of €10,000. These harsh and severe prosecutor’s proposal for a man known for his work in defending human rights in Greece for many decades will be decided by the competent judicial council. Dimitras was the subject of many press releases<sup>161</sup> and statements<sup>162</sup> in his

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157. <https://www.ohchr.org/en/press-releases/2023/01/trial-human-rights-defenders-greece-helping-migrants>

158. <https://www.amnesty.org/en/latest/news/2023/01/greece-farcical-trial-of-rescue-volunteers-begins-next-week/>

159. <https://www.amnesty.org/en/latest/news/2023/05/greece-prosecution-appeal-prolongs-ordeal-of-rescue-workers/>

160. <https://www.fidh.org/en/issues/human-rights-defenders/greece-judicial-harassment-of-migrants-rights-defenders-panayote>

161. <https://rsaegean.org/en/the-attempt-to-silence-human-rights-defenders-continues/>

162. <https://asylum-campaign.blogspot.com/2023/06/stop-smear-campaign-against-human.html>

support that condemned the dangerous effort to silence human rights defenders. Mary Lawlor, UN Special Rapporteur on the situation of human rights defenders, tweeted: “Receiving v. disturbing news about restrictions imposed on #HRD Panayote Dimitras, including on his right to continue his legitimate human rights work. Along with Tommy Olsen, he is facing what strongly appears to be an arbitrary criminal investigation in #Greece.”<sup>163</sup> In May 2023, it was leaked that the head of the Anti-Money Laundering Authority had ordered the freezing of all Dimitras’ assets, following an investigation into his activities and in particular because the funding he received, mainly from the EU, to support human rights causes was used for other purposes than those claimed. The leak took place just a few days after the *New York Times* published a new damning video revealing that on 11 April on Lesbos, 12 migrants – men, women, children and an infant – had been locked inside an unmarked van.<sup>164</sup> While these press releases continue, the voices of defending him have become louder.<sup>165</sup>

- c) In June 2023 another report of the Anti-Money Laundering Authority on the alleged methods used by the managers of NGOs to divert money from the funds of their organizations was linked to the press.<sup>166</sup> The report is titled “The Abusive Exploitation of Nonprofit Organizations”. According to the article, the Anti-Money Laundering Authority, headed by Charalambos Vourliotis, has carried out audits of more than 100 NGOs in the last two years. The checks were conducted either on the authority’s own initiative or in response to information about questionable transfers that the authority received from financial institutions. Investigations were occasionally conducted in response to requests from other countries. Forty of the more than 100 NGOs that were audited showed clear signs of fraud and corruption. Managers’ assets were blocked by the Anti-Money Laundering Authority, which has forwarded its findings to the prosecutor’s office for possible criminal charges. The report highlights specific techniques allegedly deployed by NGO managers to access the organizations’ cash and concluded: “In order to benefit, the perpetrators used the weaknesses of the system and the absence of a uniform regulatory framework and adequate supervision

163. <https://twitter.com/MaryLawlorhrds/status/1618196397270130688>

164. <https://www.nytimes.com/2023/05/19/world/europe/greece-migrants-abandoned.html>

165. <https://www.coe.int/hr/web/commissioner/-/greek-authorities-should-reverse-the-trend-undermining-the-work-of-human-rights-defenders-and-journalists>

166. <https://www.ekathimerini.com/news/1212636/how-ngo-managers-siphon-off-funds/>

of NGOs while exploiting the financial system both domestically and abroad.” This publication on specific techniques allegedly deployed by NGO managers to access their organization’s cash and the existence of audits that show clear signs of fraud and corruption refers to 100 NGOs in this case. The mass grouping of NGOs under the corruption label highlights the main goal of these media announcements: the undermining of the work of NGOs. The increased number of the allegedly involved organizations is even more alarming, as it targets all organizations working in the field and attempts to silence them.

The common characteristic of these leaks to the press is the repetition, over a few days, of vociferous claims that do not in any way describe the real circumstances or relevant evidence of the alleged crimes. The aim of these announcements is the creation of negative impressions on NGOs’ work and mission rather than to detail an evidence-based investigation. Subsequently, no other announcement regarding the developments on the case or the outcome of the investigation is provided to the public, stimulating the myth of corrupt NGOs. Human rights defenders are exposed to attempts to silence them, through harassment and efforts to impede their activities, as described above. The consequences for persons involved in these investigations and becoming a front-page story in a newspaper has incalculable consequences for their professional and personal life. Allegations against human rights defenders and NGOs in the media serve to disregard their work, creating a generalized suspicion of NGOs. The cloud of suspicion continues to hang over them long after they are released pending trial, which in Greece can take years to complete. Undoubtedly, the state has an obligation to promote and pursue criminal proceedings as well as the duty to investigate complaints that are brought to its attention. It also has the obligation to be careful not to begin unfounded prosecutions against defenders where they are carrying out their work legitimately. Thus, this worrying trend of criminalising people on the move and the solidarity with them needs to be tackled in order to preserve the rule of law, freedoms and democratic values.

Amid this political and legal discourse, the criminalization of the population on the move continues in conventional and social media. Based on the Racist Violence Recording Network (RVRN) concerns on the existence and continuation of incidents of organized racist violence against refugees and migrants,<sup>167</sup> two very recent and alarming incidents in which public speech and social media response worsened the situation are described below:

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167. <https://rvrn.org/en/racist-violence-recording-network-expresses-serious-concern-over-escalating-targeting-of-refugees-and-migrants/>

- a) Prime Minister Kyriakos Mitsotakis, who was accused of negligence and incompetence after forest fires in the Evros region burned for two weeks in August 2023, blamed the migrants, saying that the fire in Evros was almost certainly man-made “and it is almost certain that it was lit on routes used by illegal migrants”.<sup>168</sup> His statement came a few days after a very worrying and shocking racist incident in Evros and in particular. The public racist discourse occasioned by these recent events is of utmost concern. As the RVRN reported, on 25 August 2023 “citizens appeared to threaten and illegally detain a group of migrants and refugees inside a trailer, while using racist and derogatory language and inciting similar acts of violence”. The perpetrators were “civilian self-proclaimed ‘militia’ groups engaging in unlawful acts of violence against refugees and migrants ... The incident came to light through a relevant video and subsequent articles, which triggered numerous racist comments. These events coincide with the tragic news of discovering dead people, reportedly refugees and migrants, in the Evros region due to the fires.”<sup>169</sup>
- b) In September 2023, the death of Antonis Karyotis, a 36-year-old from Agios Nikolaos, Crete, at Piraeus port led to public outrage. According to relevant reports, members of a ferry crew pushed Karyotis, who arrived late at the ship, to his death by drowning from the ramp of the ferry and did nothing to help him when he fell into the water.<sup>170</sup> Shipping and Island Policy Minister Miltiadis Varvitsiotis responded to public pressure and the media, offering further details while promising a full investigation. He said Karyotis was pushed back by a crewmember, attempted to get aboard for a second time, and was pushed into the water as the *Blue Horizon* ferry moved away from the dock. Initially there were efforts to cover up the criminal act, but videos filmed by ferry passengers and CCTV cameras and posted on social media revealed the shocking truth, thus triggering public outrage.<sup>171</sup> Some days later, broadcaster MEGA published audio recordings between the captain and his crew, shortly after Karyotis was pushed from the vessel. In

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168. <https://www.ekathimerini.com/news/1218937/havoc-caused-by-fires-dominates-agenda/>

169. <https://rvrn.org/en/racist-violence-recording-network-expresses-serious-concern-over-escalating-targeting-of-refugees-and-migrants/>

170. <https://maritime-executive.com/article/anger-builds-in-greece-after-man-is-pushed-to-his-death-by-ferry-s-crew> and <https://maritime-executive.com/article/captain-crew-face-manslaughter-charges-as-man-drowns-trying-to-board-ferry>

171. <https://www.keeptalkinggreece.com/2023/09/06/ferry-crew-passenger-drown-piraeus/>

the audio, the deceased is referred to as a “fool” by a crew member. “I thought he was black, Pakistani,” he told the captain.<sup>172</sup> Authorities arrested four crew members, including the captain, high-ranking officers of the Piraeus Port Authority were removed from their posts, while the shipping minister was forced to resign.

The criminalization of both people on the move and human rights defenders in the EU is alarming and contributes to the erosion of the rule of law and democracy, while it leaves no legal pathways for the migrant population.<sup>173</sup> The lack of action, which is limited to general recommendations by EU and other bodies, has created this atmosphere of impunity in the campaign of smearing human right defenders and people on the move.

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172. <https://www.ekathimerini.com/news/1219806/i-thought-he-was-black-pakistani-blue-horizon-crew-told-captain/>

173. <https://picum.org/blog/resilience-and-resistance-the-criminalisation-of-solidarity-across-europe/>



# **With no commitment to “legal routes of entry”, sea rescue or effective and fair cooperation with third countries, is strategic litigation the answer?**

EU and state policies have left people on the move with no legal and safe route of entry, while securitization and militarization prevail over human rights obligations in the multiple and complicated legal frameworks regarding border governance. In this policy framework, the use of the law to seek accountability for violations at the borders (including pushbacks) and to counter the political circumstances that are causing them is of the utmost importance. The complexity of the mandates of several actors (state, international and other) in the field, in conjunction with the lack of standard operational procedures, responsibilities and obligations among actors in a particularly sensitive area, have complicated the issues of responsibility and liability. Greek domestic courts remain unwilling to judge on the issue, either through accumulating pending applications or reaffirming the vague and non-specific state position “that such violations are not happening in the EU borders”. Thus, in recent years, the efforts of human rights defenders have been oriented towards strategic litigation or/and third-party interventions in several migration cases before the ECtHR, United Nations Human Rights Committee or even the International Criminal Court and the European Court of Auditors, while they have also tried to mobilize the European Ombudsman and other bodies. This analysis, which acknowledges the lack of a database on cases addressing pushbacks reaching the court, seeks to highlight the approaches of the ECtHR in main issues raised in the cases brought by different EU countries, including Greece, and their potential impact on the effective protection of fundamental rights at Europe’s borders. The analysis of court decisions from different EU countries during the past eight years indicates an approval of state efforts towards



further externalization, disregarding their legal obligations and jeopardizing the rule of law. In particular:

- 1) In 2015, the ECtHR unanimously ruled in *Hirsi Jamaa and Others vs Italy* that Italy has violated the European Convention of Human Rights (Art. 3, 13) and Article 4 Protocol 4 by forcibly returning a group of asylum seekers by sea to Libya.<sup>174</sup> The case concerned incidents that took place in 2009, when the applicants, along with about 200 people, departed Libya on board three vessels bound for Italy. On 6 May 2009 the applicants' vessel was intercepted by Italian authorities and all of the occupants, including the applicants, were forcibly returned to Libya. The interception and return of the applicants was in accordance with bilateral agreements between Italy and Libya to reduce clandestine immigration (these agreements were suspended following the revolution that broke out in Libya in 2011). In this case the court confirmed the definition of "collective expulsion of aliens" as being "any measure of the competent authority compelling aliens as a group to leave the country, except where such a measure is taken after and on the basis of a reasonable and objective examination of the particular cases of each individual alien of the group". In this context, the court found that the transfer of the applicants to Libya had been carried out without any examination of each applicant's individual situation. The applicants had not been subjected to any identification procedure by the Italian authorities, which had limited themselves to embarking and disembarking them in Libya. Moreover, the court noted that the personnel aboard the military ships were not trained to conduct individual interviews and were not assisted by interpreters or legal advisers. That was sufficient for the court to rule out the existence of sufficient guarantees ensuring that the individual circumstances of each of those concerned were actually the subject of a detailed examination. Having regard to the above, the court concluded that the removal of the applicants was of a collective nature, in breach of Article 4 Protocol 4 of the ECHR.
- 2) In 2016, the ECtHR ruled by five votes to two on the *Khlaifia and Others vs Italy* case that Italy had violated European Convention of Human Rights (Art. 3, 5, 13) and Article 4 Protocol 4.<sup>175</sup> The incidents took place in September 2011 when the applicants had travelled by boat through the Mediterranean Sea and, after several hours of navigation, were intercepted by the Italian coast guard. They were then taken to the island of Lampedusa, to be held in the Early Reception and Aid

174. <https://hudoc.echr.coe.int/eng?i=001-109231>

175. <https://hudoc.echr.coe.int/eng?i=001-170054>

Centre (Centro di Soccorso e Prima Accoglienza, CSPA) at Contrada Imbriacola in the area specifically reserved for adult Tunisians. The applicants proved that they were held in overcrowded and dirty rooms, without any contact with the outside. The applicants remained in the CSPA for 4 days, when a violent revolt broke out among the migrants. Following this incident they managed, together with other migrants, to evade police surveillance and walk to the village of Lampedusa, where they demonstrated with other migrants. After being stopped by the police, the applicants were taken first back to the reception centre, then to Lampedusa airport and finally to Palermo. After disembarking, they were transferred to ships in dire conditions. The applicants remained on the ships for a few days and then boarded the planes to Tunisia. As in the case of Hirsi Jamaa, the court considered that the Italian authorities had once again carried out a collective expulsion. However, the court established a lower threshold regarding the scope of protection by maintaining that individualized decisions and an individual interview are not required in all circumstances and it is adequate that sufficient guarantees demonstrating that the personal circumstances of each of the migrants concerned had been genuinely and individually taken into account. Accordingly, the court ruled that it is adequate for the state to provide “a genuine and effective possibility” to challenge their expulsions, considering that an identification process by consular authorities of the receiving/origin country constituted such.

- 3) In 2020, amid political developments and further militarization and securitization at the borders, the ECtHR’s ruling on ND and NT v Spain was criticized for being a setback in the court’s jurisprudence regarding Article 4 Protocol 4 of the ECHR.<sup>176</sup> In a very controversial ruling of 13 February 2020, the court found that pushbacks at the Spanish–Moroccan land border comply with Article 4 Protocol 4, which prohibits the collective expulsion of aliens. In a chamber judgment in October 2017, the ECtHR had ruled that the ECHR was applicable and that Spain had violated the prohibition of collective expulsion in the absence of any examination of the individual situation of the applicants, who were not subjected to any identification procedure by the Spanish authorities.<sup>177</sup> The case was then referred to the Grand Chamber, which, after a hearing in September 2018, on 13 February 2020 unanimously found that Spain did not violate Article 4 Protocol 4 and, as such, reversed the chamber’s judgment.<sup>178</sup> The incidents took place in September 2014

176. <https://hudoc.echr.coe.int/eng?i=001-201353>

177. <https://hudoc.echr.coe.int/eng?i=001-177683>

178. <https://hudoc.echr.coe.int/eng?i=001-177683>

when the applicants, one from Mali and one from the Ivory Coast, tried to cross the border fences from Morocco into the Spanish exclave of Melilla. Melilla is surrounded by a complex border structure comprising three fences and serves as a long-time laboratory for the EU border regime. The Spanish Guardia Civil has been conducting so-called “hot returns” of migrants coming from Morocco on a regular basis. Furthermore, Spain and the EU established a systematic externalization of border controls to third countries like Morocco, which keeps especially refugees and migrants from sub-Saharan states from claiming asylum. In this case the court introduced a new exception to Article 4 Protocol 4 of the ECHR by stating that there is no violation of the article if the lack of an individual expulsion decision can be attributed to the applicant’s own conduct. Moreover, it extended the exception to situations in which the conduct of persons who cross a land border in an unauthorized manner deliberately takes advantage of their large numbers and used force so as to create a clearly disruptive situation which is difficult to control and endangers public safety. However, the court noted that it is very important to take account of whether in the circumstances of the particular case the respondent state provided genuine and effective access to means of legal entry, in particular border procedures. In this context, the court established a two-stage examination, namely a) whether the destination country provided genuine and effective access to means of legal entry into its territory and, if so, whether the applicants made use of it; and b) whether the applicants did not avail themselves of this genuine and effective access and, if so, whether the applicants had cogent reasons not to do so. This approach is very tricky, vague and dangerous as it legitimizes pushbacks of persons crossing the border in an irregular manner as long as there is a possibility to cross the border in a regular manner. It undermines the prerequisite of the Convention for “practical and effective” protection at the borders and could lead to a dangerous path regarding refugee protection, considering that while an application for protection can in theory be made at a checkpoint, even if a third country effectively prevents access (as reported),<sup>179</sup> states are free to use pushbacks everywhere else. Furthermore, this case established a link between the prohibition of collective expulsion and the fear of inhuman or degrading treatment by introducing a limitation on the scope and the independence of Article 4 Protocol 4, which is an autonomous guarantee. In particular Article 4 Protocol 4 has a wider rationale than the non-refoulement principle because a migrant can bring forward any argument against his or her

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179. [https://www.ecoi.net/en/document/1443311.html#CLEAN\\_\\_Toc521315632](https://www.ecoi.net/en/document/1443311.html#CLEAN__Toc521315632)

expulsion, not only a fear of inhuman or degrading treatment. This jurisdiction reflects a broader conservative switch in the EU's policy, further restricts refugees' rights towards securitization while, indirectly, legitimizes the pushbacks of people seeking protection at EU borders. It is to be noted that less than three weeks following the decision and as Turkish President Erdogan stopped preventing migrants from trying to reach the EU,<sup>180</sup> Greek border guards shot at migrants at the land border and at migrant boats at sea.<sup>181</sup>

- 4) In July 2020, the ECtHR unanimously ruled on *MK vs Poland* that Poland had violated the European Convention of Human Rights and Article 4 Protocol 4.<sup>182</sup> The incidents took place between July 2016 and July 2017, when the applicants tried to travel from Belarus to Poland (one applicant alone, the other applicants were two families with minor children). They all repeatedly travelled to the border crossing at Terespol, where they expressed their wish to apply for international protection to the Polish border guards. On several occasions, they presented written applications, drafted with the help of lawyers who also came to the border to support them but were not allowed to see their clients. Each time, the border guards issued administrative decisions, summarily turning the applicants away and forcing them to return to Belarus on the grounds that they were not legally entitled to enter Poland and had not applied for international protection. In this case, the ECtHR's approach is less restrictive than *ND and NT vs Spain* and provides some guidance regarding the interpretation of the prohibition of collective expulsion and states' obligations regarding asylum seekers arriving at their borders. More specifically the court clarified that the notion "expulsion" has to be interpreted in the "generic meaning" (that is to say "to drive away from a place") and should be applied to all measures that may be characterized as constituting a formal act or conduct attributable to a state by which a foreigner is compelled to leave the territory even if the measure in question is not classified as "expulsion" in domestic law. In addition, a sufficiently individualized examination carried out by assessing all individual circumstances and the "general context at the material time" is required. Moreover, the authorities have to give applicants an adequate opportunity to put forward their arguments against the expulsion. Another interesting finding is that the court widens the

180. <https://www.politico.eu/article/turkey-says-it-will-no-longer-stop-refugees-from-entering-europe/>

181. <https://www.bbc.com/news/av/world-europe-51715422>

182. <https://hudoc.echr.coe.int/eng?i=001-203840>

material evidence, acknowledging that several independent reports concerning the situation (in particular regarding the border checkpoint at Terespol) indicate that the applicants' cases constituted an exemplification of a wider state policy of refusing entry to foreigners coming from Belarus. Nevertheless, even in the present case the court found the notion of "own culpable conduct" exception applicable and under evaluation limiting the scope of the protection under Article 4 Protocol 4. In particular, the court evaluated the collective treatment and stressed that the applicants attempted to cross the border in a legal manner, using an official checkpoint and subjecting themselves to border checks as required by the relevant law. Hence, the fact that the state refused to entertain their arguments concerning the justification for their applications for international protection cannot be attributed to their own conduct.

- 5) In July 2021 the ECtHR ruled on *Shahzad vs Hungary* that Hungary violated European Convention of Human Rights and Article 4 Protocol 4 and his removal had been of a collective nature.<sup>183</sup> The incidents took place in August 2016 when the applicant, a person who had left Pakistan in 2008 or 2009, stayed in Greece and later in Serbia attempted to apply for asylum in Serbia but was not given access to a procedure. He tried entering Hungary by way of one of the transit zones but was refused access. On 11 August 2016, he crossed the border into Hungary by cutting a hole in the fence, alongside a small group of Pakistani men. The group was apprehended by Hungarian police on 12 August; asking repeatedly for asylum, they were told that they could not claim asylum. They were driven to the border fence, brought to the other side, reportedly beaten and told to return to Serbia. In the present case also, the court finds the notion of "own culpable conduct" exception applicable and under evaluation. More specifically, the court, taking into consideration the limited access to the transit zones and the lack of any formal procedure accompanied by appropriate safeguards governing the admission of individual migrants in such circumstances, found that the respondent state had failed to secure the applicant effective means of legal entry. Consequently, the lack of an individual expulsion decision could not be attributed to the applicant's own conduct. Nevertheless, the decision does not clarify the exception of the applicants' own conduct. At the same time it introduces a vague and dangerous exception of "disruptive situation" by pointing out that no indication of the applicant using force, resisting officers, or otherwise creating a "disruptive situation" was made. The threshold of "disruptive behaviour" in a situa-

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183. <https://hudoc.echr.coe.int/eng?i=001-210853>

tion at the borders is not made clear and if this behaviour is a result of other acts of violence. The new element of this decision, though, is that the applicant was not removed directly to the territory of another state but to the strip of land which belonged to Hungary – that is to say the land between the border fence and the actual border between Hungary and Serbia. The court introduced a new reasoning and reiterated “that Article 4 of Protocol No. 4 may apply even if the measure in question is not classified as ‘expulsion’ in domestic law.” In particular: “The border fence which the applicant was made to cross had clearly been erected in order to secure the border between Hungary and Serbia. The narrow strip of land on the external side of that fence to which the applicant was escorted only had a technical purpose linked to the management of the border.” Without any infrastructure on that strip of land linked to the management of the border and in order to enter Hungary, deported migrants had to go to one of the transit zones, which normally involved crossing into Serbia. Hence, the measure to which the applicant had been subjected to, aimed at and resulted in his removal from Hungarian territory. Problems with managing migratory flows could not “justify an area outside the law where individuals were covered by no legal system capable of affording them enjoyment of the rights and guarantees protected by the Convention”.

- 6) In 2022 the ECtHR ruled on *MA and others vs. Latvia* that the removal of all the applicants does not lead to the conclusion that their expulsion was “collective” within the meaning of Article 4 Protocol 4.<sup>184</sup> The incidents took place in 2017 when the applicants reached the Latvian border crossing point at Indra by train as part of a group of approximately 27 asylum seekers. The second applicant was four months pregnant at the time. When officers of the State Border Guard Service (*Valsts roberžsardze*) boarded the train, the applicants asked them for asylum, indicating that they could no longer stay in Belarus and that the first applicant was sought by the authorities in Chechnya. They also submitted a written asylum request. The applicants were taken to a building at the border crossing point where they were held for four hours. While there, they informed a State Border Guard Service officer of their unsuccessful attempts to apply for asylum elsewhere, and emphasized that they were seeking asylum, that they could not go back to Belarus due to the risk of deportation to Russia, and that they feared the Belarussian police. After about four hours, the applicants were told that they had been denied entry to Latvia. Their passports were stamped indicating that the entry had been denied due to the absence of a valid

184. <https://hudoc.echr.coe.int/eng?i=001-217342>

visa or another document permitting entry. The applicants were asked to sign a document reiterating the same reason for the denial of entry. The applicants refused to sign that document due to its failure to address their application for international protection. After that, the applicants were taken to Belarus. The other asylum seekers, with whom the applicants had travelled, were also returned to Belarus. In the present case the court made a reference to the burden of proof principle and determined that it is in principle for the applicants to adduce evidence that they asked the Latvian authorities for asylum and that they invoked before them the existence of a risk of ill-treatment in case of return to Belarus, from where they had entered Latvia. It continued that the applicants did not submit any evidence of having applied to the Latvian authorities for asylum. It is also very alarming that the court noted that they did not submit a copy of their asylum request nor did they submit any photographs taken on the Latvian-Belarusian border concluding that there is no indication that they referred to “azul” – a word often used by Chechen asylum seekers to mean “asylum”. The court even suggested that this absence of documentary evidence is particularly striking given that the applicants received assistance from a non-governmental organization in Belarus and were represented by a human rights defender before the court. The court stressed also that they did not explain what unsurmountable practical difficulties they had encountered in obtaining a copy of their request to the Latvian authorities or in obtaining other documentary evidence in that regard and submitting it to the court in the present case. This interpretation does not take into consideration the situation of people on the move, their vulnerability and weakness before the border guards and expects this population to copy/photo their documentation under specific border circumstances. As regards Article 4 Protocol 4, the court assessed that the lack of an individual expulsion decision can be attributed to the applicant’s own conduct having a sufficient opportunity to submit their arguments to the national authorities on an individual basis during the period (several hours) that remained at the border crossing point. The court failed to evaluate the situation of these people, their vulnerability and their capacity to elaborate their claim in the space of a few hours. Moreover, it was considered that there were no communication barriers as all discussions between the applicants and guards were held in Russian, without specifying whether they were informed on their rights and whether the legal avenue referred to was genuinely and effectively accessible to the applicants at the time. Furthermore, the court accepted that the practice of refusing the applicant’s entry could be explained by their lack of valid visas or residence permits and that they had a possibility of expressing their disagreement when asked to sign the decisions refusing entry which they did not do.

7) In 2022, the ECtHR ruled on *MH and Others vs. Croatia* that Croatia has violated the ECHR and Article 4 Protocol 4 and recognized the existence of a systemic practice regarding the violations at the borders.<sup>185</sup> The incidents took place in November 2017 when the applicants, the first applicant and her six children (the ninth, tenth, twelfth, thirteenth and fourteenth applicants and MAD.H.), entered Croatia from Serbia together with one adult man named N. The other applicants remained in Serbia. The Croatian police officers approached the group while they were resting in a field. The group told the police officers that they wished to seek asylum, but the officers ignored their request, ordered them to get in the vehicle and took them to the border. At the border the police officers told them to go back to Serbia by following the train tracks. The group started walking and after several minutes a train passed and hit one of the children, MAD.H. The police officers with whom they had previously been talking took them to Tovarnik railway station where a doctor established that MAD.H. had died. The group then returned to Serbia. In the present case the court considered that the burden of proving that the applicants had not entered Croatia and had not been summarily returned to Serbia prior to the train hitting MAD.H. rested on the authorities. Moreover, it stated that there was prima facie evidence in favour of the applicants' version of events and that the government had not submitted a single argument capable of refuting the above prima facie evidence provided by the applicants. As regards the breach of Article 4 Protocol 4, the court applied the "own culpability conduct" exception and found it impossible to examine whether the legal avenue referred to was genuinely and effectively accessible to the applicants at the time and, consequently, whether they had access to means of legal entry. In this context the court stressed the absence of any specific information regarding the asylum procedures at the border with Serbia in 2017 or 2018, such as the location of the border crossing points, the modalities for lodging applications there, the availability of interpreters and legal assistance to enable asylum seekers to be informed of their rights and information showing that applications had actually been made at those border points. What is significant also in this decision is the extensive reference of the reports regarding pushback operations in Croatia which concluded that the existing reports indicate the existence of a systemic practice. The reasoning of the court is an acknowledgement of the truthfulness – and credibility – of this body of reports but also of the Croatian state's cover-up of such practices. The court extensively refers to extracts of

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185. <https://hudoc.echr.coe.int/eng?i=001-213213>



reports from 2018 to 2020 on the existence of a state pushback practice. Furthermore, the court draws on the authorities' investigative failures into MAD.H's death in its assessment of evidence thus possibly pointing to an intentionally inadequate investigation.

- 8) In 2022, the ECtHR ruled on *AA and others vs North Macedonia*, that collective expulsion to Greece did not violate Article 4 Protocol 4 or Article 13 on the basis of the term of "applicants' own conduct."<sup>186</sup> The incidents took place on 14 March 2016 when refugees were stuck in the Idomeni camp at the Greek-North Macedonia border following the closure of the Balkan Route. The applicants, including a person reliant on a wheelchair, had travelled by foot to North Macedonia as part of the "March of Hope", in which 1,500 migrants participated. In Moin, a small village in North Macedonia, the applicants were intercepted and surrounded by North Macedonia soldiers, who told those gathered that if they failed to turn off their cameras and phones, they would confiscate them. The soldiers then separated out and arrested activists, journalists and volunteers (who were accompanying the refugees on the march), which prevented the ensuing actions of the state officials from being documented. The soldiers allegedly ordered the applicants to board army trucks and drove them back to the Greek border. The applicants were ordered to cross the fence to the Greek side of the border. They passed through a hole in the fence or crawled under it. Soon afterwards they returned to the camp in Idomeni. In the present case the court found that the lack of an individual removal decision can be attributed to the applicant's own culpability conduct considering that the applicants placed themselves in an unlawful situation by deliberately attempting to enter North Macedonia by crossing the border on 14 March 2016 as part of two large groups and at an unauthorized location. Moreover, the court considered that the applicants could have accessed asylum through the border posts on 14 March. In order to evidence this reasoning, it cited numbers provided by the government of certificates of intentions to claim asylum issued "between 19 June 2015 and 8 March 2016", precisely before the closure of the borders. These certificates were issued at Vinojug transit center in Gevgelija, around 2km from the border, to those who had already crossed irregularly and away from any official border crossing, further highlighting their lack of relevance to the expulsion at hand. Given the absence of legal entry procedures forcing refugees to travel without authorization or safety, this interpretation would mean that "own culpability conduct" would no longer be an exception to the prohibition of collective expul-

186. <https://hudoc.echr.coe.int/eng?i=001-216861>

sion, but its main application, and would turn the prohibition of collective expulsions into an obligation to offer a place to apply for asylum somewhere at the border.

In this context, where rights can be limited to an ever-greater extent in successive decisions and where judgments' and findings seriously question the ECtHR's ability – or willingness the factual existence of “means of legal entry”, in June 2023, the overcrowded fishing vessel *Adriana*, carrying approximately 750 refugees, capsized 47 nautical miles southwest of Pylos, Greece, in the Greek search and rescue (SAR) zone.<sup>187</sup> The boat left Tobruk, Libya, on 9 June 2023 heading to Italy. On 13 June, public information available suggests that the vessel had lost navigation capacities, was in distress and in clear need of rescue. The Hellenic Coast Guard, instead of launching immediately a search and rescue operation, asked nearby merchant vessels to provide supplies, so as to enable the boat to continue its deadly trip towards Italy. The events surrounding this incident are riddled with contradictions and marked by extreme delays in taking proper action. More than 15 hours passed from the moment its condition was made public until the shipwreck, allowing ample time for potential intervention. Importantly, the weather conditions were ideal and calm on the last day before the shipwreck. Both Frontex and the Greek Coast Guard, which had the responsibility for coordinating search and rescue, failed to provide adequate assistance to an unseaworthy vessel carrying more than 500 people that was in distress for almost a full day, from the time they were informed, resulting in it sinking and dragging hundreds of people to a watery grave. The investigation on the incident is ongoing<sup>188</sup> and on 13 September 2023 forty survivors of the deadly shipwreck filed a criminal complaint against all responsible parties at Piraeus Maritime Court.<sup>189</sup> The survivors submit that the Greek authorities failed to immediately intervene and to organise a timely and adequate rescue operation despite their duty to rescue the passengers on board under the International Law of the Sea, human rights law, EU and domestic law. This was especially due to the fact that they had been informed from the outset and subsequently ascertained at close distance the imminent threat to life facing passengers on board the manifestly unseaworthy and overcrowded trawler. The complainants allege that the Greek authorities not only refrained from taking the necessary rescue measures as soon as the vessel was sighted, but instead proceeded to an effort to tow the vessel, which resulted in its capsizing

187. <https://rsaegean.org/en/pylos-timeline-archive/>

188. <https://www.coe.int/en/web/commissioner/-/pylos-shipwreck-the-greek-authorities-must-ensure-that-effective-investigations-are-conducted>

189. <https://www.hlhr.gr/en/pylos-shipwreck-criminal-complaint/>

and sinking. The complainants demand an immediate, thorough and reliable investigation and the attribution of criminal responsibility for the acts and omissions of the Greek authorities. A number of international organizations and institutions, including the Commissioner for Human Rights of the Council of Europe<sup>190</sup> and the LIBE Committee of the European Parliament,<sup>191</sup> have already urged Greece to carry out a full and effective investigation into the circumstances of the shipwreck. The deadliest shipwreck of the Mediterranean sparked global interest, a declared commitment of the Greek authorities to conduct a thorough investigation, and the launch of a preliminary examination by Piraeus Maritime Court. Nevertheless, three months after the tragic event, none of the survivors of the shipwreck, witnesses of the events of 13-14 June 2023, have been – to our knowledge – called to testify on the circumstances of the shipwreck under that investigation or to provide any evidence.

This shipwreck took place almost a year after the recent decision of the ECtHR on *Safi and others vs. Greece* concerning the sinking on 20 January 2014 of a fishing boat transporting 27 foreign nationals in the Aegean Sea, off the island of Farmakonisi, resulting in the death of 11 people, including relatives of the applicants.<sup>192</sup>

The case of *Safi and others vs. Greece* concerned the sinking on 20 January 2014, of a fishing vessel carrying 27 foreign nationals in the Aegean Sea, off the island of Farmakonisi.<sup>193</sup> The applicants were on board the vessel, the sinking of which resulted in the death of 11 persons – eight children and three women, refugees from Afghanistan – which included their relatives. According to the applicants, a coast guard vessel was traveling at too high a speed in order to push them towards Turkish waters, resulting in the capsizing of the vessel. Finally, the applicants complained that the treatment of the shipwreck survivors on their arrival in Farmakonisi constituted inhuman and degrading treatment, as the survivors were strip-searched in a public space and forced to assume humiliating positions.

The judgment came eight years following the tragic incident and held the Greek authorities responsible for the shipwreck that took place on Farmakonisi. In particular, the ECtHR found a violation of the right to life, both on its procedural limb due to the authorities' failure to investigate such a

190. <https://www.coe.int/en/web/commissioner/-/pylos-shipwreck-the-greek-authorities-must-ensure-that-effective-investigations-are-conducted>

191. [https://multimedia.europarl.europa.eu/en/video/exchange-of-views-on-the-migrant-boat-shipwreck-off-the-coast-of-greece-extracts\\_1243537](https://multimedia.europarl.europa.eu/en/video/exchange-of-views-on-the-migrant-boat-shipwreck-off-the-coast-of-greece-extracts_1243537)

192. <https://rsaegean.org/en/justice-farmakonisi/>

193. <https://hudoc.echr.coe.int/eng?i=001-218457>

significant case responsibly and effectively, and on its substantive limb, stemming from an omission in taking actions that should and could have taken place to protect human lives and prevent the tragic incident. The court also held that coast guard officers had inflicted degrading and inhuman treatment on shipwreck survivors that night. Although the court did not condemn Greece for pushbacks, it said the competent Greek authorities (mainly on the prosecutor of the maritime court who took charge of the case) were responsible for the lack of a complete and effective investigation from which all the evidence they would require for such a crisis would emerge. Notably, this case had also been thoroughly debated by the Greek Parliament in a special sitting on 29 January 2014, given that evidence demonstrated that a “border control” and not a “rescue operation” had been carried out in the area of Farmakonisi on that night, leading to 11 deaths.<sup>194</sup> The *Safi* judgment has now been referred to the Council of Europe’s Committee of Ministers for supervision of its implementation<sup>195</sup> and it has been suggested that it could be examined as part of an existing group of cases about ineffective inquiries into violence by law enforcement ignoring the finding of a substantive violation of Article 2 and underestimating its importance. *Safi* is not an isolated incident and beside all the relevant recorded incidents the case should be placed supervision in a category of its own (human rights on the Greek borders or the Greek coast guards’ acts and omissions).

The jurisprudence of the court reflects its intentions on pushback operations or its unwillingness to take a position on the majority of border configurations, where transit/origin and destination states work to prevent direct access to a destination state’s border procedure. The lack of safe and legal routes that has led persons to cross borders irregularly and has put their lives at risk is not part of the court’s interpretation, which remains reluctant to recognize the systematic practice of collective expulsions and pushbacks. At the same time, the court, although it recognizes that in several cases member states’ investigation procedures at the borders are inadequate, seems unwilling to take a position on the issue and to put some pressure on the state to adopt particular measures. On the contrary, it considers it is for the applicant to clarify and prove contested facts, disregarding the vulnerable situation of the applicants at the borders seeking asylum. The court’s restrictive interpretation enables states to limit the legal and regulatory standards of protection and disregards the protection of individuals.

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194. <https://rsaegean.org/en/justice-farmakonisi/>

195. <https://www.coe.int/en/web/cm/execution-judgments>

We will watch with great interest the pending cases that will hopefully address the increased violations and pushbacks at the borders, although we cannot avoid wondering whether the court is punishing applicants instead of holding states accountable for violating human rights.

# Conclusion

Political discourse in Europe about migration revolves around exclusionary policies, creating a disproportionate impact on immigrants and human rights defenders, while fortifying the frontier and supporting an anti-migrant publicity campaign. Many people, including politicians, demonize migrants and stoke fear against them. Migration policy remains conservative and cynical, instrumentalizing the most vulnerable (migrants, human rights defenders, etc.). It systematically reproduces the confusion over the connection between migration with terrorism, organized crime and threats to European civilization. The socioeconomic circumstances in Europe, in conjunction with the anti-migrant and racist climate, are making the situation worse. Is the securitization of migration through repeated and largely unchallenged migration myths the answer to the EU's complex political and social crisis? Failures in implementing EU law and policy in the area of irregular migration, and making it effective and respectful of human rights, also reveal a crisis of solidarity. The failure of states to relocate and integrate refugees in an effective manner has led to them endangering their lives, to normalizing irregular practices of pushbacks and limiting the safeguards against arbitrary detention. Migration proved a bigger divide for the EU, which has not been able to agree on a common migration policy in a period in which nationalism is on the rise. Europe's efforts to handle migration by reaching deals with countries such as Turkey and Tunisia has not been in accordance with EU principles and has compromised human rights. Having failed to overcome their internal divisions and agree on a system that would balance humane border management with the "relocation" of asylum seekers within the EU, governments have tried to find other ways to handle the situation. It has been proved historically that people flee from countries of persecution despite the absence of legal and safe pathways. Nevertheless, Europe's migration policy remains focused on keeping Europe's borders closed, and it goes a little further than the securitization of borders by allocating unconditional sums of money to poor countries like Libya, which drive people to migrate in the first place, in the hope that migration will stall as a result and migrants will not pass into Europe. At the same time, anti-immigrant sentiment within the member states has increased, without any effort by the competent authorities to address and prevent such phenomena that lead to the dehumanization and targeting of "others", of refugees and migrants, of anyone that is different. We need to understand and address public concerns in order to dispel the xenophobes' migration myths and create more inclusive communities. Thus, the reconstruction of the migration debate into a narrative of strength and resil-

ience is an utmost need. The ECtHR, for the time being, has chosen to rule in a rather restrictionist manner, ending a migrant-friendly human rights case law. The scope and the meaning of the access to “means of legal entry” for refugees and migrants is full of ambiguity, while the meaning and the scope of the exception of the “culpable conduct” for those entering illegally is full of uncertainty. The role of the ECtHR to enforce the European asylum policy and protect existing safeguards is crucial and we expect that the judges will rise to the occasion in future rulings.

# Postscript

As this analysis was going to print, another conflict erupted. On 7 October 2023, Palestinian armed groups in Gaza launched thousands of rockets towards Israel and breached the fence around Gaza at multiple locations, entering Israeli towns and killing and capturing Israeli forces and civilians. The Israeli military declared “a state of war alert” and began striking targets in the Gaza Strip, including residential buildings and healthcare facilities. Since then, thousands of people have been killed and more than one million have been displaced, as parts of Gaza have been reduced to rubble.<sup>196</sup> Civilians are the primary victims of increased violence in Israel and the occupied Palestinian Territories.

**“Everyone must assume their responsibilities.**

**This is a moment of truth. History is judging us all.”**

— UN Secretary General António Guterres<sup>197</sup>

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196. <https://www.un.org/en/situation-in-occupied-palestine-and-israel>

197. <https://news.un.org/en/story/2023/10/1142912>



# Appendix

## 2001. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) report to the Greek government on its visit from 26 October to 2 November 1999<sup>198</sup>

At the time of the visit, 18 Iraqi nationals (including 6 young children) were being held there. They claimed to have spent the previous four days in the holding facility; nevertheless, this appeared to be their fourth or fifth stay there, as they had allegedly been transferred repeatedly between Turkey and Greece in the preceding months. However, it was impossible to establish how long these persons had spent in custody, or indeed how many other persons had been held at the Feres holding facility in the past and for what periods of time, as no custody records were being kept ... As already noted ... the presence of the foreign nationals detained at the Transitional Detachment holding facility for illegal aliens in Feres had not been recorded at all. The delegation was told by the police officer in charge of the Detachment that no register was being kept because he “reported orally all information to the Police Directorate in Alexandroupolis”. Such a situation obviously lends itself to abuse. No formal safeguard against ill-treatment is more fundamental than the requirement that the fact of a person’s detention should be properly recorded without delay.

## 2001. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) report to the Greek government on its visit from 23 September to 5 October 2001<sup>199</sup>

However, the CPT has continued to receive information about alleged “informal” – including group – deportations to Turkey. The Committee has been led to believe that, in such cases, the foreigners concerned were deprived of procedural safeguards and were removed from Greece without using recognised border crossings; further, on occasion, their lives might have been put at risk (e.g. by being made to cross a river under precarious conditions). In the CPT’s view, such removals could well amount in many cases to inhuman or degrading treatment.

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198. <https://rm.coe.int/16806964f0>

199. <https://rm.coe.int/1680696563>

### **2004. World Organisation Against Torture report: “State violence in Greece: An alternative report to the United Nations Committee Against Torture”<sup>200</sup>**

Refolement raises concerns over the situation in Greece. In this regard, the signing, on January 20, 2001, between Turkey and Greece, of the Agreement on Combating Crime, especially Terrorism, Organized Crime, Illicit drug-trafficking and illegal migration is troublesome. Indeed, the Greece-Turkey readmission Protocol may affect persons in need of international protection and may have direct consequences for the rights of those who wish to enter Greek territory in order to seek asylum. Moreover, the problem is accentuated as immigrants are detained before being forwarded to Turkey, Greek authorities refuse to accept their asylum application or inform them of their rights, or even refuse to allow NGOs and human rights activists to visit them in order to file asylum applications on their behalf. Also, there have been cases of individuals being deported from Greece, despite the fact that there was clear and unambiguous evidence that they risked being subjected to torture/ ill-treatment or even death.

### **2005. Amnesty International report: “Out of the spotlight: The rights of foreigners and minorities are still a grey area”<sup>201</sup>**

Further allegations received by Amnesty International suggested that officials stationed at border areas, and particularly in the area of the Greek-Turkish border, have been expelling migrants from the territory of Greece without providing those in need of international protection with the opportunity to seek asylum or providing all migrants with an opportunity to challenge their removal on other grounds, including human rights grounds. Such practices are in flagrant violation of PD [Presidential Decree] 61/99, and could be in violation of the fundamental principle of non-refoulement as well as the prohibition on arbitrary and collective expulsion. These practices are very difficult to document and the problem is compounded in border areas by the fact that these expulsions allegedly take place in areas which are under military control and thus access to them is restricted. Despite this, the organization received information during its visit to the country in January from a number of individuals (expellees who have since re-entered as well as individuals who have spoken with expellees), who were in agreement about the methods by which this practice takes place. Undocumented migrants were allegedly put in military trucks, taken to the banks of the river Evros, on the land border with Turkey, and left to swim to the other side.

<sup>200</sup>. <https://www.refworld.org/docid/46c190f70.html>

<sup>201</sup>. <https://www.refworld.org/docid/43b149b34.html>

### **2007. Pro Asyl report: “The truth may be bitter, but it must be told”<sup>202</sup>**

In the past few months Pro Asyl has become increasingly concerned about reports from asylum seekers who, during hearings in Germany, state that whilst in Greece, they were given no opportunity to file an asylum claim in accordance with the requirements of the 1951 Refugee Convention. Furthermore, the numbers of refugees reporting maltreatment and attempted refoulement by the Greek coast guard has increased ... The conduct of the Greek authorities violates international refugee and human rights law. The practices of the coast guard and border police constitute a serious breach of the principle of non-refoulement contained in article 33 (I) of the 1951 Geneva Convention on the status of refugees, article 3 (I) of the UN Convention against Torture (UNCAT), and the right to protection against torture and other cruel, inhuman and degrading treatment or punishment contrary to article 3 European Convention for Human Rights (ECHR) and article 7 of the International Covenant on Civil and Political Rights (ICCPR), as well as articles 5 and 14 of the UNGA Universal Declaration of Human Rights 1948, etc. Furthermore, the Greek authorities endanger the lives of refugees. This violates the international obligation of the Greek State to respect the right to life, as enshrined in international human rights instruments (art. 2 ECHR, art. 6 ICCPR, art 3 of the Universal Declaration of Human Rights 1948 etc.). The excessive use of force, ill-treatment and torture as carried out by the Greek coast guard constitutes a flagrant violation of international human rights instruments and violates human dignity (art. 3 ECHR, art. 7 ICCPR, art. 3 UNCAT, art. 5 UNGA Universal Declaration of Human Rights 1948 etc.).

### **2008. Commissioner for Human Rights of the Council of Europe report following a visit to Greece on 8-10 December 2008<sup>203</sup>**

During his visit to Greece the Commissioner was informed of a number of serious concerns expressed in 2008 by, among others, the Greek National Commission for Human Rights, the Greek Ombudsman and the UNHCR Office in Greece with regard to the entry and access of asylum seekers to the asylum procedure in Greece and in particular the risk of refoulement.

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202. <https://www.statewatch.org/media/documents/news/2007/oct/greece-proasyl-refugees.pdf>

203. <https://rm.coe.int/16806db821>

### 2008. Human Rights Watch report: “Stuck in a revolving door: Iraqis and other asylum seekers and migrants at the Greece/Turkey entrance to the EU”<sup>204</sup>

In 2007, Greek police recorded 112,369 arrests for illegal entry or presence. However, Human Rights Watch believes this is the tip of the iceberg. Many, perhaps most, of the apprehensions in the border region are not recorded at all. Police in the Evros region (northeastern Greece) systematically arrest migrants on Greek territory and detain them for a period of days without registering them. After rounding up a sufficient number of migrants, the police take them to the Evros River at nightfall and forcibly and secretly expel them to the Turkish side. The Turkish General Staff has reported that Greece “unlawfully deposited at our borders” nearly 12,000 third-country nationals between 2002 and 2007. Because this number only indicates those migrants who the Turkish border authorities apprehended and registered and many evade arrest, the actual number that Greece has summarily expelled is very likely to be higher. In addition to summary expulsions of migrants from inside Greek territory, Greek police and Coast Guard officials also push migrants back from the border or from Greek territorial waters, in some cases puncturing inflatable boats or otherwise disabling them before setting them adrift as they push them toward the Turkish coast. When rounding up and expelling migrants, border-enforcement officials usually make no effort to communicate with them or to do any screening whatsoever to determine their possible needs for protection and in some cases beat and otherwise mistreat them.

### 2009. UNHCR report: “Observations on Greece as a country of asylum”<sup>205</sup>

According to the reports received by UNHCR, many people arriving through the Greek-Turkish land border without permission to enter Greece are arrested and detained in police stations in the Evros region, where their arrival and/or detention is not always registered ... UNHCR has received several reports of persons forced back to Turkey across the Evros River, which forms the border. Serious incidents have also been reported at the sea, including for instance the puncturing of rubber boats and the removal of engine and oars, reportedly undertaken as “deterrent” measures. Although contested by the Coast Guard authorities due to lack of substantial evidence, an incident was documented by UNHCR with a remarkable consist-

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204. <https://www.hrw.org/report/2008/11/26/stuck-revolving-door/iraqis-and-other-asylum-seekers-and-migrants-greece/turkey>

205. <https://www.refworld.org/docid/4b4b3fc82.html>

ency of testimony received by UNHCR's partners, according to which 12 Somalis were prevented from landing on the Greek territory by the Coast Guard, but were subsequently rescued by a private rescue vessel. [UNHCR documented case, July 2009, involving 12 Somalis (11 men and 1 woman). The group reportedly was prevented from reaching Greek territory by the Coast Guard authorities outside the island of Mytilene. They were subsequently rescued by a passing tourist vessel. Testimony by the persons concerned was given to UNHCR partners in July 2009. Upon UNHCR's written intervention, the responsible Ministry conducted an internal investigation, which concluded that the said allegations were unfounded, because of lack of substantial evidence. UNHCR informed the authorities that the individuals concerned were afraid to press charges for fear of reprisals.

### **2009. UNHCR submission in the case of Xb. vs France and Greece (Appl. No. 44989/08)**<sup>206</sup>

UNHCR also has significant concerns regarding the practice of removals from Greece to Turkey, including many conducted outside the framework governing such returns under Greek law. During the summer of 2009, UNHCR observed an increase in group arrests by the Greek police in, amongst other places, Athens and Patras, followed by deportation to Turkey. Annex 2 lists 27 cases of deportation or attempted deportation that took place between April 2008 and September 2009. The list is based on the testimony of affected individuals (obtained in interviews conducted by UNHCR at border areas and in detention facilities), and on reports from UNHCR partners, including non-governmental organizations. In all cases, the persons were subsequently located, either in Turkey; in Greece, after a new attempt to reach the EU; or in their countries of origin after onward removal from Turkey. Three of the recorded cases involved deportation of registered asylum seekers. In one case, the individuals were asylum seekers whose claims were not registered in Greece, despite interventions by UNHCR and other agencies. UNHCR made written interventions with the Greek authorities in 11 of the 27 cases. As of the date of this submission, the Ministry of Interior, via local or central police authorities, had responded to six of these interventions. Responses include: (a) denials that "push-backs" are taking place; (b) claims that the persons reportedly removed were in fact released with a police notice to leave the country within 30 days; and (c) statements that transfers of people to Turkish authorities from Greek detention facilities in border areas were undertaken to reduce congestion in those facilities.

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206. <https://www.refworld.org/docid/4afd24d22.html>

**2010. Council of Europe Commissioner for Human Rights  
third-party intervention on Human Rights Application No.  
30696/09 MSS vs Belgium and Greece<sup>207</sup>**

During both his visits the Commissioner was informed by migrants he met and by Greek refugee lawyers about instances of non-registration by the Police of asylum claims and of instances of refoulement, especially from Greece to Turkey. Such forced returns have occasionally taken place before the migrants were able to apply for asylum, but also concern “pink card” holders registered as asylum seekers in Greece. Characteristically, during the Commissioner’s discussions with migrant detainees at the Feres border guard station in December 2008, one of them reported that of the group of 65 persons who were arrested in 2008, having crossed the Evros river, 50 of them were “immediately deported”. Another particularly disturbing case, noted in the Commissioner’s 2009 report on Greece, has been the reported expulsion in March 2007 from Greece to Turkey through the Evros River of an Iranian irregular entrant who attempted to reach her refugee husband in Greece with her 6-year old child who suffered from heart problems. Reportedly she was later recognised as a refugee by UNHCR in Turkey and family reunification subsequently occurred in Greece. During his visit to Greece in February 2010 the Commissioner was informed of and concerned at another reported case of refoulement concerning a group of 43 Kurds who had arrived at the town of Chania, Crete on 18 July 2009; 17 of them applied for refugee status. According to NGO reports, on 27 July 2009 they were all transferred to the aliens’ detention centre of Venna (North East Greece) from where they were subsequently expelled to Turkey. A series of other collective expulsions of migrant groups, ranging from 30 to 120 persons, to Turkey (through the land border of the Evros department) from various eastern Aegean islands were reported by Greek refugee lawyers to have occurred in July and August 2009. The Commissioner was informed by Greek refugee lawyers of more similar collective expulsions that have reportedly occurred in December 2009, January and February 2010. The Commissioner underlines that such practices are not compatible with member states’ obligations recalled by the Committee of Ministers Twenty Guidelines on Forced Returns (especially Guideline 3 – prohibition of collective expulsion) and with the states’ fundamental obligation under the Convention not to return a person to a country where they would face a real risk of being subjected to treatment contrary to Article 3, or even Article 2. The Commissioner is concerned that

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207. <https://www.refworld.org/docid/4ecc9462.html>

asylum seekers returning to Greece by virtue of the Dublin Regulation may face such risks, jeopardizing the enjoyment by them of their human rights enshrined in the Convention.

### **2012. Pro Asyl report: “Pushed back: Systematic human rights violations against refugees”<sup>208</sup>**

The EU’s external southeastern frontier between Turkey and Greece is more than 2,200 km long. In 2012, it saw the largest number of irregular entries to the EU out of all the EU’s external borders, while in 2013 numbers of detections dropped significantly. According to the Hellenic Police, during the first nine months of 2013, 8,052 persons were arrested for crossing the sea borders and 764 persons for crossing land borders (compared to the same period of 2012: 1,329 in the Aegean Sea and 30,143 in Evros). The protection of the southeastern external borders is entrusted to the Greek authorities and the European Border Management Agency (Frontex). Pro Asyl interviewed men, women, children and vulnerable groups of people (such as unaccompanied minors, sick and elderly people) from Syria, Afghanistan, Somalia and Eritrea – persons *prima facie* in need of international protection – who have allegedly been pushed back to Turkey from the Greek/European territory (from the Aegean Sea and the Evros region). All of the following findings derive directly from eye witness testimonies obtained in the frame of Pro Asyl’s research. According to them: Push-backs as described indicate a systematic and collective practice carried out by the Greek authorities at an increasing rate. Refugees are pushed back to Turkey: a) from the Greek territorial waters, b) from the Greek islands, c) from Farmakonisi military island after being detained incommunicado, d) after a distress alert is launched, e) in Evros area at the land border directly after their arrival on Greek territory via the Evros River, either in the forest where they are trying to hide or while walking in the streets of the first village they reached in the area.

### **2013. Amnesty International report: “Frontier Europe: Human rights abuses on Greece’s border with Turkey”<sup>209</sup>**

Of the 79 migrants and refugees Amnesty International interviewed between March and May 2013, 28 described at least 39 separate instances of collective expulsions from Greece to Turkey, which they claimed to have experienced themselves between August 2012 and May 2013. Seven interviewees claimed they were pushed back more than once. 26

208. [https://www.proasyl.de/wp-content/uploads/2015/12/PRO\\_ASYL\\_Report\\_Pushed\\_Back\\_english\\_November\\_2013.pdf](https://www.proasyl.de/wp-content/uploads/2015/12/PRO_ASYL_Report_Pushed_Back_english_November_2013.pdf)

209. <https://www.amnesty.org/en/documents/eur25/008/2013/en/>

instances concerned push-backs across the land border with Turkey and 13 concerned push-backs on the Aegean. The number of alleged push-backs reported by this small sample size still works out an average of roughly one such incident a week. The alarming number of testimonies collected by Amnesty International alleging collective expulsion suggests that these practices are regularly employed by Greek border guards and coastguards. In response to a query by Amnesty International, Frontex also wrote on 6 June 2013 that since 2012, Frontex Headquarters had received 18 reports of alleged violations of fundamental rights which included “unofficial returns (“push-backs”) involving groups of migrants (up to ten people) or single individuals that had allegedly been returned to Turkey by the Hellenic Police.” Frontex informed Amnesty International that it had raised such allegations with the Greek authorities in writing on three separate occasions and received a response denying that such push-backs had taken place. Those who used the land route told Amnesty International that they had been caught by Greek border guards, sometimes hours and sometimes days after arriving in Greece, having crossed the River Evros. In most cases, they were held in a police station until nightfall before being taken back to the Turkish side of the river by boat and dropped on Turkish land or left on one of the small islands in the river. Some of those seeking to reach the EU through a Greek island in the Aegean said that their inflatable boats were towed by the Greek coastguard to Turkish waters; some said that they were taken on board the coast guard vessel only to be forced back into their own inflatables once in Turkish waters. All those who claimed to be pushed back in this way reported that they were never given an opportunity to explain their situation or challenge their deportation. .. In addition to tightening border controls in the Evros region, in August 2012 Greece also intensified sweep operations in urban areas to round up and detain irregular migrants. Migrants and refugees that Amnesty International met in Athens in April 2013 said that they feared going out as they were scared of being apprehended during one of these sweep operations, code-named Xenios Zeus. While carrying out research in Turkey in March 2013, Amnesty International interviewed two Sudanese men, D. and C., who claimed to have been subjected to collective expulsions from the Evros region following such sweep operations. One had lived in Greece since 2008 and the other since 2006. Both said that they had wives and daughters (aged three and five), who had been left behind in Athens when they were sent to Turkey across the River Evros.



### **2013. Amnesty International report: “An international failure: The Syrian refugee crisis”<sup>210</sup>**

At around 1 or 1.30 o'clock in the morning we arrived to the river side and they [the Greek police] handed us over to people wearing black hoods and black or dark blue uniforms. They took our money and passports. Then, in groups, carried us with small boats over to the Turkish side with nothing but our clothes left on us.” J. and S. Syrian refugees, who claimed to have been pushed back by the Greek authorities to Turkey on 12 November 2013, interviewed by Amnesty International in Istanbul on 22 November 2013. They were part of the group of 150 people allegedly sent back to Turkey after they sought shelter in a church courtyard in the village of Praggi in Evros region, Greece. The number of such cases, which resulted in unlawful collective expulsions from Greece, is not known. However, Amnesty International’s research points to the continuous use of push-backs along the Greek-Turkish border, which affect hundreds of people.

### **2013. UNHCR briefing notes: “Denied entry and pushed back: Syrian refugees trying to reach the EU”<sup>211</sup>**

UNHCR is also concerned over similar reports of asylum seekers being pushed back from Greece to Turkey. UNHCR has asked the Greek authorities to investigate the fate of 150 Syrian refugees, including many families with children, who were reported to have been denied entry in Evros on the 12th of November. UNHCR received information from villagers of the group being detained and transported in police vehicles to an unknown location, although they have not been transferred to a reception center. Their current whereabouts is unknown to us.

### **2014. Letter from Nils Muižnieks, Council of Europe Commissioner for Human Rights, to Greek Public Order Minister Nikolaos Dendias and Citizen Protection Minister Miltiadis Varvitsiotis: “Greece must end collective expulsions”<sup>212</sup>**

The large number of reported collective expulsions by Greece of migrants, including a large number of Syrians fleeing war violence, and allegations of

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210. <https://reliefweb.int/report/syrian-arab-republic/international-failure-syrian-refugee-crisis>

211. <https://www.unhcr.org/news/briefing-notes/denied-entry-and-pushed-back-syrian-refugees-trying-reach-eu>

212. <https://www.coe.int/ca/web/portal/-/greece-must-end-collective-expulsions>

ill-treatment of migrants by members of the coast guard and of the border police raise serious human rights concerns. I call on the Greek authorities to carry out effective investigations into all recorded incidents and take all necessary measures in order to end and prevent recurrence of such practices.

### 2014. Group of EU networks and Greek NGOs issue Recommendations to the European Union to Urgently Address Criminalization and Violence Against Migrants in Greece<sup>213</sup>

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Urgently investigate allegations of frequent illegal deportations (collective expulsions and pushbacks) at sea and land borders, as reported by numerous human rights entities. Examine the scope of these illegal actions and determine whether they amount to a de facto policy; Urge Greek authorities to initiate and complete with due diligence, independent, impartial and transparent criminal and administrative investigations based on reliable evidence and to ensure access to justice for surviving migrants; Take concrete steps to effectively address issues of illegal deportations, and the persistent rights violations in the context of border control more broadly at the EU level in keeping with the EU's legal obligations (not only focusing on the externalisation of EU border control through cooperation with third countries); Ensure that migrants apprehended in Greek territory or at the border – whether on land or at sea- are treated in a humane and dignified manner, are given the opportunity to seek asylum if they so choose, and are not subject to refoulement; Establish effective and transparent monitoring systems with periodic public reporting mechanisms to ensure that EU funds and other technical assistance are not being used in the context of illegal deportations and other human rights violations at the borders; Amend Frontex Regulation Art. 26a, as to establish a mechanism for dealing with both individual and public complaints about infringements of fundamental rights in all Frontex-labelled joint operation in cases of persistent and serious violations of the Charter of Fundamental Rights and empower the Fundamental Rights Officer to take up this role; Develop means to protect seriously ill migrants from being deported to countries where they will not be able to access healthcare as this might – in certain cases – amount to refoulement and/or result in breach of Article 2 or Article 3 of the European Convention on Human Rights.

213. <https://www.refworld.org/docid/533d1eae4.html>

**2014. European Council on Refugees and Exiles (ECRE) statement: “With their case shelved in Greece, survivors of the Farmakonisi tragedy seek justice at the ECtHR”<sup>214</sup>**

Eight children and three women from Afghanistan died on 20 January 2014 when their vessel sank off the Greek island of Farmakonisi. Although, according to the survivors, a Greek coast guard vessel was towing the boat toward the Turkish coast at high speed when the boat capsized, the authorities dropped the investigation in August 2014 stating that the testimonies from the survivors were unfounded. One year later, on 20 January 2015 the survivors filed a complaint against the Greek authorities to the European Court of Human Rights, citing violations of the right to life, freedom from torture and the right to an effective remedy, as laid out in the European Convention on Human Rights (ECHR).

**2015. Pro Asyl analysis regarding the death of eleven refugees near the island of Farmakonisi<sup>215</sup>**

On 20 January 2015 a Greek lawyer’s team on behalf of the survivors filed a complaint against the Greek authorities to the European Court of Human Rights. Three woman and eight children from Afghanistan died one year ago when their vessel sank near the Greek island Farmakonisi while being towed by the Greek Coast Guard. Since 24 January 2014, Pro Asyl supports the survivors with legal and humanitarian aid. There are conflicting accounts of what happened that night. Here is the analysis of Pro Asyl: During the early hours of 20 January 2014, three women and eight children from Afghanistan died off the coast of the Greek island Farmakonisi. A fishing boat carrying 27 refugees from Afghanistan and Syria sank while being towed by the Greek Coast Guard. The survivors accuse the Greek Coast Guard of towing them at full speed towards Turkey although the sea was rough and stormy. The Coast Guard claims that the boat was pulled slowly towards Farmakonisi. The refugees describe an illegal push-back operation, Greek authorities claim that they attempted a rescue at sea operation. Members of the Coast Guard also state that this deadly mission took place within the framework of the Frontex operation Poseidon. Until today, Frontex denies any responsibility for the death of these eleven refugees and for human rights violations in the Aegean Sea.

214. <https://ecre.org/with-their-case-shelved-in-greece-survivors-of-the-farmakonisi-tragedy-seek-justice-at-the-ecthr/>

215. <https://www.proasyl.de/en/news/analysis-by-pro-asyl-regarding-the-death-of-eleven-refugees-near-the-island-of-farmakonisi/>

### **2015. UNHCR submission on Greece to United Nations High Commissioner for Human Rights, 25th Session**<sup>216</sup>

UNHCR has received and documented, in 2014, testimonies of people who claimed they have been violently pushed back to Turkey, either by land or by sea, at great risk to their lives and safety. These allegations were promptly raised by UNHCR to the Greek authorities for corrective measures ... Ensure that informal returns (“push-backs”) of persons who cross the Greek border in an irregular manner, at land or at sea, do not occur, and effectively investigate all reported incidents of such nature.

### **2015. Human Rights Watch statement: “Greece: Attacks on boats risk migrant lives”**<sup>217</sup>

Human Rights Watch spoke to nine witnesses who described eight incidents in which masked assailants – often armed – intercepted and disabled the boats carrying asylum seekers and migrants from Turkey toward the Greek islands, most recently on October 7 and 9, 2015. The witnesses said that the assailants deliberately disabled their boats by damaging or removing the engines or their fuel, or puncturing the hulls of inflatable boats. In some cases, the boats were towed to Turkish waters. “Disabling boats in the Aegean makes an already dangerous journey even more likely to result in death,” said Eva Cossé, Greece specialist at Human Rights Watch. “These criminal actions require an urgent response from the Greek authorities.” Human Rights Watch also found new cases in which Greek border guards summarily returned migrants and asylum seekers to Turkey across the land border at Evros.

### **2015. UNHCR report: “Greece as a country of asylum”**<sup>218</sup>

In 2013 and during the course of 2014, UNHCR recorded testimonies by third country nationals referring to 152 alleged incidents, who described in a credible manner that they were forced back to Turkey by Greek authorities. These informal returns/“push-backs” are occurring at both the Greek-Turkish land and sea borders. Those testifying reported that these informal forced returns were conducted on Greek soil by Greek law enforcement officials. According to the reports, these individuals were summarily returned to Turkey without being formally registered, as required by Greek law, and with no assessment of their international protection needs.

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216. <https://www.refworld.org/docid/57285e774.html>

217. <https://www.hrw.org/news/2015/10/22/greece-attacks-boats-risk-migrant-lives>

218. <https://www.refworld.org/docid/54cb3af34.html>

In some cases, these statements were further confirmed by accounts of local residents. Two incidents received particularly high attention in the media: the “Praggi” case at the Evros region in November 2013 and the “Farmakonissi” case at the sea borders in January 2014. UNHCR also obtained testimonies with allegations of excessive use of force and physical and verbal abuse by law enforcement officers, as well as of the removal of valuable personal belongings from individuals when conducting these returns. During 2013 and in 2014, UNHCR received regular phone-calls from concerned individuals, who claimed to be in the Evros region or intercepted at sea and who expressed a fear of immediate forcible return to Turkey. UNHCR also witnessed cases of persons likely to be in need of international protection, mainly Syrians, who reached the gates of the First Reception Centre in Fylakio at Evros, not having yet been apprehended by police, asking to be registered as they feared that, if not registered, they could be summarily returned to Turkey. UNHCR has made several written interventions on the issue of these “push-backs”. So far only one response was received outlining that such practices do not occur. Official investigations are rarely initiated, and, to UNHCR’s knowledge, no case has resulted in holding any officials accountable. During October and November 2014, UNHCR continued receiving testimonies of alleged “push-backs” at both land and sea borders with Turkey.

### **2015–present. Forensic Architecture investigations**<sup>219</sup>

“Shipwreck at the threshold of Europe, Lesbos, Aegean Sea”; “Pushbacks across the Evros/Meriç river: The case of Parvin”; “Drift-backs in the Aegean Sea”, etc.

### **2016. Amnesty International submission on Greece to the UN Universal Periodic Review**<sup>220</sup>

Since 2012, the United Nations Refugee Agency (UNCHR), Amnesty International and other NGOs have documented numerous testimonies from refugees and migrants who report being pushed back to Turkey by Greek police in the Evros region and by Greek coastguards in the Aegean. Of 148 people interviewed by Amnesty International between December 2012 and March 2014, 68 said that they had been pushed back at least once. In January 2015, the Greek authorities failed to adequately investigate the deaths of 11 Afghans, including eight children, who drowned on 20 January 2014 when their boat sank near the island of Farmakonisi. Survivors claim they

219. <https://forensic-architecture.org/location/greece>

220. <https://www.amnesty.org/en/documents/eur25/3538/2016/en/>

had been towed at great speed back towards Turkey by the Greek coast-guard. Criminal investigations into the deaths were subsequently dropped. Despite the government's outright denial and more recently its condemnation of the practice of push-backs, Amnesty International's research during 2015 shows that collective expulsions continue at the Greek-Turkish land border, with several testimonies of violent push backs. The research also shows that push-backs at sea continue.

### **2017. UNHCR statement on reports of informal forced returns from Greece to Turkey**<sup>221</sup>

UNHCR ... is deeply concerned by continued reports about the alleged push-backs and refoulement at the land border between Greece and Turkey. "Such allegations of informal forced return have been recorded before, and it is of vital importance that the Greek authorities investigate them thoroughly," said UNHCR Representative in Greece Philippe Leclerc. "If confirmed, this is extremely worrying. The right to seek and enjoy asylum is a fundamental human right." UNHCR has raised this issue with the Greek authorities, calling also for preventive measures against such practices, including clear rules of process at the border, independent monitoring mechanisms, and enhanced internal control structures. UNHCR notes the obligation of States under international law to provide all asylum-seekers with access to asylum procedures and protection from refoulement, or informal forced return.

### **2018. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) report to the Greek government on its visit from 10 to 19 April 2018**<sup>222</sup>

That said, from the information gathered by the delegation during the visit, it appears that, at least until early March 2018, a number of foreign nationals who irregularly entered Greece from Turkey via the Evros River border and who were apprehended by Greek police and border guards were de facto subjected to informal forcible removals (push-backs) to Turkey without being provided an effective possibility to apply for asylum in Greece. Further, it appears that these persons were not properly identified and registered and, consequently, they were not in a position to make use of the legal remedies against their expulsion or return provided for by law. In the light of these circumstances, the CPT considers that these

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221. <https://www.refworld.org/docid/59477bc54.html>

222. <https://rm.coe.int/1680930c9a>

persons were not effectively protected against the risk of refoulement, including possible chain refoulement ... Therefore, the CPT recommends that the Greek authorities act to prevent any form of push-backs taking place across the Evros River border by law enforcement officials.

**2018. Report published by Greek Council for Refugees, ARSIS-Association for the Social Support of Youth and HumanRights360: “The new normality: Continuous push-backs of third country nationals on the Evros river”<sup>223</sup>**

The undersigned organisations publish this report containing 39 testimonies of people who attempted to enter Greece from the Evros border with Turkey, in order to draw the attention of the responsible authorities and public bodies to the frequent practice of push-backs that take place in violation of national, EU law and international law. The frequency and repeated nature of the testimonies that come to our attention by people in detention centres, under protective custody, and in reception and identification centres, constitutes evidence of the practice of pushbacks being used extensively and not decreasing, regardless of the silence and denial by the responsible public bodies and authorities, and despite reports and complaints denouncements that have come to light in the recent past. The testimonies that follow substantiate a continuous and uninterrupted use of the illegal practice of push-backs. They also reveal an even more alarming array of practices and patterns calling for further investigation; it is particularly alarming that the persons involved in implementing the practice of push-backs speak Greek, as well as other languages, while reportedly wearing either police or military clothing.

**2019. United Nations Working Group on Arbitrary Detention preliminary findings from its visit to Greece (2–13 December 2019)<sup>224</sup>**

The Working Group was informed that some newly arrived persons in the Evros region are arrested, detained in very poor conditions, and summarily returned across the Greece-Turkey land border without being given the opportunity to apply for international protection in Greece. In some cases, individuals had made previous attempts to cross the border, but were for-

223. <https://www.gcr.gr/en/news/press-releases-announcements/item/1028-the-new-normality-continuous-push-backs-of-third-country-nationals-on-the-evros-river>

224. <https://www.ohchr.org/en/press-releases/2019/12/working-group-arbitrary-detention-preliminary-findings-its-visit-greece-2-13>

cibly removed to Turkey in each case. Pushback practices are not permitted under Greek law and are contrary to the right to seek asylum. The Working Group is therefore of the view that detention for this purpose has no legal basis. The Working Group urges the Government to put an immediate end to pushbacks and to ensure that such practices, including any possible acts of violence or ill-treatment that has occurred during such incidents, are promptly and fully investigated.

### **2020. HumanRights360 report: “Defending human rights in times of border militarization”<sup>225</sup>**

This phenomenon of illegal pushbacks has been escalating, including accusations of already registered asylum seekers experiencing such illegal refoulement. For example, a group of Afghan asylum seekers were all arrested in Igoumenitsa, 700 km away from Evros, and were then driven by a police van to Evros and consequently illegally pushed back to Turkey despite having their asylum application registered and pending by the Asylum Services. Once the illegal pushbacks take place, the newcomers continue to experience threats and violence upon their arrival to Turkey. It has been reported that once pushed back to Turkey, newcomers face threats of being illegally forced to return to their country of origin, often facing serious risks of persecution. Such a chain of persecutions has been documented by two Iranian women, who after pushed back to Turkey, were later on forced to return to Iran, putting their lives in imminent danger. Furthermore, similar accusations have been reported by two Turkish citizens, who after being pushed back to Turkey, were arrested by the authorities, persecuted for political reasons, and sent to prison. Even though the various illegal patterns that take place in Evros may differ from each other, they all share similar characteristics regarding the infliction of violence and the violation of basic human rights ... P.A. Iranian woman. She was arrested and beaten by police officers in Evros. She was pushed back to Turkey five times. “Five times I was pushed back to Turkey, without having the time and the safeguards to apply for international protection. They were waiting for us in the field. I do not know if police were, commandos or border police. They had binoculars that could sense body heat. They were acting very differently than other policemen. They confiscated our mobiles, chargers, power banks. They took us out and drove us to the yard. I got afraid that they wanted to push us back to Turkey, so I started yelling at everyone ‘go back, go back’. At that moment, they caught me and drove me to a room, away from the other cells which had two doors, one towards the yard and the

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225. <https://www.humanrights360.org/defending-human-rights-in-times-of-border-militarization/#4>



other one downstairs. There I was bitten up by one policeman and one man with a baton and a wire. I stayed there for six hours. While I was there the other detainees were yelling all the time 'Where is Parvin, where is Parvin?'. Because of this upheaval, other policemen came – commandos. In the beginning, there were twelve policemen with blue uniforms, and later on, fifty people arrived, commandos in black uniforms and guns. Moreover, a man dressed in civil clothes was in this place. He was the one who bitted me up, and he insulted me, yelling at me 'fuck you'. Not only him but the other policemen too. When they drove us to the river, they put us in a line to enter the plastic boats and they were telling us 'to be quiet', especially when somebody was passing by. Additionally, they had flashlights with a red light in order to not be seen by the Turkish soldiers."

**2020. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) report to the Greek government on its visit from 13 to 17 March 2020<sup>226</sup>**

The persons who alleged that they had been pushed back from Greece to Turkey had subsequently re-entered Greek territory and had been apprehended and detained by the Greek police. The persons who alleged to have been pushed back in the period prior to March 2020 described having been held for short periods in various detention facilities situated not far from the Evros River. Further, the persons alleged that they had had their personal belongings, including mobile phone and in some instances footwear, confiscated by their guards who had escorted them to the river and supervised the pushbacks (these persons all wore balaclavas which hid their faces and were dressed either in military-style fatigues or police uniforms) ... A few of the persons met during the March 2020 visit alleged that they had initially been detained with other migrants, including families, who had subsequently been sent back across the river to Turkey. These persons described having been held together with many other people for a number of hours in a facility, the layout of which corresponded to that of the Poros detention facility visited by the delegation. Indeed, the Greek authorities confirmed to the CPT's delegation that this facility had indeed been used for holding migrants for several hours before taking them to Feres or Soufli Police and Border Guard Stations. However, as the Hellenic Police did not keep any record of the persons who had been held at the Poros detention facility, it was not possible to trace the location to which these persons had been transferred. Records at Feres and Soufli did not state whether

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226. <https://rm.coe.int/1680a06a86>

they had been held at Poros or not. A telling manifestation of the human impact of this pushback practice is represented by a girl of two and a half years old who, along with her older brother of 21 years, was separated from her mother and father and five other siblings. The whole family had crossed into Greece on 29 February 2020 and had been apprehended in a field and taken to the quasi-official Poros centre. There were so many migrants present that some of them had to remain in the courtyard sitting on the concrete floor in the rain. The officers, dressed in camouflage uniforms and with balaclavas over their faces, allegedly confiscated the mobile phones of the migrants as well as their personal bags and kicked anyone who did not obey their orders to remain seated. After around six or seven hours, the camouflaged officers are said to have loaded most of the migrants, including the mother and four of her children, onto about six vehicles and transported them to the Evros River, where they were put into wooden boats and taken across to the Turkish side. A day later, the father and another brother were pushed back across the river in a similar manner. All the belongings of this family, including a backpack with clothes and identity and property documents as well as money, were allegedly taken by the officers. The brother and his little sister were taken to Feres Police and Border Guard Station and two days later to the Filakio RIC. They were served with deportation papers to Afghanistan. The anguish of the mother who was forcibly separated from her child in such a manner cannot be put into words. And yet, this is but one tragic illustration of the pushback practice ... Moreover, since the delegation's visit, credible allegations have emerged of migrants having reached the island of Samos from Turkey by boat before being re-embarked on a dinghy by Greek officers and towed by a Greek Coast Guard vessel back to Turkish waters, where they were allegedly left adrift overnight until recovered by the Turkish Coast Guard on the afternoon of the following day. As the European Court of Human Rights has repeatedly made clear, whenever the State through its agents operating inside or outside its territory exercises control and authority over an individual, and thus jurisdiction, the State is under an obligation to secure to that individual the rights and freedoms of the European Convention on Human Rights. The CPT is aware that Frontex ... currently supports Greece through Operation Poseidon with border surveillance, search and rescue, registration and identification capacities, as well as combatting cross-border crime. It has deployed some 600 officers from various European countries both in the Evros region and on the Aegean islands, as well as a number of boats to support the Greek Coast Guard (including, at the time of the delegation's visit to Samos, two German Coastguard boats operating as part of the Frontex mission). However, human rights monitors apparently had not been included in Operation Poseidon.

### **2020. UNHCR, concerned by pushback reports, calls for protection of refugees and asylum seekers<sup>227</sup>**

UNHCR is particularly concerned about the increasing reports, since March 2020, of alleged informal returns by sea of persons who, according to their own attestations or those of third persons, have disembarked on Greek shores and have thereafter been towed back to sea. Worryingly, UNHCR has also received reports and testimonies about people being left adrift at sea for a long time, often on unseaworthy and overcrowded dinghies, waiting to be rescued. UNHCR has also called for further preventive measures against such practices, for clear rules of process at the border and internal monitoring mechanisms, including through the reinforcement of the role of the Greek Ombudsman.

### **2020. International Organization for Migration (IOM) alarmed over reports of pushbacks from Greece at EU border with Turkey<sup>228</sup>**

The International Organization for Migration (IOM) is deeply concerned about persistent reports of pushbacks and collective expulsions of migrants, in some cases violent, at the European Union (EU) border between Greece and Turkey. International media reports and footage showing the use of marine rescue equipment to expel migrants across the Eastern Aegean Sea are especially disturbing. IOM, together with partners, are closely monitoring the situation and have received reports of migrants being arbitrarily arrested in Greece and pushed back to Turkey and violence perpetrated against migrants by some border personnel. The Organization calls on Greek authorities to investigate these allegations and testimonies given by people forced to cross the Greece-Turkey border. Amid heightened health considerations, we urge States to refrain from securitizing borders and implementing migration practices that could compromise the human rights of migrants, including measures such as the construction of border walls, militarizing border patrols or increasing deportations.

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227. <https://www.unhcr.org/gr/en/16207-unhcr-concerned-by-pushback-reports-calls-for-protection-of-refugees-and-asylum-seekers.html>

228. <https://greece.iom.int/news/iom-alarmed-over-reports-pushbacks-greece-eu-border-turkey>

**2021. Special Rapporteur on the Human Rights of Migrants, UN Human Rights Council report on means to address the human rights impact of pushbacks of migrants on land and at sea**<sup>229</sup>

Numerous submissions have raised concerns regarding Greece's border governance at both its land and sea borders with Turkey. Situated on the Eastern Mediterranean migration route, Greece deploys border and coast-guard patrol teams as part of national and joint European Union border operations, in cooperation with the European Border and Coast Guard Agency (Frontex). On top of an increased militarization of the Evros land border region since March 2020, which has effectively resulted in preventing entry and in the summary and collective expulsion of tens of thousands of migrants and asylum seekers, the Special Rapporteur has received allegations that pushbacks over the land border are also reportedly carried out from urban areas, including reception and detention centres. An increase in pushbacks in the Aegean Sea, from Greek territorial waters, as well as from the islands of Rhodes, Samos and Symi, has also been documented, with one stakeholder recording 321 incidents involving 9,798 migrants between March and December 2020 ... NGO ships and crew involved in search and rescue have faced over 50 criminal or administrative proceedings initiated by Germany, Greece, Italy, Malta, the Netherlands and Spain since 2016. The Special Rapporteur notes with concern that those actions have resulted, in practical terms, in a marked decrease of adequate search and rescue capacities in the Mediterranean. In Greece, NGOs are investigated and prosecuted by authorities on grounds of "espionage", "violation of State secrets", "membership of a criminal organization" and "violations of the migration law".

**2021. Council of Europe Commissioner for Human Rights statement: "Greek authorities should investigate allegations of pushbacks and ill-treatment of migrants, ensure an enabling environment for NGOs and improve reception condition"**<sup>230</sup>

In a letter addressed to the Minister for Citizens' Protection, the Minister of Migration and Asylum, and the Minister of Shipping and Island Policy of

229. <https://www.ohchr.org/en/special-procedures/sr-migrants/report-means-address-human-rights-impact-pushbacks-migrants-land-and-sea>

230. <https://www.coe.int/en/web/commissioner/-/greek-authorities-should-investigate-allegations-of-pushbacks-and-ill-treatment-of-migrants-ensure-an-enabling-environment-for-ngos-and-improve-recept>

Greece, made public today, the Council of Europe Commissioner for Human Rights, Dunja Mijatović, urges the Greek authorities to put an end to pushback operations at both the land and sea borders with Turkey, and to ensure that independent and effective investigations are carried out into all allegations of pushbacks and of ill-treatment by members of security forces in the context of such operations. These practices, which have been widely reported and documented for several years, prevent the persons who are returned at the border without individual identification or procedure from putting forward reasons why such a return would violate their rights, and from applying for protection. “In such cases, member states cannot satisfy themselves that they are not sending individuals back in violation of, for example, Article 3 of the European Convention on Human Rights and the refoulement prohibition in the UN Refugee Convention,” underlines the Commissioner. “Moreover, the way in which these operations are reportedly carried out would clearly be incompatible with Greece’s human rights obligations,” she adds.

### **2021. Amnesty International report: “Greece: Violence, lies, and pushbacks”<sup>231</sup>**

“Before I entered the bus, I showed the police my asylum card, but they took it from me, shredded it, and told me to get into the bus.” Nabil, a 31 y.o. Syrian, registered as an asylum-seeker in Greece. As an unlawful and aggressive means of border control, pushbacks tend to occur upon or shortly after people cross a border. However, the practice of pushbacks in Greece is so entrenched that Amnesty International researchers documented four cases where people affected had a registered protection status in Greece or had been in the country days or weeks before, and were apprehended well inland. In the first half of 2020, other NGOs also documented apprehensions and pushbacks from facilities in the north of Greece, including from Diavata refugee camp and Drama Paranesti pre-removal facility.

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231. <https://www.amnesty.org/en/wp-content/uploads/2021/07/EUR2543072021ENGLISH.pdf>

### **2021. Greek Ombudsman interim report: “Alleged pushbacks to Turkey of foreign nationals who had arrived in Greece seeking international protection”<sup>232</sup>**

The large number of the complaints by international organizations and by international and Greek non-governmental organizations regarding illegal pushbacks of hundreds or even thousands of foreign nationals, from Greece to Turkey in the area of Evros river, which follow, through the years, constantly repeated patterns, has created concerns regarding the level of the protection of human rights in Greece, in particular in the regions close to the land borders with Turkey. Those concerns derive from the persistent allegations for direct involvement of the Greek police, namely the alleged involvement of police officers, vehicles and infrastructure in certain areas close to Evros river, as well as the failure of the Greek authorities to locate and identify clandestine groups or individuals who are likely to engage in illegal pushbacks. The Greek authorities’ response to the said allegations has not until today resulted to effectively address those concerns through a comprehensive investigation of the complaints, in particular of those complaints whereby the foreign nationals named as victims of illegal pushbacks from Greece to Turkey had already contacted the Greek authorities, as recorded in official documents.

### **2022. United Nations High Commissioner for Refugees submission in the case of SAA and Others vs Greece (No. 22146/21) before the European Court of Human Rights<sup>233</sup>**

In some cases, informal enforced return took place after UNHCR (with the concerned person’s consent) had alerted the HCG [Hellenic Coast Guard] and/or the Hellenic Police about the presence of new arrivals who wished to seek asylum on the islands. In most cases, persons provided their exact coordinates which were communicated to the HCG and the Hellenic Police to facilitate the rescue operation and their referral to reception and identification procedures. Of 110 such incidents, where UNHCR intervened in 2021, only 42 were subsequently confirmed by the Greek authorities as arrivals. In another 19 instances, the authorities confirmed the arrival of some members of the group, while for the rest no official arrival was recorded by the authorities. In many instances, UNHCR has collected post factum information, such as testimonies by the affected persons and other

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232. <https://www.synigoros.gr/en/category/default/post/alleged-pushbacks-to-turkey-of-foreign-nationals-who-had-arrived-in-greece-seeking-international-protection>

233. <https://www.refworld.org/pdfid/62f39cb44.pdf>

reports, indicating that although their arrival had not been confirmed by the Greek authorities, they had reached the Greek territory and were informally returned to Turkey ... Between early 2020 and end February 2022, UNHCR formally submitted 59 cases of incidents at land and sea through 17 official letters addressed to the competent authorities requesting investigation. UNHCR received three official responses, in which the Greek authorities (Hellenic Police and Hellenic Coast Guard) denied that informal enforced returns took place, without providing concrete information on any of the specific queried cases. By the end 2021, UNHCR was aware of only two cases under administrative (disciplinary) investigation. UNHCR is also aware of criminal complaints submitted by defending lawyers to the Public Prosecutor concerning 209 cases. Judicial investigations were initiated in 12 of these cases. UNHCR submitted its information to the investigating authorities in nine cases concerning events at and near sea borders in 2020 and 2021, and in one case at the land border in 2019. As of the date of this submission, the outcome of these investigations remains unknown to UNHCR ... Whereas this submission primarily focuses on the situation at the sea border, reports of apprehensions and subsequent informal enforced returns to Turkey also concern the land border. UNHCR has received alarming reports about apprehensions and subsequent irregular expulsions of asylum-seekers registered in Greece or even beneficiaries of international protection ... Regarding “irregular expulsions”, the affected persons described similar situations: they were found in urban centres or commuting between cities when they were stopped by police and asked to cooperate in what appeared to be a document check. They reported having been taken to a police station or, in some instances, were told that they would be taken there. They were thereafter transferred to the Evros border area. From there, they were forcibly and informally returned to Turkey. In the period 2020-2021, UNHCR documented, through direct testimonies from persons affected and cases brought to UNHCR’s attention by representing lawyers and by civil society representatives, 21 cases of irregular expulsion of registered asylum applicants in Greece and of two refugees who had been granted international protection in Germany. UNHCR also recorded the irregular expulsion of five persons who had a “police note” confirming their presence in Greece ... From January 2020 to December 2021, UNHCR recorded 311 substantiated incidents of informal enforced returns concerning at least 6,680 affected persons, that had taken place at the Greek-Turkish land border. The information came primarily from direct sources (testimonies of affected persons), as well as secondary sources such as civil society organizations and representing lawyers. Out of those 311 incidents, UNHCR collected direct testimonies in 200 of them, with some having experienced several instances of informal enforced return. The testimonies suggest that individuals were apprehended either, after their irregular crossing of the border, or further inside the mainland and

were held arbitrarily without guarantees of due process, formal proceedings or the possibility of resorting to legal assistance or any legal remedy, prior to their informal enforced return. People affected described patterns of threats, intimidation, violence and humiliation, including testimonies of people being stripped of their clothes. Such incidents posed significant risks for the lives of persons forcibly transferred across the river Evros – a natural border between Greece and Turkey – in rubber boats, under harsh weather conditions, or abandoned on the riverbanks or on islets on the river, sometimes for days without food, water and medical assistance.

### **2022. UNHCR warns of increasing violence and human rights violations at European borders**<sup>234</sup>

We are alarmed by recurrent and consistent reports coming from Greece's land and sea borders with Turkey, where UNHCR has recorded almost 540 reported incidents of informal returns by Greece since the beginning of 2020. Disturbing incidents are also reported in Central and South-eastern Europe at the borders with EU Member States. Although many incidents go unreported for various reasons, UNHCR has interviewed thousands of people across Europe who were pushed back and reported a disturbing pattern of threats, intimidation, violence and humiliation. At sea, people report being left adrift in life rafts or sometimes even forced directly into the water, showing a callous lack of regard for human life. At least three people are reported to have died in such incidents since September 2021 in the Aegean Sea, including one in January. Equally horrific practices are frequently reported at land borders, with consistent testimonies of people being stripped and brutally pushed back in harsh weather conditions.

### **2023. Greek Council for Refugees report "At Europe's borders: Between impunity and criminalization"**<sup>235</sup>

Pushbacks of asylum seekers take place mostly in the Evros region and the Aegean islands. There have also been reports regarding incidents including informal arrests of persons in Greek territory, mainland and islands, who have been pushed back, even though some possessed documents proving their legal presence in Greece. In recent years, reports of pushback operations both at the land and the sea border of Greece with Turkey have been increasing. During 2020-2021, UNHCR recorded 539 incidents of 'informal

234. <https://www.unhcr.org/news/news-releases/news-comment-unhcr-warns-increasing-violence-and-human-rights-violations>

235. [https://www.gcr.gr/media/k2/attachments/GCR\\_Pushback\\_Criminalization\\_Report.pdf](https://www.gcr.gr/media/k2/attachments/GCR_Pushback_Criminalization_Report.pdf)



enforced return' at land and sea borders (referred to as pushback or drift-back), involving at least 17,000 people, during which potential violations of a number of rights were reported. Between early 2020 and February 2022, UNHCR formally submitted 59 cases of informal enforced returns at land and sea borders through 17 official letters addressed to the Greek authorities, requesting investigations. Moreover, in December 2021, 32 applications of pushback incidents from Evros, Crete, Kos, Kalymnos, Lesbos, Samos or the sea before the victims reached any island were communicated by the ECtHR to the Greek Government.

**2023. European Council on Refugees and Exiles statement: “Greece: Increase of pushbacks with impunity amid ongoing crackdown on solidarity, Türkiye considered ‘safe’ by Greek authorities sets new record of deportations, thousands of vulnerable refugees left without adequate accommodation after closing of ESTIA programme”<sup>236</sup>**

Greece continues its violations of EU and international law by conducting pushbacks. Only in the first week of 2023, the Hellenic Coast Guard stopped 32 boats carrying 1108 people, marking an increase of 125% in pushbacks compared to the first week of 2022. “The lack of action by the Commission has created this atmosphere of impunity”, says Tineke Strik, MEP from the Left/Greens, as the European Commission can hold Greece accountable for its ongoing violation of EU law and initiate infringement proceedings. However, not invoking the tools available are “political decisions”, says Catherine Woollard, director of the European Council on Refugees and Exiles (ECRE), adding that “It’s always important to underline that the situation would be much, much worse if legal challenges weren’t taken, because then you have a situation of total impunity, rather than partial impunity”. The role of the European Border and Coast Guard Agency, Frontex, in ensuring respect for the fundamental rights of people on the move at EU’s external borders.

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236. <https://ecre.org/greece-increase-of-pushbacks-with-impunity-amid-ongoing-crackdown-on-solidarity-turkiye-considered-safe-by-greek-authorities-sets-new-record-of-deportations-thousands-of-vulnerabl/>

### 2023. Greek National Commission for Human Rights interim report: Recording Mechanism of Incidents, of Informal Forced Returns<sup>237</sup>

During the reporting period, informal forced returns mainly concern persons who attempted to access the asylum procedure for the first time and have not been previously detected by the Authorities or have repeatedly attempted to do so, but according to their allegations they were never registered by the competent Authorities. There are, also, alleged victims claiming to be beneficiaries of international protection in Greece, or asylum seekers registered by the competent Authorities, whose expulsion to their countries of origin or third countries, without compliance to the provisions of Article 33 of the Geneva Convention, constitutes a violation of the principle of non-refoulement. Moreover, most of the testimonies recorded by the Recording Mechanism indicate that the alleged victims have been detected near a border area either in the mainland or on islands. There are, however, testimonies from victims who claim to have been detected in the mainland, far from the border areas of the country. The largest number of the alleged victims are nationals or stateless former habitual residents of countries from where the asylum seekers with the highest recognition rates of international protection in Greece and the EU come from, according to national and EU sources. According to testimonies recorded by the Recording Mechanism over the reporting period, it appears that informal forced returns are distinguished by a recurring organized operational framework. Testimonies indicate cooperation among various alleged perpetrators, transfer from one location to another, detention/restriction of movement in different facilities. As it is indicated, incidents of informal forced returns are carried out by mobilizing human resources, facilities, heavy vehicles or watercrafts and other logistical means. Moreover, as the testimonies indicate they occur in specific geographical regions, the particularities of which influence the means of implementation. The mode of implementation of informal forced returns (*modus operandi*), as revealed by the testimonies, presents an image of a staged approach. Most testimonies report that victims are first detected by a group (detection stage), then taken to a facility where they are kept under guard (detention or restriction of freedom of movement stage), and finally transferred from the detention/movement restriction area to the point of physical removal where the informal forced return is completed (physical removal stage). Some testimonies, however, especially when the place of detection is in

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237. [https://nchr.gr/images/pdf/nea\\_epikairothta/deltia\\_tupou/2023/Interim\\_Report\\_Mechanism\\_en.pdf](https://nchr.gr/images/pdf/nea_epikairothta/deltia_tupou/2023/Interim_Report_Mechanism_en.pdf)

the sea or near the region of Evros River, indicate that the detention/restriction of freedom of movement stage is skipped so that the informal forced return is carried out immediately after the detection. Testimonies recorded by the Recording Mechanism indicate that both persons in uniform and persons in civilian clothes appear to have been involved in these operations, supporting the assumption that in these operations may have participated citizens not legally entitled to exercise public authority. This assumption is further supported by testimonies indicating that third-country nationals speaking some of the victims' languages appear to have been involved as perpetrators in the process of physical removal. Furthermore, the vast majority of the testimonies report the use of violence during the physical removal stage, either by people in uniform or by other persons.

### **2023. Solomon investigation: “The Great Robbery: More than €2 million taken from asylum seekers”<sup>238</sup>**

The findings of our investigation indicate a clear modus operandi of the Greek authorities in recent years: asylum seekers are arrested when they enter Greece illegally, without being given the opportunity to apply for asylum (as required by both Greek and international law); sometimes they are arrested in various parts of the mainland, although they may already be registered or have already been granted asylum; they are brought to various places (police stations, barracks, abandoned warehouses), where often people in uniform or civilian clothing physically assault them and take their belongings before they are transported to Turkey in inflatable boats. The data collected allows us to conclude that, during the last six years, members of the Greek security forces have stolen more than €2m in cash (at least €2.2–2.8m) from asylum seekers. This amount is based on conservative estimations, without taking into account the value of mobile phones and other valuables (rings, bracelets) taken from victims. In addition, it is highly likely that these cases are just the tip of the iceberg, as the vast majority of pushbacks go unreported. A second key point that our joint investigation revealed, is that a few years ago, the practice of stealing money and personal belongings was not as prevalent, but it has progressively become a systematic tactic. “When you confiscate their phones, you eliminate any evidence that they were there. When you confiscate their money, you make their lives more difficult. When you strip them naked, another trend that’s on the rise, you humiliate and demoralize them,” comments Eva Cossé, senior researcher at Human Rights Watch in Greece. “It’s part of a strategy to prevent them from trying to cross the border again,”

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238. <https://wearesolomon.com/mag/format/investigation/the-great-robbery-during-illegal-pushbacks-in-greece-refugees-are-robbed-by-border-guards/>

she adds ... In a case against the Greek state being heard at the European Court of Human Rights (ECtHR), the UN High Commissioner for Refugees has provided evidence of 311 incidents in which “at least 6,680 people” were pushed back through Evros to Turkey. Two sources from Frontex ... that have an increased presence in Greece, confirmed to Solomon and El País that pushbacks are now a normalized reality. “We do it, just like [other countries] do it. Except that they’re not as hostile [toward asylum seekers] as we are,” acknowledges one of the two sources. An institutional source who spoke on the condition of anonymity stated that “asylum seekers who enter Greece and follow the asylum procedure have said that it’s their second or third attempt. Some make even more attempts, because they were previously pushed back to Turkey.” The same source adds that there is now a “great escalation in the use of violence and humiliating practices. It’s the lowest level of respect for human life.”

### **2023. Greek Council for Refugees and Hellenic League for Human Rights joint letter on irregular forced returns (pushbacks), criminalisation and the rule of law in Greece**<sup>239</sup>

In their letter, the organisations highlight the long-standing nature of reported pushbacks incidents at the country’s borders. Yet they stress that in recent years there has been a paradigm shift vis-à-vis the management of refugee and migrant arrivals, which has led to an exponential increase in the number of relevant complaints. At the same time, in spite of the number of complaints and in stark contrast to the European Court of Human Rights (ECtHR), which has prioritised the examination of no less than 32 cases of alleged pushbacks in Greece, the Greek judiciary continues to remain inactive, with the cases that have so far been brought before it having remained stuck at a preliminary stage or having been archived. In further contrast, amidst the demonisation of civil society organisations active in the field of refugee protection, there has also been an increasing criminalisation, even via the misuse of criminal provisions, of those who bring to light the numerous pushback allegations and/or appeal to justice on behalf of the victims. This is extremely worrying for the state of the Rule of Law in Greece.

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239. [https://www.gcr.gr/media/k2/attachments/GCR\\_HLHR\\_letter\\_final.pdf](https://www.gcr.gr/media/k2/attachments/GCR_HLHR_letter_final.pdf)

### 2023. Alarm Phone information after the shipwreck near Pylos of 14 June 2023<sup>240</sup>

Since Tuesday 14th of June, we have been following the aftermath of the shipwreck closely. Our thoughts are with the survivors and with relatives and friends who contact us, desperately searching for their loved ones. On this page, we try to collect information that might be useful for relatives but also for others who are in contact with relatives or survivors ... So far we know that there are 104 survivors. Most of them were brought to Malakasa to a reception and identification camp. 9 survivors are detained and under criminal investigation. As far as know, 78 dead bodies have been brought to the morgue of Schisto. How many people remain missing is unclear as estimates of how many passengers were on board the boat go up to 750. The boat sank at a place where the sea is extremely deep. So it can be that many will remain missing.

### 2023. Solomon report: “They are urgently asking for help’: The SOS that was ignored”<sup>241</sup>

The Hellenic Coast Guard stated that they did not commence a rescue operation to aid the fishing trawler overloaded with migrants before it eventually sank because the vessel refused assistance. International law experts, as well as active and former Coast Guard officials, refute this argument. In addition, communication between Alarm Phone and authorities (which are in Solomon’s possession), prove that the migrants on board had sent out an SOS – which was ignored ... The bodies of the victims who lost their lives at sea, 80 km southwest of Pylos on June 13-14 have been transferred to Schisto cemetery. At least 78 dead and hundreds remain missing. So far, 104 people have been rescued, while the search for survivors continues. But critical questions remain about the Hellenic Coast Guard’s mishandling of what has become the deadliest shipwreck recorded in the Mediterranean in recent years.

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240. <https://alarmphone.org/en/2023/06/16/information-after-the-shipwreck-near-pylos-of-14-june-2023/>

241. <https://wearesolomon.com/mag/focus-area/migration/they-are-urgently-asking-for-help-the-sos-that-was-ignored/>

## About the Author

**MARIA PARASKEVA** is a legal expert who has worked in several NGOs and international organizations in the field of the protection of vulnerable and minority social groups and of ensuring their access to justice. In recent years, she has collaborated with European networks on best practices from the field and theory and has worked on specific methodologies and guidelines. She is focused on safeguarding the most vulnerable, improving the protection system and bringing about systemic changes. One of the main focuses of her work is showing how the political discourse on migration revolves around exclusionary policies, creating a disproportionate impact on racialized immigrants and human rights defenders, while fortifying the frontier and encouraging anti-migrant publicity campaigns.



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Political discourse in Europe on migration revolves around exclusionary policies, the targeting of “others”, of refugees and migrants and of anyone that is different, creating a disproportionate impact on these populations. The failures in implementing EU law and policy in the area of irregular migration, and making it effective and respectful of human rights, reveal a crisis of solidarity. Migration has proved a contentious issue for the EU, which has not been able to agree on a common migration policy in a period in which nationalism is on the rise. Although it has been proved historically that people flee from countries of persecution despite the absence of legal and safe pathways, Europe’s migration policy remains focused on keeping Europe’s borders closed. This analysis summarizes the political and legislative developments with a focus on the EU policy framework, which has gradually resulted in the “normalization” and “legalization” of human rights violations – including pushbacks and collective expulsions – the criminalization of human rights defenders and NGOs working in the field, and European Court of Human Rights decisions that create concerns about the future of cases brought before it.