

Submission to the Special Rapporteur on Human Rights of Migrants:

**Human Rights Violations at International Borders: Trends, Prevention and Accountability
in Greece**

Report for the 50th Session of the Human Rights Council

Submitted by:

Border Violence Monitoring Network

Reporting Organisation:

Border Violence Monitoring Network (BVMN) is a coalition of organisations working to document illegal pushbacks, collective expulsions and police violence along the EU’s external borders in the Western Balkans, Greece and Turkey since the network’s formulation in 2016. The collection of data on illegal pushbacks and police violence is done by a consortium of independent field experts who are part of or cooperate with humanitarian support groups united through the Border Violence Monitoring Network.

Question 1: Recently adopted domestic legislation amending border entry, asylum and other international protection procedures for non-nationals since May 2021

1. Due to a change in domestic legislation in November 2021¹ access to asylum was essentially blocked by the Greek State and remains blocked to date.
2. As reported by BVMN partner, Mobile Info Team², “At the end of November 2021, the Greek Government announced major changes in access to asylum for people seeking safety on mainland Greece, Crete and Rhodes. This policy saw the termination of the Skype pre-registration system³ for the registration of asylum claims. Instead, people seeking safety will now need to go to reception centres on the mainland of Greece. However, such centres are not yet operational meaning that there has been no access to asylum for the majority of people on mainland Greece, Crete and Rhodes since 22 November 2021 [...] The abrupt change in policy has left people in an information void. There are currently no details available on how and when all other individuals can enter the asylum system. It is deeply concerning that the Greek authorities are denying people access to the asylum system without offering any interim measures or information on how and when people can expect to register their asylum claims”. Until such centres are operational, only those who are deemed vulnerable under Greek law and can evidence this, as well as people with identity documents verified by Greek authorities - which would primarily be people who have been checked by police and given a document commonly called a ‘police note’ - can access the asylum system. In theory, people could also walk to Fylakio Reception and Identification Centre, located in the Evros region, and attempt to claim asylum there. Yet, travelling to this area of Greece puts people at extreme risk of being informally expelled to Turkey. BVMN partner Josoor recently documented such an illegal expulsion of a Cuban couple who were told to go to and register their asylum claim at Fylakio Reception and Identification Centre and were subsequently expelled to Turkey in what could arguably be called an enforced disappearance - the same fate at least 65 other Cuban nationals in Istanbul had described to the organisation and media previously.

¹ Hellenic Republic: Ministry of Migration and Asylum. (2021). *Διαδικασία Υποβολής Αιτημάτων Ασύλου*. [Online]. Available from: <https://migration.gov.gr/en/diadikasia-ypovolis-aitimatou-asyloy/>

² Mobile Info Team. n.d. About Us. Available from: <https://www.mobileinfoteam.org/what-we-do>

³ Research conducted by Mobile Info Team uncovered exceedingly long delays people faced when trying to reach the Greek Asylum Service on Skype. On average, those Mobile Info Team spoke with, were still attempting to get through after 14 months. See: Mobile Info Team. (2021). *Lives on Hold*. [Online]. Available from: <https://www.mobileinfoteam.org/livesonhold>

3. The *de facto* removal of asylum access for people on mainland Greece and islands without RICs also limits access to an Asylum Seekers Card which provides official documentation formalising the legal basis for a person's stay in Greece. In turn, the Asylum Seekers Card also permits access to the Greek healthcare system, shelter and basic financial support. As the homelessness rate of people trying to access asylum on the mainland is at least 74 times the national rate of Greece⁴, BVMN is concerned about the subsequent impact that limiting access to the Asylum, and the Asylum Seekers Card will have. As reported by Mobile Info Team “left without a safety net, people seeking asylum in Greece are forced to sleep on the streets, despite having suffered severe loss and trauma.”
4. Further to this, in November, the Greek State re-issued a circular clarifying its intention to subject individuals to reception and identification procedures if they enter or reside in Greece without proof issued by the Greek state of their identification or nationality. As reported by Mobile Info Team, ‘the implementation of Article 39 of the International Protection Act⁵ will see the *de facto* detention of people seeking asylum for 25 days. Forcing people into prison-like centres for the purpose of registering an asylum claim is unjust and unnecessary. Fylakio Reception and Identification Centre is the only existing facility of its kind on the mainland with space for just 282 individuals, although up to 350 individuals have been known to be housed within the facility⁶’.
5. BVMN reaffirms the recommendations issued by Mobile Info Team:
 - 5.1. The Greek State should urgently provide interim measures to ensure people have viable options to register asylum applications on mainland Greece, Crete and Rhodes.
 - 5.2. The Greek State should urgently find alternative long-term solutions to register asylum applications without detaining individuals.

Question 2: Recent or current border management legislation/policies/measures with the view to control, reduce or prevent migrant arrivals in your country

6. The Border Violence Monitoring Network, and other similar human rights watchdog organisations, have consistently asserted that the systematic use of collective expulsions and pushbacks, and the prevalent attributed rights violations of torture and inhuman treatment, is so habitual and widespread that they would constitute as a hallmark of border management policy by multiple European States.
7. The mass proliferation of pushbacks, as shown by BVMN’s database, should be viewed as a policy or measure used by the Greek State with the view to control, reduce or prevent migrant arrivals.

⁴ *Ibid*

⁵ See: Article 39 of Hellenic Republic Law No. 4636/2019

⁶ Human Rights 360. n.d. *Legal and psychosocial support in the reception and identification center of Fylakio, Orestiadas/pre-removal center/border police stations*. [Online]. Available from: <https://bit.ly/3r7RH7R>

7.1. Since 2019, the Border Violence Monitoring Network has documented 171 pushback testimonies from Greece recalling the ill-treatment and abuse of 11,093 people⁷.

7.2. Since documentation efforts started, BVMN has also observed the increased proliferation of violence and ill-treatment during pushbacks. Since 2019, up to 93.6% of all pushbacks recall treatment that we assert would amount to torture or cruel and inhuman treatment under international law⁸.

8. Further to this, both BVMN⁹, international media¹⁰ and human rights organisations¹¹ have all observed the increased frequency of maritime pushbacks from Greece. Due to the frequency and level of coordination to carry out maritime pushbacks, we assert that they too should be viewed as a policy or measure with the view to control, reduce or prevent migrant arrivals.
9. BVMN is also deeply concerned with the pervasive trend of Turkish nationals being denied access to asylum processes, subjected to pushbacks and refouled to Turkey. This includes ethnic Kurds, opposition or political activists, politicians and alleged members of the Gülen movement, considered a clandestine terrorist organization by Turkish authorities, all of whom are often fleeing persecution, imprisonment and death.¹²
10. Following the continued practice of collective expulsions and pushbacks as a policy or measure used by the Greek State with the view to control, reduce or prevent migrant arrivals, the Border Violence Monitoring Network issues the following recommendations:

⁷ BVMN notes that this statistic only reflects a small portion of the pushbacks occurring within border regions actively monitored by BVMN and its partner organisations. The true statistic of pushbacks carried by the Greek State will be far higher.

⁸ Border Violence Monitoring Network. n.d. *Reports Archive*. Available from: <https://www.borderviolence.eu/violence-reports/>

⁹ Border Violence Monitoring Network. 2020. *BVMN Visual Investigation: Analysis of Video Footage Showing Involvement of Hellenic Coast Guard in Maritime Pushback*. [Online]. Available from: <https://www.borderviolence.eu/bvmn-investigations-analysis-of-video-footage-showing-involvement-of-hellenic-coast-guard-in-maritime-pushback>

¹⁰ Christides, Giorgos and Ludke, Steffen. Der Spiegel. 2020. *Greece Suspected of Abandoning Refugees at Sea*. [Online]. Available from: <https://www.spiegel.de/international/europe/videos-and-eyewitness-accounts-greece-apparently-abandoning-refugees-at-sea-a-84c06c61-7f11-4e83-ae70-3905017b49d5>; Bellingcat. 2020. *Frontex at Fault: European Border Force Complicit in 'Illegal' Pushbacks*. [Online]. Available from: <https://www.bellingcat.com/news/2020/10/23/frontex-at-fault-european-border-force-implicit-in-illegal-pushbacks/>

¹¹ Human Rights Watch. 2020. *Greece: Investigate Pushbacks, Collective Expulsions*. [Online]. Available from: <https://www.hrw.org/news/2020/07/16/greece-investigate-pushbacks-collective-expulsions#>; UNHCR. 2020. *UNHCR, Concerned by Pushback Reports, Calls for Protection of Refugees and Asylum Seekers*. [Online]. Available from: <https://www.unhcr.org/gr/en/16207-unhcr-concerned-by-pushback-reports-calls-for-protection-of-refugees-and-asylum-seekers.html>

¹² Shetty, Salil. 2018. *The human cost of Turkey's crackdown*. Amnesty International [Online]. Available from: <https://www.amnesty.org/en/latest/news/2018/06/the-human-cost-of-turkeys-crackdown/>;

Von der Breilie, Hans. 2019. *Turks threatened over alleged links to the Gülen movement find a safe haven in Greece*. Euronews. [Online]. Available from: <https://www.euronews.com/2019/11/22/turks-persecuted-over-alleged-links-to-the-gulen-movement-find-a-safe-haven-in-greece>.

Question 4: Please provide information on any progress made in developing independent border monitoring mechanism(s) at the national level.

Progress made by the Greek State in Implementing an Independent Border Monitoring Mechanisms (IBMM) in Greece

11. In August 2021, the European Commission reiterated its demand that Greece implement a rights monitoring mechanism as a precondition for the release of migration management funding.¹³
12. On the 29th of September, Greek Minister of Migration Mitarakis stated that Greece “has no plan to set up [an] independent border monitoring mechanism, per the European Commission’s request,” and that “acting on an issue we do not consider as existing is not in our priorities”.¹⁴
13. In contradiction to the statement made by Mitarakis, the European Commission released Communication from the Commission to the European Parliament on the Report on Migration and Asylum, claiming that: “an independent and credible monitoring mechanism being developed by the Commission and the Greek authorities that will help prevent fundamental rights violations at the borders and ensure that procedures are in place to effectively investigate any allegations of such violations.”¹⁵
14. Despite calls from the European Commission, to date, the Greek State has not implemented an Independent Border Monitoring Mechanism. Civil Society Organisations and UN bodies have made public recommendations and proposals on how Greece could implement a monitoring mechanism in the future.

Reflection on current proposals for an Independent Border Monitoring Mechanism in Greece

15. In October, it was announced that the Greek government was examining the possibility of designating the National Transparency Authority (EAD) to act as the independent body that will investigate reports of migrant pushbacks.

15.1. Established in 2019, the EAD is a relatively new agency, tasked with assuming all the responsibilities of five public auditing bodies (Office of the Inspector General of Public Administration, Body of Inspectors-Public Administration Auditors, Body of Health and

¹³ ECRE. (2021). *Greece: Council of Europe Concerned Over Crackdown on NGOs, Human Rights Monitoring a Precondition for Additional Funding, Pushbacks Continue, Afghan Refugees Stuck in Limbo*. [Online]. Available from: shorturl.at/rxBHL

¹⁴ Iefimerida. (2021). *Μητράκης: «Δεν υπάρχει πρόταση της Ευρωπαϊκής Επιτροπής για μηχανισμό ελέγχου συνόρων»*. [Online]. Available from: https://www.iefimerida.gr/politiki/boyli-mitarakis-epitropis-mihanismo-synoron?fbclid=IwAR3LeX5gVy60mzfcKHf-f8ZnU1rh_rPEqGDQLqK7mAJkWhzprhy-Ctu0oy4

¹⁵ European Commission. (2021). COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on the Report on Migration and Asylum. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A609%3AFIN>

Welfare Inspectors, Body of Inspectors General of Public Works, Public Works Officers) Secretariat for Combating Corruption.

15.2. Questions remain how the EAD would operate in establishing the IMM in terms of its independence as well as the ability to trigger investigations into misconduct at its own initiative, and have access to documentation, access to relevant sites to conduct such investigation. Further, framing the issue of pushbacks and state violence in border regions as somehow an issue of corruption is potentially problematic, in the sense that it could feed into the narrative that pushbacks are only being perpetrated by a few “bad cops”, drawing attention away from the systematic nature of these ongoing violations of human rights.

16. In 2020, the European Network of Human Rights Institutions proposed an independent monitoring mechanism that would rely on existing national human rights institutions in Greece. The proposal included an IBMM implemented by the Greek Ombudsperson’s Office and the Greek National Commission for Human Rights (GNCHR).

17. Considering the proposed involvement of the Greek Ombudsperson’s Office in future Independent Border Monitoring Mechanisms, BVMN affirms the following:

17.1. The Greek Ombudsman is tasked with monitoring public sector services, including the police, prisons, regions, and municipalities. As a mediator, the Greek Ombudsman makes recommendations and proposals to the public administration when some illegal action or wrongful omission is committed by the public administration in breach of the rights or legal interests of individuals or legal entities.

17.2. In the Greek Ombudsman's 2020 *Interim Report on Alleged Pushbacks to Turkey of Foreign Nationals who had Arrived in Greece Seeking International Protection* the report revealed (1) the ombudsperson’s office to be statutorily incapacitated to undertake a full investigation and to reach decisions regarding the validity of pushback claims in this particular investigation, and (2) unable to function as an independent monitoring mechanism due to this limitation and in general the lack of impartiality of the mechanism given that it is subordinate to the government.

17.1. We assert that the limitations of the existing mandate holder to be able to operate independently casts doubt on the independence of future monitoring mechanisms, including any proposed Independent Border Monitoring Mechanism.

18. Considering the proposed involvement of the Greek National Commission for Human Rights in future Independent Border Monitoring Mechanisms, BVMN affirms the following:

18.1. The Greek National Commission for Human Rights (GNCHR) is the National Human Rights Institution in Greece, tasked with the protection of human rights while acting as the independent advisory body on these matters. In its capacity as an independent monitoring mechanism, the GNCHR has conducted monitoring activities at borders, convened several meetings with relevant national and international stakeholders to address the critical

situation faced by asylum seekers and migrants, and advised the Greek government and Parliament on all amendments of laws on international protection.

18.2. The GNHCR is limited in its capacities to enforce accountability or remedy in the case of human rights violations. In 2019, the former president of the GNCHR resigned after expressing serious concerns as to the structural and financial independence of the institution, stating that: “the procedure followed is not in line with the Paris Principles of the UN, the independent international standards by which all National Human Rights Committees are certified” and further that “the arrogance of the executive power, the authoritarianism in making and implementing decisions, and insulting didacticism must become a thing of the past.”¹⁶

18.3 Following the former President’s resignation, the GNCHR pursued a reform of its founding law in line with the Paris Principles, resulting in the adoption of a new law amending the GNCHR’s founding legislation (2667/1998). The Greek National Commission was later explicitly recognized as the National Human Rights Institution in Greece and has been upgraded to an independent authority (operational, administrative and financial independence). While these developments stand as important steps towards the establishment of independent human rights monitoring bodies in Greece, the GNCHR still lacks the mandate and capacity to push for accountability, to trigger investigations into misconduct at its own initiative, and have access to documentation and relevant sites to conduct such investigations.

19. Further to the proposals developed by the European Network of Human Rights Institutions, in September 2021, the UNHCR in collaboration with the ENNHRI released ten points to guide the establishment of an independent and effective national border monitoring mechanism in Greece.¹⁷

19.1. On the 14th of September, the UNHCR stated: “We look forward to supporting the Greek Government in the discussion regarding the parameters and the safeguards for the establishment of a truly independent border monitoring mechanism, an important guarantee for the observance of fundamental rights under international, regional and national law, to which all persons are entitled”.¹⁸

19.2. With this, the UNHCR positions itself as an implementing partner of the Greek State in the creation of the New Pact’s Independent Monitoring mechanism. The exact scope and mandate of the UNHCR in this position are however still unclear.

¹⁶ EFSYN. (2019). Loud resignation of the chairman of the National Commission for Human Rights. [Online]. Available at: shorturl.at/nvEKW

¹⁷ ENNHRI and UNHCR. (2021). Ten points to guide the establishment of an independent and effective national border monitoring mechanism in Greece. [Online]. Available at: shorturl.at/egoGL

¹⁸ UNHCR. (2021). Ten points to guide the establishment of an independent and effective national border monitoring mechanism in Greece. [Online]. Available at: shorturl.at/jAPR1