

Call for inputs / Questionnaire

Report of the Special Rapporteur on the human rights of migrants

Human rights violations at international borders: trends, prevention and accountability

Deadline: 28 February 2022

Pursuant to Human Rights Council Resolution 43/6, the Special Rapporteur on the Human Rights of Migrants is mandated “To examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants, recognizing the particular vulnerability of women, children and those undocumented or in an irregular situation (paragraph 1 (a), A/HRC/RES/43/6)”.

In carrying out his mandate, the Special Rapporteur has decided to dedicate his forthcoming report to the 50th session of the Human Rights Council to examine recent developments and examples that illustrate effective ways to prevent human rights violations at international borders, both on land and at sea. Through the report, the Special Rapporteur also intends to assess the human rights impact of border management measures, including temporary ones introduced in the context of the COVID-19 pandemic or as part of a state of emergency. In addition, the Special Rapporteur aims to showcase attempts to enhance accountability for human rights violations at international borders, including through international and regional bodies and courts, and developing border governance and border monitoring standards. Finally, the Special Rapporteur will examine recent developments with regards to the use of “safe third country” concepts and bilateral and multilateral re- admission agreements as part of border entry and asylum procedures.

Background:

In his last report to the Human Rights Council (A/HRC/47/30), the Special Rapporteur urged States to put an end to pushback practices, to respect fully the prohibition of collective expulsion and to uphold the principle of non-refoulement. Further, he provided a set of recommendations towards the development of a human rights- based, gender-responsive, age- and child-sensitive approach to migration and border governance, that ensures the human rights of migrants, including those in an irregular situation, are always the first consideration.

Questions:

The Special Rapporteur is particularly interested in receiving inputs on any or all of the following issues:

1. Please provide information on any recently adopted domestic legislation amending border entry, asylum and other international protection procedures for non-nationals since May 2021. Grateful if you could kindly submit the original text of the relevant provisions of the legislation or policy(ies), accompanied by an English translation if it is in a language other than English, French or Spanish.

Recent legislation changes made in Greek law regarding asylum procedure, detention and deportation procedures of non-nationals occurred with Law No 4825/2021(September 2021) “Reform of procedures for the deportation and return of third country citizens, attraction of

investors and digital nomads, issues of residence permits and procedures for granting international protection, provisions under the jurisdiction of the Ministry of Immigration and Asylum and the Ministry of Citizen Protection and other urgent provisions” that amended many provisions of the law 3907/2011 “Establishment of the Asylum Service and First Reception Service, adaptation of Greek legislation to the provisions of Directive 2008/115/EC “on common rules and procedures in Member States for returning illegally staying third-country nationals” and other provisions” and Law No 4636/2019 “On International Protection and other provisions”.

Some of the most important amendments:

Article 2 of law No. 4825/2021: Article 21 of law 3907/2011 is amended. In the new provision it is added that *“In case of rejection of an application for international protection or discontinuation of the examination of the application under article 81 of Law No. 4636/2019 (A` 169) or revocation of international protection status, then the competent authority issues a decision on the return of the third-country national. The return decision is an integral part of the decision to reject the application for international protection or the decision to discontinue the examination of the application under Article 81 of Law No. 4636/2019 or the decision to revoke international protection status”.*

Article 3 of Law No. 4825/2021: This article changes article 22 of Law No 3907/2011 and it reduces the time period of voluntary departure from a period of 7-30 days to a period of 7-25 days. More specifically, it provides that the decision to return the third country national may provide for a period of time for his/her voluntary departure, which may vary between seven (7) and twenty-five (25) days.

Article 5 of Law No. 4825/2021: This article amends article 28 of Law No. 3907/2011 and it provides that *“third-country nationals may bring an appeal against the return decisions issued by the police authorities under Article 77 of Law No. 3386/2005. Third-country nationals shall have the right to appeal against return decisions incorporated in decisions rejecting the application for the granting or renewal of a residence permit, as well as decisions revoking a valid residence permit, in accordance with Article 24 of Law No. 2690/1999 (A` 45) within an exclusive period of two (2) months from the date of service of the decision.”* It added the exclusive period of 2 months that didn't exist before.

Article 17 of Law No. 4825/2021: This article amends article 24 of Law No. 4636/2019 and it provides that the late submission of a renewal application of residence permits without justification cannot in itself lead to its rejection. In this case, a fine of EUR 100 shall be imposed. The fine didn't exist in the previous form of the article.

Article 23 of Law No. 4825/2021: This article amends article 89 of Law No 4636/2019, regarding the subsequent application. More specifically, for the submission of each subsequent application after the first, the applicant shall pay a fee of one hundred (100) euros per application.

Article 25 of Law No. 4825/2021: This article amends article 95 of Law No 4636/2019 (par. 10) and it provides that if the appeal is rejected, the Independent Appeals Committee issues a decision on the return of the third country national, in accordance with Law no. 3907/2011 (A` 7) or the law. 3386/2005 (A` 212), as the case may be, which shall form an integral part of the rejection decision.

Also, there was a huge change in practice regarding the registration procedure of international protection applicants. In November 2021, the Secretary General of Migration Policy issued a circular related to the application of article 39, para. 1 of the law. 4636/2019 & article 46 of Law 4636/19 (registration procedure). According to this Circular, in case of people arriving to the continental Regional Asylum Offices who have not passed from a First Reception and Identification Procedure and wish to apply for international protection, they will be transferred to RICs in the borders.

2. Please provide information on recent or current border management legislation/policies/measures, (including those temporary measures as part of a state of emergency), with the view to control, reduce or prevent migrant arrivals in your country.

Recent allegations of pushbacks¹:

<https://www.infomigrants.net/en/post/38649/greece-rejects-reports-of-migrants-thrown-into-the-sea>;

<https://www.infomigrants.net/en/post/38658/iom-issues-alarm-over-deaths-on-greek-turkish-border>
<https://apnews.com/article/europe-middle-east-greece-turkey-migration-b6eb4527f91ef2b695d119ae3fc2d753>

<https://apnews.com/article/middle-east-france-prisons-greece-europe-1c58212ff10310deebae2b769d31e386>

In December 2021, the government's decision to extend the fence on Evros has been revealed by Citizens' Protection Minister Takis Theodorikakos. The Minister, speaking to the Defence and Foreign Affairs Committee of the Parliament, claimed, among other things, that a new artificial barrier with a total length of about 26 km will be built in selected points in the wider area of Feres. Meanwhile, works in the northern part of Evros, both on extending a fence or building a new one, and on clearing embankments, continue in an effort to better control the "difficult" areas of the border that constitute crossings. He further stressed that 550 more border guards will be recruited in 2022, of which 250 in Evros and the rest in Eastern Macedonia. He referred to the training of the Hellenic Police staff on various fields, such as border control and guarding, passport control, risk analysis, screening, debriefing, protection of human and fundamental rights, foreign language courses). At the same time, he referred to the renovation/reconstruction of the Pre-Removal Detention Centre in Orestiada and the expansion of the automated surveillance system in the riparian part of the Greek-Turkish border in the Evros region and the interconnection of the Regional Integrated Border Management and Migration Centres, the reinforcement of logistical equipment and means (vehicles of various types, thermal cameras, heartbeat detection devices, CCTV systems, mobile vehicle scanning unit to detect any hidden irregular migrants). He added that from April to the end of November, some 143,472 people were deterred from entering the country, compared to 98,798 during the same period last year, stressing that deterrence capacity increases due to the increase in pressure.

The Minister concluded his intervention in the Parliamentary Committee by stressing that cooperation with Frontex and EUROPOL will be strengthened, highlighting that they remain

¹ Equal Legal Aid's newsletter of February about pushbacks:

<https://mailchi.mp/3ed100efeae8/pushback?fbclid=IwAR00E8bWCuZNajS2iRSf9B1y89uva2TSznF4R2jFwkl-lpwW59JOha1ftdo>

always on alert and vigilant. “We evaluate every piece of information, analyze all data and adjust, whenever necessary, our operational plans”, he pointed out².

3. Please provide information on how the “safe third country” concept is applied and if there is any “safe third country” list in your country with the view to expedite border immigration and asylum procedures, as well as on any bilateral and multilateral agreement on collective/automatic re-admission of migrants of specific nationalities.

According to Article 86 of law No 4636/2019 “A country is considered as a safe third country for a particular applicant when the following criteria are cumulatively met:

a. there is no threat to his/her life and freedom on grounds of race, religion, nationality, membership of a particular social group or political opinion;

b. that country respects the principle of non-refoulement in accordance with the Geneva Convention;

c. there is no risk of serious harm to the applicant under Article 15 of the present Law;

d. that country prohibits the removal of a person to a country where there is a risk of torture or cruel, inhuman or degrading treatment or punishment as defined in international law;

e. it is possible to claim refugee status and, if the applicant is recognised as a refugee, to be granted protection in accordance with the Geneva Convention;

f. the applicant has a connection with the third country concerned on the basis of which it would be reasonable for him/her to go to that third country.”

At the same time, Greece has a list of countries considered as “safe third countries”. This list, which was updated last time in 2021 with a new joint Ministerial Decision³, includes the following countries: Turkey, Albania, and North Macedonia⁴. More specifically, Turkey is considered as “safe third country” for Syrian, Afghan, Pakistani, Bangladeshi and Somali nationals who apply for international protection in Greece, whereas Albania and North Macedonia are considered as “safe third countries” for all nationals entering Greece’s territory via Albania or North Macedonia borders.

The applicants for international protection entering Greece via a “safe third country” have to pass an admissibility interview before the Greek Asylum Service, during which they have to prove that this country cannot be considered as safe for them. If the application is found admissible, then the Asylum Service will examine their application on the merits.

Initially the notion of “safe third country” was applied only to those entering Greece via sea borders on the islands. But since summer 2021, it has been applied to all the Greek territory.

² Source : (iefimerida.gr, ertnews.gr, kathimerini.gr, news247.gr, naftemporiki.gr, newsbomb.gr, stonisi.gr, 17 December / amna.gr, evros-news.gr, evros24.gr, zougla.gr, iliaweb.gr, fonirodopis.gr, dikaiologitika.gr, evros24.gr, makthes.gr, newpost.gr, greekcitytimes.com, 18 December / thrakinea.gr 19 December)

³This decision has been challenged legally by two organizations and the procedure is still pending (source : <https://rsaegean.org/en/turkey-a-safe-third-country-greek-council-of-state/>)

⁴ Equal Legal Aid’s newsletter regarding the admissibility procedure : <https://www.equallegalaid.org/elementor-2451/>.

As many as 6,424 asylum applications were dismissed as inadmissible based on the safe third country concept in 2021, i.e. a 126% increase compared to the previous year. The overwhelming majority of those decisions (5,445) concerned the mainland⁵.

Regarding the application of “safe third country”, we interviewed some asylum seekers in Lesbos who said that they were notified one day before the interview, with no possibility to access legal support. One applicant described how they were only asked about Turkey in a concise way, without any reference to the country of origin. Accordingly, the case worker did not collect sufficient information in order to verify whether Turkey can be considered as a safe third country for the applicant. As it has been emphasized by ECRE, “*negative first instance decisions, qualifying Turkey as a safe third country for Syrians, are not only identical and repetitive but fail to provide an individualized assessment*”.

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

The news about the independent border monitoring mechanism are quite contradictory. According to ECRE, “*Officials have variously suggested that such a mechanism should be kept in-house and should not include independent bodies or organisations, have rejected it as a threat to national sovereignty, and have claimed it might constitute a rule of law violation*”⁶.

A few months ago, Minister for Migration and Asylum Notis Mitarakis rejected the need for a human rights monitoring mechanism at Greek borders, stating that it would infringe upon national sovereignty. While the number of people in the Greek island hotspots and in facilities managed by the Ministry of Immigration and Asylum has seen a significant drop, German authorities are facing more than 27,000 asylum claims from people already registered in Greece.

Following repeated demands from the UN Refugee Agency (UNHCR) and European Commission for a rights monitoring mechanism at the Greek borders, Minister Notis Mitarakis has disregarded the need for any such mechanism. According to the Minister, this would jeopardize Greece’s national sovereignty. When questioned in parliament, he stated that there is no legislation proposed by the European Commission and noted that Greece would engage in negotiations within the Council of EU but sees no reason to address a problem that the government does “consider to exist”. The Minister does not comment on the fact that a human rights monitoring mechanism is a precondition for the release of migration management funding requested by Greece from the European Commission. The EU has supplied Greece with 3.3 billion in funds since the peak of arrivals in 2015.

In a latest volte face, European Commissioner for Home Affairs, Ylva Johansson, says the Greek Minister of State, George Gerapetritis has confirmed that the mechanism will soon be operational. The Commissioner complimented Greece for being the first member state to implement such a mechanism”.

⁵ Ministry of Migration and Asylum, Reply to parliamentary question, 97157/2022, 17 February 2022, available at: <https://bit.ly/35cmM30>

⁶<https://ecre.org/greece-changing-tone-on-independent-border-monitoring-ombudsman-calls-for-re-examination-of-rejected-ngo-registration-german-court-rules-in-favour-of-asylum-seeker-over-inhumane-treatment-risk/>

- Regarding question number 1, in relation with “asylum and other international protection procedures”, it might be interesting the issue of abuse of administrative detention. I found this report dated 16 November 2021. <https://policy-practice.oxfam.org/resources/detention-as-the-default-how-greece-with-the-support-of-the-eu-is-generalizing-621307/> “Greece recently passed legislation making it possible for the authorities to detain people seeking asylum. This was followed by a change to the law to give the authorities the power to put non-asylum-seeking migrants into detention without examining alternative measures. Both legislative changes undermine the right to freedom of movement and threaten access to asylum procedures”. However, I am not sure to which law they refer (maybe is prior to May 2021).
- The Deportations and Returns (this is the original provision) bill reduces the grace period for voluntary deportations from 30 days to between a week and 25 days. It also makes it more difficult for migrants to appeal a deportation order with a stricter definition to what can be regarded as “humanitarian grounds” and reducing the period in which they can take legal action against such a decision to 30 days after it is issued. Even more controversial in the bill is Article 40 that proposes fines on NGOs involved in life-saving rescue of migrants at sea if they conduct operations without coast guard permission. According to the article’s first clause, international NGOs can only get involved in rescue operations, only if they and their members, associates, and employees are registered with Greek authorities, and when action by the Greek Coast Guard is not possible. <https://www.aa.com.tr/en/europe/greece-s-deportations-and-returns-law-comes-into-effect-despite-criticism/2358953>

Responses to the questionnaire can be submitted in English, French or Spanish. Please send your inputs by email to **OHCHR-migrant@un.org** by 28 February 2022. Please limit your responses to a maximum of 2,000 words. Legislation, policies and other types of background materials can be attached as annexes to the submission. Please submit your responses in an accessible format, such as MS Word.

If not stated otherwise in your submission, the responses received will be published on the website of the Special Rapporteur. Unless requested otherwise, the submissions may also be quoted, in part or in full, or referenced in the report of the Special Rapporteur.

For any questions or clarifications, please do not hesitate to contact the Secretariat through the Office of the United Nations High Commissioner for Human Rights (OHCHR-migrant@un.org).