

Greek Council for Refugees input for the forthcoming report of the Special Rapporteur on the human rights of migrants with respect to human rights violations at international borders: trends, prevention and accountability

Athens, 28 February 2022

The current submission aims to provide information on the four questions raised by the Special Rapporteur on the human rights of migrants, as part of the call for inputs for the Rapporteur's forthcoming report on human rights violations at international borders.

The Greek Council for Refugees (GCR) is a Non- Governmental Organization, which has been active since 1989 in the field of asylum and human rights in Greece. GCR is an association recognized as a special charity, is included in the Registers of competent Ministries, has Consultative Status in the Economic and Social Council (ECOSOC) of the UN since 2001 and is an operative partner of the UN High Commissioner for Refugees (UNHCR). In addition to the above, GCR is a member of the Executive Committee of the European Council on Refugees and Exiles (ECRE) since 1991, a member of the Separated Children in Europe Program (SCEP), and participates in the Greek National Commission for Human Rights (GNHCR) since 1999.

The following are the issues that GCR would like to emphasize with respect to the questions raised:

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.

In September 2021, Greece adopted L. 4825/2021.¹ The specific legislation *inter alia* directly and negatively impacts on access to asylum and safeguards in the context of returns, while further shrinking the space within which independent civil society actors can operate, particularly with regards to maritime search and rescue operations.

Subsequent asylum applications

Article 23, introduced for the first time a € 100 fee as a requirement for accessing the asylum procedure and namely for submitting a second or further subsequent asylum application. As further specified,² the same fee applies separately to each family member. Notwithstanding the likely incompatibility of this provision with the right to seek asylum, as enshrined in the Universal Declaration of Human Rights and the EU Charter of Fundamental Rights, this provision aims to “discourage third country nationals from submitting a new application for international protection”, as noted by the Greek National Commission for Human Rights (GNHCR).³

As also noted by the Greek Ombudsman *“connecting the submission of a fee with the submission of a subsequent application for international protection undermines the right to seek asylum [...] A fee, and in fact [a fee] amounting to € 100, constitutes the submission of a subsequent application almost prohibitive for a population that is in a vulnerable financial situation, as is the case with asylum applicants and contravenes articles 40-42 of Directive 2013/32/EU”*.⁴

In this context, the provision risks further hindering effective access to asylum, while exacerbating the legal limbo in which many applicants increasingly find themselves, on account of the increasing application of the “safe third country” concept by the Greek asylum system (see section 3).

Deportations & Returns

Article 1 attempts to circumvent EU legislation, while extending application of national legislation on issues of return/deportation. It provides for the issuance of a deportation decision, instead of the return decision provided by the EU Directive on Returns in an extended number of cases, including for reasons of irregular arrival and/or apprehension at the borders, albeit *in abstracto* (e.g. without specifying any connection with the time of arrival or place of apprehension within the Greek territory), and for asylum applicants whose applications have been rejected.

As stressed by the Greek Ombudsman, *“article 1 leaves margins of interpretation that can potentially circumvent the [...] explicit [...] provision [both in the Return Directive (article 4§4) and L. 3907/2011 (article 19§21) respectively] that minimum safeguards for the respect of fundamental rights, including of the principle of non-refoulement, continue to apply for third country nationals that are excluded from its scope”*.⁵

Similarly, as noted by UNHCR, articles 1-7 undermine safeguards *“for persons who may be in need of international protection, including asylum seekers whose asylum applications have been rejected on admissibility grounds but not assessed on the merits”*.⁶

On this point, it needs to be stressed that persons who are subject to return decisions in Greece include asylum applicants who never benefited from an in-merit examination of their application (e.g. Syrian nationals), on account of the ongoing application of the “safe third country” concept.

Independent SAR operations

Article 40 introduces further limitations to the independent role of civil society actors, namely with respect to their ability to operate within areas of jurisdiction of the Greek Coastguard (GCG), including with respect to Search & Rescue (SAR) operations.

As per the provision, in order to conduct SAR operations, civil society actors need to have never before conducted such operations (in Greece) without first having received an approval by the GCG, be registered in the Registry of NGOs of the Ministry of Migration and Asylum,⁷ and act

under the direct command of the GCG, after being included in the GCG's emergency plans on SAR operations.⁸ Likewise, in order to engage in operations aimed at managing irregular arrival at sea, civil actors need to first inform and be granted written permission to act by the GCG, and can only do so subject to the latter's inability to act in a given incident.⁹ Severe consequences are provided in case of non-compliance.¹⁰

Notwithstanding the fact that this provision was introduced after the public consultation had concluded, it risks further criminalizing the work of NGOs, hindering their ability to engage in life-saving work, at a time when Greece continues being under the limelight on account of the multiple and intensified, since March 2020, reports and allegations on illegal pushbacks at its borders.

As *inter alia* noted by the Council of Europe Commissioner for Human Rights, the specific provision "*may further jeopardise NGOs' human rights activities in relation to persons arriving by sea, and severely undermine the necessary scrutiny of the compliance of the operations of the Greek Coast Guard with human rights standards*", while noting that "*member states, including Greece [...] should refrain from harassing human rights defenders or obstructing their work, whether through legislative, judicial or administrative means*".¹¹

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.

UNHCR recently (February 2022) and once more raised the alarm on the "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 [...]"¹² As further stressed, "*[a]lthough 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.*"¹³

As also noted by IOM,¹⁴ which also identified an increase in the number of deaths of third country nationals at the borders between Greece and Turkey in the first months of 2022, "*[t]here are persistent reports of pushbacks, collective expulsions, and use of excessive force against people on the move along this route, based on testimonies collected by IOM teams in both countries. Such actions are not in line with and oppose States' commitments and obligations under international and regional law, such as the violation of the principle of non-refoulement.*"

To be noted, this pattern of violent pushbacks at Greece's borders, which has grown alarmingly since March 2020, has been systematically reported by international and regional human rights

bodies and instruments, intergovernmental organisations, media outlets and civil society organisations. Yet to this day, “*despite mounting, credible evidence*”,¹⁵ the Greek government continues to deny the allegations, and as a consequence no effective investigation has taken place.

In any case, the character of pushback practices from Greece in the context of border management has been well documented, with Annex I providing a non-exhaustive list of relevant sources.

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.

A Joint Ministerial Decision (JMD) was issued on 7 June 2021¹⁶, under which the Greek State designates Turkey as a “safe third country” for nationals of Afghanistan, Syria, Somalia, Pakistan and Bangladesh who apply for asylum in Greece, thus extending the scope of the March 2016 EU-Turkey Statement.

Apart from the many concerns that have repeatedly been raised on whether Turkey can be considered a “safe third country”,¹⁷ an additional and significant element of the unfeasibility of this new decision is the fact that, since March 2020, Turkey is not accepting the return of refugees and asylum seekers from Greece. This has been recognized by both Greece’s Ministry of Migration and Asylum and the European Commission.¹⁸ As a consequence, refugees whose applications have been/are rejected as inadmissible based on the “safe third country” concept end up in Greece in a state of legal uncertainty, exposed to a direct risk of destitution and detention, without access to an in-merit examination of their application and without the means to submit a subsequent asylum application (see section 1).

It is paramount that these cases be examined on their merits, in accordance with EU legislation, as has also been asserted in various instances by the Commissioner for Migration and Home Affairs of the European Commission.¹⁹ On 7 December 2021, the Commissioner issued a response on a joint open letter by civil society organizations,²⁰ where she reiterated the Commission’s continued concerns over individuals left in “legal limbo” in Greece. As she states, “in line with Article 38(4) of the Asylum Procedures Directive, the Greek authorities should ensure that applicants whose applications have been declared inadmissible under the Joint Ministerial Decision and who are not being admitted to Turkey should be given access to the in-merits asylum procedure. The Commission has enquired with the Greek authorities on the steps taken towards this direction.”²¹

It should be noted that an application for the annulment of said JMD has been submitted before the Greek Council of State and its examination is pending to be discussed.²²

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

The Greek Government remains opposed to the development of an independent border monitoring mechanism, despite the constant reports and allegations of pushback operations at Greece's borders. The European Commission has been persistent in addressing the issue of setting up such a mechanism, however, and despite the constant reassurances provided by the Greek Government towards the European Commission, no such plans are currently in place. Illustrative of the Greek Government's stance on the matter is the open public dialogue since September 2021, when UNHCR, OHCHR and ENNHRI shared with the Greek Government their "Ten Points" to guide the creation of an Independent National Border Monitoring Mechanism in Greece²³, only for the Minister of Migration and Asylum to dismiss any such plans a few days later, before the Greek Parliament, by stating that there is no need for the creation of such a mechanism, since there is no issue to be monitored.²⁴ The exact same day the European Commission stated that it had received confirmation by the Greek Government on the establishment of such a mechanism and that a working group towards this direction was going to be put in place. In any case, already since August 2021 the European Commissioner was reaffirming that during her discussions with the Greek Government she was insisting in the formation of an independent mechanism.²⁵

This back and forth in the discussions between the European Commission and the Greek Government is continuous²⁶ and illustrative of Greece's intentions to keep on refraining from the development of an independent border monitoring mechanism. However, it could be argued that the timing for the creation of such mechanism is more urgent than ever, given the new concerns *inter alia* raised by UNHCR (see section 2) on the situation of informal forced returns at the Greek-Turkish borders, with the former reporting close to 540 incidents of such returns by Greece since the beginning of 2020.²⁷ Yet instead of effective initiatives towards this aim, the Greek Minister on Migration and Asylum was prompt to respond to UNHCR's statement, by simply expressing his astonishment and attributing the reports to Turkish propaganda.²⁸

Lastly, it needs to be noted that the Greek Government has referred to the National Transparency Authority as the body responsible amongst others for the investigation of pushback allegations²⁹, however, this particular Authority lacks the expertise to investigate pushbacks and is by no means an independent body, since it fails to comply with the constitutional prerequisites for safeguarding the independence of such authorities.³⁰

ANNEX I: Indicative list of reports and publications on pushback practices from Greece

A. International and regional bodies; national independent authorities:

1. Council for Europe, Commissioner for Human Rights, Greek authorities should investigate allegations of pushbacks and ill-treatment of migrants, ensure an enabling environment for NGOs and improve reception conditions, 12 May 2021, <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>;
2. United Nations High Commissioner for Refugees (UNHCR), UNHCR concerned by pushback reports, calls for protection of refugees and asylum-seekers, 21 August 2021, <https://www.unhcr.org/gr/en/16207-unhcr-concerned-by-pushback-reports-calls-for-protection-of-refugees-and-asylum-seekers.html>;
3. United Nations High Commissioner for Refugees (UNHCR), 'UNHCR calls on Greece to investigate pushbacks at sea and land borders with Turkey', 12 June 2020, <https://www.unhcr.org/news/briefing/2020/6/5ee33a6f4/unhcr-calls-greece-investigate-pushbacks-sea-land-borders-turkey.html>;
4. International Organisation for Migration (IOM), 'IOM Alarmed over Reports of Pushbacks from Greece at EU Border with Turkey', 10 June 2020, <https://greece.iom.int/en/news/iom-alarmed-over-reports-pushbacks-greece-eu-border-turkey>;
5. United Nations, Working Group on Arbitrary Detention (WGAD), Report of the Working Group on Arbitrary Detention, Visit to Greece, 29 July 2020, A/HRC/45/16/Add.1, <https://undocs.org/A/HRC/45/16/add.1>;
6. United Nations Special Rapporteur (UNSR) on the human rights of migrants, 'Greece: Rights violations against asylum seekers at Turkey-Greece border must stop – UN Special Rapporteur', 23 March 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25736&LangID=E>;
7. European Committee for the Prevention of Torture (CPT), Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 17 March 2020, CPT/Inf (2020) 35, 19 November 2020, <https://rm.coe.int/1680a06a86>;
8. United Nations Committee Against Torture (CAT), Concluding Observations on the seventh periodic report of Greece, CAT/C/GRC/CO/7, 3 September 2019, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d/PPRiCAqhKb7yhshSVhO2M2H1UDd4ISZI3FIR5qrnsTERNRPyCwxiWbubp%2B/HAJy6umRfJxn4LcEt1F1b7e4I4jLFRrGMNR5aqIZtPvMF9r/cnzZFGplXRrmst>.
9. Greek Ombudsman, Alleged pushbacks to Turkey of foreign nationals who had arrived in Greece seeking international protection Interim report (Own initiative Investigation), updated up to 31 December 2020, <https://www.synigoros.gr/resources/docs/280421-pushbacks-interim-report-eng.pdf>;
10. Greek National Commission for Human Rights (GNCHR), National Report on the situation of human rights of migrants at the borders, July 2021, https://www.nchr.gr/images/English_Site/PROSFYGES/Greek_National_Report-compressed.pdf;
11. GNCHR, Statement on the reported practices of push backs, 9 July 2020, <https://www.nchr.gr/en/decisions-positions/94-refugees-migrants/1070-statement-on-the-reported-practices-of-push-backs.html>.

B. Civil Society Organizations

12. Amnesty International, Greece: Violence, Lies and Pushbacks, June 2021, https://www.amnesty.gr/sites/default/files/new_edited_22_jun_greece-violence_lies_and_pushbacks2_eur25-4307-2021_002_002.pdf;
13. Greek Campaign for Access to Asylum, "Illegal pushbacks, Lives at risk, NGOs under prosecution: Investigations on pushbacks at the EU level, targeting of those highlighting them in Greece", 16 March 2021: <https://bit.ly/3vjz0SA>.
14. Arsis *et al.*, Joint Statement on push backs practices in Greece, February 2021, https://www.gcr.gr/media/k2/attachments/JOINT_STATEMENT_GR_NGOS.pdf;
15. Border Violence Monitoring Network (BVMN), The Black Book of Pushbacks - Volumes I & II, December 2020, <https://left.eu/issues/publications/black-book-of-pushbacks-volumes-i-ii/>.

C. Media

16. Aljazeera.com, Croatia, Greece, Romania illegally pushing refugees back: Report; 7 October 2021, <https://www.aljazeera.com/news/2021/10/7/croatia-greece-romania-illegal-pushbacks-borders>;
17. Lighthouse Report, Unmasking Europe's Shadow Armies, 6 October 2021, <https://www.lighthousereports.nl/investigation/unmasking-europes-shadow-armies/>
18. Infomigrants.com, UNHCR reprimands Greece over more reports of pushbacks at sea, 29 March 2021, <https://www.infomigrants.net/en/post/31174/unhcr-reprimands-greece-over-more-reports-of-pushbacks-at-sea>.
19. Reports of illegal pushbacks of migrants in Greece must be fully investigated, says Commissioner Johansson, 7 October 2021, <https://www.amna.gr/en/article/591375/Reports-of-illegal-pushbacks-of-migrants-in-Greece-must-be-fully-investigated--says-Commissioner-Johansson>

¹ Law 4825/2021 on the "Reformation of deportation and return procedures for third country nationals, attracting investors and digital nomads, issues of residence permits and procedures for granting international protection, provisions of the Ministry of Migration and Asylum and the Ministry of Citizen Protection and other urgent provisions", 4 September 2021: <https://bit.ly/3HlrFUB>.

² Article 2, Joint Ministerial Decision 472687, Gov. Gazette 6246/B, 27 December 2021: <https://bit.ly/35my44O> (in Greek)

³ GNHCR, Observations on the Draft Law of the Ministry of Migration and Asylum, July 2021: <https://bit.ly/3LXOIZ9> (in Greek), p. 25.

⁴ Greek Ombudsman, *Comments and observations on the draft law on the "Reformation of deportation and return procedures for third country nationals, attracting investors and digital nomads, issues of residence permits and procedures for granting international protection, provisions of the Ministry of Migration and Asylum and the Ministry of Citizen Protection and other urgent provisions"*, 30 August 2021: <https://bit.ly/3vnnWnc> (in Greek), p.11.

⁵ Greek Ombudsman, *op.cit.*, p. 2.

⁶ UNHCR, *UNHCR intervention during the hearing of actors on the Draft Law for the reform of deportation and return procedures*, 31 August 2021: <https://bit.ly/3LNR78Z>.

⁷ For the issues that arise with respect to the specific registry, *inter alia* see Expert Council on NGO Law of the Council of Europe, *Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration*, CONF/EXP(2020)4, 2 July 2020, <https://bit.ly/3rLLVay> and Expert Council on NGO Law of the Council of Europe, *Addendum to the opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration*, CONF/EXP(2020)5, 23 November 2020, <https://bit.ly/3epJebB>.

⁸ Articles 40 (1a & b) L. 4825/2021

⁹ Articles 40 (1c) L. 4825/2021.

¹⁰ Namely, as per article 40 (2 & 3), a € 500-1,000 fine and potential incarceration of 1-3 years for individual members, and a € 3.000-6.000 for the employing organizations. If non-compliance is repeated, the fees are increased by 100% and the organisations and their members are removed from the Registry of NGOs of the Ministry of Migration and Asylum, thus in practice losing the right to operate in the field of refugee protection, as registration in the former is a prerequisite for the latter.

¹¹ CoE Commissioner for Human Rights, "Greece's Parliament should align the deportations and return bill with human rights standards", 3 September 2021: <https://bit.ly/3HdW07u>.

¹² UNHCR, "News Comment: UNHCR warns of increasing violence and human rights violations at European borders", 21 February 2022: <https://bit.ly/3HjHnQq>.

¹³ *Ibid.*

¹⁴ IOM, "IOM Concerned about Increasing Deaths on Greece-Turkey Border", 18 February 2022: <https://bit.ly/3hiY9oe>.

¹⁵ UNHCR, 21 February 2022, *op.cit.*

¹⁶ Joint Ministerial Decision (JMD) 42799/2021, Gov. Gazette 2425/B/7-6-2021: <https://bit.ly/3suvKSx>.

¹⁷ Indicatively see: GCR *et al.*, "Greece deems Turkey "safe", but refugees are not: The substantive examination of asylum applications is the only safe solution for refugees", 14 June 2021: <https://bit.ly/3sotTP0>.

¹⁸ For instance: Ministry of Migration and Asylum, 28-07-2021, *New request from Greece for the return of 1.908 illegal economic migrants to Turkey*, <https://bit.ly/3HuAHir>, European Commission, Commission Staff Working Document: Turkey 2020 Report, 6 October 2020, p. 48, <https://bit.ly/3xgt4aK>

¹⁹ EN P-000604/2021, Answer given by Ms Johansson on behalf of the European Commission (1.6.2021), https://www.europarl.europa.eu/doceo/document/P-9-2021-000604-ASW_EN.pdf, EN

E-003875/2021, Answer given by Ms Johansson on behalf of the European Commission, (18.10.2021),

https://www.europarl.europa.eu/doceo/document/E-9-2021-003875-ASW_EN.pdf, and the most recent one, EN E-004131/2021, Answer given by Ms Johansson on behalf of the European Commission, (21.12.2021),

https://www.europarl.europa.eu/doceo/document/E-9-2021-004131-ASW_EN.pdf

²⁰ Joint Open Letter, *Denying food: instead of receiving protection people go hungry on EU soil*, https://www.hias.org/sites/default/files/joint_open_letter_-_food_-_denying_food_-_instead_of_receiving_protection_people_go_hungry_on_eu_soil.pdf

²¹ Ares S(2021)8048555, Ylva Johansson (Brussels- 07.12.2021)

https://www.hias.org/sites/default/files/eu_commissioner_for_home_affairs_ylva_johansson_-_response_to_joint_open_letter_of_33_organizations_on_exclusion_from_food_distribution.pdf

²² GCR, *Decision declaring Turkey a "safe third country" brought before Greek Council of State*,

<https://www.gcr.gr/en/news/press-releases-announcements/item/1823-decision-declaring-turkey-a-safe-third-country-brought-before-greek-council-of-state>

²³ UNHCR, *Ten points to guide the establishment of an independent and effective national*

border monitoring mechanism in Greece, 14 September 2021, <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>

²⁴ Refugee Support Aegean, *RSA Submission to the European Commission on the 2022 Rule of Law Report*, p. 16, https://rsaegean.org/wp-content/uploads/2022/01/RSA_RoL2022_Submission.pdf

²⁵ Καθημερινή, *Νέος Μηχανισμός για το Προσφυγικό*, 30 September 2021,

<https://www.kathimerini.gr/society/561518644/neos-michanismos-gia-to-prosfygiko/>

²⁶ The continuance of the chronicle is presented in the Report of Refugee Support Aegean, *RSA Submission to the European Commission on the 2022 Rule of Law Report*, p.16-17, https://rsaegean.org/wp-content/uploads/2022/01/RSA_RoL2022_Submission.pdf

²⁷ UNHCR, *News Comment: UNHCR warns of increasing violence and human rights violations at European borders*, 21-02-2022, <https://www.unhcr.org/news/press/2022/2/62137a284/news-comment-unhcr-warns-increasing-violence-human-rights-violations-european.html>

²⁸ Hellenic Republic, Ministry of Migration and Asylum, *Press Release - Statement by the Minister of Migration and Asylum, Mr. Notis Mitarachi*, 21-02-2022, <https://migration.gov.gr/en/deltio-ty-poy-dilosi-toy-y-poyrgoy-metanastey-sis-kai-asyloy-k-noti-mitaraki/>

²⁹ Naftemporiki, *Στην Εθνική Αρχή Διαφάνειας η έρευνα για παράνομες επαναπροωθήσεις μεταναστών*, 21-01-2021, <https://www.naftemporiki.gr/story/1794056/stin-ethniki-arxi-diafaneias-i-ereuna-gia-paranomes-epanaproothiseis-metanaston>

³⁰ Refugee Support Aegean, *RSA Submission to the European Commission on the 2022 Rule of Law Report*, p. 10, https://rsaegean.org/wp-content/uploads/2022/01/RSA_RoL2022_Submission.pdf