

## Questions

The Special Rapporteur is particularly interested in receiving inputs on any or all of the following issues, including case studies and specific examples of current practices and challenges:

**1. Please provide information on any relevant legislation or policy in relation to the right to asylum to seek and enjoy in your country, which guarantees that migrants including asylum seekers' protection needs are examined individually, and they are not pushed back at the international border without access to this assessment. and other relevant procedures. Grateful if you could kindly submit the original text of the legislation or policy, accompanied by an English translation if it is in a language other than English, French or Spanish.**

**1. Articles 76, 77, 78A of Law 3386/2005**

These articles refer to the stipulations and the deportation procedures, according to the law prerequisites. Deportation, apart from material/physical action, is also an official procedure while an undocumented third country citizen who is subject to deportation, has firstly to be registered. Moreover, a written administrative act has to be issued and delivered to him. Thus, these three articles do not apply to illegal pushbacks, which are merely illegal material acts of the Greek authorities as the police, border patrols and other bodies. They took part out of the legal framework and do not follow any legal return procedure and premise.

**2. Articles 18,21,24,28 and 30 of the Law no 3907/11**

According to the L. 3907/11 in article 18 the legal terms of “return”, “return decision” and “removal of third country national” are defined and refer to the legal procedures for the return of third country nationals to the country of origin or to another third country in accordance with European union or national bilateral readmission agreements. Furthermore, the article 21 is referred to the return decision (according to article 6 of the Directive 2008/115 / EC) and, specifically, it provides in paragraph 3 the only case where a return written decision is not by law prerequisite, is, when another Member State takes over the third country national on the basis on bilateral agreements or arrangements.

According to the article 24 a decision for postponing the third country national removal is provided. This article is not, obviously, applicable in pushbacks cases. However, according to par.1 of the same article, the removal of a third country national who is subject to return procedure, is obligatorily postponed in case, inter alia, the principle of non – refoulement could be violated.

Finally, the article 28 provides for legal remedies against the return decision and the article 30 (Article 15 of the Directive) are defined and specified the condition for the detention of third-country nationals who are subject to return and removal procedures.

### **Law no 4636/2019 (gazette A 169/1.11.2019)**

The Law 4636/2019 is the law that is currently in force and has codified all the provisions regarding the international protection and the asylum procedure in Greece. This law is important for illegal pushbacks because it is referred in several articles the principle of non – refoulement.

Concretely and extensively:

1. According to Article 21 of the Law 4636/2019 (Article 21 of Directive 2011/95/EU) the competent authorities respect the principle of non-refoulement in accordance with the international obligations of the country.

2. According to the Article 68 of the Law 4636/2019 (Article 9 of Directive 2013/32/EU), entitled as “The right of asylum seekers residence – Exclusions” in the par. 3 is mentioned the following “The applicant's right of residence in the country, in accordance with paragraph 1, does not establish a right to a residence permit. When, in accordance with the provisions of this law, the applicant's right of residence ceases to be valid, the competent Authority shall consider the assistance of the terms of the principle of non-refoulement, as put forth in Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or humiliating treatment or punishment ratified by Law 1782/1988 (A '116), in Article 7 of the International Covenant on Civil and Political Rights ratified by Law 2462/1997 (A' 25), in Articles 31 and 33 of the Geneva Convention relating to the Status of Refugees 1951, ratified by L.C. 3989/1959 (A '201) and in article 3 of the European Convention on Human Rights ratified by L.C. 53/1974, (A '256). In this case, the competence Authority issues a certificate of non-removal for humanitarian reasons, which implies for the holder, the rights and obligations of the certificate of postponement of removal of article 3907/2011.

**2. Please provide information on any existing good practices or measures taken (such as screening and referral mechanisms at borders) in your country to ensure that persons crossing international borders in mixed movements are protected according to international human rights law. Please indicate any specific measures aimed at reducing vulnerabilities of migrants, including by applying a human rights-based, gender- and disability-responsive, as well as age- and child-sensitive approach.**

**3. Please provide information on existing restrictions or limitations in law and in practice in relation to the right to claim and seek asylum at international borders in your country (e.g., border controls, restricted access to territory) and elaborate the impact of these restrictions on the protection of the rights of migrants crossing international borders.**

**4. Please provide information on any concrete instances of pushbacks, including an analysis on the circumstances of the event.**

1. Although push-backs have been ruled as unlawful under international law, the practice is understood to continue in a methodical and widespread manner along the Evros/Meriç border. The scarcity of evidence and the varying access of witnesses highlighted the necessity for a collaboration [Forensic Architecture](#). In that context, HumanRights360 has partnered with Forensic Architecture in order to undertake an investigation into illegal push-backs of migrants crossing the border from Turkey to Greece through the Evros/Meriç river. The results of this investigation are focused on specific cases, and describe the modus operandi of the institutional bodies carrying out push-backs while raising important questions of responsibility and accountability (<https://chaptered-video.forensic-architecture.org/kuzey/>

<https://chaptered-video.forensic-architecture.org/fady/>

2. [HumanRights360](#) in coordination with [GLAN](#) filed on 17/11/2020 a complaint before the UN Human Rights Committee<sup>1</sup> on behalf of Fady, a recognised refugee in the EU, who was subject to an enforced disappearance and repeated summary expulsions by Greek authorities between November 2016 and November 2017. Fady was stripped of his possessions, his document attesting to his residency status in the EU and placed outside the protection of the law. He was placed in a state of precarity and rightlessness for three years until his documents were reissued and he was finally able to return to his home in Germany in November 2019. His initial expulsion to Turkey was [reconstructed](#) in the form of a 'situated testimony' by the UK-based investigative group [Forensic Architecture](#). The complaint argues that Greece's unlawful deprivation of Fady's liberty amounts to an enforced disappearance under international law. And it results in further serious violations of basic rights, notably the right to life, the right to liberty, the prohibition against torture, and the right to due process and remedy, as enshrined in the ICCPR.

3. HumanRights360 has submitted to the Greek Ombudsman, the national mechanism for investigating cases of police arbitrariness, as well as to the National Mechanism for the Monitoring of (Forced) Returns, three reports on cases which are detailed in our report. However, as for the further process of the investigation, the exact personal data of the victims had to be known to the Greek authorities, we chose, after contacting the victims, not to risk a vindictive act by the state apparatus. Furthermore, we considered that it is not worth exposing them to a process with dubious results and not be able to find a safe place to live in Greece. Any filing by the Greek authorities of a "false report to the authorities" lawsuit would jeopardize even their legal stay in case of entry into the country and their request for international protection.

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<sup>1</sup> <https://www.humanrights360.org/international-complaint-against-greece-s-violent-pushbacks-at-the-evros-border/>

**5. Please indicate any specific challenges that your Government has encountered, in the context of the COVID-19 pandemic, on ensuring the human rights of migrants crossing international borders, either by land or by sea.**

State's reaction on ensuring the human rights of migrants crossing international borders on the land in the context of COVID-19 was exhausted to punishment procedures. There has been noticed that almost 10 people who arrived at the RIC, held a fine notice for not wearing a mask due to COVID-19 measures, during their arrest by a Police Department of Rodopi region.

**6. Please indicate any challenges and/or obstacles faced by Governmental institutions or civil society organizations and individuals in protecting the human rights of migrants at international borders, including those in distress at sea and in situations where pushbacks or pullbacks are likely to take place.**

The defense of human rights and especially someone's right to apply for international protection in Greece has been severely undermined. The extent and magnitude of the violations is so obvious judging by the recent informative note of the Ministry of Immigration and Asylum regarding the reduction of flows and arrivals of refugees in 2020. As HumanRights360 we have the following to say about the difficulties in providing legal assistance to victims / survivors of refoulement in the borders of Evros:

1. As state structures such as the Greek Police, the Army, the National Guard participate in organized pushbacks and collective expulsions, especially in regions that have exclusive control of the area, it is impossible to acquire easily evidence of violations despite the testimonies and any minimum material has been rescued and sent via internet before their mobile phones had been confiscated. Specifically, in Evros, where many of the pushbacks and deterrent events take place in areas which are considered as military zones, it is impossible for civil society actors or human rights defenders to have access to violations in order to record them.

2. The perpetrators of the violations include, based on all of the complaints, police bodies of various services, with obvious orders to immediately seize mobile cameras, legal or other documents, and even to remove clothes and shoes. Phenomena of violence have also been observed. The fact that the perpetrators of human rights violations take place in the state apparatus to such an extent gives the full cover of concealing these acts and the inability of the victim to refute the perpetrator except for his testimony. Respectively, any criminal prosecution against the unknown perpetrators, police bodies in Evros, will meet exactly this wall of concealment and therefore no serious and reliable pre-investigation will be conducted. In fact, it is at the discretion of each Prosecutor, in case the perpetrators are not found, or the case is placed in the file, to prosecute ex officio the perpetrator for false testimony.

3. The lack of a law provision based on which appropriate information, support, and protection of the victims to participate in the criminal proceedings should be ensured.

4. Especially after the events of March 2020, the official rhetoric, and the emergence of migrants / refugees as "Erdogan's tools", "national danger" and other designations that define them as "dangerous", makes it particularly difficult for civil society in the region to develop an action seeking an end to the continuous violence of the principle of non-refoulement. In addition, this rhetoric legitimizes other actors in the region, either far-right organizations in March 2020 or self-appointed militia which arrest immigrants and engage themselves in illegal pushbacks to Turkey<sup>2</sup>.

5. Another example of the weakness to set up a mechanism in order to monitor FRONTEX staff's breaches, especially in areas that are also military zones and are therefore inaccessible to human rights advocates, is F. Leggeri's answer to [question 18](#) before the European Committee on Civil Liberties, Justice and Home Affairs. When asked why he did not adopt the recommendations of the fundamental rights officer in order to reconsider the continuation of RBI EVROS 2020 as defined in Article 46 (4) and (5) of Regulation 2019/1896, F. Leggeri replied that according to Article 46 (6), decisions to suspend operations must be made on the basis of registered complaints which have not been resolved by a national competent authority, reports of serious incidents, reports by coordinators of relevant international organizations, institutions and bodies, services and agencies of the Union which deal with the areas covered by this Regulation. With the presence and activity of the rapid intervention teams and not only in the borders of Evros, which is a military zone, it is impossible to record any violations of Frontex or other national bodies. As a result, neither accountability nor suspension or withdrawal of funding for the Agency's activities, in whole or in part, can be achieved in such areas forming eventually a framework of full impunity and an exemption regime for human rights.

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<sup>2</sup> <https://www.humanrights360.org/during-and-after-crisis-evros-border-monitoring-report/>  
<https://www.humanrights360.org/defending-human-rights-in-times-of-border-militarization/>