

# Briefing

## Systemic breaches of the rule of law and of the EU asylum *acquis* at Greece's land and sea borders

June 2022

### Contempt of judicial protection and court orders

The right to judicial protection is a fundamental right enshrined *inter alia* in Article 47 of the Charter of Fundamental Rights. Access of individuals to judicial protection and redress before domestic and international courts, including the European Court of Human Rights (ECtHR), is indispensable to the effectiveness of rights guaranteed by international and EU law. Legal assistance and representation are foundational elements of the right to judicial protection.

Descriptions of the exercise of such a right through as "manipulating the European Asylum and Justice systems" or "NGOs also make appeals to the European Court of Human Rights", per the Ministry of Migration and Asylum letter of 20 June 2022, create a dangerous departure from core principles of the rule of law that are essential to the Union and its Member States.

Furthermore, we note that, despite the exercise of the right of individual application before the ECtHR under Article 34 ECHR, Greek authorities have on several occasions unlawfully removed individuals from the national territory in contempt of interim measures ordered by the Court under Rule 39 of the Rules of the Court.<sup>1</sup> In other cases, they have performed push backs against refugees pending the outcome of Rule 39 proceedings and requests for information before the Court.<sup>2</sup>

The Ministry of Migration and Asylum letter of 20 June 2022 does not refute these observations. It merely notes that Greek authorities "have acted on all these cases". This is an incorrect assertion, given that only in three out of 13 cases of interim measures ordered by the ECtHR from 15 March 2022 to present have the persons concerned been rescued by Greece after several days. In two of those, the persons were rescued only after having been pushed back and re-entering Greece at a later stage.

Furthermore, the Ministry of Migration and Asylum letter also refers to the LIBE Committee's letter as "based on press reports, which have not been independently verified." This is an incorrect description of individual applications registered with the ECtHR pursuant to Article 34 ECHR and currently pending examination by the Court. We recall that, pursuant to established case law, the ECtHR only grants interim measures pursuant to Rule 39 to prevent a risk of serious, irreparable harm. It does not "naturally, [react] by asking for urgent measures", as the letter incorrectly posits.

We recall that failure to abide by interim measures ordered under Rule 39 of the Rules of Court amounts to a breach of Article 34 ECHR, according to well-established

<sup>1</sup> GCR, *Information note*, 23 June 2022, available at: <https://tinyurl.com/2n3hzj7v>.

<sup>2</sup> *Ibid.* See also RSA, 'The timeline of a pushback of a Syrian refugee in Evros, as documented by RSA', 19 October 2021, available at: <https://bit.ly/3Ofda9d>.

Strasbourg case law.<sup>3</sup> Greece has thereby clearly breached its human rights obligations, pending the outcome of proceedings before the ECtHR. Importantly, in the majority of cases cited above, the Greek National Commission for Human Rights has written to the Greek authorities in line with its mandate, to stress the need for compliance with ECtHR interim measures.

### Disregard and discrediting of European and international monitoring bodies

The United Nations Special Rapporteur on the human rights of migrants recently stated that “In Greece, pushbacks at land and sea borders have become de facto general policy.”<sup>4</sup> A wide array of authoritative European and international monitoring bodies corroborate these concerns and consistently denounce systemic breaches of fundamental rights at Greece’s land and sea borders within the scope of their respective mandates. These include at least:

- The United Nations High Commissioner for Refugees (UNHCR);<sup>5</sup>
- The International Organisation for Migration (IOM);<sup>6</sup>
- The United Nations Committee on Enforced Disappearances (CED);<sup>7</sup>
- The United Nations Committee on the Rights of the Child (CRC);<sup>8</sup>
- The United Nations Human Rights Council;<sup>9</sup>
- The United Nations Working Group on Arbitrary Detention (WGAD);<sup>10</sup>
- The United Nations Special Rapporteur on the human rights of migrants;<sup>11</sup>
- The United Nations Special Rapporteur on human rights defenders;<sup>12</sup>
- The Council of Europe Commissioner for Human Rights;<sup>13</sup>
- The European Committee for the Prevention of Torture (CPT);<sup>14</sup>

<sup>3</sup> ECtHR, *Mamatkulov and Aksarov v. Turkey*, App Nos 46827/99 and 46951/99, 4 February 2005.

<sup>4</sup> UN Special Rapporteur on the human rights of migrants, para 32, available at: <https://bit.ly/3QxvbBn>.

<sup>5</sup> UNHCR, ‘UNHCR warns of increasing violence and human rights violations at European borders’, 21 February 2022, available at: <https://bit.ly/39Md9L4>; ‘UNHCR concerned by pushback reports, calls for protection of refugees and asylum-seekers’, 21 August 2020, available at: <https://bit.ly/3xNCV9O>.

<sup>6</sup> IOM, ‘IOM Alarmed over Reports of Pushbacks from Greece at EU Border with Turkey’, 11 June 2020, available at: <https://bit.ly/39GXQDi>.

<sup>7</sup> CED, *Concluding observations on the report submitted by Greece*, CED/C/GRC/CO/1, 12 April 2022, paras 28-31, available at: <https://bit.ly/3OwfTVh>.

<sup>8</sup> CRC, ‘Experts of the Committee on the Rights of the Child Ask Greece about Roma Children and Push Backs of Refugees at the Border’, 4 May 2022, available at: <https://bit.ly/3xDCsqA>.

<sup>9</sup> UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Greece*, A/HRC/49/5, 6 January 2022, paras 130.96, 130.202, 130.204, 130.209, 130.214, 130.215, 130.216, 130.223, 130.226, available at: <https://bit.ly/3tSxghE>.

<sup>10</sup> WGAD, *Report of visit to Greece*, A/HRC/45/16/Add.1, 29 July 2020, paras 87-88, available at: <https://bit.ly/3HINxuZ>.

<sup>11</sup> UN Special Rapporteur on the human rights of migrants, available at: <https://bit.ly/3QxvbBn>.

<sup>12</sup> UN Special Rapporteur on human rights defenders, ‘Statement on preliminary observations and recommendations following official visit to Greece’, 22 June 2022, available at: <https://bit.ly/3tSwZLB>.

<sup>13</sup> Council of 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, available at: <https://bit.ly/3OclKpt>.

<sup>14</sup> CPT, ‘Council of Europe’s anti-torture Committee calls on Greece to reform its immigration detention system and stop pushbacks’, 19 November 2020, available at: <https://bit.ly/39FChmQ>.

- The Frontex Fundamental Rights Officer (FRO);<sup>15</sup>
- The United States Department of State (USDOS).<sup>16</sup>

For its part, the European Commission has agreed that “the issue of alleged pushbacks by the Greek authorities is highly concerning”<sup>17</sup> and stresses the “need to reinforce the transparency of border operations by establishing a reliable and independent border monitoring mechanism.”<sup>18</sup>

At the same time, independent authorities at national level have also taken important initiatives against the backdrop of systemic violations of human rights at Greece’s borders. The Greek Ombudsman has informed the Hellenic Parliament that he is investigating over 50 push back incidents regarding over 10,000 people,<sup>19</sup> including recognised refugees unlawfully deported to Turkey. The Greek National Commission for Human Rights has established an Informal Forced Returns Recording Mechanism (Μηχανισμός Καταγραφής Περιστατικών Άτυπων Αναγκαστικών Επιστροφών).<sup>20</sup> The signatories to this briefing are members of said mechanism.

Against that backdrop, sustained efforts on the part of the Greek government to discredit the work of authoritative monitoring bodies at European, international and domestic level and to describe them as “adversaries... always ready to sow division and spread lies” and “propaganda machines”, per the letter of 20 June 2022, appear as a direct affront to the rule of law and to the country’s international obligations. We are equally concerned by the explicit reference made by the aforementioned letter to LIBE Committee as an institution susceptible to “manipulation” by “propaganda machines and smuggling networks”.

We would further add that as recently as three weeks ago, the Prime Minister of the Hellenic Republic declared that “no one will speak... regarding refugees because we simply managed to resolve this problem.”<sup>21</sup> Land border arrivals were at 2,346 in the first five months of 2022, compared to 1,865 during the same period in 2021.<sup>22</sup> Therefore, both official data and discourse at domestic level contradict the references in the letter of 20 June 2022 to “strenuous efforts of the Greek government to cope with the ongoing migration crisis” and to “instrumentalization of migration”.

<sup>15</sup> Frontex, *Fundamental Rights Officer Annual Report 2021*, June 2022, 7, 14, 39, available at: <https://bit.ly/3A1XP7J>.

<sup>16</sup> USDOS, *2021 Country Reports on Human Rights Practices: Greece*, Part C, available at: <https://bit.ly/3bs9wuo>; *2021 Trafficking in Persons Report: Greece*, available at: <https://bit.ly/3tYLhu1>.

<sup>17</sup> European Commissioner for Home Affairs, Ares(2021)454531, 13 July 2021, available at: <https://bit.ly/3Nrc5dv>.

<sup>18</sup> European Commission, Reply to written question E-2697/2021, 22 July 2021; Reply to written question E-1667/2021, 30 June 2021; Reply to written question E-4587/2020, 23 November 2020; Reply to written question E-4566/2020, 17 November 2020; Reply to written question E-4168/2020, 9 October 2020.

<sup>19</sup> Εfsyn, ‘Πάνω από 50 καταγγελίες επαναπροωθήσεων διερευνά ο Συνήγορος του Πολίτη’, 19 May 2022, available at: <https://bit.ly/3zWoHGn>. See also Greek Ombudsman, *Annual Report 2021*, 61 et seq.; *Special Report Returns 2021*, 35-36, available at: <https://bit.ly/3QFyard>.

<sup>20</sup> Greek National Commission for Human Rights, ‘Η ΕΕΔΑ για την Παγκόσμια Ημέρα Προσφύγων’, 20 June 2022, available at: <https://bit.ly/3QPRPVM>.

<sup>21</sup> Kathimerini, ‘Αιχμηρός Μητσοτάκης για προσφυγικό’, 3 June 2022, available at: <https://bit.ly/39LNvWJ>.

<sup>22</sup> Ministry of Migration and Asylum, *Monthly statistical reports*, May 2021 and May 2022.

## Absence of effective & independent border monitoring

The National Transparency Authority (*Εθνική Αρχή Διαφάνειας*, NTA), entrusted *inter alia* with investigation of rule of law breaches such as the use of Predator spyware against journalists<sup>23</sup> and push backs,<sup>24</sup> is not an independent authority as it does not comply with the requirements set by Article 101A of the Greek Constitution for the institutional and functional independence of such authorities from political interference.<sup>25</sup> This concern was already raised during the Institutions and Transparency Committee meeting of 6 September 2019, which approved the appointment of the first and current Director of the NTA solely on votes of the ruling party.<sup>26</sup>

For those reasons, as recently stressed by the United Nations Special Rapporteur on human rights defenders, the NTA “is not equipped to conduct independent investigations into the management of migration flows”,<sup>27</sup> contrary to the submissions of the Ministry of Migration and Asylum in its 20 June 2022 letter to the LIBE Committee.

The first report published by the NTA on 10 May 2022 confirms that said authority does not observe well-established requirements for the effectiveness of investigations (including independence and impartiality, thoroughness, victim involvement),<sup>28</sup> given that:

- It sought *inter alia* “To reflect the view of local communities on how irregular migration is managed by the relevant national bodies” and to record “the view of the local community on allegations of pushbacks”;<sup>29</sup>
- It did not interview victims of push backs, representatives of UN agencies, the Ombudsman or the Greek National Commission for Human Rights, and only interviewed only 1 lawyer and 1 NGO offering medical services, out of a total of 65 persons interviewed, including 29 Greek officials;<sup>30</sup>
- It “requested the assistance of the Hellenic Police Forensic Science Division (in Greek: DEE) in examining the data provided (16 videos and 7 photographs)”<sup>31</sup> in relation to allegations *inter alia* of push backs conducted by Hellenic Police officers.

<sup>23</sup> Reporters United, ‘Συγκάλυψη #2: Πώς η κυβέρνηση Μητσοτάκη προσπαθεί (ξανά) να κλείσει την υπόθεση Κουκάκη’, 21 April 2022, available at: <https://bit.ly/3LCYNcU>.

<sup>24</sup> NTA, *Investigation Report OM3/4: Management of immigration flows – Allegations of pushbacks in Greece*, March 2022, available at: <https://bit.ly/38CREfj>.

<sup>25</sup> Article 101A(2) of the Constitution provides that candidate members of independent authorities are appointed by the Conference of Presidents of the Parliament on the basis of a supermajority (3/5) vote. However, the legal basis of EAD (Articles 88(2) and 90(2) L 4622/2019) foresees that candidates for the positions of Director and Management Board members of EAD are proposed by the Council of Ministers and are approved by simple majority vote of the Institutions and Transparency Committee of the Parliament. This means that a party holding a majority of seats in Parliament can approve a candidate solely through its own votes in the Committee. Accordingly, the selection procedure not only falls short of the institutional requirements set by the Constitution for independent authorities but also raises risks of political dependency of the EAD on the government.

<sup>26</sup> Hellenic Parliament, *Institutions and Transparency Committee: Ακρόαση, από τα μέλη της Επιτροπής, του προταθέντος, από το Υπουργικό Συμβούλιο, για τη θέση Διοικητή της Εθνικής Αρχής Διαφάνειας, με διετή θητεία*, 6 September 2019, available at: <https://bit.ly/3sHofbg>.

<sup>27</sup> UN Special Rapporteur on human rights defenders, ‘Statement on preliminary observations and recommendations following official visit to Greece’, 22 June 2022, available at: <https://bit.ly/3tSwZLB>.

<sup>28</sup> ECtHR, *Bati v. Turkey* App Nos 33097/96 and 57834/00, 3 June 2004, para 134.

<sup>29</sup> NTA, *Investigation Report OM3/4*, 9.

<sup>30</sup> *Ibid*, 39-44.

<sup>31</sup> *Ibid*, 34.

At the same time, the Greek Ombudsman, an independent authority in line with constitutional standards, reports obstacles from the Greek authorities vis-à-vis the exercise of his functions. In an interim report on push backs at the Evros border, the Ombudsman concluded that “the response of the administration to the above allegations has not contributed to date to effectively addressing concerns through rigorous investigation of allegations”.<sup>32</sup>

While the European Commission has taken note of the findings of the Ombudsman's report and “expects the Greek authorities to take relevant action”,<sup>33</sup> has “engaged in a dialogue with the National Transparency Authority and the Ombudsman, which investigate incidents at the border...”<sup>34</sup> and has committed to following up with Greece,<sup>35</sup> no tangible changes have been marked vis-à-vis the serious concerns relating to the lack of independence and effectiveness of investigations into push backs.

### Denial of access to asylum procedures

Since November 2021, Greece has stopped registering first asylum applications made on the mainland by persons who have not previously been registered by the Reception and Identification Service (RIS) or the Hellenic Police. The European Commission notes that “currently there is practically no option for persons who were not apprehended at the mainland borders and did not go through reception and identification procedures... to have an asylum application registered by the authorities on the mainland... the latter have to wait until the new registration centers become operational” and warns that this “does not seem in line with the provisions of the Asylum Procedures and Reception Conditions Directives.”<sup>36</sup>

In addition, as highlighted ahead of the LIBE Delegation visit to Greece in November 2021, Greece imposes a €100 fee per person on every second or further subsequent application,<sup>37</sup> thereby arbitrarily restricting access to the asylum procedure for the persons concerned. Judicial review proceedings on the legality of the fee are pending before the Greek Council of State and are expected to be heard in December 2022.

The European Commission has already stated that “the unconditional application of a EUR 100 fee for second subsequent applications raises issues in terms of effective access to the asylum procedure”.<sup>38</sup> However, the Asylum Service confirms that the fee is an unequivocal condition for the “making” of an asylum application and that no exemption is possible. The European Commission has also noted that “the introduced fee for subsequent applications seems too high”<sup>39</sup> and has “reiterated its concerns on

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<sup>32</sup> Ombudsman, *Καταγγελλόμενες επαναπροωθήσεις στην Τουρκία αλλοδαπών που είχαν εισέλθει στην Ελλάδα αναζητώντας διεθνή προστασία – Ενδιάμεση έκθεση*, May 2021, 30-31, available at: <https://bit.ly/3HccLAo>.

<sup>33</sup> European Commission, Reply to written question E-1667/2021, 30 June 2021.

<sup>34</sup> European Commission, Reply to written question E-5571/2021, 7 April 2022.

<sup>35</sup> European Commission, Reply to written question E-1438/2022, 10 June 2022; Reply to written question E-259/2022, 29 April 2022.

<sup>36</sup> European Commission Head of Task Force Migration Management, Email to the General Secretaries for Reception and Migration Policy, Ares(2022)2235456, 27 March 2022. See also European Commission, *Task Force Migration Management Mission Report – Greece – Jan/Feb 2022*, Ares(2022)1024324, 11 February 2022, 3.

<sup>37</sup> Article 94(10) Asylum Code.

<sup>38</sup> European Commission, Reply to written question E-5103/2021, 25 January 2022.

<sup>39</sup> European Commission, *9<sup>th</sup> Migration Management Steering Committee Meeting – 23 September 2021*, Ares(2021)7289610, 26 November 2021, para 2.4.

the introduction of the fee at political level. Services informed that until today only a few TCNs have been able to pay the fee."<sup>40</sup>

### Persisting arbitrary use of the safe third country concept

Greece insists on systematic use of the safe third country concept throughout its territory pursuant to JMD 42799/2021, despite clear knowledge on the part of EU and Greek authorities that return to Turkey is not possible. According to the European Commission, Turkey's refusal to readmissions is unrelated to the COVID-19 pandemic: "Responding to repeated requests from the Greek authorities and the European Commission regarding the resumption of return operations, Turkey has stated that no return operation would take place unless the alleged pushbacks along the Turkish-Greek border stop and Greece revokes its decision to consider Turkey a Safe Third Country".<sup>41</sup>

The European Commission has reminded the Ministry of Migration and Asylum that "Article 38(4) of the Asylum Procedures Directive should apply to an application processed under the safe third country concept, where the applicant is not being or has not been readmitted to Turkey."<sup>42</sup> It has repeatedly stated that asylum seekers whose readmission to Turkey is impossible should have their cases heard on the merits, including where Turkey has suspended readmission agreements or does not respond to readmission requests.<sup>43</sup> Greece, however, refuses to apply Article 38(4) of the Directive to date.

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<sup>40</sup> European Commission, *Task Force Migration Management Mission Report – Greece – Jan/Feb 2022*, Ares(2022)1024324, 11 February 2022, 3.

<sup>41</sup> European Commission, *Sixth Annual Report on the Facility for Refugees in Turkey*, COM(2022) 243, 24 May 2022, 3.

<sup>42</sup> European Commission Head of Task Force Migration Management, Email to the General Secretaries for Reception and Migration Policy, Ares(2022)2235456, 27 March 2022.

<sup>43</sup> European Commission, Reply to written question E-1347/2022, 22 June 2022; Reply to written question E-5103/2021, 25 January 2022; Reply to written question E-4131/2021, 21 December 2021; Reply to written question P-604/2021, 1 June 2021.

## Annex – Interim measures granted by the ECtHR regarding push backs in the Evros area from March to June 2022

The following table compiled based on the GCR Information Note of 23 June 2022, cited above.

Application	Main elements	Order date
13624/22 A.A.	30 Syrian refugees including children. One child fell in the river and allegedly drowned during pushback operation. Applicants were rescued after being stranded on an islet in river Evros. Joint representation with the organization Human Rights 360 -a full application has been submitted before the Court.	16 Mar 2022
18341/22 B.M.	27 Syrian refugees including 5 children were rescued.	13 Apr 2022
18940/22 A.D.	37 Syrian refugees including 17 children complain that they were pushed back from Greece to Turkey, while the Court's decision was pending. GCR submitted a full application before the Court. Some of the applicants entered Greece again and they are stranded on an islet in Evros since 15/6.	19 Apr 2022
18941/22 H.A.	46 Syrian refugees including 10 children were rescued.	19 Apr 2022
19419/22 K.M.I.	39 Syrian refugees including 9 children complain that they were pushed back from Greece to Turkey twice. The second pushback took place after the Court's decision. A woman in need of haemodialysis allegedly died on the islet. Some of them entered Greece again and were rescued. A full application has been submitted by GCR before the Court.	21 Apr 2022
21039/22 S.S.	12 Syrian refugees including 3 children complain that they were pulled back from an islet to Turkey. Some of them entered Greece again. Stranded on islet since 15/6.	29 Apr 2022
21131/22 A.A.	14 Syrian refugees complain that they were pushed back from Greece to Turkey. Some of the applicants entered Greece again and were rescued. A full application will be submitted by GCR before the Court.	04 May 2022
23128/22 F.R.	39 Syrian refugees including 13 children complain that they were pulled back from an islet to Turkey. Some of them entered Greece again and they are stranded on islet since 15/6.	11 May 2022
25806/22 H.M.*	93 Syrian refugees complain that they were pushed-back from Greece to Turkey after the Court's decision. Joint representation with the organization Human Rights 360.	25 May 2022
	Applicants complain that they were pushed-back from Greece to Turkey, while the Court's decision was pending. Joint representation with the organization Refugee Support Aegean.	27 May 2022
	Applicants complain that they were pushed-back from Greece to Turkey while the Court's decision was pending.	27 May 2022
26558/22 H.M.	Some of the applicants in Application no. 25806/22 entered Greece again together with 28 other refugees. Applicants complain that they were	01 Jun 2022

	pushed-back from Greece to Turkey after the Court's decision. Joint representation with the organization Human Rights 360.	
29655/22 M.A.	18 Syrian refugees including 7 children are stranded on an islet in Evros since 15/6 together with applicants of cases A.D., S.S. and F.R. v. Greece.	17 Jun 2022

**25806/22 H.M.** concerns 93 refugees who were stranded on an islet in Evros river from 22 May 2022 and for whom ECtHR decided on 25 May 2022 to indicate to the Greek government that the applicants not be removed until further notice and be provided with food, water and adequate medical care as needed until further notice. Two days later, on 27 May 2022, they were pushed back to Turkey after being taken to a place of detention, as reported to the NGO.

In this case, the Greek authorities insisted they could not locate the persons, despite receiving information from GCR and HumanRights360 about their location, from strangers who were in a military zone and called them to go back – shouting "go back" – and also from a Hellenic Army patrol which asked their nationality and number. On the morning of 27 May 2022, the people were sent back to Turkey. That same afternoon, the Press Office of Journalists of Eastern Macedonia and Thrace issued a press release according to which "investigations are being carried out to locate people who are reportedly on an island on the riverbed of the Evros river the area of Pythio Didymoteicho, with a negative result so far."

**26558/22 H.M.** concerns 52 refugees (24 of whom had already been pushed back to Turkey on 27 May 2022) for whom interim measures were issued on 1 June 2022 by the ECtHR. On 4 June 2022 they were transferred to a border police department where they were detained for a few hours and were then transferred to the river and pushed back to Turkey.

Here, the authorities, while being informed by GCR about the issuance of interim measures despite their duty to respond to the ECtHR by 2 June 2022 as to the whereabouts of the 93 refugees of the previous case, continued to refuse to give their location, stating that their search was not successful. After being asked to instruct the refugees to be on the shore in order to locate them, they insisted on not having located them. A few hours later, on 4 June at 01:00, we were informed by the refugees of the danger they were facing, as boats approached the islet with their engines and lights turned off. The entry of unknown men or the Hellenic Police onto the islet was recorded by Spiegel correspondent George Christidis, who tweeted: "URGENT: Greek police (or someone) just reached the group. One refugee called me after texting me 'commandos' are coming. He put me on speaker. I heard a man w / Greek accent call out to the refugee 'telephone, telephone' in ENG. After a while the line dropped @hellenicpolice."

The above illustrate that the course of action followed by the Greek authorities involves delays in the implementation of ECtHR interim measures – in only three cases did Greece rescue those stranded, and then only subject to delays. That course of action exposed those stranded to a number of risks. In the other cases, persons stranded were subjected to organised removal operations. At the same time, while there was evidence of their exact location and prior location e.g. by Army patrols, drones, we were officially informed that they could not be located. Finally, in these two cases the Greek authorities have not complied with the duty to inform the Court further to the interim measures, as we have not received any relevant information.