

Muhammad v. Greece, Application no. 34331/22

WRITTEN SUBMISSIONS

**on behalf of the
Greek Council for Refugees**

pursuant to the Registrar's notification of 8 October 2024 on the Court's
permission to intervene under Rule 44 § 3 of the Rules of the European Court
of Human Rights

Athens, 29 November 2024

Summary

1. This submission is made by the Greek Council for Refugees (GCR), a Greek Non-Governmental Organization, founded in 1989, that specializes in the provision of legal aid and social support to persons in need of international protection in Greece. *Inter alia* GCR participates in the Greek National Commission for Human Rights (GNCHR) since 1999, has a Consultative Status in the Economic and Social Council (ECOSOC) of the UN since 2001 and it is a member of the Racist Violence Recording Network (RVRN) and the recently established Recording Mechanism of Informal Forced Returns under the auspice of GNCHR. GCR has a long experience in supporting victims of border violence and in particular pushbacks or omission to rescue across the Greek-Turkish borders, before domestic courts and the European Court of Human Rights.
2. With the following submission, GCR wish to provide information with regards the effectiveness of criminal procedures followed before domestic courts in cases of border violence and in particular in pushback cases. Based on the cases supported by GCR before domestic Courts but also available statistical data and other information by authoritative sources, domestic procedures lack the required effectiveness. A pattern of ineffective investigation of cases involving human rights violations related to border control operations and/or pushbacks allegations emerges.

Credible, consistent and numerous allegations on pushback practices at the Greek-Turkish land and sea borders

3. Pushback practices across the Greek-Turkish land and sea borders have been widely documented over the previous years and up until today. While pushbacks are not a recent phenomenon, the number of cases of reported pushbacks has significantly increased since 2020. Pushback practices are not only a violation of the non-refoulement principle. They are also violent practices carrying out life-threatening risks and risk of ill-treatment.¹
4. **UNHCR** states that “*during 2020-2022, UNHCR recorded 809 incidents of ‘summary forced return’ at land and sea borders (informally referred to as ‘pushback’) involving at least 28,497 individuals*”.² The **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)** of the Council of Europe has repeatedly underlined over the previous years that they received “*consistent and credible allegations*” on pushbacks.³ In the recent 2024 CPT Report, the

¹ See *inter alia* Report of the Special Rapporteur on the human rights of migrants, 12 May 2021, Human Rights Council, 47th session, 21 June–9 July 2021, Report on means to address the human rights impact of pushbacks of migrants on land and at sea, para. 53 and UN High Commissioner for Refugees (UNHCR), Submission by the Office of the United Nations High Commissioner for Refugees in the case of G.R.J. v. Greece (App. No. 15067/21) before the European Court of Human Rights, 16 April 2024, para. 2.3.6.;

² UN High Commissioner for Refugees (UNHCR), *ibid.*, para. 2.2.2

³ See Committee for the Prevention of Torture, Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and

CPT underlines that “ [...] *there is sufficient evidence to conclude that pushbacks to Türkiye have taken place and continue to take place [...]*”.⁴

5. The **FRONTEX Fundamental Rights Officer**, in July 2023, issued a fourth opinion concluding that “*collective expulsions at sea and land borders in Greece, accompanied by additional associated fundamental rights violations, are conducted systematically rather than constituting isolated incidents*”.⁵ To this end, the Fundamental Rights Officer reiterated the advice to the FRONTEX Executive Director to trigger the mechanism to suspend or terminate FRONTEX activities in Greece, in whole or in part, unless major changes were made.⁶
5. In its latest annual report, the **Recording Mechanism of Incidents of Informal Forced Returns** operating under the **Greek National Commission for Human Rights**,⁷ exhibits the systematic and organized nature of the illegal operations, with the involvement of law enforcement and armed forces personnel, such as the police, the coastguard, the army, and FRONTEX.⁸ The total number of the victims of the pushback incidents reported to the Mechanism from January to December 2023, is at minimum 1.438 people, including at least 158 women, 190 children and 41 people with special health needs.⁹ The Recording Mechanism considers that its recordings of pushbacks “*are limited only to what is commonly known as the tip of the iceberg*”.¹⁰

Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 19 April 2018, CPT/Inf (2019) 4, 19 February 2019, paras. 136 seq. and Committee for the Prevention of Torture, 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, paras. 53 seq.

⁴ Committee for the Prevention of Torture, 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 20 November to 1 December 2023, CPT/Inf (2024) 21, 12 July 2024, para. 161.

⁵ FRONTEX, Fundamental Rights Officer, ANNUAL REPORT 2023, July 2024, <https://prd.frontex.europa.eu/document/fundamental-rights-officer-annual-report-2023/>, p. 12.

⁶ Pursuant to Article 46 (4) of Regulation (EU) 2019/1896 read as follows: “*The executive director shall, after consulting the fundamental rights officer and informing the Member State concerned, withdraw the financing for any activity by the Agency, or suspend or terminate any activity by the Agency, in whole or in part, if he or she considers that there are violations of fundamental rights or international protection obligations related to the activity concerned that are of a serious nature or are likely to persist*”.

⁷ For more information on the Recording Mechanism of Incidents of Informal Forced Returns, see: <https://nchr.gr/en/recording-mechanism.html>

⁸ Greek National Commission for Human Rights (GNCHR), 2023 Annual Report of the Recording Mechanism of Incidents of Informal Forced Returns, June 2024, https://www.nchr.gr/images/pdf/RecMechanism/Final_Annual_Report_202311.pdf; see also GNCHR, Written intervention by the GNCHR in the ECHR as regards the case of G.R.J. v. Greece and A.E. v. Greece, 28 March 2024, <https://www.nchr.gr/en/news/1798-written-intervention-by-the-gnchr-in-the-echr-as-regards-the-case-of-g-r-j-v-greece-and-a-e-v-greece.html>

⁹ 2023 Annual Report, *ibid*, p. 10.

¹⁰ *Ibid*, p. 70.

6. The **Greek Ombudsman**, after taking under consideration the number of reported pushback incidents between 2017 and March 2024, the relevant complaints submitted to the Ombudsman and the findings of its own investigations in his capacity as National Mechanism for the Investigation of Arbitrary Incidents regarding law enforcement officers, concluded that *“the persistent reluctance on the part of the disciplinary bodies of the enforcement agencies to investigate such incidents”* and *“the recurrent shortcomings impeding the effectiveness and diligence of the few investigations launched”*, suggest that [...] *unlawful pushbacks at land and sea borders present features that do not correspond or correlate to an isolated phenomenon*”.¹¹

7. From March 2022 to 7 October 2024, **GCR** has supported more than 1,000 individuals in risk of pushback and/or victims of multiple pushbacks before the European Court of Human Rights by submitting 85 Applications for Interim Measures under Rule 39, which all have been granted.¹² In only 20 out of these 85 cases, the asylum seekers were formally arrested by the Greek authorities and the official procedure was followed. The recent GCR Report “At Europe’s Borders: Pushbacks Continue as Impunity Persists” provides detailed descriptions of cases legally represented by GCR and underlines the organized nature of pushback practices and the systemic issue of ineffective investigations into reports and complaints for pushbacks and rights violations by domestic Courts, that contribute to an environment of impunity.¹³

8. To this regards, it is worthy of note that the Greek Authorities consistently deny all pushback allegations,¹⁴ which to a certain extend may also explain the lack of any effective investigation of such allegations. For

¹¹ Greek Ombudsman, Third party intervention before the European Court of Human Rights in the cases G.R.J. v. Greece and A.E. v. Greece (applications nos. 15067/21 and 15783/21), 14 March 2024, <https://www.synigoros.gr/el/category/grafeio-typoy-and-epikoinwnias/post/deltio-typoy-or-parembashtritoy-toy-synhgoroy-toy-polith-katopin-prosklshshs-toy-edda-gia-to-zhthma-twn-epanaprow8hsewn>, p.11

¹² Greek Council for Refugees, GCR’s Information Note on interventions and on interim measures granted by the ECtHR in cases regarding pushbacks Updated on the 7th of October 2024, <https://gcr.gr/el/news/item/1984-information-note/>.

¹³ Greek Council for Refugees, “At Europe’s Borders: Pushbacks Continue as Impunity Persists”, November 2024, <https://gcr.gr/en/gcr-reports/item/sta-synora-tis-eyropis-epanaproothiseis-y-po-kathestos-atimorisiast/>; see also Greek Council for Refugees, “At Europe’s Borders: Between Impunity And Criminalization”, March 2023, <https://gcr.gr/en/gcr-reports/item/2110-at-europe-s-borders-between-impunity-and-criminalization/>.

¹⁴ See for example Council of Europe, Commissioner for Human Rights, Letter to the Minister for Citizens’ Protection of Greece, the Minister of Migration and Asylum of Greece and the Minister of Shipping and Island Policy of Greece, 3-5-2021, CommHR/DM/sf 019-2021, <https://rm.coe.int/letter-to-mr-michalis-chrysochoidis-minister-for-citizens-protection-o/1680a256ad>, “I am deeply concerned that the official reaction of the Greek authorities has often been to simply dismiss allegations of pushbacks despite the overwhelming body of evidence that has been presented in recent years”.

example, in the report submitted by the Greek Authorities before the UN Human Rights Committee, within the framework of the examination of the compliance of Greece with the ICCPR,¹⁵ they are directly challenging the reference of the Report of the UN Special Rapporteur on the Human Rights of Migrants on pushback practices in Greece,¹⁶ by mentioning that this “do not correspond to the real situation”. The CPT notes in the recent 2024 Report that “[t]he Greek authorities have continued to maintain that violent forcible informal removals from Greece to Türkiye do not occur”.¹⁷ This is also one of the challenges identified by the FRONTEX Fundamental Rights Officer of FRONTEX who underlines “National authorities denying by default in any involvement in fundamental rights violations and being reluctant to investigate or follow up on cases”.¹⁸

Ineffective criminal investigations - A systemic issue

9. The **EU Fundamental Rights Agency** in its 2023 submission to the European Commission’s Rule of Law Report, underlined the broader impact of ineffective judicial protection against widespread rights violations at EU borders, that poses a risk to the respect of the rule of law as enshrined in Article 2 of the Treaty on European Union.¹⁹ Additionally, in its latest 2024 report on “Guidance on investigating alleged ill-treatment at borders” the FRA states that fundamental rights violations in the EU’s land and sea borders often go unreported and that investigations into these violations need to be more effective.²⁰
10. In the 2024 Report The **CPT** points out that “*the evidence to date seems to highlight that no effective investigations have been carried out into allegations of violent forcible removals from Greece to Turkey*”.²¹
11. These are also the finding of the Greek Ombudsman with regards disciplinary investigations carried out by the competent bodies of the

¹⁵ Third period report submitted by Greece under article 40 of the Covenant pursuant to the optional reporting procedure, 13-9-2023, CCPR/C/GRC/3, para. 158, “*Reports indicating that the practice of so-called ‘pushbacks’ ‘has been established as the de facto border policy’ do not correspond to the real situation*”.

¹⁶ UN Special Rapporteur on the Human Rights of Migrants, Human rights violations at international borders: trends, prevention and accountability, 26 April 2022, A/HRC/50/31, <https://documents.un.org/doc/undoc/gen/g22/328/57/pdf/g2232857.pdf>, para. 32, where mentioned “*In Greece, pushbacks at land and sea borders have become de facto general policy*”.

¹⁷ CPT/Inf (2024) 21, p. 5.

¹⁸ FRONTEX, Fundamental Rights Officer, ANNUAL REPORT 2022, July 2023, <https://www.frontex.europa.eu/media-centre/news/news-release/frontex-fundamental-rights-officer-publishes-report-for-2022-QtQzyB>, p. 28

¹⁹ FRA, Submission by the European Union Agency for Fundamental Rights to the European Commission in the context of the preparation of the annual Rule of Law Report 2023, 2023, p. 42.

²⁰ European Union Agency for Fundamental Rights, ‘Guidance on investigating alleged ill-treatment at borders’, 30 July 2024, p. 3.

²¹ CPT/Inf (2024) 21, para. 159.

Greek law enforcement agencies. The **Greek Ombudsman**, based on the experience under the special mandate of the National Mechanism for the Investigation of Arbitrary Incidents regarding law enforcement officers, notes “*the persistent reluctance on the part of the Greek disciplinary bodies of the enforcement agencies to investigate such [pushback] incidents*” and “*the recurrent shortcomings impeding the effectiveness and diligence of the few investigations launched*”.²²

Official Statistics: All domestic criminal cases “shelved”/closed at the pre-trial stage

12. Despite this background of *credible, consistent* and *numerous* allegations on pushback practices at the Greek-Turkish land and sea borders, no case has been effectively investigated by any Greek Court and the Greek penal justice system.
13. As it transpires from the official data submitted before the Greek Parliament, all cases for which a criminal investigation has been initiated by the Greek Public Prosecutors of domestic Criminal Courts – competent for examining cases involving the potential criminal liability of the personnel of the Hellenic Police and civilians (after the submission of a criminal complaint or *ex officio*), have been either shelved following a preliminary investigation conducted by the Public Prosecutor (no criminal charge have been initiated against law enforcement bodies or other persons²³ and *a fortiori* no case has been referred to a Court for a hearing) or they are still pending.²⁴
14. More specifically, according to the Letter of the then Greek Secretary General of Migration Policy to the Director General of DG Migration and Home Affairs, on 21 February 2024, “[s]ince 2020, *Public Prosecutors in Greece* [having jurisdiction over members of the Hellenic Police] *have opened 79 investigations of allegations, in total. Out of those 79 cases: 48 cases have been closed, 15 cases are currently at the stage of preliminary investigation, nine (9) cases have been transmitted to other competent services, and seven (7) cases are pending*”.²⁵
15. Equally, no criminal charges have been brought in any case examined involving the potential criminal liability of the personnel of the Hellenic Coast Guard. According to the Greek Minister of National Defense in

²² Greek Ombudsman, Third Party Intervention, *ibid.*, p.11.

²³ There have been some cases where criminal charges were initiated against unknown perpetrators and, thus, they were also archived (in the archive of unknown perpetrators).

²⁴ Reply of the Ministry of Justice to the Parliamentary Question No 6153/31-07-2024, 26 August 2024, https://www.hellenicparliament.gr/Koinovouleftikos-Elenchos/Mesa-Koinovouleutikou-Elegxou?pcm_id=99b2a984-b843-4271-9904-b1be00f12542 (in Greek).

²⁵ Reply of the Secretary General of Migration Policy, as forwarded to the European Commission, 21 February 2024, https://www.europarl.europa.eu/doceo/document/E-9-2024-000150-ASW-ANN02_EN.pdf

response to a parliamentary question, out of the total 125 pushback cases which have been investigated by the Public Prosecutor Office of the Piraeus Naval Court, regarding the criminal responsibility of port authorities or Navy personnel for alleged pushbacks,²⁶ between 1 January 2019 and 18 October 2024, 106 were shelved, 15 are pending and 4 cases have been referred to other Prosecutors' Offices of the Greek Territory according to jurisdiction.²⁷ None of the above cases has led to criminal prosecution to date. This is a pattern of ineffective investigation of pushback allegations by domestic Court.

16. It is worth noting that well-documented pushback cases are still pending before the Greek judiciary, with no known outcome to date. These are for example:
17. The case of the alleged pushback of a FRONTEX interpreter from the Evros land borders in September 2021,²⁸ for which the Greek authorities had committed to its full investigation.²⁹ Following significant delays in the internal inquiry of the Police, the Greek Ombudsman initiated its own investigation on this case in February 2023. On the basis of this investigation, the Greek Ombudsman concluded that “*there was sufficient evidence to substantiate the accusations*”.³⁰ The findings of the Greek Ombudsman’s investigation were communicated to the Hellenic Police in September 2023 as well as to the local Public Prosecutor for the respective disciplinary and penal competences.³¹ However, at the judiciary level, the competent Public prosecution authority who had initiated the preliminary investigation on the reported pushback incident, decided to close the case for insufficient evidence - without even having previously called either the victim/complainant or the officers on duty the day of the incident to testify. The case has been re-opened due to the Appeals Prosecutor’s objection to the decision of closing the case, who in November 2023 ordered the conduct of a supplementary preliminary investigation by a Prosecutor him/herself.³² To our knowledge, the

²⁶ Competent for examining criminal complaints submitted against Hellenic Coast Guard personnel.

²⁷ Reply of the Ministry of National Defense to the Parliamentary Question No 6153/31-7-2024 Parliamentary Question, 18 October 2024, <https://www.hellenicparliament.gr/UserFiles/67715b2c-ec81-4f0c-ad6a-476a34d732bd/12722929.pdf> (in Greek)

²⁸ New York Times, E.U. Interpreter Says Greece Expelled Him to Turkey in Migrant Roundup, 1 December 2021, <https://www.nytimes.com/2021/12/01/world/europe/greece-migrants-interpreter-expelled.html>.

²⁹ CNN.gr, New York Times: Διερμηνέας της ΕΕ καταγγέλλει την Ελλάδα ότι τον απέλασε στην Τουρκία, 1 December 2021, <https://www.cnn.gr/ellada/story/291630/new-york-times-diermineas-tis-ee-kataggellei-tin-ellada-oti-ton-apelase-stin-toyrkia> (in Greek).

³⁰ Greek Ombudsman, Third Party Intervention, *ibid.*, p. 9-10; Greek Ombudsman, Special Report, National Mechanism for the Investigation of Arbitrary Incidents (EMIDIPA) – 2023, <https://www.synigoros.gr/el/category/ekdoseis-ek8eseis/post/emhdipa-or-ethsia-ek8esh-2023> (in Greek), pp. 65-69.

³¹ *Ibid.*

³² Information provided by the Greek Government ahead of the hearing of the Court in cases *G.R.J. v. Greece* and *A.E. v. Greece*, application nos. 15067/21 & 15783/21.

investigation is still pending today, i.e. more than 3 years of the alleged incident.

18. The alleged push-back incident that took place on 11 April 2023 in Lesvos, which was brought to light by New York Times (NYT) on 19 May 2023.³³ The video footage published by NYT depicted the forcible expulsion of a group of refugees, including children and an infant, being driven in an unmarked white van to a remote spot on Lesvos Island, before being forced into an inflatable boat by men wearing balaclavas. The dinghy then transfers them to a Hellenic coast guard vessel which proceeds to abandon them on a raft in the middle of the Aegean Sea. A criminal complaint (*μηνυτήρια αναφορά*) to the Prosecutors of the Piraeus Naval Court, the First Instance Court of Mytilene and the Supreme Court Prosecutor has been submitted in early July 2023 by 28 Civil Society Organizations.³⁴ A preliminary examination regarding possible criminal liability of the Coast Guard was initiated by the Naval Court Prosecutor in August 2023.³⁵ The FINAL SIR report, completed by FRONTEX's Fundamental Rights Office in September 2023, highlighted that the Fundamental Rights Office had "*independently corroborated the information in NYT article*" and that the alleged pushback had been "*established beyond reasonable doubt*".³⁶ As far as we are aware, there has been no update on the criminal investigation being conducted by the domestic court on this case.

Common characteristics of the criminal investigations, based on cases legally represented by GCR and other legal aid organizations

19. Serious concerns relating to the effectiveness of domestic criminal investigations by the Greek authorities have been raised in a joint Letter sent in November 2024 to the European Commissioner for Home Affairs and the European Commissioner for Justice and Consumers, by 5 civil society organisations active in Greece, including the Greek Council for Refugees – provided in Annex.
20. The findings included in this Letter are based on the monitoring of 21 criminal investigations conducted by Greek criminal investigative

³³ New York Times, Greece Says It Doesn't Ditch Migrants at Sea. It Was Caught in the Act, 19 May 2023, <https://www.nytimes.com/2023/05/19/world/europe/greece-migrants-abandoned.html>

³⁴ GCR, Press Release: Intervention of 28 organisations to competent Prosecutors on the pushback incident published by the New York Times, 27 July 2023, <https://gcr.gr/en/news/item/2169-paremvasi-28-organoseon-pros-eisaggelikes-arxes-gia-to-peristatiko-epanaproothisis-se-dimosievma-ton-new-york-times>

³⁵ Information provided by the Greek Government ahead of the hearing of the Court in cases *G.R.J. v. Greece* and *A.E. v. Greece*, application nos. 15067/21 & 15783/21.

³⁶ FRONTEX, Fundamental Right Office, FINAL SIR REPORT, SIR 12070/2023, 18 September 2023, <https://prd.frontex.europa.eu/> and <https://drive.google.com/file/d/1GIU0BS-CMegd1s4j8IofJ277SIQJbgi6/view>

authorities from 2020 to the present into 19 cases of of alleged killings, push-backs, attempted push-backs, other cases of ill-treatment, and failure to rescue people in distress, that the aforementioned organisations have legally represented or have otherwise become aware of, shared with, reveal some common characteristics and/or omissions of the criminal investigations.

21. According to these findings:

- Out of the 21 criminal investigations, 12 criminal investigations were shelved and 8 are still pending. In relation to the remaining 1 case, there is no further information as to the state of play of the proceedings.
- Out of the 8 Investigations pending, 4 are pending for at the stage of investigation for more than two years.
- Out of the 12 closed investigations, 3 were shelved without having sought the testimony of the victims.
- In the 6 out of the 8 investigations that are still pending, the victims have not been called to testify yet and in one case they were only called to testify several months after the opening of the investigation and only at the insistence of their lawyers. In only 3 cases were the victims shown photos of potential suspects.
- In 1 case, the victims were charged with illegal entry. In 2 cases, the victims complained that they had received pressure to change their testimony or that their testimony was tampered with. In 1 case, the mobile phones of the victims were confiscated by the Coast Guard without a formal procedure and without providing any documentation or instructions as to how to retrieve the devices. These devices have not been examined as evidence by the authorities yet, despite requests by the victims' lawyers. In another case, the victim complained that the interpreter provided by the Hellenic Police did not speak her language.
- 5 of the investigations were shelved without examining any of the Coast Guard/Police officers on duty at the time of the events complained of. One case was shelved although a police radio was found on site. In none of the shelved cases did the Prosecution seek footage from nearby cameras and in only one case did it review internal Police/Army/Coast-guard documents. In 1 case, the Prosecutor did not take into account the forensic reports issued by the Turkish authorities and ignored their request for judicial cooperation.
- It is only in 1 pending case, the mobile phones of the Coast-Guard vessel personnel were confiscated by the Prosecutor as evidence, only

after a relevant request by the victims' lawyers and more than three months after the incident complained of.

- In 6 cases, the preliminary examination was conducted by members of the Hellenic Police, i.e. the very state body that is allegedly involved in the commission of the offenses under investigation. In one of these cases, a police officer was interrogated by a police officer of a lower rank.

Recent case law of the Court - Violation of the procedural aspect of Article 2 or 3 ECHR

22. A number of significant deficiencies in conducting effective investigation in cases involving alleged enforced disappearance, pushbacks or human rights violations in border control operations is also depicted in the recent case law of this Court, in which the Court has found a violation of the procedural aspect of Article 2 or 3 ECHR, due to the failure of the domestic Court to conduct an effective investigation.
23. In *Safi and Others v. Greece*, application no 5418/15, 07 July 2022, the Court found serious deficiencies in the conduct of criminal investigations into a shipwreck that led to the death of 11 people. The shortcomings included problems with the interpretation, resulted in errors in the record of statements, applicants lacking access to evidence (i.e. the coast guard's recordings) and fact that a number of critical allegations of the applicant have not been examined by the Public Prosecutor. Moreover, the Court pointed out that it was not in the position to determine whether the incident at stake took place within a pushback attempt, however stressed that "*this inability stems largely from the lack of a thorough and effective investigation by the national authorities*".³⁷
24. In *B.Y. v. Greece*, application no. 60990/14, 26 January 2023, the Court found a violation of the procedural limb of Article 3 ECHR, for failure of the domestic Courts to properly investigate the alleged forced disappearance and unlawful removal of a Turkish asylum seeker from Greece to Türkiye. Although it was established that the number plate of the vehicle involved in the abduction of the victim belonged to the Greek Police, no police officer or official was ever questioned by the Greek judicial authorities on that matter and the identity of the persons involved in the abduction was not further investigated. In addition, two eyewitnesses have been examined by the competent investigative authorities belatedly, despite the Public Prosecutor's Office was informed of their existence. Moreover, in this case in which the Court did not found a violation of Article 3 ECHR under its substantive limb, the Court noted that it is "*regretful that the*

³⁷ ECtHR, *Safi and Others v. Greece*, application no 5418/15, 07 July 2022, para. 155.

*investigation conducted by the Greek authorities does not allow the Court to draw any further conclusions about the facts in question”.*³⁸

25. In *Alkhatib and other v. Greece*, application no. 3566/16, 16 January 2024, the Court concluded that there had been a violation of Article 2 ECHR in its procedural aspect due to numerous shortcomings in the investigation and namely the testimonies of the speedboat passengers were incomplete, while critical investigative steps were not taken (e.g. forensic and ballistic reports, detailed vehicle examinations); there were discrepancies between the findings of the Greek Public Prosecutor and an earlier criminal conviction of the boat driver and the Public Prosecutor had failed to provide a reasoned analysis of these discrepancies.
26. Moreover, a considerable number of Applications are pending before the Court, in which *inter alia* the lack of an effective investigation of pushback allegation/border control operation by the domestic Courts is raised.
27. These include a number of cases supported by GCR, in which indicatively, *inter alia*:
 - the testimony of an eye-witness of the alleged pushback incident has been misrepresented/ignored by the Public Prosecutor, a major witness has not been invited to testify and critical evidences has not been properly assessed (*A.E. v. Greece*, application no 15783/21);
 - the statements of the victims/witnesses have been consistently misrepresented and the chronological order of the facts of the case were confused in the Public Prosecutor’s Report deciding to close the case; among the persons that were summoned to testify were the directors of the competent police and border police but not the officers on duty; the Report of the Public Prosecutor, by which it has decided to close the case, stated “*otherwise, anything else, according to the reported/alleged incidents, points to the fact that there are criminal groups operating in the area which commit criminal acts against groups of foreigners and that they are staffed by members of the security forces or military officials or even paramilitary or paramilitary cells, with the knowledge, concealment, tolerance or even worse, the organization or participation of high-ranking members of the Greek Army and the Greek Police, without being noticed by anyone, even in public*” (*K.A. and Others v. Greece and Türkiye & B.A. and Others v. Greece and Türkiye*, application nos 35090/22 & 38444/22); or

³⁸ ECtHR, *B.Y. v. Greece*, Application no. 60990/14, 26 January 2023, paras. 83-84, “*Le requérant soutient que c’est lui-même qui avait été placé dans ce véhicule. La Cour se penchera donc sur la question de savoir si les éléments du dossier permettent de conclure que c’était le requérant qui était la victime des actes allégués [...] À cet égard, elle estime qu’il est regrettable que l’enquête conduite par les autorités grecques ne lui permette pas de tirer plus de conclusions sur les faits en cause, le dossier de l’affaire ayant été classé le 26 février 2014 dans les archives des «auteurs inconnus»*”.

- none of the Coast Guard or Hellenic Police officers on duty on the places, dates and hours of the alleged incident were examined in the context of the criminal preliminary examination and no photos of any suspects were shown to the victims when they testified before the Public Prosecutor (*Khalili and Others v. Greece*, Application no. 27/24).

The Greek Council for Refugees
www.gcr.gr

ANNEX:

GCR *et al.*, Joint Letter to the EU Commissioner for Home Affairs and the EU Commissioner for Justice and Consumers, “Lack of effective investigations into cases of fundamental rights violations at Greek borders”, 14 November 2024.

Ms Ylva Johansson
European Commissioner for Home Affairs
European Commission
Rue de la Loi 200, B-1049, Brussels, Belgium

Mr Didier Reynders
European Commissioner for Justice and Consumers
European Commission
Rue de la Loi 200, B-1049, Brussels, Belgium

Athens, 14 November 2024

Re: Lack of effective investigations into cases of fundamental rights violations at Greek borders

Honourable Commissioners,

We, representatives of five civil society organisations active in the areas of asylum and migration in Greece, wish to hereby convey to you our concerns regarding the continuous lack of effective investigations into cases of fundamental rights violations at Greek borders. These should be understood as investigations in the context of the justice system, conducted by Public Prosecutors with a view to establishing potential criminal responsibility of Greek law enforcement personnel, as the sole appropriate process to identify, try and punish perpetrators, and to deliver justice to the victims concerned.¹

Our findings, based on the monitoring of 21 criminal investigations conducted by Greece from 2020 to present into 19 cases² of alleged killings, push-backs, attempted push-backs, other cases of ill-treatment, and failure to rescue people in distress, that our organisations have

¹ *Alkhatib and Others v. Greece*, App No 3566/16, § 75, 16 January 2024.

² One incident is investigated by both the Office of the Public Prosecutor and the Prosecutor of the Navy Court. For another incident, two different criminal investigations were initiated.

legally represented or have otherwise become aware of, corroborate persisting concerns relating to the effectiveness of domestic investigations by the Greek authorities.

In particular:

Out of the 21 criminal investigations, 12 criminal investigations were shelved (*θέση στο αρχείο*) and eight are still pending. Four investigations have been pending at the stage of investigation for more than two years. In relation to the remaining one case, there is no further information as to the state of play of the proceedings. One of the shelved cases has been reopened after the objection of the Appeals Prosecutor (see below).

Out of the 12 cases that were shelved, three were shelved on the basis that the perpetrators could not be identified (archive of unknown perpetrators). Interestingly, in one of them, the Prosecutor had pressed charges for breach of duty/misconduct in office. In another one, the Prosecutor had pressed charges against unknown perpetrators for the criminal offenses of illegal restraint, theft, dangerous physical injury, illegal violence and exposure to life risk - all with a racist motive. The remaining nine cases were shelved for lack of sufficient evidence to initiate criminal prosecution.

Out of the 12 closed investigations, three were shelved without having sought the testimony of the victims. In the six of the eight investigations that are still pending, the victims have not been called to testify yet and in one case they were only called to testify several months after the opening of the investigation and only at the insistence of their lawyers. In only three cases were the victims shown photos of potential suspects.

In one case, the victims were charged with illegal entry. In two cases, the victims complained that they had received pressure to change their testimony or that their testimony was tampered with. In one case, the mobile phones of the victims were confiscated by the Coast Guard without a formal procedure and without providing any documentation or instructions as to how to retrieve the devices. These devices have not been examined as evidence by the authorities yet, despite requests by the victims' lawyers. In another case, the victim complained that the interpreter provided by the Hellenic Police did not speak her language.

Five of the investigations were shelved without examining any of the Coast Guard/Police officers on duty at the time of the events complained of. One case was shelved although a police radio was found on site. In none of the shelved cases did the Prosecution seek footage from nearby cameras and in only one case did it review internal Police/Army/Coast-guard documents. In one case, the Prosecutor did not take into account the forensic reports issued by the Turkish authorities and ignored their request for judicial cooperation.

In one pending case, the mobile phones of the Coast-Guard vessel personnel were confiscated by the Prosecutor as evidence, only after a relevant request by the victims' lawyers and more than three months after the incident complained of.

In six cases, the preliminary examination was conducted by members of the Hellenic Police, i.e. the very state body that is allegedly involved in the commission of the offenses under investigation. In one of these cases, a police officer was interrogated by a police officer of a lower rank.

An investigation concerning push-back allegations at Evros, including the commission, with a racist motive, of the criminal offences of torture, exposure to life risk, physical injuries, robbery and omission to provide assistance, was shelved by the Public Prosecutor on the basis that "there was no sufficient evidence to support the commission of criminal acts". According to the Prosecutor, "the army is not involved in incidents of tracking and rescuing third country nationals, as, during their patrol, if they [the army] identify irregular migrants, they inform directly the police". In relation to victims' allegations of arbitrary detention, it was argued that the competent border police station has an official capacity lower than the number of the victims, hence it would not have been possible for the victims to have been arbitrarily detained there. Interestingly, however, he commented that "otherwise, anything else, according to the reported/alleged incidents, points to the fact that there are criminal groups operating in the area which commit criminal acts against groups of foreigners and that they are staffed by members of the security forces or military officials or even paramilitary or paramilitary cells, with the knowledge, concealment, tolerance or even worse, the organisation or participation of high-ranking members of the Hellenic Army and the Hellenic Police, without being noticed by anyone, even in public".

In another push-back case, the Prosecutor's decision to shelve the complaint concluded that there has been a "complete and total failure to provide evidentiary support for the reported incident". It should be noted that the threshold to initiate prosecution is the existence of "sufficient evidence" [Art. 43(4) Greek Code of Criminal Procedure]. According to the decision, the recording of coordinates in Greek territory and reporting on the incident by the Turkish Coast Guard alone did not demonstrate that the victim that had entered Greek territory had been pushed back, given that "it was not proven in any way that he was held in a guarded area by the Greek authorities or other actions of the accused authorities". The Prosecutor also found that the photographs submitted could not be considered as credible due to the absence of metadata, invoking the assessment of the internal police investigation of the incident.

What is also important is that, in the case of the alleged push-back of a FRONTEX interpreter in September 2021,³ it has come to our attention⁴ that the Public Prosecutor decided to shelve the case in the end of 2023 on grounds of insufficient evidence. It should be noted that the Greek Ombudsman's investigation into the case had concluded that there was sufficient evidence to substantiate the accusations and that there were serious omissions by the Police to investigate the incident as soon as they received a Serious Incident Report by FRONTEX on 5 September 2021. Eventually, the Appeals Prosecutor opposed the shelving of the case and ordered a supplementary preliminary investigation, to be carried out by a Prosecutor. Additionally, he ordered that testimonies be collected by both the victim and the police officers that were on duty on the day of the incident. The above indicates that the preliminary examination had been conducted by police officers and that neither the victim nor the officers on duty had been called to testify.

As regards the investigation into the push-back incident that took place on 11 April 2023 in Lesvos and was published by New York Times on 19 May 2023,⁵ and for which a group of Civil Society organisations submitted a criminal complaint (*μηνυτήρια αναφορά*) to the Prosecutors of the Piraeus Naval Court, the First Instance Court of Mytilene and the Supreme Court Prosecutor in early July 2023,⁶ a preliminary examination regarding possible criminal liability of the Coast Guard was initiated by the Naval Court Prosecutor only in August 2023.⁷

Five of the above cases have also been referred to the Greek Ombudsman in his capacity as the National Mechanism for Investigation of Arbitrariness Incidents. In four of these cases, the Greek Ombudsman requested that the implicated state bodies conduct an internal investigation. Two of these complaints are still pending, while two have been closed by the implicated authorities on the basis that no violation of national or international law was found. In relation to one complaint, the Ombudsman decided to conduct his own investigation and

³ New York Times, 'E.U. Interpreter Says Greece Expelled Him to Turkey in Migrant Roundup', 1 December 2021, available at: <https://www.nytimes.com/2021/12/01/world/europe/greece-migrants-interpreter-expelled.html>

⁴ Information provided by the Greek government upon ECtHR's request, as part of the Greek government's written observations on the admissibility and merits and just satisfaction claims in the *A.E. and others v. Greece* App No 15783/21 case; the applicant is legally represented by the Greek Council for Refugees (GCR).

⁵ New York Times, 'Greece Says It Doesn't Ditch Migrants at Sea. It Was Caught in the Act', 19 Mai 2023, available at: <https://www.nytimes.com/2023/05/19/world/europe/greece-migrants-abandoned.html?action=click&module=RelatedLinks&pgtype=Article>; see also PRAB VI, 'What we do in the shadows', p. 2, May 2023, available at: <https://www.gcr.gr/el/news/press-releases-announcements/item/2141-what-we-do-in-the-shadows>

⁶ GCR, Press Release, 'Intervention of 28 organisations to competent Prosecutors on the pushback incident published by the New York Times', 27 July 2023, available at: <https://gcr.gr/en/news/item/2169-parevasi-28-organoseon-pros-eisaggelikes-arxes-gia-to-peristatiko-epanaproothisis-se-dimosievma-ton-new-york-times/>

⁷ Information provided by the Greek government upon the ECtHR's request, as part of the Greek government's written observations on the admissibility and merits and just satisfaction claims in the *A.E. and others v. Greece* App No 15783/21 case; the applicant is legally represented by the Greek Council for Refugees (GCR).

concluded that there was sufficient evidence to substantiate the accusations and that there were serious omissions in the investigation of the incident by the Hellenic Police.⁸

In another case, the Greek Ombudsman announced the launch of his own independent investigation, due to the denial of the Hellenic Coast Guard to carry out an internal disciplinary investigation.

According to official statistics of the Greek state, Public Prosecutors (*Εισαγγελείς Πρωτοδικών*) have investigated at least 79 cases of alleged push backs from 2020 to present.⁹ Official statistics released in August 2024 confirm that zero charges have been levelled by Public Prosecutors against Hellenic Police officers.¹⁰

As for the Piraeus Naval Court Prosecutor (*Εισαγγελία Ναυτοδικείου Πειραιά*), the sole authority competent to launch criminal proceedings against Hellenic Coast Guard officers, official data disclosed in October 2024 state that out of a total of 125 cases investigated from January 2019 to October 2024, 106 have been archived, only four have been referred to Public Prosecutors on competence grounds, and 15 are pending preliminary examination.¹¹

The lack of effective investigations into allegations for ill-treatment during border management in Greece has also been confirmed in the recent ‘Guidance on investigating alleged ill-treatment at borders’ of the European Union Agency for Fundamental Rights Agency (‘FRA’), per which “national authorities in Greece, Croatia and Hungary did not effectively investigate incidents of ill-treatment and loss of life during border management. Examples include insufficient efforts to locate and hear victims and witnesses, hindering lawyers in their work and not having access to key evidence (e.g. footage from border surveillance). The low number of investigations of such cases, despite the high number of credible allegations, casts a negative light on border management authorities’ operation”.¹²

⁸ Greek Ombudsman, Third Party Intervention in the examination of *G.R.J. v. Greece* App No 15067/21 and *A.E. v. Greece* App No 15783/21 cases, 26 March 2024, p. 10, available at: <https://www.synigoros.gr/el/category/deltia-typoy/post/deltio-typoy-or-parembash-tritoy-toy-synhgoroy-toy-polith-katopin-prosklhshs-toy-edda-gia-to-zhthma-twn-epanaprow8hsewn>

⁹ Ministry of Migration and Asylum, Letter to the European Commission, Ares(2024)1532076, 28 February 2024, available at: https://www.europarl.europa.eu/doceo/document/E-9-2024-000150-ASW-ANN02_EN.pdf

¹⁰ Ministry of Justice, Reply to parliamentary question, 178/2024, 26 August 2024, available at: <https://www.hellenicparliament.gr/UserFiles/67715b2c-ec81-4f0c-ad6a-476a34d732bd/12664194.pdf> The response includes enclosed replies from 19 Public Prosecutors’ Offices.

¹¹ Ministry of Defence, Reply to parliamentary question, Φ.900α/6153/19533, 21 October 2024, available at: <https://www.hellenicparliament.gr/UserFiles/67715b2c-ec81-4f0c-ad6a-476a34d732bd/12722929.pdf>

¹² European Union Agency for Fundamental Rights, ‘Guidance on investigating alleged ill-treatment at borders’, 30 July 2024, p. 3, available at: <https://fra.europa.eu/en/publication/2024/guidance-investigating-alleged-ill-treatment-borders>

Recommendations

Evaluate the effectiveness of the Greek criminal justice system in investigating allegations of push backs and other violations of fundamental rights and in delivering justice to the victims thereof, in the context of the annual Rule of Law Report.

Make concrete recommendations with a view to safeguarding effective investigations and to ensuring execution of relevant European Court of Human Rights judgments (e.g. *Alkhatib and Others v. Greece* App No 3566/16, *Safi and Others v. Greece* App No 5418/15, *B.Y. v. Greece* App No 60990/14).

Invite Greece to provide statistical and qualitative information on types of complaints received, cases opened and their outcome, and to identify shortcomings, including the reasons why almost all investigated complaints have been archived by Public Prosecutors, noting that such information is not covered by the principle of secrecy of pre-trial proceedings.

Invite Greece to introduce binding rules prohibiting law enforcement bodies (e.g. Hellenic Police, Hellenic Coast Guard) from conducting initial investigations into incidents involving potential criminal responsibility of law enforcement bodies.

We thank you in advance for your consideration and remain at your disposal for any additional information or clarification required.

Yours sincerely,

1. HIAS Greece
2. Greek Council for Refugees
3. Refugee Support Aegean
4. Human Rights Legal Project
5. Legal Centre Lesbos