

## **Greek Council for Refugees contribution to project of joint statement on the notion of short-term enforced disappearance**

**August 2023**

The Greek Council for Refugees ([GCR](#)) is a Non-Governmental Organisation founded in 1989 that specialises in the provision of legal assistance and social support to persons in need of international protection in Greece. GCR *inter alia* has consultative status in the UN Economic and Social Council (ECOSOC) since 2001 and participates in the Greek National Commission for Human Rights (GNCHR) since 1999. Pursuant to the [call for inputs](#) issued by the Committee on Enforced Disappearances (CED) and the Working Group on Enforced or Involuntary Disappearances (WGEID), the present submission attempts to address the questions raised by the CED and the WGEID, within the scope of GCR's [statute](#) and based on GCR's experience in Greece.

### **a. How is the notion of 'short-term enforced disappearances' understood and in which contexts do they occur?**

Recalling GCR's previous submissions before the CED,<sup>1</sup> and without overlooking the multiple settings in which practices that may fall under the notion of 'short-term enforced disappearances' can occur, GCR wishes to once more highlight reported practices of irregular forced returns (henceforth 'pushbacks') occurring at Greece's land and sea borders, given that, as previously argued,<sup>2</sup> the *modus operandi* of such practices fulfills the definition of 'enforced disappearance' set out in article 2 of the Convention<sup>1</sup> and their manifestation can, amongst others, trigger violations of articles 3, 12 (1&2), and 16-18 of the Convention.

In this context, as a preliminary remark, GCR wishes to express its deep concern over the unprecedented escalation of such practices in Greece in the past three years, and specifically since what has been termed the 'instrumentalisation' incident at the Greek-Turkish land borders (Evros) in March 2020. Since then, an alarming number of pushbacks from Greece to Türkiye have consistently been documented and reported by a wide array of UN, EU and national bodies, civil society organisations and the media.<sup>3</sup> These highlight a systematic pattern of arbitrary apprehensions of people wishing to and/or having already expressed their will to apply for asylum while on Greek territory, followed by deprivation of their liberty for short periods of time (including *incommunicado* detention), confiscation of their personal belongings (including phones and money),<sup>4</sup> frequent recourse to degrading treatment, and their summary removal to Türkiye –where practices that could, as a consequence, also give rise to cases of *chain refoulement* have continued being reported<sup>5</sup>– in

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<sup>1</sup> Throughout the present text, the term 'Convention' is used by reference to the International Convention for the Protection of All Persons from Enforced Disappearance.

clear breach of due process and legal safeguards, including by omission to assess international protection needs and the principle of *non-refoulement*.

Moreover, in recent years, there have been increasing indications that reported pushback operations are being carried out with the involvement of both state and non-state actors, including third country nationals, which seem to be acting not only ‘with the authorization, support or acquiescence of the State’, but reportedly in direct cooperation with state authorities,<sup>6</sup> thus highlighting a further link with article 2 of the Convention.

That being said, given it is not uncommon for the victims of such practices to “*resurface shortly*”<sup>7</sup> after the pushback incident, including, to the extent that GCR can be aware,<sup>8</sup> in a new and frequently unsuccessful attempt to apply for asylum in Greece, it can be argued that pushback practices, as recorded in Greece, fulfil conditions to be classified as a preminent form of ‘short-term enforced disappearance’, specifically taking place in the context of migration management, and giving rise to breaches of the Convention (amongst others), in as far as these systematically reported practices include an element of limited time or duration that can conceptually distinguish them from other acts similarly falling under article 2 of the Convention, without, however, altering the nature or core essence of the act, as an act of enforced disappearance (amongst others).

Therefore, recalling that “[t]here is no time limit, no matter how short, for an enforced disappearance to occur”<sup>9</sup>, and that, irrespective of duration, “*these crimes equally cause grave harm to the disappeared person and their families*”<sup>10</sup>, GCR urges the CED and the WGEID to include explicit reference to pushbacks as a manifestation of enforced disappearances in their forthcoming joint statement.

**b. Which are the legal frameworks and practices that may lead to ‘short-term enforced disappearances’, and which are the legal frameworks and practices that might prevent them?**

As noted by the UN Special Rapporteur on the rights of migrants,<sup>11</sup> ‘pushbacks’ can be used as “*an overarching term for all measures, actions or policies that effectively result in the removal of migrants, individually or in groups, without an individualized assessment in line with human rights obligations and due process guarantees*”. As a minimum, therefore, pushbacks constitute a direct violation of the principle of *non-refoulement*, deny victims any type of protection under the law, including by virtue of the *de facto* unavailability of legal remedies, and in any case contravene a wide array of well-established rules and principles under International, EU and national law, including under the Convention. Therefore, and given pushbacks do not occur in a legal vacuum, a first means of prevention would be the effective and in full compliance with applicable legal frameworks and the Rule of Law.

Vice-versa, non-compliance with the Law, which considering the wealth of documented pushback cases seems to arise as a recurring theme in Greece in this specific context, is a foremost enabling condition for such manifestations of ‘short-term enforced disappearances’ to occur, indicating a need for vigorous enforcement of applicable legal frameworks, including through effective judicial investigations and, where appropriate, criminal proceedings.

In this context, the role of the judiciary can be instrumental in preventing such practices from occurring, at least to an extent. Yet as highlighted elsewhere,<sup>12</sup> to this day *“the Greek judiciary continues to remain inactive, with the cases that have so far been brought before it having remained stuck at a preliminary stage or having been archived”*. Indicatively, as reported by UNHCR in July 2022,<sup>13</sup> out of the 209 criminal complaints submitted to the Public Prosecutor for cases regarding pushbacks, judicial investigations were only initiated in 12 cases, the outcome of which remains unknown.<sup>14</sup> Though the reasons for such inactivity are not for GCR to assess, it is difficult not to argue that it contributes to fostering a climate of impunity for alleged perpetrators of such practices.

On this point, it is worth recalling that on 7 July 2022, in a landmark decision in the case of [Safi and Others v. Greece](#) that was supported by GCR and other organisations, concerning the 2014 shipwreck in the area of Farmakonisi that led to the loss of life of 8 children and 3 women, the ECtHR found Greece in violation of the right to life, amongst others, due to the *“lack of thorough and effective investigation”* on the circumstances of the shipwreck, which survivors had unanimously claimed had occurred in the context of a pushback operation by the Greek Coastguard.<sup>15</sup> The ECtHR has further prioritized the examination of 32 cases concerning pushbacks in Greece and, since March 2022, has issued *interim measures* in at least 24 cases supported by GCR, concerning more than 500 third country nationals wishing to apply for asylum while on Greek territory, the vast majority of whom have complained of being pushed back to Türkiye even on multiple occasions, including while *interim measures* were granted and or pending before the Court.<sup>16</sup>

A third factor that can support preventive action against such practices, by *inter alia* ensuring impartial investigation into relevant allegations, regards the establishment and operation of a robust, independent, properly resourced and staffed mechanism with the responsibility to monitor fundamental rights abuses with a particular focus at the Greek borders, for which the ten points recommended by UN bodies and the ENNHRI can serve as guide.<sup>17</sup> In what specifically concerns investigations on reported *“breach[es] of fundamental rights at the borders”*, including pushbacks, the Greek government has delegated this responsibility to the National transparency Authority (NTA).<sup>18</sup>

However, the NTA is not a Constitutionally established independent authority and lacks requisite guarantees to be considered independent; lacks requisite expertise and experience to be able to effectively investigate pushback cases; and is any case *“not equipped to conduct independent investigations into the management of migration flows”*, as noted by the UN Special Rapporteur on human right defenders.<sup>19</sup> Furthermore, the sole investigation on reported pushbacks the NTA has

published to this day exhibits (amongst others) a high degree of methodological deficiencies, primary of which the excessive dependence on sources of information with a direct connection to the incidents under investigation (i.e. police and coastguard) or of questionable relevance for the investigation (e.g. clergy and local citizens), while other sources, such as alleged victims of pushback operations, UN agencies, the Greek Ombudsman or NGOs, are virtually non-existent. Concerns over the lack of transparency displayed by the NTA vis-à-vis access to information requests, even contrary to Decisions by competent Courts, have also been raised cause for concern.<sup>20</sup>

In parallel to the NTA, and not least due to mounting international pressure regarding the need to independently investigate pushback allegations,<sup>21</sup> the Greek government set up a Fundamental Rights Officer (FRO) and a Special Commission on Fundamental Rights Compliance pursuant to [L. 4690/2022](#) (articles 49 & 50), operating under the Ministry of Migration and Asylum (henceforth 'MoMA'), with the reported aim of *"monitoring the procedures and implementation of national, EU and international legislation in the fields of border protection and the granting of international protection"*.<sup>22</sup>

However, in what regards the FRO, the law explicitly provides that the Officer's mandate is limited to *"the collection and preliminary assessment of complaints about alleged violations of fundamental rights in the reception of third-country nationals and in procedures for granting international protection"*,<sup>23</sup> thus in practice excluding cases of enforced disappearances occurring in the context of reported pushback operations. More importantly, the choice of FRO is made by a five-member Evaluation Committee, composed of representatives of the MoMA, the Ministry of Citizen Protection, the Ministry of Maritime Affairs, the National Commission for Human Rights and the Greek Ombudsman,<sup>24</sup> highlighting a disproportionate representation by governmental officials, and in this regard, officials of Ministries that oversee the work of bodies that have consistently been accused of pushbacks practices.

The same argument also applies to the Special Commission on Fundamental Rights Compliance, which consists of representatives (one each) from the MoMA, the FRO, the Ministry of Citizen Protection, the Ministry of Maritime Affairs, the NTA, the National Commission for Human Rights and the Greek Ombudsman,<sup>25</sup> thus raising already from the outset concerns over the two mechanisms' ability to fulfil their roles in an independent and impartial manner. In this regard, it is indicative that both the Greek Ombudsman and the NCHR have *inter alia* explicitly cast doubt on the independence and effectiveness of these mechanisms, in letters addressed to the MoMA in July<sup>26</sup> and October 2022<sup>27</sup>, respectively. Similar doubts have more recently also been echoed by the EU Commission.<sup>28</sup>

In any case, given the concerns that have been raised with respect to all three of the aforementioned monitoring bodies,<sup>29</sup> it is doubtful that their operation can contribute to preventing acts also falling under article 2 of the Convention, by shedding light on them.

Lastly, a set of broader factors could be argued contribute to similar results. These include an environment characterised by smear campaigns and defamatory statements made by even high level government officials on the role of civil society organisations working with refugees and migrants and in particular those documenting, highlighting or even bringing pushback cases before competent Courts.<sup>30</sup> At the extreme of the spectrum are criminal proceedings against human rights defenders,<sup>31</sup> *inter alia* based on an overly broad interpretation of ‘facilitation of irregular entry’ that ends up criminalising even simple acts of “*providing water or food for people landing on shores of Greece, or for carrying out search and rescue operations*”<sup>32</sup>. In either case, as noted by the UN Special Rapporteur on human right defenders,<sup>33</sup> these practices *inter alia* diminish “*the available space for human rights defenders to operate in and may impact upon their activities and contribute to their self-censorship*”.

In turn, this risks further restricting possible avenues for bringing such practices to light and, as a result, of prevention.<sup>34</sup> Legislative initiatives that ended up restricting the space for independent Search and Rescue (SAR) operations, can also be counted amongst factors further contributing to this reality and have been amongst the reasons for the cessation of operations of *Mare Liberum*, the last independent SAR ship in Greece.<sup>35</sup>

**c. Which are the main procedural questions that may arise for domestic authorities, the Committee and the Working Group when dealing with ‘short-term enforced disappearances’?**

Based on GCR’s experience, a core challenge when dealing with ‘short-term enforced disappearances’ in the context of alleged pushbacks from Greece, regards the lack of transparency and accountability.

In this context, possible questions for consideration could regard:

- Persistent practice by the Greek judiciary to archive and/or dismiss relevant cases brought before it, frequently based solely on testimonies provided by police or coastguard personnel, without examining or, to the extent that GCR can be aware, even requesting to examine possible evidence, such as phone calls made between personnel of these authorities or recordings from the technical means available to them. On this point GCR wishes to yet again recall that both in the case of *Safi and others v Greece* and in its more recent decision on [B.Y. v Greece](#), regarding the victim of an enforced disappearance, the ECtHR found Greece in violation of the obligation to conduct an effective investigation.<sup>36</sup>
- The protocols followed where authorities have identified and/or been notified about a vessel in distress, given that both in the case of *Safi and others v Greece*, and in the most recent shipwreck off the coast of Pylos, a Search and Rescue Operation was only initiated after the

incident had occurred, and the extent to which available technical means are used *post-factum* to establish the circumstances of such incidents.

- The type of mechanisms put in place to ensure the prompt, thorough and independent investigation of such reported incidents and the guarantees in place, in law and fact, to ensure such mechanisms fulfil criteria of independence and effectiveness, as per relevant recommendations made by [FRA](#), [UN bodies and the ENHRI](#).

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<sup>1</sup> GCR, Contribution of the Greek Council for Refugees to the Committee on Enforced Disappearances – 22<sup>nd</sup> Session, March 2022, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCED%2FNGO%2FGRC%2F48017&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCED%2FNGO%2FGRC%2F48017&Lang=en) and Letter regarding the consultation on draft General Comment No. 1 on Enforced Disappearances in the context of Migration, 20 June 2022, available at: [https://www.ohchr.org/sites/default/files/documents/hrbodies/ced/cfis/general-comment-1/csos/2022-07-20/Greek%20Council%20for%20Refugees\\_GCMigration\\_English\\_zpdated\\_public.pdf](https://www.ohchr.org/sites/default/files/documents/hrbodies/ced/cfis/general-comment-1/csos/2022-07-20/Greek%20Council%20for%20Refugees_GCMigration_English_zpdated_public.pdf).

<sup>2</sup> *Ibid.*

<sup>3</sup> amongst many others see The New York Times, “Greece Says It Doesn’t Ditch Migrants at Sea. It Was Caught in the Act”, 19 May 2023, available at: <https://www.nytimes.com/2023/05/19/world/europe/greece-migrants-abandoned.html>; NCHR, Recording Mechanism of Incidents of Informal Forced Returns: Interim Report, January 2023, available at:

[https://www.nchr.gr/images/pdf/nea\\_epikairothta/deltia\\_tupou/2023/Interim\\_Report\\_mechanism\\_en.pdf](https://www.nchr.gr/images/pdf/nea_epikairothta/deltia_tupou/2023/Interim_Report_mechanism_en.pdf); UNHCR, “UNHCR warns of increasing violence and human rights violations at European borders”, 21 February 2022, available at: <https://www.unhcr.org/news/news-releases/news-comment-unhcr-warns-increasing-violence-and-humanrights-violations> and “UNHCR concerned by pushback reports, calls for protection of refugees and asylum-seekers”, 21 August 2020, available at: <https://www.unhcr.org/gr/en/16207-unhcr-concerned-by-pushback-reports-calls-for-protection-of-refugees-and-asylum-seekers.html>; Frontex, Fundamental Rights Officer Annual Report 2021, June 2022, available at: [https://frontex.europa.eu/assets/Images\\_News/2022/FRO\\_Report\\_2021.pdf](https://frontex.europa.eu/assets/Images_News/2022/FRO_Report_2021.pdf); p. 7, 14, 39; IOM, ‘IOM Alarmed over Reports of Pushbacks from Greece at EU Border with Turkey’, 11 June 2020, available at: <https://www.iom.int/news/iom-alarmed-over-reports-pushbacks-greece-eu-border-turkey>; UN Special Rapporteur on human rights defenders, ‘Statement on preliminary observations and recommendations following official visit to Greece’, 22 June 2022, available at: <https://srdefenders.org/statement-on-preliminary-observations-and-recommendations-following-official-visit-to-greece/>; 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://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-reception>; CED, Concluding observations on the report submitted by Greece, CED/C/GRC/CO/1, 12 April 2022, paras 28-31, available at: <https://digitallibrary.un.org/record/3987990>; 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://www.ohchr.org/en/press-releases/2022/05/experts-committee-rights-child-ask-greece-about-romachildren-and-push-backs>; 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://digitallibrary.un.org/record/3956537>; OLAF, Final Report on Frontex (CASE No OC/2021/0451/A1), 2021, available at: <https://fragdenstaat.de/dokumente/233972-olaf-final-report-on-frontex/>; WGAD, Report of visit to Greece, A/HRC/45/16/Add.1, 29 July 2020, paras 87-88, available at: <https://www.ohchr.org/en/documents/countryreports/ahrc4516add1-visit-greece-report-working-group-arbitrary-detention>; 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://www.coe.int/en/web/cpt/-/council-of-europe-s-anti-torture-committee-calls-on-greece-to-reform-its-immigration-detention-system-and-stop-pushbacks>.

<sup>4</sup> More recently, in the context of a joint investigation, Solomon & El País have reported that the Greek security forces are estimated to have taken more than 2 million € from third country nationals wishing to apply for asylum in Greece, in the context of pushback operations at the Evros land border. Solomon, "Pushbacks at Evros: the great heist", 9 March 2023, available (Greek) at: <https://wearesolomon.com/el/mag/format-el/erevnes/epanaproothisis-ston-evro-i-megali-listia/>.

<sup>5</sup> *Inter alia* see AIDA report on Türkiye: 2022 update, July 2023, available at: [https://asylumineurope.org/wp-content/uploads/2023/07/AIDA-TR\\_2022-Update.pdf](https://asylumineurope.org/wp-content/uploads/2023/07/AIDA-TR_2022-Update.pdf), pp. 28-36; HRW, "Turkish Border Guards Torture, Kill Syrians", 27 April 2023, available at: <https://www.hrw.org/news/2023/04/27/turkish-border-guards-torture-kill-syrians>. These highlight similar concerns to those raised by the WGEID in its 2016 relevant report. WGEID, *Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Turkey*, 2016, available at: <https://digitallibrary.un.org/record/847933>, para. 55.

<sup>6</sup> *Inter alia*, NCHR, *Recording Mechanism Of Incidents Of Informal Forced Returns: Interim Report*, January 2023, available at: [https://www.nchr.gr/images/pdf/nea\\_epikairothta/deltia\\_tupou/2023/Interim\\_Report\\_echanism\\_en.pdf](https://www.nchr.gr/images/pdf/nea_epikairothta/deltia_tupou/2023/Interim_Report_echanism_en.pdf), p. 15; The Guardian, "Revealed: Greek police coerce asylum seekers into pushing fellow migrants back to Turkey", 28 June 2022, available at: <https://www.theguardian.com/global-development/2022/jun/28/greek-police-coerce-asylum-seekers-pushbacks-migrants-turkey>; Reporters United, "The Slaves of Evros: How the Greek state recruits migrants for the dirty work of pushbacks", 28 June 2022, available (Greek) at: <https://www.reportersunited.gr/9138/pushbacks-evros-sklavoi/>; HRW, "Greece Using Other Migrants to Expel Asylum Seekers", 7 April 2022, available at: <https://www.hrw.org/news/2022/04/07/greece-using-other-migrants-expel-asylum-seekers>.

<sup>7</sup> OHCHR, Fact Sheet No. 6 (Rev. 4): Enforced Disappearances, 31 March 2023, available at: <https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-6-rev-4-enforced-disappearances>, p.8.

<sup>8</sup> Since March 2022 the Greek Council for Refugees (GCR) has represented 468 Syrian and 38 Turkish refugees, including many children, before the European Court of Human Rights, by filing 24 applications for interim measures (Rule 39), requesting to be granted humanitarian assistance and access to the asylum procedure. The ECtHR granted the *interim measures* in all cases. The refugees have complained of having been pushed back from Greece to Türkiye even on multiple occasions, and in several of the cases even while the *interim measures* had been granted or were pending. GCR, "GCR's Information Note on interventions and on interim measures granted by the ECtHR in cases regarding pushbacks", 19 April 2023, available at: <https://www.gcr.gr/en/news/press-releases-announcements/item/1984-information-note>.

<sup>9</sup> OHCHR, "Every minute counts" – UN experts raise alarm over short-term enforced disappearances International Day of the Victims of Enforced Disappearances", 30 August 2016, available at: <https://www.ohchr.org/en/press-releases/2016/08/every-minute-counts-un-experts-raise-alarm-over-short-term-enforced>.

<sup>10</sup> OHCHR, *Crimes against humanity: Information provided by the United Nations Human Rights Council Working Group on Enforced and Involuntary Disappearances*, 2019, available at: [https://legal.un.org/ilc/sessions/71/pdfs/english/cah\\_un\\_wg\\_disappearances.pdf](https://legal.un.org/ilc/sessions/71/pdfs/english/cah_un_wg_disappearances.pdf), p. 3.

<sup>11</sup> OHCHR, "Pushbacks of migrants on land and at sea must end, says UN expert", 9 July 2021, available at: <https://www.ohchr.org/en/stories/2021/07/pushbacks-migrants-land-and-sea-must-end-says-un-expert>

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<sup>12</sup> GCR and HLHR appeal: safeguard the Rule of Law in Greece, March 2023, Available at: <https://www.gcr.gr/en/news/press-releases-announcements/item/2124-gcr-and-hlhr-appeal-safeguard-the-rule-of-law-in-greece>

<sup>13</sup> United Nations High Commissioner for Refugees in the case of S.A.A. and Others v. Greece (No. 22146/21) before the European Court of Human Rights, July 2022 available at: <https://www.refworld.org/docid/62f39cb44.html>, para. 2.2.8.

<sup>14</sup> Also see GCR, Submission of The Greek Council for Refugees to the Committee of Ministers of the Council of Europe concerning the groups of cases of M.S.S. v. Greece (Application No. 30696/09) and Rahimi v. Greece (8687/08), July 2023, available at: [https://www.gcr.gr/media/k2/attachments/Sumbission\\_GCR\\_2023.pdf](https://www.gcr.gr/media/k2/attachments/Sumbission_GCR_2023.pdf), pp. 2-3; GCR et.al., “Intervention of 28 organisations to competent Prosecutors on the pushback incident published by the New York Times”, 27 July 2023, available at: <https://www.gcr.gr/en/news/press-releasesannouncements/item/2169-intervention-of-28-organisations-to-competent-prosecutors-on-the-pushbackincident-published-by-the-new-york-times> and GCR & HLHR, *Joint letter by GCR & HLHR on irregular forced returns (pushbacks), criminalisation and the Rule of Law in Greece*, 17 March 2023, available at: [https://www.gcr.gr/media/k2/attachments/GCR\\_HLHR\\_letter\\_final.pdf](https://www.gcr.gr/media/k2/attachments/GCR_HLHR_letter_final.pdf).

<sup>15</sup> Also see GCR, *At Europe’s Borders: Between Impunity and Criminalization*, March 2023, available at: [https://www.gcr.gr/media/k2/attachments/GCR\\_Pushback\\_Criminalization\\_Report.pdf](https://www.gcr.gr/media/k2/attachments/GCR_Pushback_Criminalization_Report.pdf), pp. 6-7.

<sup>16</sup> GCR, 19 April 2023, *op.cit.* On the lack of comprehensive investigation by the Greek authorities on complaints regarding pushbacks, also *inter alia* see Greek Ombudsman, *Interim report - Own initiative investigation by the Greek Ombudsman on alleged pushbacks to Turkey of foreign nationals who had arrived in Greece seeking international protection*, available at: <https://www.synigoros.gr/en/category/eidik-es-ek8eseis/post/alleged-pushbacks-to-turkey-of-foreign-nationals-who-had-arrived-in-greece-seeking-international-protection>, p. 23.

<sup>17</sup> UNHCR, OHCHR (ROE) & ENNHRI, *Ten points to guide the establishment of an independent and effective national border monitoring mechanism in Greece*, September 2021, available at <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>

<sup>18</sup> European Commission against Racism and Intolerance, *ECRI report on Greece*, available at: <https://rm.coe.int/ecri-first-report-on-greece-adopted-on-28-june-2022-published-on-22-se/1680a818bf>, p.36.

<sup>19</sup> UN Special Rapporteur on human rights defenders, “Statement on preliminary observations and recommendations following official visit to Greece [Ελληνικά / English]”, 22 June 2022, available at: <https://srdefenders.org/statement-on-preliminary-observations-and-recommendations-following-official-visit-to-greece/>

<sup>20</sup> For more, *inter alia* see RSA et.al., *Rule of Law Backsliding Continues in Greece: Joint Civil Society Submission to the European Commission on the 2023 Rule of Law Report*, January 2023, available at: [https://rsaegrean.org/wp-content/uploads/2023/01/RoL2023\\_JointSubmission\\_CS0\\_Greece.pdf](https://rsaegrean.org/wp-content/uploads/2023/01/RoL2023_JointSubmission_CS0_Greece.pdf), pp. 25-29; IRC, *Mapping Potential Elements of an Independent Border Monitoring Mechanism in Greece*, 5 April 2022: <https://www.rescue.org/eu/report/mapping-potential-elements-independent-border-monitoring-mechanism-greece>, p.10; GCR et.al., “National Transparency Authority should publish the full investigation regarding pushbacks in accordance with the principle of transparency”, 7 April 2022, available at: <https://www.gcr.gr/en/news/press-releases-announcements/item/1940-national-transparency-authority-should-publish-the-full-investigation-regarding-pushbacks-in-accordance-with-the-principle-of-transparency>.

<sup>21</sup> For instance, Euronews, “‘Violent and illegal’ migrant pushbacks must end now, EU warns Greece”, 8 July 2022, available at: <https://www.euronews.com/my-europe/2022/07/04/violent-and-illegal-migrant-pushacks-must-end-now-eu-warns-greece>; <https://www.euronews.com/my-europe/2022/07/04/violent-and-illegal-migrant-pushacks-must-end-now-eu-warns-greece>; ECRE, “Greece: Renewed Demands for Human Rights Monitoring, Pushbacks Continue with NGO Oversight Restricted, Refugee Children Risk Exclusion”, 17 September 2021,



<https://ecre.org/greece-renewed-demands-for-human-rights-monitoring-pushbacks-continue-with-ngos-oversight-restricted-refugee-children-risk-exclusion/>.

<sup>22</sup> MoMA, “The Fundamental Rights Officer at the Ministry of Migration & Asylum has been appointed”, 2 December 2022, available at: <https://migration.gov.gr/oristike-o-ypeythynos-prostasias-themeliodon-dikaionaton-sto-ypourgeio-metanasteysis-asyloy/>.

<sup>23</sup> Article 49 (1) L. 4960/2022.

<sup>24</sup> Article 49 (5) L. 4960/2022.

<sup>25</sup> Article 50 (2) L. 4960/2022.

<sup>26</sup> Commenting on the government’s legislative initiative, and in particular articles 49 and 50 L. 4960/2022, the Ombudsman noted that it “*fails to meet the conditions required for an independent, impartial, external, effective mechanism to monitor respect for rights and due process at the border*”. Greek Ombudsman, Letter to the Minister of Migration and Asylum re. articles 49 & 50 L. 4960/2022, 29 July 2022, available (Greek) at: <https://www.aftodioikisi.gr/ipourgeia/epifylaxeis-stp-gia-ti-symmetochi-toy-se-epitropes-toy-yp-metanasteysis/>, p.3.

<sup>27</sup> Commenting on the same initiative, in its letter “*the Commission notes that the above legislative interventions do not fulfil the conditions for the creation of an independent and effective monitoring mechanism*”. NCHR, Letter from the NCHR to the Secretary General for Migration, Reception and Asylum, Mr Patrolos Georgiades, regarding the participation of the NCHR in the Committees of Articles 49 and 50 of L. 4960/22, 21 October 2022, available (Greek) at: <https://www.nchr.gr/%CE%B5%CE%BD%CE%B7%CE%BC%CE%B5%CF%81%CF%89%CF%84%CE%B9%CE%BA%CE%AC-%CE%BA%CE%B5%CE%AF%CE%BC%CE%B5%CE%BD%CE%B1/1496-sxedio-epistolis-tis-eeda-pros-ton-g-g-tou-ypourgeiou-metanastefsis-kai-asylou.html>, pp. 1-2.

<sup>28</sup> As noted by the EU Commissioner for Migration and Home Affairs, “[t]hey [*i.e. Greek officials*] have promised me already last summer that they will set up an independent monitoring mechanism [...a]nd it’s still not there”. Politico, “EU’s Johansson slams Greece over ‘deportation’ of migrants”, 24 May 2023, available at: <https://www.politico.eu/article/commission-ylva-johansson-greece-migrant-deportation/>.

<sup>29</sup> For more on this issue *inter alia* see AIDA Report on Greece: 2022 Update, June 2023, available at: [https://asylumineurope.org/wp-content/uploads/2023/06/AIDA-GR\\_2022-Update.pdf](https://asylumineurope.org/wp-content/uploads/2023/06/AIDA-GR_2022-Update.pdf), pp. 30-31; RSA et.al., “No monitoring of fundamental rights violations in Greece without independent and effective mechanisms”, 21 June 2023, available at: <https://rsaegean.org/en/investigating-institutions/>; PRAB, *Beaten, punished, and pushed back*, 26 January 2023, available at: <https://www.gcr.gr/en/ekdoseis-media/reports/item/2097-beaten-punished-and-pushed-back>, pp. 8-9.

<sup>30</sup> Indicatively, in June 2022, while speaking before the European Parliament’s Committee on Civil Liberties, Justice and Home Affairs (LIBE), the (at the time) Greek Minister of Migration and Asylum had stated: “*smuggling networks have devised a new method of circumventing border controls and manipulating the European asylum and justice system. Smugglers abandon groups of migrants on islets created by the seasonal low flow of the Evros river. Then they notify specific NGOs, which specialize in border crossing facilitation and these NGOs in turn notify the Greek authorities and at the same time file with the European Court of Human Rights with a letter reacting by indicating interim measures, which of course do not prejudice the merits of any case*”. Ministry of Migration & Asylum, “N. Mitarachi: Greece would expect an even more active role of EU institutions”, 27 June 2022, available at: <https://www.youtube.com/watch?v=hBDGfunbP1U>. For more, also see RSA et.al., Rule of Law Backsliding Continues in Greece: Joint Civil Society Submission to the European Commission on the 2023 Rule of Law Report, available at: [https://rsaegean.org/wp-content/uploads/2023/01/RoL2023\\_JointSubmission\\_CSJ\\_Greece.pdf](https://rsaegean.org/wp-content/uploads/2023/01/RoL2023_JointSubmission_CSJ_Greece.pdf), paras. 75-77.3.

<sup>31</sup> Such as, for instance, Panayote Dimitra. For more, *inter alia* see Campaign for Access to Asylum, “Update on The Ongoing Persecution of Human Rights Defender Panayote Dimitras”, 22 December 2022, available at: <http://asylum-campaign.blogspot.com/2022/12/update-on-ongoing-persecution-of-human.html>.

<sup>32</sup> UN Special Rapporteur on human rights defenders, “Statement on preliminary observations and recommendations following official visit to Greece [Ελληνικά / English]”, 22 June 2022, available at:

[GREEK COUNCIL FOR REFUGEES – SPECIAL CONSULTATIVE STATUS WITH THE UN \(ECOSOC\)](https://www.gcr.gr/en/ekdoseis-media/reports/item/2097-beaten-punished-and-pushed-back)

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<https://srdefenders.org/statement-on-preliminary-observations-and-recommendations-following-official-visit-to-greece/>. A case in point is the ERCI trial case, where volunteers, such as Saraardini, Sean Binder, Nasos Karakitsos, Paul Wittenberg, and others were accused as members of a criminal smuggling network. *Inter alia* see OHCHR, “Trial of human rights defenders in Greece for helping migrants”, 13 January 2023, available at: <https://www.ohchr.org/en/press-releases/2023/01/trial-human-rights-defenders-greece-helping-migrants>

<sup>33</sup> UN Special Rapporteur on human rights defenders, 22 June 2022, *op.cit.*

<sup>34</sup> As *inter alia* noted by the Spokesperson for the UN Human Rights Office (OHCHR) January 2023, referring to the ERCI case, “[t]rials like this are deeply concerning because they criminalize life-saving work and set a dangerous precedent. Indeed, there has already been a chilling effect, with human rights defenders and humanitarian organizations forced to halt their human rights work in Greece and other EU countries”. UN, “UN Human Rights briefing by Elizabeth Throssell on trial of human rights defenders in Greece for helping migrants”, 13 January 2023, available at: <https://www.unognewsroom.org/story/en/1606/un-human-rights-briefing-by-elizabeth-throssell-on-trial-of-human-rights-defenders-in-greece-for-helping-migrants-13-january-2023>

<sup>35</sup> *Inter alia* see GCR & HLHR, *op.cit.*, para. 14 and sources therein.

<sup>36</sup> Also see GCR *et.al.*, “Conviction of Greece by the ECtHR for violation of Article 3 of the ECHR, in the procedural part, for the abduction of a Turkish political refugee in 2013 from the centre of Athens (obligation to investigate)”, 1 February 2023, available (Greek) at: <https://www.gcr.gr/el/news/press-releases-announcements/item/2101-katadiki-tis-elladas-apo-to-edda-gia-paraviasi-tou-arthrou-3-tis-esda-kata-to-diadikastiko-meros-gia-tin-apagogi-toyrkou-politikoy-prosfyga-to-2013-apo-to-kentro-tis-athinas-ypoxreosi-diereynisis-tis-kataggelias>.