




Islets, Interim Measures and Illegal Pushbacks: The Erosion of the Rule of Law in Greece




**Border Violence
Monitoring Network**

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FOREWORD



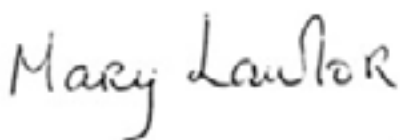
In my role as Special Rapporteur, I carry out two official country visits to UN Member States a year to examine their implementation of the UN Declaration on Human Rights Defenders. I recently made a country visit to Greece, at the invitation of the government. The visit built on communication with the Greek authorities and human rights defenders (HRDs) in the country that I've been undertaking since I took up my position, and so I was somewhat aware of the complex reality for human rights defenders on the ground before making the visit.

One of my biggest areas of concern involved the situation for those working to defend the rights of refugees, asylum seekers and migrants. It is a topic that dominated many of the meetings I held during the visit, including with human rights defenders themselves. I will now be preparing a detailed report on the situation for HRDs in the country, but as I stated in my preliminary observations following the mission, the State is currently falling far short of its obligations towards defenders in this area, who find themselves faced with a climate of restriction and hostility when cooperation and trust is what is needed.

The defenders under most pressure are those working on access to asylum and pushbacks. Those active on these subjects are taking testimonies to monitor respect for the right to seek asylum by the State, as well as respect for the principle of *non-refoulement*. They provide legal aid and information to asylum seekers, and sound the alarm, including before judicial authorities, when there is a risk of violations occurring. In doing so, they are exercising their right to defend and promote human rights. The State must refrain from any form of retaliation against them for doing so, and protect them from any such retaliation from third-parties.

This report from the Border Violence Monitoring Network provides an in-depth analysis of the human rights cost of the Greek government's current policy on migration and asylum. It is based on three years of hard work of the human rights defenders who make up the network, and testimonies from people who have seen their rights violated when trying to seek asylum in the country. It should be taken extremely seriously by the Greek authorities, and all those who seek to see the human rights of all be upheld in Europe. The information included concerning smear campaigns and reports of criminal investigations into human rights defenders seeking interim measures from the European Court of Human Rights echo similar cases which were brought to my attention while I was in Greece. They are extremely concerning. If the hostile environment for human rights defenders in the country is to be overturned, the State must defend the work of defenders, not denigrate it; they must champion it, not criminalise it.

Mary Lawlor
UN Special Rapporteur on the situation of human rights defenders



Glossary of Terms

UN - United Nations
EU - European Union
MS - Member States
POM - People-on-the-move
ECHR - European Convention on Human Rights
ECtHR - European Court of Human Rights
GCR - Greek Council Refugees
HR360 - Human Rights 360
AP - AlarmPhone
BVMN - The Border Violence Monitoring Network
CSO - Civil Society Organisation
NGO - Non-governmental Organisation
APD - Asylum Procedures Directive
RD - Returns Directive
RCD - Reception Conditions Directive
RIC - Reception and Identification Centre
RAO - Regional Asylum Office
EBCGA - European Border and Coastguard Agency (Frontex)
MMA - Ministry of Migration and Asylum
IPA - International Protection Act
HRD - Human Rights Defender
EYP - National Intelligence Service
MEP - Member of the European Parliament
SAR - Search and rescue
UNHCR - United Nations High Commissioner for Refugees
GNCHR - Greek National Commission for Human Rights
LIBE - Committee on Civil Liberties, Justice and Home Affairs
CEAS - Common European Asylum System

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EXECUTIVE SUMMARY



This report documents the recent increase in use of Rule 39 measures in the Greek mainland, in order to secure access to international protection. It specifically details and analyses three case studies whereby transit groups were stranded on islets in the Evros river over the months of May and June 2022, and sent distress calls to state and civil society actors across Greece expressing their will to claim asylum. In all three cases, civil society organisations, including the Greek Council for Refugees, Human Rights360, AlarmPhone and The Rule 39 Initiative submitted applications for interim measures on the behalf of the transit groups, and a Rule 39 decision was indicated by the European Court of Human Rights, legally binding the Greek state to provide temporary access to Greece and material reception conditions. Despite the Court's rulings, as well as the extensive public documentation of the cases on social media platforms and in news outlets, all three transit groups were reportedly pushed back to Turkey after several days on the islets without food, water or medical care.

In order to contextualise these events, the report briefly introduces a history of Evros islets in the context of pushbacks, the lack of access to asylum on mainland Greece and interim measures at the European Court on Human Rights. It subsequently discusses the ongoing responses and evolving consequences of the Greek state's violations of the Court's rulings, including by the UN Special Rapporteur on Human Rights Defenders, Members of European Parliament, the LIBE committee, the Greek Ministry of Migration and Asylum and other actors in Greece. The report additionally observes the concerning trend of criminalisation of civil society organisations and the use of smear campaigns to restrict migrant rights defenders from operating. In the context of the cases documented here and the recent investigation by Lighthouse Reports we, the Border Violence Monitoring Network, call for Greece to be held accountable and for all operational and financial support to be suspended until the rule of law is restored.

INTRODUCTION

A. Evros Islets

The Border Violence Monitoring Network (BVMN) began operating in the Greek mainland, taking first-hand testimonies of illegal cross-border pushbacks, in the summer of 2019. Since then, operatives on the ground have taken 163 testimonies pertaining to the Evros land border, which have affected a total of approximately 10,800 individuals. It is important not to obscure the violent history of the Evros border which, according to a recent paper from local researcher Lena Karamanidou¹⁷ and cultural anthropologist Bernd Kasperek, forms a “landscape of multiple and interlocking forms of violence”. The earliest pushback testimony refers to Kurdish asylum seekers in the late 1980s,¹⁸ suggesting the practice is a longstanding one. Nevertheless, the technologies of control and practices within the pushback procedure have been shifting over time. The scope of the pushback practice reached a zenith in 2020, with the events at the Evros border in March when Erdogan “opened the gates” to Europe¹⁹ resulting in the mass proliferation of human rights abuses, coupled with the COVID-19 pandemic which allowed for the construction of people-on-the-move (POM) as threats to public security and public health. From 2020 onwards there has been an increasing movement of armed forces into migration management, the introduction of pushbacks from Reception and Identification Centres (RICs), the development of targeted torture-like practices, and the use of lockdown measures to stage even more aggressive rights suspensions. In the midst of these shifts, BVMN noticed a new practice at the Evros border whereby transit groups were stranded on small islets as part of the pushback procedure. Of the 163 testimonies collected since 2019 a total of 35 (21.5% of all those collected) refer to transit groups being stranded on these islets; affecting approximately 2,450 individuals.²⁰ The first case documented by BVMN was in the spring of 2020, when member organisation Josoor received reports of a case in which a 16-year-old Pakistani male was presumed to have drowned²¹ after he and his transit group were stranded on an islet. In November of the same year, BVMN recorded multiple incidents in which large transit groups were stranded on islets in the Evros river for days, in freezing temperatures and without access to food or water. Member organisation Josoor, and long-term collaborator, AlarmPhone, published footage of these cases²² and sent an urgent letter²³ to Frontex calling them to respond and uphold funda-

mental rights in their operational area, according to their obligations outlined in EBCGA Regulation 2019/19896.²⁴

These cases represent a dangerous shift in the pushback practice in Northern Greece, elucidating a new trend by which Greek border forces only force people halfway across the Evros river and abandon them on small uninhabitable islets, or force them to jump into the water, rather than taking them directly to Turkish territory and disembarking them on the riverbank. Both procedures represent a violation of fundamental rights; illegal pushbacks entail no individualised assessment, access to material reception conditions, right to appeal, or effective remedy, and may constitute cases of refoulement. However, the process of stranding transit groups on islets or ordering them to jump into the river poses far greater risk to human life. According to Pavlos Pavlidis, a forensic pathologist at the General Hospital of Alexandroupoli, Evros has the “largest number of buried and unidentified people-on-the-move in Greece”,²⁵ with the main cause of death (allegedly 70%) attributed to drowning.²⁶ Presenting a daunting natural barrier, the Evros river is fast flowing with a strong current; it has a mean annual flow rate of 103 cubic metres per second, a rate that increases twofold between December and April.²⁷ In an interview given in October 2021,²⁸ Pavlidis stated that he had seen 36 bodies from the Evros river so far that year, and in another statement given in February 2022²⁹ he said that 23 bodies had emerged from Evros in the first two months of 2022 alone. These statements correspond with the internal BVMN database of dead and missing cases at the Evros land border. Since November 2020 to the time of writing, operatives on the ground have compiled 42 missing cases in the Evros border area, 26 of which (62%) went missing in the Evros river either during their crossing, apprehension, or pushback by the Greek state. If we are to consider the recorded deaths related to islets specifically, the current total stands at 5. Two were deaths by drowning after being stranded on an islet, that were confirmed by a BVMN respondent³⁰ in April 2021 through photos on social media that showed bodies washed up on the riverbank. One death was co-reported by Josoor and AlarmPhone in August 2021, where a sick man died after being stranded on an islet without any access to medical attention.³¹ The fourth was the death of a four-year-old Syrian boy by drowning after his transit group were stranded on an islet during a pushback by Greek authorities in March

2022,³² and the fifth was the death of a woman in April 2022³³ who was in need of urgent medical care (dialysis) due to her long-term kidney problem, and was left trapped on an islet despite the Greek state being aware of her health condition and location.

It is safe to assume that these cases are merely the tip of the iceberg and represent far higher numbers; the Evros border area is a military zone, inaccessible to the majority of the public, isolated from Civil Society Organisations (CSOs) and human rights watchdogs, and largely inhabited by local farmers, fisherman and military personnel. This fact, alongside the well-established practice of confiscating belongings during the pushback process, particularly recording devices like phones, obscures accurate data and concrete evidence collection.

B. Lack of Access to Asylum on the Mainland

Pushbacks, and the steps that precede and follow them, do not exist in a vacuum. It is important to expand on wider shifts in migration management in Greece to understand why individuals seeking asylum are increasingly desperate. As pushbacks in the Evros region have become more systematised, violent and life-threatening, access to asylum on the mainland has become virtually impossible.

i. Changes to the Asylum procedure on mainland Greece

In November 2021, the Greek Government announced major changes in access to the asylum procedure for people on mainland Greece, Crete and Rhodes.³⁴ The Circular and Clarification,³⁵ issued on 22 November 2021, saw the implementation of Article 39 of the International Protection Act (IPA), terminating the Skype pre-registration system and mandating that all new arrivals lodge their application for international protection through reception and identification procedures. Despite the promise of two new reception centres,³⁶ the policy changes initiated were brought into practice with a single Reception and Identification Centre on the mainland, Fylakio, which has capacity for just 282 people.³⁷ In addition, Fylakio is located in the Evros region, only 20km from the Evros border, where 71% pushback groups were apprehended in 2021.³⁸ BVMN has taken testimonies from individuals who have been illegally pushed back from Fylakio as a direct result of requesting access to asylum procedures.³⁹

ii) Police notes

Individuals, if they do not have one of ten vulnerabilities according to Greek asylum law (Article 11c of Law 4939/2022)⁴⁰ which they are able to evidence, are left with just one option to register their asylum claims - via a police note. A police note is a document issued to third country nationals who have no legal basis for their stay in Greece. It designates a timeframe of up to 25 days for an individual to voluntarily leave the country, following a period of detention for the identity of the person to be checked.⁴¹ Individuals seeking international protection should therefore present themselves to the authorities in order to obtain a police note, which they can subsequently register at a Regional Asylum Office (RAO). In practice, police notes are distributed inconsistently, and people live in well-founded fear of Greek authorities due to the prevalence of pushbacks, detention and police violence.⁴² Even when people have been issued with a police note, Regional Asylum Offices (RAOs) operate differently across regions of the country, resulting in the majority of emails and in-person requests to register being left unanswered.⁴³ Furthermore, up-to-date information regarding the asylum procedure is difficult to find, and there are several discrepancies amongst actors which leads to confusion and extensive delays in access to protection.

iii. No access to the asylum procedure

As a result, the majority of people seeking international protection on mainland Greece are left undocumented, without access to basic food, accommodation or medical care.⁴⁴ This leads to a high prevalence of homelessness, destitution, exploitation including sexual and gender-based violence (SGBV), ill-health and poor living conditions.

Denying people who express the wish to apply for international protection access to the asylum procedure is a breach of European legislation (Recital 27 of APD).⁴⁵ The evidenced lack of safe and efficient routes to the asylum procedure in Greece forces people to find alternative ways to enter international protection systems.

C. Interim Measures at the European Court of Human Rights (ECTHR)

One such example of alternative routes to access international protection is represented in the increased use of Rule 39 measures in

the Greek mainland since March 2022. Rule 39 of the Court allows the ECtHR to indicate interim measures to any State party to the European Convention on Human Rights (ECHR).⁴⁶ The binding nature of interim measures was established in February 2005, using the right to individual application (Article 34 of the ECHR)⁴⁷ to prevent States from intervening with an individual bringing such a case to the Court. Interim measures are an urgent measure of last resort which apply only where there is an imminent risk of irreparable harm and, in the majority of cases, relate to the suspension of an expulsion or extradition decision when all appeal rights under domestic law have been exhausted. For persons in need of international protection, interim measures offer, inter alia, the possibility to request the suspension of removal orders, playing a vital role in avoiding irreversible situations that would prevent the Court from properly examining the application, and securing to the applicant the practical and effective benefits of their rights as asserted in the ECHR, specifically their right to non-refoulement. In this sense, Rule 39 indications usually concern Article 2⁴⁸ (right to life) and Article 3⁴⁹ (right to freedom from torture and inhumane and degrading treatment or punishment), but also Article 4⁵⁰ (freedom from slavery and forced labour) and Article 1 of Protocol 6 and Protocol 13⁵¹ (freedom from the death penalty). Any person can submit an application for interim measures to the Court, regardless of their age, nationality or status, and applicants may also be represented by a family member, friend, lawyer, non-governmental organisation (NGO), or any other person in possession of written authority by the applicant, providing that the application is appropriately substantiated with evidence that demonstrates the applicant's imminent risk of irreparable harm. Notably, between 2006 and 2010 there was an alarming rise in the number of interim measure applications to the ECtHR, with the total increasing by 4000%.⁵² In a statement⁵³ released in February 2011, the Court sought to remind individuals that it does not constitute an appeals tribunal in areas of asylum and immigration. The Court urged Member States (MS) to provide national remedies with suspensive effect that operate effectively and fairly in accordance with the ECHR and ECtHR case law. If we turn to the state of play in Greece at the time of writing, it is clear that such measures have not been enforced which has forced CSOs to continue to reach out to the ECtHR to ensure access to fundamental rights, an avenue of last resort that has become an alarmingly regular procedure.

As outlined above, since the spring of 2020 the Greek state has begun to weaponise small uninhabitable islets in the Evros river as a key stepping stone in the pushback procedure. The lack of effective access to asylum in main-

land Greece has forced transit groups to find other means by which to enter the system after being left stranded on islets in the Evros river. As a result, CSOs in Greece have been filing applications for interim measures which, upon indication, require the Greek authorities to launch search and rescue (SAR) operations for the transit groups trapped on islets, provide them access to asylum procedures, and material reception conditions. Since March 2022, Rule 39 interim measures have been indicated in 13 Evros islet cases, which have affected a total of 470 individuals.⁵⁴ Of these cases, only four groups (30% of all those granted interim measures) were actually rescued by Greek authorities. In fact, in Case 2⁵⁵, an email to BVMN shows that Frontex offered operational support to the Greek authorities in the SAR operation but were declined.

Dear legal team of Border Violence Monitoring Network,

Please be informed that in addition to relaying the information to the relevant National Authorities, Frontex proactively took action by offering its availability to support national actors in the search and rescue operation in question. Soon after, the Hellenic Police declined the operational support offered and informed Frontex that the group of people was found and that all persons will be transferred to Orestiada Border Crossing Unit for further legal procedures which will be undertaken by local Authorities.

Section three of this report will focus on what happens to those groups who are not rescued, but here we will turn to the argumentation being used by CSOs and recognised by the ECtHR as substantiating evidence that the transit groups are at imminent risk of irreparable harm once stranded on islets in the Evros river.

i) Article 2 of the ECHR - Right to life

Article 2 of the Convention outlines that everyone's right to life shall be protected by law, and nobody shall be deprived of their life intentionally.⁵⁶ We have outlined above the five deaths that have been reported that are linked to islet cases. It is important to pay particular attention to the fourth and fifth cases mentioned above.⁵⁷ In the fourth case of the four-year-old Syrian boy, the transit group he was part of were reportedly pushed back by Greek authorities from the mainland to the islet where they were left stranded on 12 March 2022. CSO, Human Rights 360 (HR360)

were in contact with the group of 30 Syrian asylum seekers, which included two pregnant women and seven minors, all of whom had no access to food, water, medical care, or shelter. They were left on the islet for six days and sent videos to HR360 showing them eating garbage leftovers in order to stay alive. Four days after being stranded, on 16 March, the ECtHR indicated a Rule 39 interim measure to the Greek state who reportedly responded by launching a SAR operation and retrieving the group on the 18th March, attributing their delay to being unable to find the transit group despite their exact coordinates being shared with authorities. Unfortunately, the initial pushback of the group contributed to a violation of Article 2 as four year old Ayman Saleh lost his balance whilst being transported to the islet, fell into the water, and was carried away by the current.⁵⁸ At the time of writing, his body has still not been recovered.

In another case, a group of 37 Syrian asylum seekers, among them 12 minors, were trapped on an islet in Evros after attempting to cross into Greece to seek international protection. They arrived at the islet on 17 April 2022, and the Greek Council for Refugees (GCR) applied for interim measures at the ECtHR which were indicated on 20 April. In spite of this, no SAR mission was launched and the group reported to GCR that they were subsequently pushed back. Tragically, before this happened one member of the group, a woman with serious kidney problems, died on the island as she could not access lifesaving dialysis medication. Both of these cases provide irrefutable evidence that persons trapped on islets are at immediate risk of irreparable harm, namely through the violation of Article 2, by which they may be deliberately deprived of their right to life. In both cases, the Court indicated interim measures and the Greek state delayed their response which resulted in the prolongation of suffering and contributed to the deaths of these individuals. Especially in the first case of Ayman Saleh, who was put on the islet by Greek authorities and drowned as a result of this act, Greece is in direct contravention of the ECHR.

ii) Article 3 of the ECHR - Prohibition of torture or inhuman or degrading treatment or punishment

Article 3 refers to two separate categories: torture and inhumane or degrading treatment or punishment. The Court defines torture as “deliberate inhuman treatment causing very serious and cruel suffering”⁵⁹ with examples of acts found by the Court to amount to torture including rape,

threats of harm to family, being kept blindfolded and mock executions. It is important to note that the suffering might be mental as well as physical. Inhuman treatment must reach a minimum level of severity and “cause either actual bodily harm or intense mental suffering”.⁶⁰ Unlike torture, it does not need to be deliberate or inflicted for a purpose. Degrading treatment involves humiliation and debasement as opposed to physical and mental suffering. It is most often constituted by degrading detention conditions, strip searches, solitary confinement, and the absence or refusal of medical assistance. One task of CSOs applying for interim measures is to ascertain that the situation faced by individuals trapped on islets amounts to torture or inhuman or degrading treatment or punishment, and that the prolongation of such circumstances cannot be condoned by the Court.

Firstly, the islets in the Evros river are small sand banks that can contain very few people. There is no access to food, safe drinking water, shelter, the means to keep warm, medical care, or any other form of material conditions, making them uninhabitable. Such conditions can constitute inhuman or degrading treatment in that they have shown to contribute towards pre-existing illnesses, resulting in death in the most extreme cases, and cause both bodily harm and mental suffering. The latter is most clearly evidenced in a BVMN testimony⁶¹ where the respondent was reduced to harming himself in order to be rescued from the islet, which constitutes inhuman and degrading treatment. In this testimony, the respondent was in a group of around 30 people who had, at this point, been trapped on the islet for two days. He explained: “I got mad and crazy. I started hitting myself. I found a piece of glass on the ground and started cutting myself with it.” Accompanied with visual evidence, the testimony reports that the individual had more than 20 lacerations of their chest and it was at this point that the Turkish authorities allowed the group to cross to safety on the Turkish side of the border. This clearly demonstrates the mental suffering experienced by individuals stranded on islets who, in spite of interim measures being indicated, are oftentimes not rescued by the Greek state, or are rescued only after the situation has been unnecessarily prolonged.

In cases where individuals are pushed back to islets in the Evros river, BVMN has argued that the pushbacks themselves often constitute acts of torture through six distinct variations of abuse: the use of excessive and disproportionate force, the use of electric discharge weapons, forced undressing, threats or violence with a firearm, inhuman treatment inside a detention facility and inhuman treatment inside a police ve-

hicle. In 2020, BVMN noted that almost 90% of all Greece-Turkey pushback testimonies⁶² contained one or more types of torture or ill-treatment. In light of this, pushbacks to islets and the following inaction on the part of the Greek state to rescue individuals when interim measures are indicated, constitute violations of Article 3 and, yet again, place Greece in direct contravention of the ECHR.

iii) Non-refoulement

The principle of *non-refoulement* forms an essential protection under international human rights, refugee, humanitarian and customary law. It prohibits States from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill-treatment or other serious human rights violations.⁶³ The majority of interim measures indications are linked to non-refoulement in that they seek to grant the Court more time to determine whether or not a person would be subject to irreparable harm upon return to a certain State.


In all 13 cases in which interim measures were indicated by the Court, the transit groups included Syrian nationals, for whom it has long been argued that Turkey is not a safe third country. In these cases, the pushback or non-rescue of the group can, *prima facie*, be considered a

breach of *non-refoulement* and therefore in violation of European and international human rights law. In the case of Syrian nationals there have been well documented cases of forced “voluntary” returns to Syria⁶⁴ for a number of years. This practice reached a zenith in 2021 when the Turkey representative for UNHCR revealed that around 800 persons were being returned to various parts of northern Syria on a weekly basis. Leclerc specifically noted that “the level of uncertainty in Syria does not enable a mass voluntary return movement”,⁶⁵ indicating those who are removed to Syria from Turkish territory are at risk of irreparable harm. In light of this, the actions of the Greek state to enact pushbacks of Syrian nationals to Turkey, or to leave them on islets where their only option is to swim back to Turkish territory, is clearly in direct contravention to the non-derogable right to *non-refoulement*.

Rule 39 of the Court exists to ensure individuals have full access to their rights in line with the Charter and Convention. In each of the 13 cases launched since March 2022, the Court has indicated that the transit groups in question would be at imminent risk of irreparable harm if they were to be left on the islet, or further pushed back to Turkey. Here, we have substantiated the violations of Articles 2 and 3, and the violation of the non-derogable right to *non-refoulement* that are being committed by the Greek state in spite of recognition by the Court that this would constitute unlawful behaviour.



CASE STUDIES



The following section of the report focuses on three recent case studies which took place between May and June 2022, whereby transit groups were stranded on islets in Greek territory in the Evros river, and sent repeated distress calls to CSOs and the Greek authorities as well as expressing the will to lodge a claim for international protection in Greece. Despite the Greek authorities' knowledge of the transit groups and their location, they remained stranded on the islets for several days without access to asylum procedures or material reception conditions including medical care, food, and water. In case studies one and two, GCR and HR360 were contacted by the transit groups, and after a lack of response from informing the relevant authorities and emergency services, proceeded to submit an application for interim measures at the ECtHR to ensure the transit groups had access to their fundamental rights. The third case study proceeded in a similar manner, but was responded to by CSO AlarmPhone and The Rule 39 Initiative. Despite a Rule 39 interim measure being indicated in all three cases, legally binding the Greek State to ensure that the applicants not be removed from Greek territory until further notice as well as be provided with food, water and adequate medical care, the transit groups were pushed back to Turkey. The second case study refers to a transit group of 52 people, some of whom had returned from the first transit group after being pushed back to Turkey. The third case study details the events of a new transit group arriving to an islet, who were pushed back to Turkey, then were reportedly forced to return to an islet by the Turkish authorities a few days later, yet were pushed back again from Greece. As such, many individuals in the transit groups were subject to being stranded on islets without food or water for prolonged periods of time, in addition to experiencing multiple pushbacks which included inhuman and degrading treatment.

In all three cases, the transit groups included men, women and young children. The case studies are used to demonstrate the events chronologically and in detail, emphasising the extensive attempts from the transit groups as well as CSOs to ensure access to international protection in Greece in full compliance with national, EU and international law. Correspondingly, the timelines will indicate the specific violations of rights and breaches of law that are implied at each stage by the Greek state, according to the ECHR and EU legislation. The information contained in each of the case studies was obtained from GCR, HR360⁶⁶ and AlarmPhone as well as from public data available on social media platform Twitter, CSO press releases and local news articles.

CASE 1: GCR/HR360

Dates: 24 May 2022 - 27 May 2022

Number of people: 93

VIOLATION OF ARTICLES 2 AND 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

24/05/2022

GCR/HR360 were informed by email that 93 Syrian people, including 30 minors (some unaccompanied), elderly, a disabled person, and a girl with obvious signs of allergies were trapped from Sunday 22 May 2022 on an islet on the Evros river.⁶⁸

VIOLATION OF ARTICLES 4 OF THE EUROPEAN CHARTER ON FUNDAMENTAL RIGHTS

The transit group were reportedly exposed to low temperatures during the night, without food, water or medical care, particularly considering the ill-health a young girl was experiencing.⁶⁹

VIOLATION OF RECEPTION CONDITIONS DIRECTIVE (2013/33/EU)

Early in the morning, GCR/HR360 contacted the emergency services by phone on 112, and the Greek authorities.⁷⁰

VIOLATION OF ASYLUM PROCEDURES DIRECTIVE (2013/32/EU)

25/05/2022

GCR/HR360 submitted an application for interim measures to the ECtHR, and a Rule 39 interim measure was indicated on the same day by the Court. This was immediately relayed to the Greek authorities.⁷¹

VIOLATION OF THE ASYLUM PROCEDURES DIRECTIVE (2013/32/EU)

At 15:25, the transit group reported that two men in black clothing appeared from the Greek river bank, shouting at the applicants "go back to Turkey, go back".

VIOLATION OF ARTICLES 4, 18 AND 19 OF THE EUROPEAN CHARTER OF FUNDAMENTAL RIGHTS

GCR/HR360 informed the Greek authorities of their presence, Greek news outlet Efsyn⁷² published two articles and journalist Giorgos Christides posted the information publicly on Twitter, accompanied by a video shared by the transit group.⁷³

VIOLATION OF ARTICLES 2 AND 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The transit group sent a video to GCR/HR360 showing drones above the islet.⁷⁴

26/05/2022

A letter containing the Rule 39 indication was sent to the Greek authorities by the President of the National Commission for Human Rights.

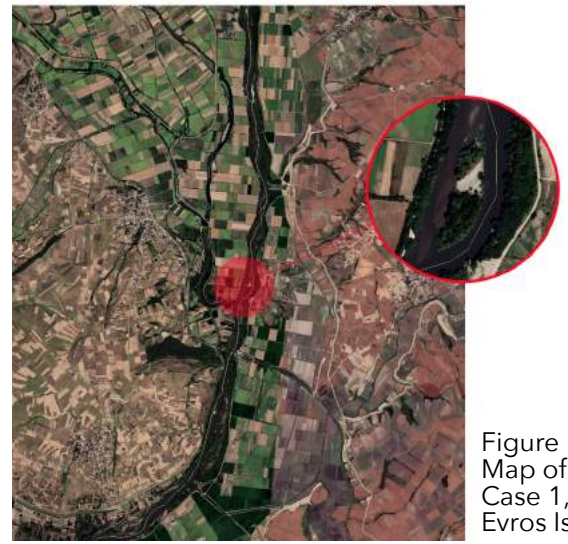


Figure 1 - Map of Case 1, Evros Islet



Figure 2 - Transit Group on Islet

Figure 3 - Disabled Man on Islet



Figure 4 - Panorama of Transit Group on Islet



Figure 5 - Panorama of Islet



Figure 6 - Person Visible on Riverbank

A Greek Army patrol located the transit group on the islet, and reportedly asked for the number of people in the transit group as well as their nationalities, and informed the authorities by phone, including their specific location.⁷⁵

The transit group reported that late at night, a group of six men arrived on the islet with masked faces, including Arabic speakers translating their orders. The practice of Greek authorities exploiting third country nationals to facilitate pushbacks has been consistently reported by BVMN since August 2020. A recent joint investigation by LighthouseReports, Le Monde, The Guardian, Der Spiegel and ARD76 provided extensive evidence to confirm this practice. The masked men reportedly forcibly arrested the transit group, beating them with batons and removing their personal belongings before transporting them to the Greek side of the river on motorboats.⁷⁷ On the other side, there were individuals reported to be wearing blue and black uniforms, which is consistent with Greek police uniforms, who beat the transit group and took them away in closed vans to a detention centre. They were then reportedly driven to another location on the Evros river, and ferried across by Arabic speakers, in groups of ten, on an inflatable, motorless dinghy boat. The transit group reported that they were detained in Turkey, before being split up. Some members of the transit group were reportedly brought to Istanbul, while 27 others were brought back to an Evros islet with 25 new members to the group, and were reportedly told "Let them take you from there, there is no return to Turkey, if you return we will send you to Syria".

Greek news outlet Efsyn published an article regarding the case.⁷⁸

27/05/2022

GCR/HR360 lost contact with the transit group, raising safety concerns.

A relative of one of the 93 people informed GCR/HR360 that they had been forcibly returned to Turkey and had been arrested by the Turkish authorities.⁷⁹

GCR and HR360 published a press release regarding the case.⁸⁰

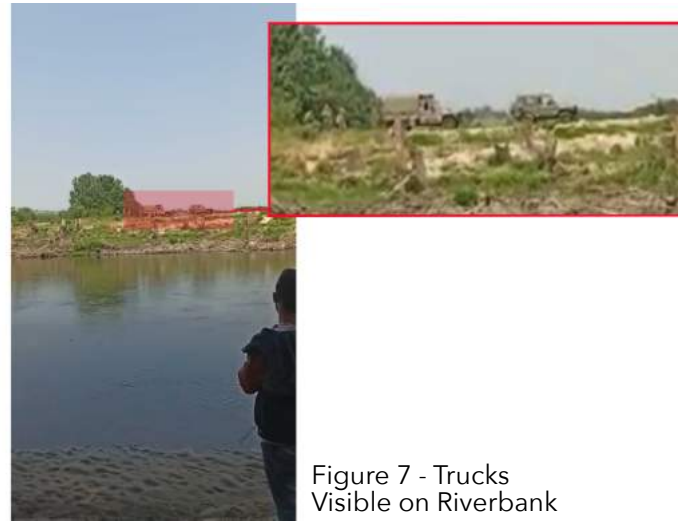


Figure 7 - Trucks Visible on Riverbank

"Of the thirty children we have, only ten are fine. By tomorrow they will die without water and food. No one is listening to us, neither the command, nor the United Nations, nor anyone. We ask for help. We are trapped here without water and food. My six-month-old daughter is giving me water from the river to stop crying. We eat the soil and the leaves of the trees. "Please help us as soon as possible because the children will die."⁸¹

"The traffickers brought us here and left us. I have an amputated leg, it also has inflammation and it is progressing, I need help immediately, please."⁸²

VIOLATION OF ARTICLE 5 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

VIOLATION OF ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

POTENTIAL VIOLATION OF ARTICLE 2 EUROPEAN CONVENTION ON HUMAN RIGHTS

VIOLATION OF ARTICLES 34 AND 13 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

VIOLATION OF ASYLUM PROCEDURES DIRECTIVE (2013/32/EU) AND RETURNS DIRECTIVE (2008/115/EC)

VIOLATION OF NON-REFOULEMENT

CASE 2: GCR/HR360

Dates: 31 May 2022 - 6 June 2022

Number of people: 52

VIOLATION OF
RECEPTION
CONDITIONS
DIRECTIVE
(2013/33/EU)

VIOLATION OF
ASYLUM
PROCEDURES
DIRECTIVE
(2013/32/EU)

31/05/2022

GCR/HR360 were informed by an applicant from the previous transit group of 93 people that a transit group of 52 Syrian people were abandoned on an islet by the Turkish authorities, including individuals from the previous transit group.⁸³

01/06/2022

GCR/HR360 submitted an application for interim measures to the ECtHR, and a Rule 39 interim measure was indicated on the same day by the Court.⁸⁴ The decision indicated to "the Government of Greece, under Rule 39, that the applicants should not be removed until further notice and be provided with food, water and adequate medical care as needed until further notice".⁸⁵ The decision draws attention to the fact that "failure of a Contracting State to comply with a measure indicated under Rule 39 may entail a breach of Article 34 of the Convention."⁸⁶

The Greek authorities were informed of the Court ruling immediately, at 20:47 that night.⁸⁷

02/06/2022

GCR/HR360 informed the Regional Centre for Integrated Border Management and Migration by repeatedly phoning regarding the ruling. They additionally contacted the emergency services, referring to the critical state of children's health, and the Orestiada Police Directorate, who stated that they had sent out a patrol but not yet located the group.⁸⁸

03/06/2022

Young children in the transit group experienced deteriorating health conditions with reports of fever and vomiting due to poisoning from the river water.⁸⁹

GCR/HR360 notified the authorities via email regarding the seriousness of the children's health condition.⁹⁰

At 23:16, the UN High Commissioner for Refugees sent an electronic request for information on the situation of the 52 people on the islet in the Evros river.

VIOLATION OF
ARTICLES 2
AND 3 OF THE
EUROPEAN
CONVENTION
ON HUMAN
RIGHTS



Figure 8: Map of Case 2, Evros Islet

"Please help, the children will die here" ⁹⁵



Figure 9: Evros River



Figure 10: Children on Islet



Figure 11: Transit Group on Islet

04/06/2022

At 01:02 the transit group communicated to journalist Giorgos Christides that at least six masked men wearing black clothing, with military vests and guns emerged on the Greek side of the Evros river bank. They reportedly boarded two inflatable boats with the engines off and travelled toward the islet. The transit group expressed their fear of the incident as the masked men were reminiscent of the people who carried out their previous violent pushback to Turkey.

As the masked men approached the islet, the transit group were in direct communication via a telephone call with journalist Giorgos Christides, who heard the masked men shouting in Greek "come on, come on", as well as asking the transit group for their telephones.⁹¹

GCR/HR360 immediately contacted the emergency services, and sent an email to the authorities regarding the risk of the applicants' physical safety as well as the risk of pushback to Turkey.

GCR/HR360 subsequently lost contact with the transit group.⁹²

The masked men reportedly searched them on the islet for an hour, hitting some of the members of the group. The transit group were subsequently ferried across the river to the Greek side of the border, before being loaded into a bus by individuals reportedly wearing camouflage clothing.

The transit group reported to GCR/HR360 that after a 15-minute drive, they arrived at a building that resembled a police station, which based on testimony descriptions is presumed (but not verified) to be Isaakio border police station, where they were searched and their clothes were taken, and where they spent a further five hours. The transit group reported that they were not provided with food, water or medical care.

The transit group reported to GCR/HR360 that they were then driven 20 minutes along a rough road, with 18 people in uniforms consistent with the police or army, including individuals who spoke Arabic. Upon arrival at the river, the transit group reported being put into non-motorised boats, ferrying them

"It's the 3rd of June and we are stuck for third day, cant go back or forward. Children suffer from diarrhoea and food poisoning"⁹³



Figure 12: Journalist Giorgos Christides on Facetime with Transit Group

"We are still here. No one has come to save us yet. Brother, please do something"⁹⁴

VIOLATION OF ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

VIOLATION OF ARTICLES 3 AND 5 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS,

ARTICLE 6 OF THE EUROPEAN CHARTER ON FUNDAMENTAL RIGHTS

VIOLATION OF ARTICLE 5 OF THE EUROPEAN CHARTER OF FUNDAMENTAL RIGHTS

VIOLATION OF
NON-
REFOULEMENT

VIOLATION OF
THE RETURNS
DIRECTIVE
(2008/115/EC)

VIOLATION OF
ARTICLES 4, 18
AND 19 OF THE
EUROPEAN
CHARTER OF
FUNDAMENTAL
RIGHTS

VIOLATION OF
ARTICLES 13
AND 34 OF THE
EUROPEAN
CONVENTION
ON HUMAN
RIGHTS

approximately 65 metres across the river. There were also approximately 30 other people with them, reportedly of Iraqi and Iranian nationality.

06/06/2022

GCR/HR360 received communication from a relative of the transit group to confirm that the transit group were pushed back to Turkey.

CASE 3: AlarmPhone and The Rule 39 Initiative

Dates: 1 June 2022 - 12 June 2022

Number of people: 28 (an additional five who arrived on the islet on the 10 June 2022)

VIOLATION OF
ARTICLE 3 OF
THE EUROPEAN
CONVENTION
ON HUMAN
RIGHTS

VIOLATION OF
RECEPTION
CONDITIONS
DIRECTIVE
(2013/33/EU)
AND ASYLUM
PROCEDURES
DIRECTIVE
(2013/32/EU)

VIOLATION OF
ASYLUM
PROCEDURES
DIRECTIVE
(2013/32/EU),
RETURNS
DIRECTIVE
(2008/113/EC),
RECEPTION
CONDITIONS
DIRECTIVE
(2013/33/EU),
ARTICLES 13

01/06/2022

AlarmPhone received a distress call on their hotline by a transit group of 28 Kurdish people from Syria who were stranded on an islet in the Evros river. The transit group included eight children and seven women, who had not had access to food or drinking water for a number of days.⁹⁶ In addition, one member of the transit group required immediate medical care.⁹⁷

02/06/2022

AlarmPhone informed the Greek authorities and Frontex of the transit groups' location, and received a response from Frontex Senior Deputy Officer at 08:56 stating that the message was immediately relayed to the Greek authorities.

At 17:53 AlarmPhone submitted an application for interim measures to the ECtHR via The Rule 39 Initiative.⁹⁸

03/06/2022

The transit group was reportedly pushed back from the islet to Turkey, while a decision of the ECtHR was still pending.⁹⁹

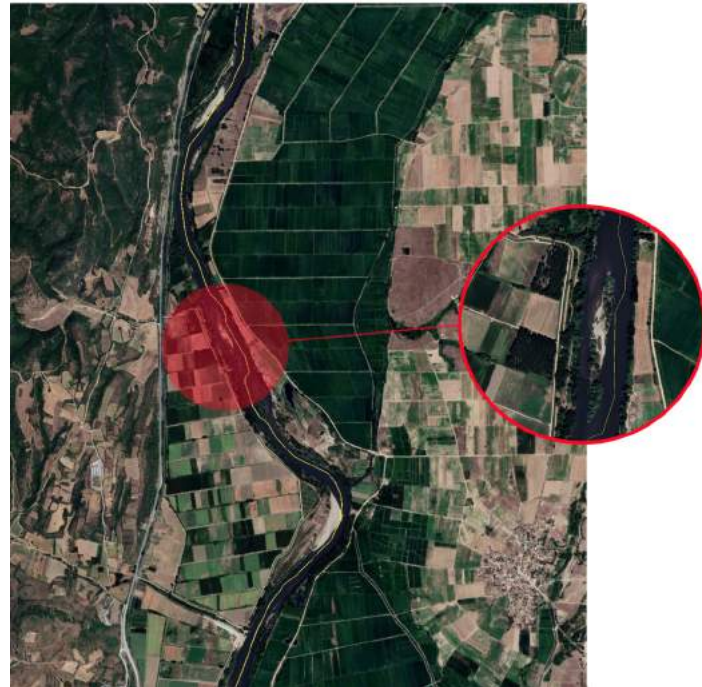


Figure 13: Map of Case 3, Evros Islet

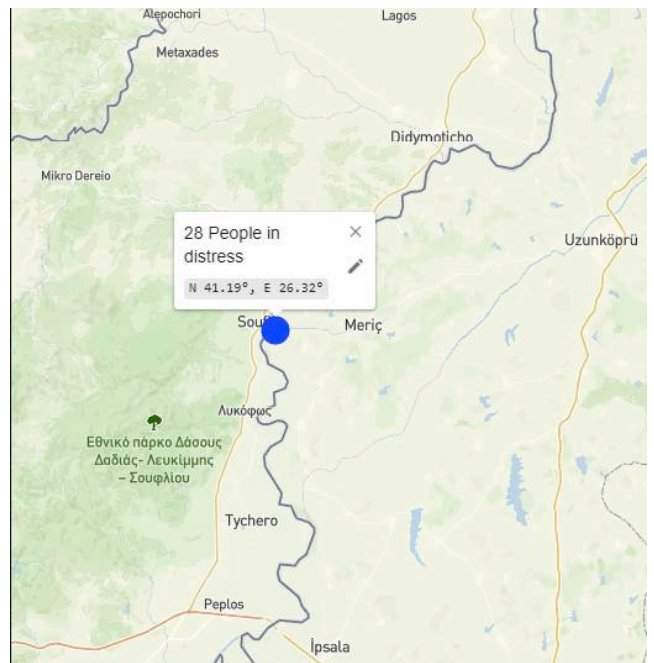


Figure 14: AlarmPhone Map showing Distress Call

AND 34 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS, NON-REFOULEMENT, ARTICLES 4, 18 AND 19 OF THE EUROPEAN CHARTER OF FUNDAMENTAL RIGHTS

VIOLATION OF ARTICLES 2 AND 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

VIOLATION OF ARTICLES 2 AND 4 OF THE EUROPEAN CHARTER OF FUNDAMENTAL RIGHTS

VIOLATIONS OF ARTICLES 2 AND 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

VIOLATION OF ARTICLES 2 AND 4 OF THE EUROPEAN CHARTER OF FUNDAMENTAL RIGHTS

AlarmPhone posted that “We have learned that the group was attacked, robbed and driven back by the Greek forces.”¹⁰⁰

A Rule 39 interim measure was indicated by the Court, stating that “the applicants should not be removed until further notice and be provided with food, water and adequate medical care as needed until further notice.”¹⁰¹

04/06/2022

AlarmPhone were contacted by a relative of the transit group to confirm that they had been pushed back and that “the soldiers took all their money and mobiles.”¹⁰²

08/06/2022

At 08:42, the transit group contacted AlarmPhone for the second time, from an islet in the Evros river that they had returned to after being pushed back to Turkey.¹⁰³ An additional five people had joined the original transit group.

AlarmPhone immediately informed the Greek authorities of the continued validity of the original Rule 39 decision indicated by the Court.

AlarmPhone sent a second email to the Greek authorities at 11:18 to reiterate that, as per ECtHR case law, decisions issued under Rule 39 of the Rules of Court are legally binding.

At 21:50 in the evening, the transit group reported that “unidentified men in uniform” approached the islet and fired shots into the air.¹⁰⁴

09/06/2022

AlarmPhone were informed by the Greek authorities that they were aware of the transit group and carried out a search operation with Frontex early in the morning, but they could not find the transit group.¹⁰⁵



Figure 15: Map 2 of Case 3, Evros Islet

10/06/2022

On 10 June 2022, The Rule 39 Initiative sent a detailed letter to the Court to emphasise the urgency of the situation, as well as the addition of five new members who had arrived on the islet joining the transit group.

The Court (duty judge) responded with the decision, in the interests of the parties and the proper conduct of the proceedings before it, to indicate to the Government of Greece, under Rule 39, that the applicants should not be removed from Greece and be provided with food, water and adequate medical care as needed until further notice.¹⁰⁶ The Court ruling also applied to the five new members of the transit group.

AlarmPhone shared the response of the Court with the Greek authorities and Frontex. Frontex responded by stating that they had relayed the message to the Greek authorities.

AlarmPhone released a statement¹⁰⁷ and an article was published on news outlet InfoMigrants.¹⁰⁸

AlarmPhone received communication from Frontex explaining that they had relayed information regarding the transit group and the Court ruling to the Greek authorities.¹⁰⁹

Greek news outlet Efsyn published an article.¹¹⁰

11/06/2022

AlarmPhone lost contact with the transit group. In their last communication with the transit group, it was reported that the transit group was being watched from the Greek side.¹¹¹

AlarmPhone called Frontex three times at 10:44, with no response.¹¹²

A twitter dispute regarding the GPS coordinate location of the transit group argued that the transit group was on the Turkish side of the border, however this was disproved.¹¹³

12/06/2022

AlarmPhone received final confirmation that the transit group had been pushed back.



Figure 16: Person Visible on Riverbank

RESPONSE

A. Criminalisation

The criminalisation of movement has been an increasingly prevalent and worrying phenomenon across the EU which has, in turn, led to a growing overlap between criminal law and migration management, reflected in the increase in legislation governing the movement of people. Nothing demonstrates this more clearly than the cases of strategic litigation brought against POM and the human rights defenders (HRDs) working with them. This situation is exacerbated by the way EU law on the topic is formulated. There is a clear distinction between international human rights instruments at the UN level in areas of smuggling and trafficking, and the ways in which such rights are provided for in EU legislation. In 2000, when the UN established the Convention Against Transnational Organised Crime, ratified by all EU Member States, there was a clear emphasis on dividing the definitions and charges of 'smuggling' and 'trafficking' through the establishment of two separate protocols. Firstly, the protocol on smuggling clearly outlined the rights of POM being smuggled, and prohibited the criminalisation of individuals subject to smuggling. At the EU level, distinctions between smuggling, trafficking and illegal migration are ill-defined. The offence of facilitation of illegal entry is first mentioned in Article 7(1) of the Schengen Convention¹¹⁴, as the creation of the Schengen acquis required, inter alia, a commitment to strengthening the EU's external borders as a means of protecting the internal bloc, reflected in the increased criminalisation of movement. In 2002, the Facilitator's Package furthered this agenda by putting forward the goal of the Commission to combat both illegal migration and the aiding of illegal migration. The package stands in direct contradiction to the UN definition of smuggling in that it doesn't consider financial gain as intrinsic to the definition, simply an aggravating circumstance. The mechanisms behind this are somewhat ill-defined with the terms used in the policy such as 'smuggling', 'financial gain' and 'humanitarian assistance' left open, leaving full discretion to Member States to decide how sanctions are transposed into national legislation.

EU policy on smuggling, trafficking, and facilitating illegal entry is sufficiently broad to have allowed for the Greek state to develop some of the strictest anti-smuggling legislation across EU MS, one that is often misapplied to target POM and HRDs. The geographical strain placed

on Greece as a key entry point at the EU's external border, as well as a transit country for secondary migration, has led to disproportionate levels of criminalisation of movement by the Ministry of Migration and Asylum (MMA). Since the crime of facilitation first entered national legislation in 1991, the scope for charging an individual for taking on a 'facilitation' role has increased and both CSOs and POM have fallen victim to this regime. Sentences applied to those convicted of facilitating illegal entry stand at a maximum of 15 years per person transported, leading to individuals being charged with sentences of hundreds of years imprisonment.¹¹⁵ The next section looks at how this regime has been applied to CSOs and HRDs submitting interim measures applications to the ECtHR, but it is important to note that those accused of being criminal smugglers are very likely to be individuals seeking asylum themselves.

i. Criminalisation of HRDs: Smear Campaigns

On 29 May 2022, an article¹¹⁶ was released in Greek news outlet D News, leaking information that four CSOs, who are "active in Evros", are being targeted in an investigation by the Greek authorities for knowing the coordinate locations of transit groups stranded on islets in Evros, and sending the information to the Greek authorities to ensure that they get full access to their fundamental rights. It should be noted that it is the legal obligation of individuals or groups to inform the authorities regarding any information on the arrival of POM, as soon as they become aware of their presence in Greek territory. Specifically, the article refers to authorities in Didymoteicho being flooded with emails from CSOs, "that for some strange reason know the coordinates of illegal immigrants and call on Greece to go and save them."¹¹⁷ The original article, and subsequent articles repeating similar information,¹¹⁸ question CSOs' involvement in illegal smuggling circuits, implying that they are in contact with transit groups in order to facilitate their entry into Greece.¹¹⁹ It remains unclear which four CSOs mentioned in the articles are being targeted for investigation, however it is suspected to be linked to cases where CSOs have submitted applications for interim measures.¹²⁰ There has not been any official announcement that a formal case file has been opened to date.

On the 6 June 2022, a subsequent arti-

cle¹²¹ was released in Greek news outlet Real-News, referring once again to four CSOs, claiming that “closed groups on social networks provide instructions and contacts to immigrants in Turkey in order to cross the natural border of Evros”.¹²²

The second article explicitly states that the organisations “do not have a physical presence in Greece, but have developed intense activity in the neighbouring country where thousands of immigrants live.”¹²³ The article subsequently accuses the CSOs of being responsible for the increase in migration flows at the Greek-Turkish land border in the first five months of 2022. These allegations are observed to follow a pattern of defamation and media smear campaigns, instigated by State agencies in Greece, depicting HRDs and members of CSOs as ‘smugglers’ who have directly acted as a ‘pull-factor’ for people to travel to a state’s territory in order to receive their aid.¹²⁴

This tactic can be considered as an informal act of criminalisation, which “expresses itself through acts of repression, threats, surveillance, intimidation and the disturbance or destruction of services that provide humanitarian assistance to POM, amongst others”.¹²⁵ Smear campaigns and defamation consequently contribute to fear mongering and decreasing public support for HRDs thus exposing CSOs to reductions of funds, resources, and safe civil society spaces, as well as the potential for a formal investigation.¹²⁶

ii. The Use of Surveillance Technologies to Monitor HRDs

The second article further states that the Greek services are already taking preventative measures against the ‘grey CSOs’, in order to “be aware of every instruction and new information circulated in specific networking groups allegedly managed by the grey CSOs, by constantly monitoring their activity on the internet through specialised technical means.”¹²⁷ It emphasises that “the Greek authorities are closely monitoring the online activity of the four CSOs, with the aim of combining prevention and repression actions in order to contribute to a more effective guarding of the Evros border.”¹²⁸

As well as contributing to a securitisation narrative whereby POM and migrant rights defenders are considered a threat to national security, this raises serious concerns over the implied use of surveillance software to monitor CSOs. This is particularly disturbing as it comes after the recent allegations that came to light at the end of 2021 in an Efsyn report¹²⁹ revealing that the National Intelligence Service (EYP) had requested information on citizens, including a lawyer, journalist and a UN agency employee. The EYP investigations were specifically focused on individuals

who were involved in migrant rights work, raising concerns that the Service was being transformed into a personal mechanism serving the political interests of the government.¹³⁰ In April 2022, it was confirmed that advanced spyware software Predator was used to infect an investigative journalist’s phone for ten weeks in 2021, enabling the spyware user to gain full access to the phone’s data, contacts, messages (even when sent via encrypted applications) as well as access the phone’s microphone and camera.¹³¹ Monitoring the communication of individuals without their knowledge is illegal, and constitutes severe breaches in privacy as well as a clear interference with the freedom of press and expression,¹³² which is protected under Article 10 of the ECHR.¹³³ These cases provide a precedent for the unlawful acts of surveillance being applied to HRDs, and that has already been indicated in the aforementioned articles. This additionally contributes to the increasingly hostile and restrictive environment for journalists and HRDs in Greece, particularly for those engaging with migrant rights.

B. Concerns over the Criminalisation of CSOs and Greece’s lack of Compliance with ECtHR

Following the publication of the two articles accusing the four CSOs of involvement in illegal smuggling circuits, multiple CSOs and other actors have publicly denounced the use of smear campaigns and alleged investigations to target HRDs, commenting on the harmful narratives that continue to perpetuate trends of criminalisation and intimidation, ultimately aiming to restrict the work of migrant rights defenders. Among those criticising the actions of the Greek authorities are journalists,¹³⁴ local researchers and commentators,¹³⁵ CSOs,¹³⁶ international NGOs,¹³⁷ as well as MEPs¹³⁸ and UN representatives.¹³⁹ The arguments raised by civil society actors in response to Greece’s lack of compliance with ECtHR and the alleged investigation include the heightened concern of continued breaches of the *asylum acquis*, the lack of press freedom in Greece, which builds upon recent tendencies of the Greek government to control national media,¹⁴⁰ and reduced visibility at border areas with the intention to restrict human rights watchdogs from operating in these regions through criminalisation tactics. The following section details the ongoing and evolving responses by various civil society actors, MEPs and UN representatives to Greek authorities’ non-compliance with the Court rulings and subsequent reports of pushbacks, particularly concerning the case studies exemplified above.

i) The UN Special Rapporteur on the Criminalisation of HRDs

After a recent country visit to Greece in June 2022, the UN Special Rapporteur on HRDs, Mary Lawlor, acknowledged the practice and detrimental impact of smear campaigns used in Greece against migrant rights defenders. In her concluding statement, she expressed concern that “at the tip of the spear are prosecutions, where acts of solidarity are reinterpreted as criminal activity, specifically the crime of people smuggling. The negative impact of such cases is multiplied by smear campaigns perpetuating this false image of defenders.”¹⁴¹ These practices have a “suffocating effect” on civil society in Greece, “particularly those who are supporting migrants, refugees and asylum seekers and are targeted by hostile comments, including by key stakeholders in the government. They are described as traitors, enemies of the state, Turkish agents, criminals and smugglers and traffickers.”¹⁴² In her live press conference, she further acknowledged the restricted access to asylum procedures on mainland Greece, and increasing use, but non-compliance by the Greek State, of applications for interim measures to the ECtHR by CSOs on behalf of POM to ensure that they have access to their fundamental rights.¹⁴³

ii) The LIBE Committee

With CSOs, journalists, and HRDs tweeting photos and videos of transit groups trapped on islets, MEPs also quickly picked up on the topic. On 30 May 2022, MEP Eric Marquardt of the Greens submitted a written question to the Commission on the case of the 93 Syrians trapped on an islet and their subsequent pushback, asking the Commission to evaluate whether this behaviour is compliant with EU law and the Charter.¹⁴⁴ In relation to the second GCR/HR360 case of a transit group of 52 individuals, Die Linke MEP Cornelia Ernst tweeted on 3 June urging the government to “comply(ing) with ECtHR judgement and Greek prosecutor orders”.¹⁴⁵ As the cases continued to build and the Greek state continued to act in contempt of the Court’s decisions, the chair of the LIBE Committee decided to send a letter to the Commission on the topic of pushbacks at the Evros border in contempt of ECtHR rulings. In spite of an attempt to block the vote, the letter was ultimately endorsed by the Committee. The letter called on the Commission to “condemn any use of violence” and acknowledged the smear campaign against CSOs responding to distress calls from groups trapped on river islets, warning of a situation “by which NGOs providing legal assistance would be criminalised for doing

so.”¹⁴⁶ The MMA responded with a letter on 20 June 2022 that accused MEPs of being manipulated by “propaganda machines and smuggling networks”¹⁴⁷ and accused CSOs of coordinating with human smugglers, tolerated by Turkish authorities, to circumvent border controls and make applications to the ECtHR.¹⁴⁸ This response from Mitarakis consolidates the evidence that the Greek state is seeking to discredit CSOs working to uphold the rule of law and EU asylum acquis through smear campaigns.

In response, members of the Informal Forced Returns Recording Mechanism, established by the Greek National Commission for Human Rights (GNCHR) published a briefing on 24 June 2022.¹⁴⁹ In the briefing, they argue for the failure of the Greek state to abide by interim measures to be considered a breach of international human rights law as their actions are in violation of Article 34 of the ECHR. The letter goes on to denounce illegal pushbacks as a systematic practice in Greece, criticise the supposed ‘independent’ border monitoring mechanism set up by the National Transparency Authority (NTA), highlight the effective lack of access to asylum in the mainland, and criticise the persistent arbitrary use of the safe third country concept pursuant to JMD 42799/2021.¹⁵⁰ Following the LIBE letter, its backlash, and the report released by members of the GNCHR, on 27 June 2022 Greek Minister of Interior Mitarakis presented himself before the LIBE committee. In his opening statement, Mitarakis reinforced the narrative that CSOs working to protect the rights of POM are, in fact, engaging in the act of facilitating illegal entry saying,

*“smuggling networks have found a new way of circumventing border controls and manipulating the EU asylum and justice system. Smugglers abandon groups on islets created by seasonal low flow, they then notify specific NGOs specialised in border-crossing facilitation who notify Greek authorities and file with the ECtHR.”*¹⁵¹

He went on to allege that the Greek state has acted in all cases referred to the ECtHR for interim measures, namely five cases in the last month where 196 persons have been rescued. Mitarakis further accused LIBE members of “jumping the gun” by assuming that interim measures have been ignored in cases where further communications haven’t yet been issued by the Court. The case studies detailed above directly contradict the assertions made by Mitarakis to the European Parliament; visual investigation and first-hand testimonies have proven that the Greek state has, in fact, not acted in every case nor responded in compliance with ECtHR jurisprudence. Against this backdrop of violations of several international and EU human rights guarantees, the MMA

response which refers to CSOs as “adversaries” and “propaganda machines” “specialised in border-crossing facilitation” and the LIBE Committee as an institute susceptible to “manipulation” by these groups, is of increased concern. There is a clearly articulated attempt, on behalf of the Greek state, to discredit the concerns raised by HRDs and to censure their response.



CONCLUSIONS & RECOMMENDATIONS

This paper, read in conjunction with the Informal Forced Returns Recording Mechanism briefing and the recent joint investigation from Lighthouse Reports, coherently documents and evidences the actions of the Greek state as violating both EU and international law. The mass proliferation of human rights abuses at the Evros border is not a new phenomenon, but the shifts in practice represent a worsening one. If the Greek state is allowed to continue with a regime of criminalisation of movement and non-compliance with the asylum acquis and ECtHR rulings, this sets a dangerous precedent for other MS and threatens EU-wide acquiescence to the Common European Asylum System (CEAS), the EU Charter of Fundamental Rights and the EU Treaties. In order to counteract this, BVMN issues the following recommendations:

To the Greek Government:

A. Ensure that both migrant rights defenders and civil society members are able to engage in their activities freely, without any fear of intimidation, threats, reprisals or punishments. Immediately cease any formal criminalisation campaign of migrant rights defenders, and condemn unequivocally historic acts of intimidation or harassment.

B. Immediately refrain from using the media and other public communication channels to publicly discredit, criminalise or intimidate migrant rights defenders and civil society organisations. Furthermore recognize, on a regular basis, including through media and social campaigns, the fundamental role of migrant rights defenders in society and condemn violations and attempts to undermine and criminalise them.

C. Establish a truly independent and impartial border monitoring mechanism at Greece's borders. This mechanism should have broad scope to investigate violations at the border, be given strong powers to carry out its mandate, be accessible and transparent with its work submitted to public scrutiny, and strengthen human rights accountability with a mandatory follow-up process that has access to victims and CSOs.

D. To stop illegal pushbacks and systematic violations of the European Convention on Human Rights, European Charter on Fundamental Rights, Asylum Procedure Directive, Reception Conditions Directive, and the Geneva convention being perpetrated by the Greek police and other competent authorities in the border region, specifically in relation to islets in the Evros river.

E. To comply with decisions issued by the European Court of Human Rights, particularly when interim measures are indicated, and give individuals access to material reception conditions and asylum procedures.

F. To facilitate safe and legal border crossings for all people to have access to their right to lodge an application for international protection, either at the border or in the territory of Greece.

To the European Border and Coastguard Agency:

G. Trigger Article 46, as per subparagraph 5 regarding the violations of fundamental rights or international protection obligations, and terminate all operational support to Greece until the rule of law is restored.

To the European Commission:

H. Stop the disbursement of funds to the Greek state until they are in accordance with the European Charter of Fundamental Rights and a truly independent and impartial border monitoring mechanism is in place and compliance with the European Charter of Fundamental Rights.

I. Start infringement proceedings to condemn Member States for any use of violence, to enforce the asylum acquis, and take all the necessary measures in order to ensure that the rule of law is being upheld by Greece.

ANNEX A

Interim measures granted by the ECtHR regarding islet pushbacks in the Evros area from March to June 2022¹⁵²

CASE NUMBER	DATE	GROUP SIZE	OUTCOME	LINKS
1	16/03/2022	30	Rescued on 18/03; drowning of four-year old boy from the islet.	https://www.humanrights360.org/a-positive-outcome-of-the-case-of-the-30-syrian-refugees-confined-on-the-islet-of-evros-river/
2	30/03/2022	34	Rescued on 01/04	https://alarmphone.org/en/2022/03/31/non-assistance-for-34-people/ // https://www.borderviolence.eu/greece-ordered-to-rescue-34-syrians-from-evros-river/
3	13/04/2022	27	Rescued on 13/04	
4	19/04/2022	37	Pushed back	https://www.gcr.gr/en/news/press-releases-announcements/item/1950-the-european-court-of-human-rights-ecthr-grants-injunctions-for-2-groups-of-syrian-refugees-on-islands-in-evros
5	19/04/2022	46	Rescued	"
6	21/04/2022	39	Pushed back	https://www.gcr.gr/en/news/press-releases-announcements/item/1962-the-european-court-for-human-rights-ecthr-grants-interim-measures-for-5th-group-of-syrian-refugees-stranded-on-an-islet-in-the-evros-river
7	29/04/2022	14	Not rescued	
8	29/04/2022	12	Not rescued	
9	11/5/2022	39	Not rescued	
10	24/05/2022	93	Pushed back	https://www.humanrights360.org/video-new-echr-decision-instructing-greece-to-save-syrian-refugees-at-the-evros-region/ // https://www.gcr.gr/en/news/press-releases-announcements/item/1974-new-echr-decision-instructing-greece-to-save-syrian-refugees-at-the-evros-region-we-call-on-the-greek-government-to-comply-and-save-their-lives

CASE NUMBER	DATE	GROUP SIZE	OUTCOME	LINKS
11	1/6/2022	52	Pushed back	https://www.humanrights360.org/urgent-need-to-rescue-refugees-greek-state-needs-to-comply-with-the-ecthrs-decisions/ //https://twitter.com/g_christides/status/1532755403557195779?s=21&t=c0xf-cQcsAyaEN-_dYVBAQ">https://twitter.com/g_christides/status/1532676843891040257?s=21&t=c0xf-cQcsAyaEN-_dYVBAQ // https://twitter.com/g_christides/status/1532755403557195779?s=21&t=c0xf-cQcsAyaEN-_dYVBAQ https://www.humanrights360.org/urgent-need-to-rescue-refugees-greek-state-needs-to-comply-with-the-ecthrs-decisions/ //https://twitter.com/g_christides/status/1532982182314184704?s=21&t=c0xf-cQcsAyaEN-_dYVBAQ">https://twitter.com/g_christides/status/1532634636538478592?s=21&t=c0xf-cQcsAyaEN-_dYVBAQ // https://twitter.com/g_christides/status/1532982182314184704?s=21&t=c0xf-cQcsAyaEN-_dYVBAQ
12	10/06/2022	28	Pushed back	https://alarmphone.org/en/2022/06/10/alarm-phone-demands-immediate-evacuation-of-refugees-from-a-small-islet-in-the-evros-river/ https://twitter.com/g_christides/status/1535264287517822976?s=20&t=Fwc9yAV7pqE-3J5vIrtGqBA https://www.infomigrants.net/fr/post/41108/migrants-coince-sur-levros-quand-la-grece-ne-respecte-pas-les-decisions-de-la-cour-europeenne-des-droits-de-lhomme //https://twitter.com/alarm_phone/status/1532749392242950145?s=20&t=Fwc9yAV7pqE3J5vIrtGqBA">https://twitter.com/g_christides/status/1535533438572314627?s=20&t=Fwc9yAV7pqE-3J5vIrtGqBA // https://twitter.com/alarm_phone/status/1532749392242950145?s=20&t=Fwc9yAV7pqE3J5vIrtGqBA https://twitter.com/alarm_phone/status/1534466052469444613?s=20&t=Fwc9yAV7pqE-3J5vIrtGqBA
13	17/6/2022	18	They are still on the islet (in total 6 days) together with some of the individuals from previous cases	

ANNEX B

Pushbacks involving islets from the BVMN open source database

CASE NUMBER	DATE	LINK	GROUP SIZE
1	19/08/2020	https://www.borderviolence.eu/violence-reports/august-19-2020-2200-north-east-of-nea-vyssa-greece/	13
2	11/11/2020	https://www.borderviolence.eu/violence-reports/november-11-2021-0000-island-near-nei-psathades/	20
3	14/11/2020	https://www.borderviolence.eu/violence-reports/november-14-2020-0000-dilofos-kapikule/	90
4	28/11/2020	https://www.borderviolence.eu/violence-reports/november-28-2020-2000-pythion-kurttepe/	X
5	13/12/2020	https://www.borderviolence.eu/violence-reports/december-13-2020-0000-greek-turkish-border-near-edirne/	X
6	02/01/2021	https://www.borderviolence.eu/violence-reports/january-2-2021-0000-orestiada-karakasim/	80
7	03/01/2021	https://www.borderviolence.eu/violence-reports/january-3-2021-0200-dilofos-kapikule/	40
8	08/01/2021	https://www.borderviolence.eu/violence-reports/january-8-2021-0000-near-nea-vyssa/	20
9	05/02/2021	https://www.borderviolence.eu/violence-reports/february-5-2021-2000-lagyna-kuplu/	100
10	16/02/2021	https://www.borderviolence.eu/violence-reports/february-16-2021-0000-lavara-karayusuflu/	50
11	01/03/2021	https://www.borderviolence.eu/violence-reports/march-1-2021-1700-soufli-meric/	60
12	06/03/2021	https://www.borderviolence.eu/violence-reports/march-6-2021-0000-nei-psathades-serem/	36
13	06/03/2021	https://www.borderviolence.eu/violence-reports/march-6-2021-0000-karayusuflu-lavara/	70
14	10/03/2021	https://www.borderviolence.eu/violence-reports/march-10-2021-0000-lavara-karayusuflu-3/	55

CASE NUMBER	DATE	LINK	GROUP SIZE
15	01/04/2021	https://www.borderviolence.eu/violence-reports/april-1-2021-2100-soufli-meric/	80
16	07/04/2021	https://www.borderviolence.eu/violence-reports/april-7-2021-0000-dilofos-kapikule/	147
17	08/04/2021	https://www.borderviolence.eu/violence-reports/april-8-2021-0600-island-near-karayusuflu/	9
18	10/04/2021	https://www.borderviolence.eu/violence-reports/april-10-2021-0000-soufli-to-nasuhbey-via-evros-meric-river/	120
19	03/05/2021	https://www.borderviolence.eu/violence-reports/may-3-2021-0000-lavara-karayusuflu/	150
20	02/06/2021	https://www.borderviolence.eu/violence-reports/june-2-2021-0000-dhidhimotikhon-kiremitcisalih/	40
21	14/06/2021	https://www.borderviolence.eu/violence-reports/june-14-2021-1500-uzunkopru/	60
22	20/06/2021	https://www.borderviolence.eu/violence-reports/june-20-2021-0000-1st-pushback-point-kyprinos-2nd-pushback-point-pythion-cakmakoy-3rd-pushback-point-didymoteicho-serem/	200
23	20/06/2021	https://www.borderviolence.eu/violence-reports/june-20-2021-0000-1st-pushback-point-svilengrad-2nd-pushback-point-pythion-sigircili/	60
24	02/07/2021	https://www.borderviolence.eu/violence-reports/july-2-2021-0000-mikrochori-kerimtecisalih/	100
25	07/07/2021	https://www.borderviolence.eu/violence-reports/july-7-2021-0000-lagyna/	160
26	10/07/2021	https://www.borderviolence.eu/violence-reports/july-7-2021-0000-lagyna/	20
27	29/8/2021	https://www.youtube.com/watch?v=147SVmsz-aE	50
28	14/10/2021	https://www.borderviolence.eu/violence-reports/october-14-2021-2359-amori-gr-to-rahmanca-tr/	200
29	18/10/2021	https://www.borderviolence.eu/violence-reports/october-14-2021-2359-amori-gr-to-rahmanca-tr/	200
30	25/11/2021	https://www.borderviolence.eu/violence-reports/november-25-2021-1200-mikrochori-gr-to-kiremitcisalih-tr/	120

CASE NUMBER	DATE	LINK	GROUP SIZE
31	30/01/2022	https://www.borderviolence.eu/violence-reports/january-30-2022-0830-pythion-to-cakmakkoy/	65
32	21/03/2022	https://www.borderviolence.eu/violence-reports/march-21-2022-0500-petrades-gr-to-eskikoy-tr/	40
33	03/04/2022	https://www.borderviolence.eu/violence-reports/april-3-2022-0000-orestias-gr-to-karakasim-tr/	60
34	20/04/2022	https://www.borderviolence.eu/violence-reports/april-20-2022-0000-kastaneai-gr-to-yenikaden-tr/	80
35	05/05/2022	https://www.borderviolence.eu/violence-reports/may-5-2022-1800-soufli-gr-to-adasarhanli-tr/	63
			2,458

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