

**CONTRIBUTION OF THE GREEK COUNCIL FOR REFUGEES TO THE
COMMITTEE ON ENFORCED DISAPPEARANCES - 22nd SESSION**

The Greek Council for Refugees (GCR) is a Greek Non-Governmental Organization, which has been active since 1989, providing legal assistance and social support to persons in need of international protection in Greece. GCR has a Consultative Status in the Economic and Social Council (ECOSOC) and is an implementing partner of the UN High Commissioner for Refugees (UNHCR). The present submission focuses on the issues arising in relation to pushbacks at the Greek borders resulting, among others, in violations of the Convention for the Protection of all Persons against Enforced Disappearance.

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Introduction

Pushbacks, as a set of state measures by which refugees and migrants are forced back over a border without consideration of their individual circumstances and without any opportunity to apply for asylum or to put forward arguments against the measures taken, violate, among other provisions of International Law, the prohibition of enforced disappearance. The *modus operandi* of pushbacks fulfils the definition of ‘enforced disappearance’ set out in article 2 of the Convention given that pushbacks include *‘the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law’*. Pushbacks therefore constitute a violation of the Convention.

According to article 3 of the Convention *‘each State Party shall take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice’*. In the present contribution, GCR provides information demonstrating that Greek authorities do not act in accordance with this provision. The first and second section present recent information issued by international organisations and NGOs, including testimonies of victims collected by GCR and partner organizations. These sources describe patterns that breach articles 17 and 18 of the Convention regarding arbitrary detention imposed before pushback operations. The third section summarizes GCR’s recent litigation before national Courts and the European Court of Human Rights (ECtHR) with a view to inform the Committee about violations of article 12 par. 1 and 2 of the Convention. The last section explains how the return of persons in need of international protection from Greece to Turkey results in a violation of article 16 of the Convention, given the detention conditions in Turkey and chain-refoulement to other countries.

I. Recent information issued by international organisations and NGOs

UNHCR reports that (as at 13 February 2022) there have been 565 arrivals into Greece over the course of 2022, of which 325 were by sea and 240 by land¹. In previous years, the total number of arrivals were: 8,935 (2021), 15,696 (2020), 74,613 (2019) and 50,508 (2018)². The number of migrants and asylum seekers are reported to have decreased substantially across the European Union since 2020 due to the Covid-19 pandemic and global restrictions on movement³. However, notwithstanding the impact of Covid-19, the numbers published by UNHCR do not accurately capture the total numbers attempting to enter Greece either by land or by sea given recent examples of alleged pushbacks⁴.

Various international organisations and NGOs have reported on the practice of pushbacks by Greece and the manner in which they are conducted. We have set out below a selection of the most recent public reports (out of many others) which provide evidence of the practice of pushbacks.

Following its visit to Greece in 2020, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) included pushbacks in its report and explained how they constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In its report, the CPT noted that it had received “*consistent and credible allegations obtained through individual interviews in different places of detention of foreign nationals being detained, having their belongings confiscated and subsequently*

¹ UNHCR, *Operational Data Portal (Greece)*, available at: <https://data2.unhcr.org/en/situations/mediterranean/location/5179> (accessed 22 February 2022)

² *Ibid.*

³ European Commission, Migration and Home Affairs, *Annual Report on Migration and Asylum 2020*, 11 June 2021, available at: https://ec.europa.eu/home-affairs/news/emn-annual-report-2020-explores-trends-migration-and-asylum-eu-and-norway-2021-06-11_en (accessed 2 February 2022)

⁴ Asylum Information Database, *Country Report: Greece (2020 Update)*, p.19, available at: https://asylumineurope.org/wp-content/uploads/2021/06/AIDA-GR_2020update.pdf (accessed 2 February 2022)

*being pushed back across the Evros River border to Turkey*⁵. The CPT also noted that the victims were “*held for short periods in various detention facilities situated not far from the Evros River*” and that they had had their “*personal belongings, including mobile phone and in some instances, footwear*” confiscated from them⁶. Furthermore, as the Hellenic Police did not keep any record of the persons who had been held at the Poros detention facility, it was not possible to trace the location to which these persons had been transferred and the CPT was not convinced by the explanation provided to its delegation that the details of all persons taken to Poros were recorded upon entry to the facility and that at the end of each day, the form containing the information on these persons was simply thrown away. Moreover, persons held at the Poros facility claimed that while their personal belongings were taken away (bags, mobiles), they did not have to provide any individual personal information at that stage⁷.

Following its visit to Greece in 2020, the Working Group on Arbitrary Detention reported that it had been informed that “*a number of persons newly arrived in the Evros region had been arrested, detained and summarily returned across the land border between Greece and Turkey without being given the opportunity to apply for international protection in Greece*”⁸.

In relation to pushbacks at the land border, the Special Rapporteur on the human rights of migrants has noted that, in addition to “*increased militarisation of the Evros land border...which has effectively resulted in preventing entry and in the summary and collective expulsion of tens of thousands of migrants and asylum seekers*”, there have been allegations that “*pushbacks are also reportedly carried out from urban areas, including reception and detention centres*”⁹.

⁵ Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 17 March 2020, paragraph 53

⁶ *Ibid.*, paragraph 54

⁷ *Ibid.*, paragraph 55. See also The New York Times, ‘*We Are Like Animals*’: Inside Greece’s Secret Site for Migrants, 10 March 2020 - updated 18 July 2021, available at: <https://www.nytimes.com/2020/03/10/world/europe/greece-migrants-secret-site.html> (accessed 16 February 2022)

⁸ Working Group on Arbitrary Detention, UN Human Rights Council Forty-Fifth Session, Report of the Visit to Greece, 29 July 2020, paragraph 87, available at: <https://undocs.org/A/HRC/45/16/add.1> (accessed 16 February 2022)

⁹ Special Rapporteur on the human rights of migrants, *Report on means to address the human rights impact of pushbacks of migrants on land and sea*, 12 May 2021, paragraph 55, available at:

On 3 May 2021, the Council of Europe Commissioner for Human Rights wrote to Greek authorities noting that “*summary returns from Greece to Turkey across the Evros River border have been reported and documented for several years*”¹⁰ and expressed her concern about an “*increase in reported instances in which migrants who have reached the Eastern Aegean islands from Turkey by boat, and have sometimes even been registered as asylum seekers, have been embarked on life-rafts by Greek officers and pushed back to Turkish waters*”¹¹.

An interim report from the Greek Ombudsman noted in April 2021 how the structure of pushbacks followed a “*standard practice*”¹², namely a pattern of arbitrary detention, refusal to register new arrivals or allow them to apply for asylum and ultimately forceful (and sometimes violent) return to Turkey. This “*standard practice*” has been corroborated by several different sources.

On 21 February 2022, UNHCR expressed its concern regarding recurrent and consistent reports coming from Greece’s land and sea borders with Turkey, where at least three people are reported to have died in such incidents since September 2021 in the Aegean Sea, including one in January. UNHCR has recorded almost 540 reported incidents of informal returns by Greece since the beginning of 2020¹³. The International Organization for Migration (IOM) was also alarmed by mounting migrant deaths and continuous reports of pushbacks at the border between Greece and Turkey¹⁴.

In its annual review of Greece for 2021, Human Rights Watch describes the “*heavy-handed and often abusive immigration controls*” employed by Greece and the

https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_47_30_E.pdf (accessed 17 February 2022)

¹⁰ Letter from Council of Europe Commissioner dated 3 May 2021, available at: <https://rm.coe.int/letter-to-mr-michalis-chrysochoidis-minister-for-citizens-protection-o/1680a256ad>, (accessed 28 January 2022)

¹¹ *Ibid.*

¹² The Greek Ombudsman Independent Authority, *Alleged pushbacks to Turkey of foreign nationals who had arrived in Greece seeking international protection*, Interim Report (Updated up to 31 December 2020), p.13, English translation available at: https://www.synigoros.gr/resources/060521-pushbacks-interim-report_eng.pdf, (accessed 17 February 2022)

¹³ UNHCR, *News Comment: UNHCR warns of increasing violence and human rights violations at European borders*, 21 February 2022, available at: <https://www.unhcr.org/news/briefing/2022/2/62137a284/news-comment-unhcr-warns-increasing-violence-human-rights-violations-european.html> (accessed 28 February 2022)

¹⁴ IOM, *IOM Concerned about Increasing Deaths on Greece-Turkey Border*, 18 February 2022, available at: <https://www.iom.int/news/iom-concerned-about-increasing-deaths-greece-turkey-border> (accessed 28 February 2022)

“*mounting chorus of criticism*”¹⁵ of its policy of pushbacks. Amnesty International documented 21 pushback incidents and other abuses that occurred in Greece between June and December 2020, identifying a number of key trends¹⁶.

With respect to pushbacks at land, victims described to Amnesty International how they were apprehended on Greek territory, often detained arbitrarily and then transferred back into Turkey. Those conducting the pushback operations were consistently identified as appearing to belong to law enforcement. In 12 of the cases documented by Amnesty International, individuals stated that they were held in places of detention ranging from a few hours to more than one day without access to phone calls, lawyers and without registration procedures. Amnesty International concluded that “*every apprehension and detention reported occurred outside of identifiable legal procedures and meets the definition of arbitrary arrest and detention*”¹⁷. Amnesty International reported that none were informed that they were under arrest and that information provided regarding reasons for arrest and detention were “*either false or completely absent*”¹⁸. In addition to examples of pushbacks soon after their arrival in Greece, Amnesty International documented instances of pushback of people with registered protection status in Greece or who had been in the country for days or weeks.¹⁹

Human Rights Watch has provided a similar account of pushbacks at the Greece-Turkey border, noting that “*all those interviewed said that within hours after they crossed in boats or waded through the river, armed men wearing various law enforcement uniforms or in civilian clothes, including all in black with balaclavas, intercepted everyone in their group*” before detaining them in “*official or informal detention*” and “*summarily pushing them back to Turkey*”²⁰.

¹⁵ Human Rights Watch, *Greece: Events of 2021*, available at: <https://www.hrw.org/world-report/2022/country-chapters/greece> (accessed 28 January 2022)

¹⁶ Amnesty International, *Greece: Violence, Lies, and Pushbacks*, June 2021, p. 5, available at: <https://www.amnesty.org/en/wp-content/uploads/2021/07/EUR2543072021ENGLISH.pdf>, (accessed 27 January 2022)

¹⁷ *Ibid.*, p. 6

¹⁸ *Ibid.*, p. 14

¹⁹ *Ibid.*, p. 16

²⁰ Human Rights Watch, *Greece: Violence Against Asylum Seekers at Border: Detained, Assaulted, Stripped, Summarily Deported*, 17 March 2020, available at: <https://www.hrw.org/news/2020/03/17/greece-violence-against-asylum-seekers-border> (accessed 16 February 2022)

In relation to pushbacks at sea, Aegean Boat Report's Annual Report for 2021 reported that 902 boats carrying a total of 26,202 people were picked up in 2021 and arrested by the Turkish Coast Guard and Police²¹. Of these total figures, 5,220 people had already arrived on the Greek Aegean islands before being "*arrested by police, forced back to sea and left drifting in life rafts*"²². In late 2021 a Turkish-flagged ship carrying 382 asylum seekers ran into engine trouble off Crete on 28 October 2021, only to be "*hauled in the direction of Turkey*" dragged by the Greek coastguard for three days²³. Further evidence of the practice has been documented by Der Spiegel whose investigative report includes video documentation of Greek elite security forces on the Aegean²⁴. Aegean Boat Report further documented (with photographic and audio evidence) an example of a pushback from Greece on 30 January 2022²⁵. The report notes how a group of 21 individuals arrived on Chios. 12 people from this group were subsequently arrested by Greek police and those same 12 people were later rescued by Turkish coast guard in a life raft drifting outside Cesme, Turkey. Contact was lost with the remaining members of the group, but Aegean Boat Report state that authorities in Chios claimed that there had been no new arrivals that day. Aegean Boat Report documented a further example on 24 January 2022²⁶, describing how a group of 41 individuals arrived on the Greek island of Inousses that morning, only to be rescued by Turkish coast guard later that same day drifting outside Cesme, Turkey. Finally, Aegean Boat Report has documented an instance on 9 January 2022 where 25 new arrivals on Lesbos sent pictures, videos, voice messages and location data to Aegean Boat Report. At 11.20 am the following day (10 January 2022), all contact was lost with them. No new arrivals

²¹ Aegean Boat Report, *Annual Report 2021*, available at: <https://aegeanboatreport.files.wordpress.com/2022/01/abr-annual-report-2021-pdf.pdf> (accessed 27 January 2022)

²² *Ibid.*

²³ The Guardian, *Greece accused of 'biggest pushback in years' of stricken refugee ship*, 5 November 2021, available at: <https://www.theguardian.com/global-development/2021/nov/05/greece-accused-of-biggest-pushback-in-years-of-stricken-refugee-ship> (accessed 27 January 2022)

²⁴ Der Spiegel, *Beatings at the Border: Europe's Violent Shadow Army Unmasked*, 7 October 2021, available at: <https://www.spiegel.de/international/europe/greece-and-croatia-the-shadow-army-that-beats-up-refugees-at-the-eu-border-a-a4409e54-2986-4f9d-934f-02efcebd89a7> (accessed 27 January 2022)

²⁵ Aegean Boat Report, *Blog Posts*, available at: <https://aegeanboatreport.com/blog-posts/> (accessed 28 January 2022)

²⁶ *Ibid.*

were documented by Greek authorities that day and the Turkish coast guard then rescued them drifting in a life raft outside Seferihisar, Turkey²⁷.

In relation to pushbacks at the land border, Refugee Support Aegean (RSA) has documented the experience of a Syrian national being pushed-back at Evros in late 2021²⁸. In this case, RSA note how they had contacted the Hellenic police to confirm the arrival of the Syrian national (and others) in Greece and their intention to apply for international protection. There was no response from the Greek authorities and the group were unlawfully returned to Turkey. RSA report how the Syrian national described to them that “*men in uniform confiscated their mobile phones*” and “*ignored their explicit requests for international protection*” and how they were “*held incommunicado without any registration in two detention sites*”²⁹.

Finally, several sources also commented on the treatment of individuals while in detention. In its report, Amnesty International confirmed that in 17 of the 21 incidents reported on, individuals either suffered or witnessed physical violence during the course of the pushback³⁰.

²⁷ *Ibid.*

²⁸ Refugee Support Aegean, *The timeline of a pushback of a Syrian refugee in Evros, as documented by RSA*, 19 October 2021, available at: <https://rsaagean.org/en/timeline-pushback-evros/> (accessed 28 January 2022)

²⁹ *Ibid.*

³⁰ Amnesty International, *Greece: Violence, Lies, and Pushbacks*, June 2021, p. 27, available at: <https://www.amnesty.org/en/wp-content/uploads/2021/07/EUR2543072021ENGLISH.pdf>, (accessed 27 January 2022)

II. Testimonies of victims collected by GCR and partner organizations

GCR published two reports, one in February 2018 that contains the testimonies of more than 10 people and a second published in association with the ARSIS-Association for the Social Support of Youth and HumanRights360 that contains the testimonies of 39 people³¹. The vast majority of testimonies are from people who attempted to enter Greece from the Evros border with Turkey and both reports highlight the systematic and organized character of the illegal pushbacks taking place in Evros. The frequency and continuous nature of the acts described in the testimonies establishes evidence of the practice of pushbacks being used extensively, often employing violence in the process, in violation of national, EU and International Law.

The reports are particularly of interest as they present recurrent and similar testimonies gathered directly by GCR from over 59 individuals of various nationalities, of which at least 10 were unaccompanied minors. In each instance, the testimonies describe numerous other people from third-party countries being illegally pushed back together with the reporting victims, irrespective of their status at the time. Many of the victims were pushed back several times and were exposed to grave danger in their attempts to re-enter Greece. One person reported that he could not remember exactly, but that he was pushed back about 40-50 times.

The procedures described in all the testimonies are strikingly similar, with significant common elements indicated by all victims, namely:

- (i) the victims are stopped / interrogated by persons appearing as Greek officials (described as e.g. police cars, police officers, military vehicles, Special Forces, men in uniform, many with their faces covered etc.), who generally speak Greek, little to no English, and some of them speak German;
- (ii) the victims' papers are checked and, most often, withheld by the interrogators, together with all of their personal belongings (such as mobile

³¹ Greek Council for Refugees, *Reports and testimony of systematic pushbacks in Evros*, 20 February 2018, available at: <https://www.gcr.gr/en/ekdoseis-media/reports/reports/item/790-reports-of-systematic-pushbacks-in-the-evros-region> and GCR, Arsis and HumanRights360, *The new normality: Continuous push-backs of third country nationals on the Evros river*, December 2018, available at: <https://www.gcr.gr/en/news/press-releases-announcements/item/1028-the-new-normality-continuous-push-backs-of-third-country-nationals-on-the-evros-river> (accessed 27 January 2022)

- phones, identification documents, money, etc.) and in almost all cases their personal belongings were not given back (documents burned and phones thrown in the river);
- (iii) the victims are forcefully taken in a van to a different location, most commonly described as a police station or a detention centre; in many cases they were held in a warehouse or one room together with a large group of people without separation of men, women and children detainees; in these locations they are temporarily held in inhumane, unsanitary and improper conditions (without basic necessities), including, in one case, a refusal to provide medical care; in all the reported cases there was no provision of food, and in the vast majority of the cases there was no provision of water;
 - (iv) in a great number of the testimonies, people were subjected to inhumane and degrading treatment by persons conducting the pushbacks (e.g. they were forced to strip down, men were left with underwear and women left with t-shirts and underwear, people were subject to baton blows for speaking and in one reported case a baby was hit in the face for crying, etc.); and
 - (v) ultimately, in the evening / after dark, the victims are transported with vans to the river, where there are other armed men, and boarded with numerous other persons in boats and returned to Turkey, which in many cases led to them being arrested by the Turkish authorities; it was reported that police officers or other men wearing black were driving the boats to the other side and back.

Besides the coherent and similar descriptions of the pushbacks' *modus operandi*, which testify to their systematic and organized character, there are other additional aspects which are reflected by the testimonies that highlight the pushbacks' illegal and abusive nature, namely:

- (i) the repeated violence and offences against both the reporting victims, as well as the other victims mentioned in their statements, with more than 62 cases of violence, more than 80 cases of confiscation of personal items and documents and more than 79 cases of food and water deprivation mentioned generally in the report; as well as

- (ii) the disregard towards the victims' prior legal status, as several of the victims had already applied for asylum or had been already granted international protection in another European country.

III. GCR's litigation before national Courts and the ECtHR

Almost on a daily basis, GCR receives notifications from/about people in need of international protection who have just crossed the border close to Evros river and are afraid of being pushed back to Turkey. During 2021, 48 interventions were sent to the Greek authorities and GCR received at least 15 negative replies indicating that persons of concern were not found in the indicated area. Regarding a number of pushbacks that took place in spring 2019, five survivors authorized GCR lawyers to take legal action. Despite strong evidence provided by the victims, the judicial authorities did not properly investigate these crimes. As a result, in 2021 we submitted to the ECtHR three applications regarding five victims of different incidents which took place in 2019. All the applicants are Turkish citizens who fled their country for reasons provided by Article 1 A 2 of the 1951 Geneva Convention. In 2019 they entered Greek territory after crossing the river Evros from Turkey. Despite the fact that they explicitly expressed their desire to apply for asylum, the Greek authorities did not register the applications. Given the very few hours that they remained in Greece, restricted by the police and the accelerated and unofficial way under which their return took place, they did not have any opportunity to initiate any procedure in order to challenge their return. On 18 June 2019, GCR filed a complaint on behalf of the victims before the Public Prosecutor. The purpose for submitting the complaint was the identification and punishment of the perpetrators. In the complaint against any responsible person, GCR included indicatively the following breaches of the Greek Criminal Code (CC): abuse of power (a.239 CC), breach of duty (a.259 CC), unlawful retention (a.325 CC), failure of redemption from life-threatening (a.307 CC), exposure to danger (a. 306 CC), simple injury (a. 308 CC), unprovoked bodily injury (a. 308A), hazardous injury (a. 309 CC), causing damage by continuous harsh behaviour (a.312 CC), damage of foreign ownership (a. 381 CC), torture and other infringements of human dignity (a. 137A CC). The Public Prosecutor of the First Instance Court of Orestiada initiated criminal proceedings after receiving the above *notitia criminis* (complaint) and the evidence that the criminal offences had been committed.

In the first case, the Prosecutor of the First Instance Court of Orestiada dismissed the complaint in December 2019. According to the Prosecutor, the content of the complaint, the witness statement of the policeman and the documents that were included in the file did not provide any evidence that a criminal offence had been committed. Following the Prosecutor's order, an appeal against the dismissal was lodged before the Prosecutor of the Court of Appeal of Thrace in February 2020. The Prosecutor of the Court of Appeal of Thrace ordered the continuation of the preliminary examination. By his order, he called two out of the three witnesses from the applicant's side, excluding the third one on the ground that he could not travel to Greece from his country of residency elsewhere in the EU. He also called all the police officers on duty in the border guard station of Orestiada on the day that the pushback took place. In September 2020 the Prosecutor dismissed the case on the grounds that there was no evidence against the police and that Greece and especially the Greek police never conducts pushbacks to Turkey. It should be noted that the Prosecutor considered the testimonies of the police officers (who were also possible offenders of the alleged crimes against the victim) to be more important than the other evidence submitted, which included testimonies of an eye-witness lawyer and a journalist, photos of the applicant in front of a Greek public building before being apprehended by the police and pushed back to Turkey as well as many live locations shared by her after her entry to Greece and before her mobile phone was confiscated.

In the second case (three applicants), the Prosecutor only investigated the incidents that took place on the day after the second entry of the applicants in Greece and not the incidents from the day when the pushback actually took place. The applicants mentioned eight (unknown) perpetrators, but the investigation only included two police officers who were on duty on the wrong date. More precisely, the Prosecutor of Alexandroupolis, who was conducting the preliminary/pre-trial investigation, adopted a partial negative decision and decided to transfer the case to the archive of unknown perpetrators. The legal form of a note on the case folder in February 2021 means that the investigation stopped and no more investigations would take place until the end of the limitation period for the criminal offences (“παραγραφή εγκλημάτων”). In April 2021, GCR submitted an application before the Prosecutor of Alexandroupolis against the Prosecutor's decision, underlining that:

- a) there was not a proper evaluation of evidence by the Greek judicial authorities;
- b) the Greek judicial authorities did not investigate the police officers who were in charge at the time that the applicants submitted that the illegal acts had been committed;
- c) no list of police officers / other authorities on duty was brought into the criminal investigation;
- d) the testimonies of the two policemen were different to the other testimonies;
- e) there was new evidence (detention decisions) which proved that the “official” detention of the applicants started two days after their second entry in Greece; and
- f) the entire criminal investigation focused on the wrong date when the applicants were already officially present in Greece and placed under detention, which was two days after their alleged pushback.

In May 2021, the Prosecutor of Alexandroupolis rejected the application justifying the refusal to remove the case from the archive of unknown perpetrators, on the basis that:

- a) there was no new and crucial evidence provided by the applicants, (particularly about the identity of the offenders);
- b) the Prosecutor rejected as unfounded the applicants’ allegation that the time of the criminal acts differs to the time of the investigated incidents because two police documents displayed that there was no involvement / participation of the police in any incident with the applicants on the correct date; and
- c) the witnesses suggested by the applicants did not testify about the identity of the offenders.

In the third case concerning a victim of five consecutive pushbacks in May 2019, the Alexandroupolis Prosecutor’s office started a pre-trial investigation. Following a request by the Prosecutor in August 2019, the internal affairs section of the Hellenic Police started a parallel investigation into possible criminal and disciplinary responsibility of policemen allegedly involved in the crimes against the applicant. During this procedure the applicant gave his detailed testimony and recognized three policemen, who were later invited to provide an unsworn statement to the Prosecutor. All three recognized the applicant and admitted that they had met him. Two of them said that they had met him during a patrol at the border of river Evros and the third one

on the Greek territory in front of a border guard station, but the applicant ran away. The Prosecutor collected other evidence as well (documents, witness statements). In January 2021 the Vice-Prosecutor of First Instance of Alexandroupolis dismissed the applicant's complaint against the three policemen. The reason provided for the dismissal was that the three policemen had acted in compliance with their official duty and not in the manner described by the applicant. In February 2021, GCR submitted a written statement in support of the accusation, explaining the moral damage that had been caused to the applicant and seeking compensation for the events under the criminal complaint. In March 2021, GCR lodged an appeal provided by article 52 Code of Criminal Procedure (CCP) against the Prosecutor's order before the Prosecutor of the Court of Appeal with the following arguments:

- a) The order did not include any document or testimony except for the unsworn testimony of the three policemen.
- b) The Prosecutor did not evaluate the relevant evidence included in the case files and did not collect any additional evidence that should be collected by his order during the pre-trial examination.
- c) The order did not include testimonies from the other police officers and their on-duty commanders from the same dates and times of the alleged incidents.
- d) The Prosecutor did not transmit the case files for approval to the Prosecutor of the Court of Appeal before adopting a decision (which is mandatory under art. 43 par. 3 CCP).

In June 2021, the office of the Prosecutor of Appeal of Thrace notified GCR of the rejection of the appeal. The reasons for the rejection were that the applicant had not submitted additional evidence to the Court and that, in searching for witnesses and the vehicle used during the pushback, the criminal investigation reached a dead end because they could not locate the two witnesses suggested by the applicant and the car belonged to a civilian residing in Evros.

GCR believes that the Greek authorities did not make an effective investigation under the penal procedure following the submission of the criminal complaints, which also constitutes a violation of the Convention. According to the relevant provisions of the Greek Code of Criminal Procedure the crime of enforced disappearance is prosecuted *ex officio*, not only after a written complaint has been lodged, but also following any

information (from any source) that the Public Prosecutor, the law enforcement authorities or other public officers become aware of (articles 36, 37, 38 of the Code of Criminal Procedure). Upon receiving such information, the Public Prosecutor is obliged to order a preliminary investigation to be conducted immediately by the investigating officers. Following this investigation and on the basis of the evidence collected, if there are sufficient indications, then the Public Prosecutor decides whether to start the prosecution (article 43 CCP). As to the compensation for the victim of enforced disappearance, article 322C (5) of Greek Penal Code previously contained a provision ensuring sufficient compensation for the victim (*“The victim of the crimes laid down in Articles 322A and 322B shall be entitled to demand from the perpetrator and from the State, who have joint and several liability, compensation for the damages sustained and pecuniary compensation for moral distress and moral damages”*). In 2019 Greece adopted Law 4619/2019 which includes the new Criminal Code. In this revised Criminal Code, articles 322A, 322B and 322C have been deleted, on the grounds that their content is included in the criminal offence of abduction, as it is described in the basic version of article 322 CC (p.7 Explanatory Memorandum of New Criminal Law). Notwithstanding the above formal changes, the criminal procedure remains the same and the Public Prosecutor is obliged to act immediately and order an investigation, as soon as he receives the relevant information. The basic difference is that the part regarding the compensation for the damages sustained from Enforced Disappearance is deleted from 1.7.2019 and thereafter. In the above cases, however, criminal offences took place when articles 322A, 322B and 322C were still in force and applicable.

IV. Returns to Turkey resulting in violations of the Convention

18 March 2022 marks the sixth anniversary of the “EU-Turkey Statement” under which the European Union and Turkey leaders agreed, among other points, that all third country nationals crossing from Turkey to the Greek islands would be returned to Turkey on the basis that Turkey is a “safe country” for them³². Article 38 of the Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection establishes that a third country can be considered safe where in that country: (1) The life and liberty of the applicant are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion; (2) There is no risk of serious harm as defined in the Qualification Directive; (3) The principle of non-refoulement in accordance with the Geneva Convention is respected; (4) The prohibition of removal is respected; and (5) The possibility of applying for refugee status and of receiving protection pursuant to the Geneva Convention exists.

These requirements for considering a third country as “safe” have been incorporated into Greek national law (International Protection Act). On 7 June 2021, Greece declared Turkey a “safe third country” for asylum-seekers originating from Afghanistan, Bangladesh, Pakistan and Somalia, in addition to Syria, in the Joint Ministerial Decision No 42799/2021 (JMD)³³. GCR has filed a judicial review application before the Greek Council of State for the annulment of the JMD. It establishes that the JMD was not issued in compliance with procedural requirements set out by the law and that based on valid information sources and reports, Turkey does not constitute a safe third country³⁴.

³² Council of the EU, *EU-Turkey statement*, 18 March 2016, available at: <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/pdf> (accessed 28 January 2022)

³³ Refugee Support Aegean, *The dismantling of the Greek asylum system*, 8 September 2021, available at: <https://rsaegean.org/en/faq-greek-safe-third-country-list/> (accessed 28 January 2022)

³⁴ See Greek Council for Refugees, *Decision declaring Turkey a “safe third country” brought before Greek Council of State*, 8 October 2021, available at: <https://www.gcr.gr/en/news/press-releases-announcements/item/1823-decision-declaring-turkey-a-safe-third-country-brought-before-greek-council-of-state> (accessed 28 January 2022)

Only a couple of days after the JMD the European Council stated in its conclusions from 24 - 25 June 2021 that: “*Rule of law and fundamental rights in Turkey remain a key concern. The targeting of political parties, human rights defenders and media represents major setbacks for human rights and runs counter to Turkey’s obligations to respect democracy, the rule of law and women’s rights.*”³⁵ Indeed Turkey has been the subject of multiple reports of border abuse, denial of access to protection and legal status, unlawful detention, unlawful deportation and refoulement³⁶. The reality is that many third country nationals are denied their right to register as well as access to basic services, with many provinces having halted all registration³⁷. To register an international protection application, applicants have to approach the Provincial Directorate of Migration Management (PDMM) to which they have been assigned. Practice is not standardised, and individuals are often refused registration by the PDMM without being referred to another PDMM³⁸. According to reports, dozens of single Afghan men, in particular, claimed to have faced major obstacles during the asylum registration process, often being told that they do not register single men. Delays in receiving their registration documents affect their ability to access services, like sending their children to school or receiving health care and humanitarian assistance, such as cash assistance and coal for the winter months³⁹. The only documentation that the applicant receives is the International Protection Applicant Identification Card (“kimliks,” in Turkish). As a result, asylum seekers are required to travel to the assigned province without being provided with the necessary documentation to evidence their intention to seek international protection. In practice, people are often apprehended during police controls throughout the country and are

³⁵ European Council, *Conclusions 24 and 25 June 2021*, available at: <https://www.consilium.europa.eu/media/50763/2425-06-21-euco-conclusions-en.pdf> (accessed 28 January 2022)

³⁶ Norwegian Organisation for Asylum Seekers, *A critical review of Turkey’s asylum laws and practices December 2018 Update, Seeking Asylum in Turkey*, available at: https://www.noas.no/wp-content/uploads/2019/02/Tyrkia-2018-Update_Web.pdf, page 5 (accessed 28 January 2022)

³⁷ Human Rights Watch, *Turkey Stops Registering Syrian Asylum Seekers*, 16 July 2018, available at: <https://www.hrw.org/news/2018/07/16/turkey-stops-registering-syrian-asylum-seekers> (accessed 28 January 2022)

³⁸ AIDA, *Country Report: Turkey, 2020 Update*, available at: https://asylumineurope.org/wp-content/uploads/2021/05/AIDA-TR_2020update.pdf, page 25, point 5 (accessed 28 January 2022)

³⁹ Refugees International, *“We Don’t Have Space for You All”: The Struggles Afghan Refugees Face in Turkey*, 12 June 2019, available at: <https://www.refugeesinternational.org/reports/2019/6/11/we-dont-have-space-for-you-all-the-struggles-afghan-refugees-face-in-turkey> (accessed 28 January 2022)

therefore at risk of being arrested, transferred to a removal or detention centre, and finally being deported⁴⁰.

In the detention and removal centres, the Turkish authorities hold refugees in appalling conditions. These include refusing access to health services, ill-treatment, defamation, assault, lack of access to personal hygiene and hot water, widespread infectious skin diseases, inadequate nutrition, deprivation of privacy and the inability to exercise the right to petition. The situation inside detention centres has led to several suicide attempts⁴¹. Detainees may face arbitrary punishment when they do not follow prison rules, which are neither written down nor explained to them⁴². In Antalya, a Syrian national was tortured by officers and was later transferred to the Gaziantep Removal Centre, all the while suffering physical violence during the transfer⁴³. In 2020, the Constitutional Court ruled that a Kazak detainee had been subjected to torture in Erzurum after being held in solitary confinement for 10 days⁴⁴. Lawyers who provide legal aid in removal centres report a variety of bureaucratic and practical barriers, making it impossible to even locate or contact the refugees they represent⁴⁵. Eight lawyers and one interpreter from Izmir Bar Association were even arbitrarily detained for several hours within the Harmandalı Removal Centre⁴⁶.

⁴⁰ AIDA, *Country Report: Turkey, 2020 Update*, available at: https://asylumineurope.org/wp-content/uploads/2021/05/AIDA-TR_2020update.pdf, page 40; Norwegian Organisation for Asylum Seekers, *A critical review of Turkey's asylum laws and practices December 2018 Update, Seeking Asylum in Turkey*, available at: https://www.noas.no/wp-content/uploads/2019/02/Tyrkia-2018-Update_Web.pdf, page 25 (accessed 28 January 2022)

⁴¹ Deportation Monitoring Aegean, *Surrendered to Harmandali Removal Prison – How EU policies lead to expulsion and maltreatment of migrants deported to Turkey*, 4 June 2019, available at: <https://dm-aegean.bordermonitoring.eu/2019/06/04/surrendered-to-harmandali-removal-prison-how-eu-policies-lead-to-expulsion-and-maltreatment-of-migrants-deported-to-turkey/> (accessed 28 January 2022)

⁴² Deportation Monitoring Aegean, *Surrendered to Harmandali Removal Prison – How EU policies lead to expulsion and maltreatment of migrants deported to Turkey*, 4 June 2019, available at: <https://dm-aegean.bordermonitoring.eu/2019/06/04/surrendered-to-harmandali-removal-prison-how-eu-policies-lead-to-expulsion-and-maltreatment-of-migrants-deported-to-turkey/> (accessed 28 January 2022)

⁴³ AIDA, *Country Report: Turkey, 2020 Update*, available at: https://asylumineurope.org/wp-content/uploads/2021/05/AIDA-TR_2020update.pdf, page 116 (accessed 28 January 2022)

⁴⁴ Y.K case, 2016/14347, 2 June 2020

⁴⁵ AIDA, *Country Report: Turkey, 2020 Update*, available at: https://asylumineurope.org/wp-content/uploads/2019/04/report-download_aida_tr_2018update.pdf, page 92 and 93 (accessed 28 January 2022)

⁴⁶ European Council on Refugees and Exiles, *Turkey: Lawyers Arbitrarily Detained in Izmir Removal Centre*, 31 May 2019, available at: <https://ecre.org/turkey-lawyers-arbitrarily-detained-in-izmir-removal-centre/> (accessed 28 January 2022)

The biggest threat for refugees is the systematic violation the principle of non-refoulement⁴⁷. Turkish authorities are forcing third country nationals to sign or fingerprint documents of “voluntary repatriation”, which they either do not understand – because they are illiterate, or the documents are only in Turkish – or after they are threatened with violence or beaten⁴⁸. Some people were told that they were signing a registration document, a confirmation of receipt of a blanket, or a form that expressed their desire to remain in Turkey⁴⁹. They are then deported on a bus, handcuffed and beaten when they asked to go to the toilet or drink water⁵⁰. In some cases, the refugees were allegedly handed over to the Ahrar al Sham armed group (Islamist insurgent group)⁵¹.

Publicly, the Turkish authorities deny such deportations. However, according to Amnesty International, Turkish officials – in private conversations – admit to it. According to one Turkish lawyer, a senior official of Directorate General of Migration Management of Turkey admitted that Turkey is sending Syrians back to Syria⁵². Amnesty International documents 20 cases of unlawful forced returns, which occurred between 25 May and 13 September 2019, with most (14) happening in July 2019. These

⁴⁷HIAS, *Proposal regarding the classification of Turkey as a safe third country*, 14 May 2021, available at:

https://www.hias.org/sites/default/files/greece_doc_save.pdf?fbclid=IwAR3aomFvGwG2qPxSlbBbf2Gj2JCsUc7-s8j0CF3FSstGD3J0BptJc7p2xq4, page 61; Afghanistan Analysts Network, *Afghan Exodus: Migrants in Turkey left to fend for themselves*, 22 December 2020, available at: <https://www.afghanistan-analysts.org/en/reports/migration/afghan-exodus-migrant-in-turkey-left-to-fend-for-themselves/> (accessed 28 January 2022)

⁴⁸Syrians for Truth & Justice, *Turkey Continues to forcibly return Refugees, ignoring international warnings that Syria is still unsafe*, 14 February 2022, available at: <https://stj-sy.org/en/turkey-continues-to-forcibly-return-refugees-ignoring-international-warnings-that-syria-is-still-unsafe/> (accessed 28 January 2022)

⁴⁹The Guardian, *Turkey accused of using threats and deception to deport Syrian refugees*, 25 October 2019, available at: <https://www.theguardian.com/global-development/2019/oct/25/turkey-accused-of-using-threats-and-deception-to-deport-syrian-refugees> (accessed 28 January 2022)

⁵⁰ Human Rights Watch, *“Repatriation” of Syrians in Turkey needs EU action*, 7 November 2019, available at: <https://www.hrw.org/news/2019/11/07/repatriation-syrians-turkey-needs-eu-action> (accessed 28 January 2022)

⁵¹Amnesty International, *Illegal mass returns of Syrian refugees expose fatal flaws in EU-Turkey deal*, 1 April 2016, available at: <https://www.amnesty.org/en/latest/news/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal/> (accessed 28 January 2022); European Commission, *Turkey Report 2020*, 6 October 2020, available at: https://www.ecoi.net/en/file/local/2038780/turkey_report_2020.pdf (accessed 28 January 2022)

⁵² European Commission, *Turkey Report 2020*, 6 October 2020, available at: <https://www.ecoi.net/en/file/local/2018904/EUR4411022019ENGLISH.pdf>, page 11 (accessed 28 January 2022)

are detailed cases that are illustrative of a much larger issue⁵³. Between 2019 and 2021 Turkey reportedly deported over 155,000 Syrian refugees to Syria, committing refoulement under the veil of “voluntary return”⁵⁴.

January 2022 was marked by group deportations of tens of Syrians, most of whom had not committed any crimes. Instead, many carried *kimliks*, work permits, and student paperwork. Not only male refugees are targeted⁵⁵. Recent reports document horrific violations against Syrian refugees, including children, returned to Syria mainly on the basis of allegations of disloyalty or “terrorism”. These violations include torture (“*They electrocuted me between the eyes*”) and rape of women and their children as a “welcome” to their country. Amnesty International documented five cases whereby detainees had died in custody after returning to Syria, while the fate of 17 forcibly disappeared people remains unknown⁵⁶.

⁵³*Ibid.*, page 12

⁵⁴ Syrians for Truth & Justice, *Turkey Continues to forcibly return Refugees, ignoring international warnings that Syria is still unsafe*, 14 February 2022, available at: <https://stj-sy.org/en/turkey-continues-to-forcibly-return-refugees-ignoring-international-warnings-that-syria-is-still-unsafe/> (accessed 28 January 2022)

⁵⁵*Ibid.*

⁵⁶Amnesty International, *Syria: Former refugees tortured, raped, disappeared after returning home*, 7 September 2021, available at: <https://www.amnesty.org/en/latest/news/2021/09/syria-former-refugees-tortured-raped-disappeared-after-returning-home/> (accessed 28 January 2022)