



HREIT

HUMAN RIGHTS AND EQUALITY INSTITUTE OF TÜRKİYE

THE REPORT

ON EVALUATION OF PUSHBACK ACTIONS AGAINST ASYLUM SEEKERS AND IRREGULAR MIGRANTS FROM A HUMAN RIGHTS PERSPECTIVE





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HUMAN RIGHTS AND EQUALITY INSTITUTION OF TÜRKİYE

Address: Yüksel Street No: 23 | 06650 Kızılay/ANKARA

Phone: +90 312 422 78 00 | Fax: +90 312 422 78 99

www.tihek.gov.tr | tihek@tihek.gov.tr

Within the scope of preparing the report, delegation consisting of Expert on Human Rights and Equality Dr. Ertuğrul YAZAR and Assistant Experts on Human Rights and Equality Sueda İMAN and Ayşe Nazlı MERCİMEK under the chairmanship of Human Rights and Equality Institution of Türkiye Board Member Dilek ERTÜRK took part in the writing of the report, held national and international meetings, and conducted site field visits as well as Pushback Observation Group Members of our Institution Assoc. Dr. Ayselin YILDIZ, Dr. Nihal EMINOGLU, Atty. Tuğçe Duygu KÖKSAL, Lieutenant Commander Mevlüt MERCAN, Atty. Gamze GÜL ÇAKIR KILIÇ and Expert on Migration Mustafa ÇELİK contributed to report preparing process.

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Address: Yukarı Öveçler Mah. 1238 Street No: 9/5 Çankaya / ANKARA

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Phone: +90 312 394 48 63 | Fax: +90 312 394 48 65

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ABBREVIATIONS

AA	Anadolu Agency
ABR	Aegean Boat Report
ARSIS	Association for the Social Support of Youth
ASAM	Association for Solidarity with Asylum Seekers and Migrants
BVMN	Border Violence Monitoring Network
CC	Constitutional Court
CCPR	Covenant on Civil and Political Rights
CJEU	The Court of Justice of the European Union
COE	Council of Europe
CPT	Council of Europe Anti-torture Committee
ECCHR	European Center for Constitutional and Human Rights
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EDRi	European Digital Rights
ENNHRI	European Network of National Human Rights Institutions
EP	European Parliament
EU	European Union
Frontex	European Border and Coast Guard Agency
GCR	The Greek Council for Refugees
GLAN	Global Legal Action Network
GNCHR	Greek National Commission for Human Rights

HIAS	Hebrew Immigrant Aid Society
HRW	Human Rights Watch
IBID	Ibidem
ICMPD	International Center for Migration Policy Development
IOM	International Organization for Migration
LCL	Legal Centre Lesvos
LFIP	Law on Foreigners and International Protection
NGO	Non-Governmental Organization
NTA	National Transparency Authority
OHCHR	Office of the United Nations High Commissioner for Human Rights
OLAF	European Anti-Fraud Office
OXFAM	Oxford Committee for Famine Relief
RC	Removal Center
Para	Paragraph
RVRC	Racist Violence Recording Network
HREIT	Human Rights and Equality Institution of Türkiye
TRT	Turkish Radio and Television Corporation
TÜGAM	Turkish Migration Research Center
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	UN Refugee Agency
UNICEF	United Nations International Children Emergency Fund



FOREWORD

Pushback actions to be defined as *“actions of rapid, systematic, unlawful, forced and often violent transfer, repelling and forced return of asylum seekers and irregular migrants across an international border immediately or shortly after crossing the border, in violation of international human rights obligations”* lead to violations in terms of many right categories defined at the contractual and legal level, in particular the right to life, the prohibition of torture and ill-treatment, and the right to access the asylum procedure.

Localization of pushback practices, especially in the Aegean Sea borders and in our territorial waters, as well as in other geographies has also alerted our Institution Human Rights and Equality Institution of Türkiye (HREIT) carrying out activities within the framework of its duties and authorities of *“protecting and promoting human rights, guaranteeing the right of persons to be treated equally, preventing discrimination in the enjoyment of legally recognized rights and freedoms, fighting torture and ill-treatment effectively and fulfilling the duty as a national preventive mechanism in this regard”* as defined in Law No. 6701. In this context, our institution made site visits and meetings with many national and international institutions/organizations in order to examine pushbacks from land and sea after the Board Decision. Thus, official data and statistics were collected from relevant stakeholders, these data were analyzed and a report was prepared to eventually serve as an international reference.

This report discussing the human rights violations of pushed back asylum seekers and irregular migrants is prepared in accordance with the provisions *“working to protect and promote human rights, prevent discrimination and remedy violations”* and *“providing information to the public opinion, publishing special reports on matters falling under its mandate in addition to regular annual reports when deemed necessary”* regulated on Article 9 of HREIT Law No. 6701 as titled “Duties of the Institution”.

The fact that asylum seekers and irregular migrants are deprived of their fundamental human rights and pushed back on a global scale, and this has become an official policy reaches to alarming rates. It is necessary to analyze and evaluate these pushback actions from a human rights perspective. This report, which includes on-site investigation, documented violations, all observations and results for the purpose of monitoring and evaluating the systematic push-back actions carried out by our neighboring countries on our Aegean Sea and Western borders, especially Greece, is presented to the public in order to contribute to the field.

I would like to express my gratitude to the valuable members of all public institutions, representatives of non-governmental organizations (NGOs), academicians, bar associations contributing and supporting reporting process with their pluralist methodological approach and views and evaluations on the basis of participatory stakeholder, as well as valuable personnel of our Institution contributing visit and reporting process.

Prof. Dr. Muharrem KILIÇ
Chairman of Human Rights and Equality Institution of Türkiye

EXECUTIVE SUMMARY

There was great “migration waves” throughout the history of humanity, as a result of natural disasters, war, exile, starvation, famine or humanitarian crises. So, the modern age we live in is described as the “age of migration”. Rapidly increasing migration mobility appears as an international issue area. Considering the social, economic and socio-psychological dimensions of the issue, it is seen that ‘migration management’ is an area required to be carried out with the active participation of all actors and stakeholders who are parties to the issue. In this context, the developments experienced was put into report form by Human Rights and Equality Institution of Türkiye (HREIT) as a national human rights institution, in order to monitor and evaluate the systematic pushback actions, especially by Greece, on our Aegean Sea and Western borders.

The data included in the report and constituting a basis for the evaluation are based on the information and documents obtained by HREIT during site visits made to examine pushbacks from the sea and land. Information and documents obtained from site visits and online meetings, as well as public institutions and organizations with an official letters in this regard were used. Reference sources included outputs and publications obtained from the studies of international organizations, bar associations and NGOs; national and international reports published on the issue; judicial opinion of the European Court of Human Rights (ECtHR) on human rights and immigration law; declarations, statements and publications by human rights representatives or rapporteurs of organizations such as United Nations (UN) and Council of Europe (COE), as well as reliable data received from the media.

Site Visits

“Monitoring” has a broad conceptual framework that describes the effective collection, verification and immediate use of information to discuss human rights issues. In the context of human rights, the term monitoring includes the collection and observation of information about events; visit to places such as detention places and refugee camps; meetings with Government officials to obtain information, seek solutions and carry out other urgent follow-ups. In this context, HREIT contacted many national and international institutions/organizations in order to monitor human rights violations as a result of push-backs on-site, and made site visits to examine push-backs from land and sea.

The necessary information, documents, solution proposals based on statistics and scientific data were requested from the relevant public institutions such as the Ministry of Foreign Affairs, the Directorate of Migration Management and the Coast Guard Command, the Provincial Directorates of Migration Management of İzmir, Aydın, Edirne, Muğla and Çanakkale through the Governorships, Provincial Gendarmerie Commands, Provincial Police Departments and Coast Guard Command's affiliates as well as NGOs and bar associations interviewed within the scope of site visits, in accordance with the relevant article of the Law No. 6701 in order to form the basis for the evaluations to be made during the preparation phase of the report. Although the data reached HREIT through the Governorship at the final stage, specific to the provinces where the site visits were made, many institutions and organizations such as Provincial Directorate of Migration Management, Coast Guard Aegean Sea Region Command, Provincial Security Directorate and Provincial Gendarmerie Command took part in the preparation of the data. Site visits

were made in Aydın, İzmir and Edirne, respectively, to make on-site observations. Edirne was included in site visits since it is the only province where pushbacks from land took place. It is seen that the provinces where pushbacks from the sea took place are Aydın, Balıkesir, Çanakkale, İzmir and Muğla. Since it will not be possible to include all provinces in site visits, Aydın and İzmir were selected as the provinces in terms of the localization in the Aegean Sea and the existence of very short and dangerous routes as a result of consultations with the Directorate of Migration Management and the Coast Guard Aegean Sea Region Command. However, numerical data on the entire Aegean Sea were obtained through the Coast Guard Command.

Background of Pushback Actions

The background of pushback actions, which has been observed to increase especially in recent years; was evaluated under the headings of “Rapidly Increasing Migration Mobility, Position of Türkiye and Greece on the Migration Route, Process After 18 March Reconciliation, Security Approaches of Countries, Pushback Methods of Greece and Human Rights Centered Policy of Türkiye”.

The obstacles faced by those forced to migrate due to the civil war and deprivation they are exposed appear as the newly built walls/border lines, the wire fences and “pushbacks” carried out in violation of human rights standards. This is clearly revealed by site visits of our institution, the information and documents obtained, and the interviews with the pushback victims.

The extent of pushbacks on land and sea borders by some COE member states, especially Greece, in recent years and the scale of pushbacks can be read as an indication that states disregard their international human rights obligations. HREIT is deeply anxious about that pushing back asylum seekers and irregular migrants has now become an official policy.

Evaluation of Pushback Actions from Human Rights Perspective

It is seen that pushback actions to be defined as rapid, systematic, unlawful, forced and often violent transfer of asylum seekers and irregular migrants across an international border immediately or shortly after crossing the border are in violation of many right categories. It is observed that Greece, as the active subject of these actions during the pushback process, takes an attitude contrary to the guarantees in the international human rights conventions to which it is a party and the standards it has declared its loyalty.

Pushback actions constitute a violation of the law in terms of many categories of rights defined in the law, especially the right to life, the right to protect and develop one's material and spiritual existence and the prohibition of torture and ill-treatment. The right to access to the asylum procedure since it creates a restriction on the right to object to the de facto refoulement decision taken against them, as well as the right to an effective remedy may also be the subject of a violation. This may also be evaluated for the prohibition of collective expulsions that was prohibited in accordance with EU law and international law, because pushback actions are often carried out against a group. Although Greece is not a party to the Additional Protocol No. 4 to the European Convention on Human Rights (ECHR) that regulates the prohibition of collective expulsions, this will not prevent Greece's actions from being evaluated on human rights.

Evaluation and Recommendations

HREIT is deeply anxious about the increasing number of violence and serious human rights violations, and calls for ending pushback actions upon reminding the public once again that saving lives on land and at sea should be “first priority”. Within the framework of the observations and determinations obtained during the site visits, the information obtained from the public institutions and the reports of many organizations documenting the violations, HREIT calls for the public and the responsible stakeholder institutions and organizations to fulfill the following recommendations.

Recommendations for Greek State Authorities

- To cease all push-backs from land and sea borders immediately, without a personalized procedure to prevent the violations of the principle of non-refoulement, the prohibition of collective expulsions and/or the right to effective remedies,
- To execute all allegations and investigations regarding unlawful forced return, arbitrary detention, non-compliance with asylum procedures, excessive use of force, violence and other abuses in independent, impartial and prompt manner,
- To ensure that pushback victims and all other actors can safely report violations and their claims are duly followed,
- To avoid adopting laws and policies allowing people to be pushed back without a personalized procedure,
- To keep the records of asylum seekers and immigrants deprived of their liberty in Greece,
- To raise awareness of national and international public opinion in order to increase social common sense in Europe, especially in Greece, and to ensure that pushback cases appear transparently in the national and international press,
- To release refugees and migrants arbitrarily detained in Greece,
- To end the criminalization of individuals and groups working with refugees, asylum seekers and migrants, and to create a suitable environment for NGOs, journalists and activists to do their jobs freely and unimpededly and report any violations.

Recommendations for EU Institutions, Frontex and Member States of Council of Europe

- To take urgent measures against Greece in order to restore conditions in accordance with European asylum and fundamental rights law,
- To provide emergency support to Greece-led humanitarian crisis experienced on the Turkish-Greek land and sea borders,
- To determine pushback routes in the process of monitoring, documenting and reporting human rights violations in which organizations such as Frontex is involved, and to monitor and observe frequently via vehicles such as ships and drones that make camera images on these routes in compliance with the protection of personal data, although pushback cases are tried to be recorded by especially T.R. Coast Guard Command and many NGOs with documents,
- To create “Pushback Cases Monitoring and Reporting System” so that pushbacks are monitored and reported actively and systematically,
- To file an action for infringement against Greece by EU Commission due to the violations of EU Law on Asylum and Fundamental Rights based on serious and consistent evidence that pushbacks continue.





I. INTRODUCTION

I. INTRODUCTION

"Pushback" actions being widespread on a global scale are defined as "practices carried out to repel, stop and force refolement of asylum-seekers and irregular migrants" in violation of the basic guarantees of human rights.¹ Pushbacks include the refusal of asylum request, forced returns in contradiction with the principle of non-refoulment, failure to individual guarantees in deportation proceedings, as well as risks to shocking violence and degrading treatment and the right to life.²

It is stated in the report of European Center for Constitutional and Human Rights (ECCHR)³ that the prevention of access to the right to apply for asylum with systematic pushback actions carried out by states, and discouraging asylum seekers from migration by keeping out of the custody of law and law enforcement without any procedure.⁴ Applying pushback actions to stop and discourage asylum seekers escaping the battle and/or migrants trying to go elsewhere for economic motives is incompatible with international human rights law. While many NGOs describe pushbacks as 'unlawful'; Amnesty International (AI) considers these actions, in addition to this unlawfulness, as a *"de facto policy tool"* of the Greek Border Control.⁵

The principle of universality of human rights requires the protection and promotion of 'human rights' of people who have to move from one place to another as a subject of right, the protection of human dignity and compliance with the principle of rule of law. In this context, *"Evaluation Report on Pushback Actions Against Asylum Seekers and Irregular Migrants from Human Rights Perspective"* is based on human dignity that is basis of "metaphysical basis"⁶ of being human in the existential sense. As a matter of fact, our Institution carries out its activities in accordance with the principles of *"protection and promotion of human rights, guaranteeing the right of people to be treated equally, anti-discrimination in benefiting from legally recognized rights and freedoms"* as required by field of duty.

The term *"asylum seeker"* included in the report means "a person seeking security in a foreign country and waiting for the result of the application for refugee status pursuant to relevant national or international documents in order to be protected from persecution or serious harm"; the term *"irregular migrant"* means "a person being deprived of legal status in a transit or host country due to illegal entry, violation of entry conditions or expiration of the visa".⁷ Especially, the victims of pushbacks and interviewees are irregular migrants and also asylum seekers wishing to benefit from the asylum procedure after escaping war or persecution. Therefore, asylum seeker and/or irregular migrant will be used together in the report, due to distinction and difficulty in determining the status as a result of pushback actions.

1 Amnesty International, Greece: Violence, Lies, and Pushbacks: Refugees and Migrants Still Denied Safety and Asylum at Europe's Borders, 2021, p. 11.

2 COE, Pushed Beyond the Limits Four Areas for Urgent Action to End Human Rights Violations at Europe's Borders, Recommendation by the Council of Europe Commissioner for Human Rights, 2022, p. 7.

3 ECCHR, Analyzing Greek Pushbacks: Over 20 Years of Concealed State Policy Without Accountability, 2021, p. 2, https://www.ecchr.eu/fileadmin/Publikationen/ecchr_analysis_greek_pushback_practice.pdf, (E.T. 12.06.2022)

4 OHCHR, Contribution by the Greek National Commission for Human Rights (GNCHR) to the UN Special Rapporteur on the Human Rights of Migrants in Reply to the Questionnaire on Pushback Practices and Their Impact on the Human Rights of Migrants, 2021. p. 6-7.

5 Amnesty International, Greece: Violence, Lies, and Pushbacks: Refugees and Migrants Still Denied Safety and Asylum at Europe's Borders, p. 11.

6 Kiliç, Muharrem, *Social Rights During Pandemic: Socio-Legal Dynamics of Social Rights*, Seçkin Publishing, Ankara 2021.

7 IOM, Glossary of Migration Terms, (eds. Richard Perruchoud and Jillyanne Redpath), Second Edition, p. 27, 74.

It does not seem possible for victims of pushbacks to pass to refugee status following asylum in the states applying pushbacks since the right to apply for asylum is not put into practice due to their being pushed back. Accordingly, although the term “refugee” is not preferred in the report, it was observed that the concepts of refugee, asylum seeker and irregular migrant are used together in most of the referenced sources. Therefore, the report will refer to the term refugee either in the broader context of persons affected by all migration movements or by preserving the approach of the institutions referenced as a source. It should be emphasized that the main emphasis of the report is the approach based on human rights, regardless of these definitions, and that it deals with all migrants.

On the other hand, this report uses the concept of “pushback” in order to define “including but not limited to, rapid, systematic, unlawful, forced and often violent transfer of asylum seekers and irregular migrants across an international border immediately or shortly after crossing the border, without taking into account their individual situations and complying with the necessary human rights guarantees”. It is seen that pushback actions are in the nature of a direct intervention in terms of many rights categories, especially the right to life, the right to protect and develop one's material and spiritual existence, the prohibition of torture and ill-treatment and the right to access the asylum procedure. Pushback actions deprive individuals of the right to object to the refoulement decision and the right to an effective remedy, as defined in the relevant legal regulations. Illegal pushback actions may also be evaluated in the context of “prohibition of collective expulsions” prohibited under EU law and international law, since they are mostly related to a group.

Rapidly increasing migration mobility appears as an international issue area. It is obvious that all actors who are parties to the issue should take the initiative and produce solutions at the point of “migration management”. It is essential to accept that mass migrations have an impact like factories producing “redundant people” in the modern age as in Zygmunt Bauman's words, and to discuss the refugee crisis as a ‘humanity's crisis’. Considering that these “redundant people” had to set off for a refuge away from their home and/or a more promising life since they became unemployed or they were refused for political reasons, policy making will be compatible with the fundamental paradigmatic principles of human rights.⁸

The obstacles faced by those forced to migrate due to the civil war and deprivation they are exposed appear as the newly built walls/border lines, the wire fences and “pushbacks” carried out in violation of human rights standards. This is clearly revealed by site visits of our institution, the information and documents obtained, and the interviews with the pushback victims. The extent and the scale of pushbacks on land and sea borders by some COE member states, especially Greece, in recent years can be read as an indication that states disregard their international human rights obligations.

It is seen that the developing neighboring countries are mostly affected by the rapidly increasing migration mobility. 73% of refugees resettled to a third safe country live in countries neighboring their country of origin. This may lead political, economic and social problems in countries such as Türkiye and

8 The New York Times, The Refugee Crisis Is Humanity's Crisis, 2016. <https://www.nytimes.com/2016/05/02/opinion/the-refugee-crisis-is-humanitys-crisis.html>, (E.T. 10.05.2022).

Greece neighboring to conflict areas and in countries used as transit migration routes. In this context, American political scientist Hannah Arendt states that the only way to problematize the situation for the nation-states is the deportation of the migrating people, upon the mass appearance of refugees. Accordingly, she says *"these groups not accepted by any state and not assimilated anywhere were now homeless when they left their homeland; they were now stateless when they left their state; they were now rightless when they were deprived of their human rights, they were tailings of the earth."*⁹

As national human rights institution of Türkiye, HREIT is deeply anxious about that pushing back asylum seekers and irregular migrants has now become an official policy. A thematic report titled *"The Report on Evaluation Pushback Actions Against Asylum Seekers and Irregular Migrants from a Human Rights Perspective"* was prepared after the decision taken by the Board being the decision body of HREIT, in order for these crises in terms of human rights not to turn into a new wall of shame in Europe, and for migrants not to be the "tailings of the earth" in Arendt's words and "redundant people" in Bauman's words.

A. Legal Basis

Article 3 of the Principles Relating to the Status of National Institutions Established for the Promotion and Protection of Human Rights (Paris Principles) that was adopted by UN General Assembly includes the provision *"to submit to the Government, Parliament and any other competent body, at the request of the authorities concerned or through the exercise of its power, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human right."*¹⁰

National human rights institutions play an important role in ensuring the respect to the human rights of migrants, including national borders. This critical role is recognized by diversified institutional actors such as European Parliament (EP) and CoE Committee of Ministers. In addition to reporting, the obligation to monitor appears as one of the main missions of national human rights institutions. EP recognizes the critical role of national human rights institutions in monitoring of the process of forced return of migrants for human rights after calling for *"using Commission and its Member States, existing independent monitoring bodies such as national and international organizations and National Human Rights Institutions in cooperation or designating them as mandatory return monitoring systems."*¹¹

CoE Committee of Ministers underlines that National Human Rights Institutions play an important role in preventing pushbacks within the framework of National Preventive Mechanisms and Paris Principles under UN Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).¹²

9 Arendt, Hannah, *The Sources of Totalitarianism-2 Imperialism*, (trans. Bahadır Sina Şener), İletişim Publishing, 6th Edition, Istanbul 1998, p. 256.

10 UN General Assembly, *Principles Relating to the Status of National Institution*, Resolution A/RES/48/134, 1993, m. 3.

11 European Parliament Resolution of 17 December 2020 on the implementation of the Return Directive (2019/2208 (INI)), m. 35.

12 CoE Committee of Ministers, *Pushback Policies and Practice in Council of Europe Member States*, Adopted at the 1367th meeting of the Ministers Deputies (12 February 2020), Second part-session Reply to Recommendation: Recommendation 2161 (2019)", 2020, m. 4.

European Network of National Human Rights Institutions (ENNHRI) emphasizes unique position and status of national human rights institutions for the protection and promotion of human rights of migrants at European borders, through 'their roles for monitoring and reporting at the borders, existence of grievance mechanisms, independent investigations, access to justice, reviewing practices, policies and legislation, and a culture of respect for human rights'.¹³

Pursuant to Law No. 6701 that is HREIT's law of establishment, HREIT has comprehensive duties and authorities within the framework of and in line with international texts, foundations and the expectations of institutions. Subparagraph "a" of the first paragraph of Article 9 titled "Duties of the Institution" in the Law contains provision: *"Working to protect and promote human rights, prevent discrimination and remedy violations"*; Subparagraph "l" contains provision *"Providing information to the public opinion, publishing special reports on matters falling under its mandate in addition to regular annual reports when deemed necessary"*; Subparagraph "m" contains provision *"Following and assessing international developments in areas of human rights and non-discrimination."*

HREIT decided to prepare a thematic report titled ***"Evaluation Report on Pushback Actions Against Asylum Seekers and Irregular Migrants from Human Rights Perspective"*** with the Decision dated 1 February 2022 and numbered 169. This report was written by HREIT within the scope of the duties defined in the relevant Law.

B. Methods and Limitations

The data included in the report and constituting a basis for the evaluation are based on the information and documents obtained by HREIT during site visits made to examine pushbacks from the sea and land. Information and documents obtained from site visits and online meetings, as well as public institutions and organizations with an official letter in this regard were used. Reference sources included outputs and publications obtained from the studies of international organizations, bar associations and NGOs; national and international reports published on the issue; judicial opinion of the European Court of Human Rights (ECtHR) on human rights and immigration law; declarations, statements and publications by human rights representatives or rapporteurs of organizations such as UN and COE, as well as reliable data received from the media.

In addition to all these official information and documents, the statements of pushback victims and/or their relatives were also taken as reference in the report writing. Sensitivity was shown to obtain the consent of the pushback victims especially in the interviews held in removal centers. The interviewees were given comprehensive information about the purpose of site visits and the planned report, where and how the received statements will be used, and the confidentiality of data, interviews were conducted with their consent. The consent of the relevant persons was obtained, their photos were taken and they are informed that their faces would be reflected in the report without being seen. The questions asked to the pushback victims were prepared with great care and Observation Group formed within HREIT finalized the questions.

13 ENNHRI, Report on Gaps in Human Rights Accountability at Borders, 2021, p. 6.

The questions included issues such as “nationality, age, gender information, their language-dialect information, the number of spouses and children, if any, with whom they traveled together, their age, the country they came from and the reason for their departure, their destination countries in Europe and whether they have relatives in these countries, whether there were any family members separated while being pushed back, Information about the cities they prefer on the route of entry and exit to Türkiye, the agreement method regarding the migrant smuggler, the fees paid, nationality information, their experience with the pushbacks by the Greek authorities, whether there is a change in the treatment of vulnerable groups when they are pushed back, whether they received legal aid, civil society support, interpreter support or whether they asked to appoint a lawyer from a bar association, what kind of pushback method was applied, whether their phone, passport and money were confiscated, what complaints they had about rights violations in this process, the process they went through in Greece, whether they were taken to a place, if so how it happened, which camp if they stayed in any camp, and the situation in the temporary refugee camps in Greece, the differences in treatment of the Greek and Turkish official authorities, whether they were taken for a health check by the state authorities in Türkiye, whether they were interviewed, information about the administrative decisions taken against them, whether they would like to cross the border again, and the current situation in the processes of applying to the judicial remedy, especially to the ECtHR, if any.

Many actors, including national and international human rights institutions, non-governmental organizations, media and international organizations, contributed significantly to the preparation process of this report on the basis of stakeholdership. Pushback actions by Greece constitute the focus of this report. In the context of the relevant issue, EU institutions, including the governments of EC member states, elected officials and EU Border and Coast Guard Agency (Frontex), have also been identified as addressee.

The necessary information, documents, solution proposals based on statistics and scientific data were requested from the relevant public institutions such as the Ministry of Foreign Affairs, the Directorate of Migration Management and the Coast Guard Command, the Provincial Directorates of Migration Management of İzmir, Aydın, Edirne, Muğla and Çanakkale through the Governorships, Provincial Gendarmerie Commands, Provincial Police Departments and Coast Guard Command's affiliates as well as NGOs and bar associations interviewed within the scope of site visits, in accordance with the relevant article of the Law No. 6701¹⁴ in order to form the basis for the evaluations to be made during the preparation phase of the report. Although the data reached HREIT through the Governorship at the final stage, specific to the provinces where the site visits were made, many institutions and organizations such as Provincial Directorate of Migration Management, Coast Guard Aegean Sea Region Command, Provincial Security Directorate and Provincial Gendarmerie Command took part in the preparation of the data.

Site visits were made in Aydın, İzmir and Edirne, respectively, to make on-site observations. Edirne was included in site visits since it is the only province where pushbacks from land took place. It is seen that the provinces where pushbacks from the sea took place are Aydın, Balıkesir, Çanakkale, İzmir and Muğla. Since it will not be possible to include all provinces in site visits, Aydın and İzmir were selected as

14 Law No. 6701, art. 19/4: “It is obligatory to submit the information and documents requested by the institution regarding the subject of investigation and research with a justification, within thirty days from the date of notification of this request.”

the provinces in terms of the localization in the Aegean Sea and the existence of very short and dangerous routes as a result of consultations with the Directorate of Migration Management and the Coast Guard Aegean Sea Region Command. However, numerical data on the entire Aegean Sea were obtained through the Coast Guard Command.

The main contribution of this report is to share the numerical data on pushback cases in the first quarter (first three months) of 2020, 2021 and 2022 by the institutions included and contacted in this report with the public, to analyze these data and to report them and point out the issue areas and to develop solutions in this regard.

Information and documents requested are anonymized and sensitivity was shown protection of personal data. Collection and reflection of such data in the report to cover the year 2020, 2021 and the first quarter of 2022 reveals the actuality of the relevant report. It is also important that many institutions work separately and their data is analyzed for the first time in a report from a human rights perspective.

Our Chairman of the Institution, Prof. Dr. Muharrem Kılıç sent an official letter to Maria Gavouneli, President of the Greek National Commission for Human Rights (GNCHR) for purposes such as “to obtain information and documents of similar content, to make site visits including the Greek islands, and to organize meetings to share experiences on human rights violations on land and at sea”. One of the limitations of the report is that there was no response to the letter emphasizing that pushback actions and migration are a common concern for both sides in the Aegean Sea, and therefore the views of the Greek authorities could not be reflected in the report.

The report covers site visits made in March after 1 February 2022 when the Board, the decision-making body of our Institution, decided to prepare a thematic report on the evaluation of pushback actions in terms of human rights. During the visits, the officials of Coast Guard Command and Directorate of Migration Management stated that irregular migration started to increase especially after the spring, therefore data and pushback cases in the first three months of the year were relatively low. In this context, one of the limitations of the report is that our observations made in March and the human rights violations detected are likely to show an increasing trend.

The main reason for adding removal centers to site visits is both the desire to conduct interviews with pushback victims and the need to identify the problems experienced in the removal centers, especially the capacity problem, as a result of pushbacks. However, the main reason for making the process sustainable is the fact that the capacity of our country's removal centers is close to the capacity of removal centers in all European countries. Pushback victims interviewed in removal centers as part of site visits include persons held in centers with a maximum history of 1 year in accordance with the Law on Foreigners and International Protection (LFIP) numbered 6458. It should be annotated in the report that the asylum seekers and irregular migrants who were admitted to the center as a result of the dramas experienced especially after Pazarkule Incidents could not be interviewed. However, the dramas and human rights violations experienced at the Pazarkule Border Gate were tried to be included in the report.

According to the data of the Coast Guard Command, the majority of pushback cases occur in the Aegean Sea. 305 of 312 events in 2020, 625 of 628 events in 2021, and all 109 events in 2022 (as of 04

March 2022) took place in the Aegean Sea. The main reason for the localization of site visits preferred within the scope of the report in the Aegean Sea is the statistical data on pushback cases.

C. Information and Documents Requested from National and International Institutions and Organizations

Information and documents requested from public institutions are as follows:

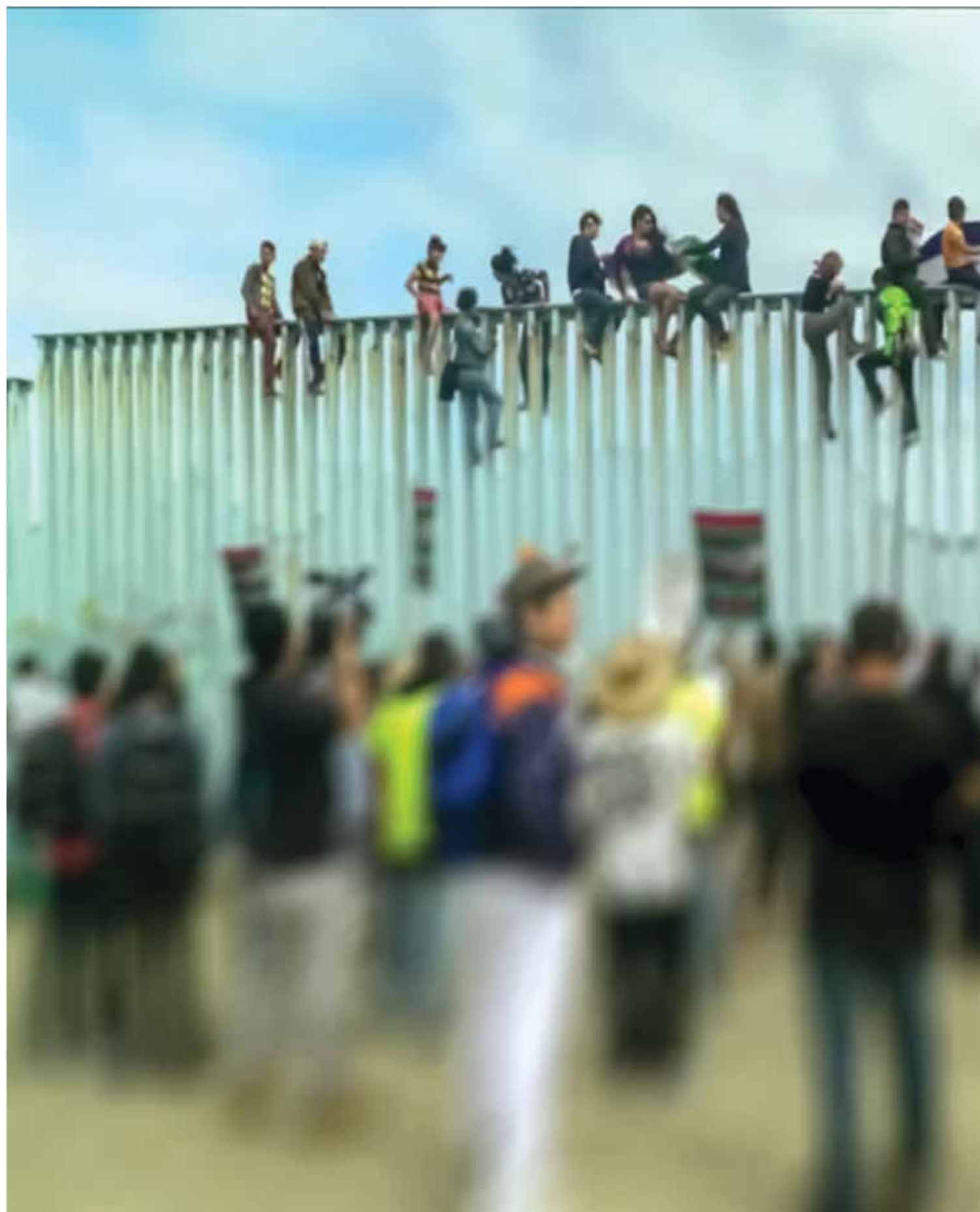
- Statistical data on age, gender, nationality and disability status of asylum seekers and migrants rescued as a result of pushback actions, especially by Greece in our border provinces,
- Statistical data based on age, gender, nationality and disability status of asylum seekers and migrants who lost their lives in our border provinces, as a result of pushback actions, especially by Greece, and information and documents including how these cases resulted in death,
- Information and documents on the methods of pushback (separately at sea and on land) by our neighboring countries in the Aegean Sea borders and in our territorial waters, and statistical data on pushbacks cases with batons, guns, spraying water and creating waves, and evidence such as photographs and videos, if any,
- Information and documents regarding the additional measures taken by the Institutions for children, women, pregnant, disabled and elderly asylum seekers rescued as a result of pushbacks,
- Interviews identifying the motivation behind the preference of asylum seekers and irregular migrants, who were rescued as a result of pushbacks, for crossing through migration routes, and statistical data, information and documents showing the motivations of migrants within the framework of the information obtained in these interviews,
- Information on the procedure for recording the push-back cases, statistical data showing the administrative detention, deportation and asylum decisions on the rescued asylum seekers and irregular migrants, and information and documents on the procedure applied to provide safe return of these people to their countries,
- Information on whether a comprehensive reporting study was conducted on pushback cases, and information on the availability of research and scientific meetings held in cooperation with international institutions and organizations on the subject,
- Statistical data on migrant smugglers who are caught and in the investigation and prosecution phase, and information and documents on the procedure of Migration Administration to intervene in the ongoing criminal processes of these people,
- Financial and other problems faced by our country in the process of struggling with pushbacks, and solutions offered by our Institutions for these problems.

Relevant public institutions reported that they had some difficulties and problems at the point of submitting such data to HREIT. In this context, the followings were stated in particular:

- Difficulties in obtaining a legally obtainable crime scene footage of pushbacks by Greece,
- Pushback victim foreigners are not regulated in the relevant legislation, therefore it is necessary to take a decision for deportation and/or administrative detention by following the normal procedure,
- If these decisions are taken, the problem of firstly taking the deportation and administrative detention decisions to the court as an objection by the lawyers assigned within the scope of legal aid,
- Uncertainty as to whether the decisions for deportation will be rescinded or what status will be given,
- Not to share correct information about the identity information of foreigners because of their desire to move to Europe, not to stay in Türkiye or to get legal status,
- Lack of information in foreigners that complaining to ECtHR about European countries will prevent re-transition or acceptance in Europe after the transition,
- The difficulties including the prolongation of the time although a case has been filed to ECtHR, lack of any address/contact information of the foreigners concerned, and the problem of not being able to reach the foreigners in the replies and follow-ups coming from ECtHR since their aim is not to settle in Europe.

This information requested from public institutions constitutes one aspect of the report. Another issue contributing to the report to have a richer content was the inclusion of information and documents received from people, institutions and organizations interviewed face-to-face or online. In this context, UN Refugee Organization and Türkiye Offices of International Organization for Migration (IOM), International Center for Migration Policy Development (ICMPD), Council of Europe (COE) Special Representative for Migration and Refugees, A21 Greek Directorate and Migration Research Foundation negotiated, Izmir and Edirne Bar Associations Association for Solidarity with Asylum Seekers and Migrants contacted under site visits, Refugee Rights Center provided a comprehensive reference to the report with the data they presented. The data requested from these institutions are as follows:

- What are the studies conducted on pushbacks within your organization?
- What are the cooperation activities carried out with public institutions and organizations?
- Do you have publications such as reports and analysis on the subject?
- Do you have a working group on the subject?
- What are the organizations that you think useful to contact for report writing?
- From which international institutions/organizations can information and documents be requested?
- Have you worked on pushbacks with your Greek representation in the past?
- Is there any organization publishing in Greece that you can recommend us to follow its studies?





II. SITE VISITS

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“Monitoring” has a broad conceptual framework that describes the effective collection, verification and immediate use of information to address human rights issues. In the context of human rights, the term monitoring includes collecting information about events and observing; visiting places such as detention places and refugee camps; obtaining information, seeking solutions and meetings with Government officials to make other urgent follow-ups.¹⁵ In this context, HREIT contacted many national and international institutions/organizations in order to monitor human rights violations as a result of pushbacks, and made site visits to examine pushbacks from land and sea.

A. Online Meetings of HREIT Delegation with International Contacts

1. Visit to Türkiye Office of UN High Commissioner for Refugees (UNHCR)

Our delegation visited Türkiye Office of UNHCR on 04.03.2022. Pushbacks on the Aegean and Mediterranean borders and the human rights violations caused by them were discussed in the meeting held with Deputy Representative Daniela CICCHELLA and Senior Protection Manager Neşe KILINÇOĞLU on behalf of UNHCR Türkiye.

2. Visit to Türkiye Office of International Organization for Migration (IOM)

Our delegation visited Türkiye Office of IOM on 10.03.2022. Pushbacks on the Aegean and Mediterranean borders and the human rights violations caused by them were discussed in the meeting held with IOM Türkiye Emergency Coordinator David SAVARD, IOM Türkiye Senior Program Officer and Public Liaison Officer Yelda DEVLET KARAPINAR.

3. Visit to International Center for Migration Policy Development (ICMPD)

Our delegation visited ICMPD on 08.04.2022. possible solutions for the prevention of human rights violations by Greece were discussed in the meeting held with ICMPD Western Balkans and Türkiye Regional Coordinator Tamer KILIÇ.

4. Meeting with Council of Europe Special Representative for Migration and Refugees (CoE)

Our delegation held an online meeting between the delegations with Special Representative of CoE Migration and Refugees Leyla KAYACIK on 13.04.2022. Within the scope of the relevant meeting, views were exchanged on the human rights violations at the border and the strategies to be followed to prevent these violations, the determination of the fields of activity to be carried out by our Institution and the Special Representative Office and the sharing of mutual experiences and suggestions.

15 OHCHR, Training Manual on Human Rights Monitoring, 2001, p. 9.

5. Meeting with A21 Greek Directorate

Our delegation held an online meeting with A21 Greece Director Marina NTONOPOULOU on 21.04.2022. Within the scope of the relevant meeting, views were exchanged on the human rights violations at the border and the strategies to be followed to prevent these violations, the determination of the fields of activity to be carried out by HREIT and the Directorate and the sharing of mutual experiences and suggestions.

6. Online Meeting with Migration Research Foundation

Our delegation held an online meeting with Hakan ÜNAY from Migration Research Foundation on 25.04.2022. During this meeting, views were exchanged on the human rights violations at the border and the strategies to be followed to prevent these violations, the determination of the fields of activity to be carried out by HREIT and the Directorate and the sharing of mutual experiences and suggestions.

B. Contacts of HREIT Delegation at National Level

1. Aydın Contacts of HREIT Delegation

HREIT Delegation started its site visits in Aydın on 14.03.2022 within the framework of the thematic report study on pushbacks. Aydın contacts were followed by İzmir, İzmir contacts were held between 15-16 March 2022 for 2 days and the visit was ended after high-level coordination meeting.

1.1. Visit to Governorship of Aydın

Our delegation started its contacts in Aydın by meeting with the Governor of Aydın Hüseyin AKSOY. During the meeting where Aydın Deputy Governor Armağan ÖNAL and Aydın Provincial Migration Management Director Soner KOÇ were also present, the studies conducted in Aydın were discussed for monitoring and evaluating the systematic pushback actions carried out by our neighboring countries, especially Greece, in the Aegean Sea and on our western borders.

1.2. Visit to Aydın Removal Center (RC)

Starting site visits after meeting with the Governor of Aydın, delegation first visited Aydın RC. A detailed presentation was made to the delegation about pushback cases in Aydın and the surrounding provinces. The presentation included detailed data on the information and documents requested by HREIT Delegation from Aydın Governorship.

Following the presentation, pushback victim asylum seekers and irregular migrants were interviewed at the Center, and the questions prepared with the Observation Group Members were asked to victims with their consent and showing sensitivity to the protection of personal data.

1.3. Visit to Aydın Kuşadası Coast Guard Station Command

After the meeting, Aydın Kuşadası Coast Guard Command was visited. After interviewing 35 asylum seekers and/or irregular migrants, including a baby, pushed back by Greece in the morning and rescued by the Turkish Coast Guard Command, comprehensive information was obtained about pushback case carried out by Greece.

After the meeting, Aydın Kuşadası Coast Guard Station Command was visited and the route and locations, where pushbacks took place, were observed on-site by Turkish Coast Guard boat. Aydın Deputy Governor Dr. Mehmet GÖDEKMERDAN, Kuşadası District Governor Sadettin YÜCEL, Kuşadası Coast Guard Station Commander Major Cihan SEYMEN and Migration Management Provincial Director Soner KOÇ accompanied with HREIT Delegation.

2. İzmir Contacts of HREIT Delegation

Our delegation continued its visits in İzmir province between 15-16 March 2022.

2.1. Visit to Coast Guard Aegean Regional Command

Our delegation firstly visited Coast Guard Aegean Regional Command within the scope of its İzmir contacts. Coast Guard Aegean Regional Commander Rear Admiral Serkan TEZEL, Coast Guard İzmir Group Commander Major Mutlu ÇELİK and Coast Guard Aegean Regional Command Department of anti-smuggling and organized crime Section Chief Major Turgut Çağatay ER attended in the meeting.

2.2. Visit to İzmir Harmandalı RC

Our delegation secondly visited İzmir Harmandalı RC within the scope of its İzmir contacts. İzmir Provincial Migration Management Director Ela ŞENÇOLAKLAR and İzmir Harmandalı RC Director Özlem ALTUNDAĞ were present during the visit.

Pushback victims in the center were interviewed one-to-one regarding the determination of the rights violations in Greece and the statements of the victims were recorded.

2.3. Visit to Governorship of İzmir

After visit to İzmir Harmandalı RC, Delegation visited Governorship of İzmir. Information was obtained about the pushbacks in İzmir during the meeting held with Governor of İzmir Yavuz Selim KÖŞGER.

2.4. Visit to İzmir Çeşme Coast Guard Station Command

After the meeting with Governorship, İzmir Çeşme Coast Guard Station Command was visited, and the routes and locations, where the pushbacks took place, were observed on-site by the Turkish Coast Guard boat.

During the visit to the routes and locations by the Coast Guard Command boat, exit points such as Karaabdullah Cape, Altinkum, Domuz Çukuru and Uçburunlar were seen. Information was also obtained about distant points such as Mersin Bay, Bosphorus Island, Süngükaya. It was explained that some points are very close to the Greek islands and that it is difficult to catch with the Coast Guard Command boat even if it is reported or noticed. Our delegation was informed that asylum seekers and irregular migrants persistently take this dangerous journey for a better future despite the large number of deaths and disappearances at sea. The dangers of the seas can be stated as follows:

- Asylum seekers and irregular migrants go on their journeys without knowing the sea and weather conditions and without being able to calculate correctly.
- Nonaquatic vessels are preferred.
- More passengers more than carrying capacity are carried.

2.5. Visit to İzmir Bar Association

HREIT Delegation started the second day of their İzmir contacts by visiting İzmir Bar Association. Information was obtained about the experiences of Bar Association with asylum seekers and irregular migrant within the scope of legal aid and the files transferred to ECtHR. Opinions and suggestions were shared on pushback cases, legal process, common activities required to be conducted on the rights violations experienced by the victims, and the rights violations experienced by refugees in general during the meeting attended by Bar Association President Atty. Özkan YÜCEL and Board Member Responsible for Migration and Asylum Commission Atty. Ayşe KAYMAK, and it was emphasized to develop cooperation between HREIT and İzmir Bar Association for the rights violations experienced by refugees.

2.6. Visit to Association for Solidarity with Asylum Seekers and Migrants (ASAM)

After İzmir Bar Association, ASAM İzmir Province Representation Office was visited. ASAM Aegean Regional Coordinator Esra ŞİMŞİR was contacted and the experiences of the Association at the border were reported to our delegation.

2.7. İzmir-Aydın High-Level Coordination Meeting

İzmir contacts of our institution ended with presentations to our delegation at the high-level coordination meeting held with the participation of İzmir and Aydın Deputy Governors, Provincial Police Chiefs, Provincial Gendarmerie Commanders, Provincial Migration Management Managers, Aydın and Harmandalı RC Managers, and representatives of Coast Guard Command, and with transferring its observations to the attendants by our delegation within the scope of İzmir and Aydın contacts.

3. Edirne Contacts of HREIT Delegation

The last site visit of the delegation was held in Edirne between 28-30 March 2022.

Our delegation visited Edirne province on 29.03.2022, in this context, our delegation visited to Edirne RC with the participation of Edirne Provincial Migration Management Director Musa AŞILIOĞLU and Edirne RC Director Enver TUTEL.

3.2. Visit to Edirne Provincial Gendarmerie Command

Reference: <https://www.uyduharita.org/edirne-haritasi-resimleri/edirne-haritasi-5/>

3.4. Visit to Governorship of Edirne

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3.5. Visit to Edirne Bar Association

After the governorship visit, our delegation visited Edirne Bar Association on 30.03.2022. Information was obtained about the experiences of Bar Association with asylum seekers and irregular migrants within the scope of legal aid and the files transferred to ECtHR. Opinions and suggestions were shared on pushback cases, legal process, common activities required to be conducted on the rights violations experienced by the victims, and the rights violations experienced by refugees in general during the meeting attended by Bar Association President Atty. Tacettin SIVRIKAYA and Board Member Responsible for Migration and Asylum Commission Atty. Anıl YAŞAGÖR. During the meeting held with Refugee Rights Center after the visit to Bar Association, the information was obtained about the experience of the Association in monitoring pushback actions.

3.6. Edirne High-Level Coordination Meeting

Edirne contacts of our institution ended with presentations to our delegation at the high-level coordination meeting held with the participation of Edirne Deputy Governor, Provincial Police Chief, Provincial Gendarmerie Commander, Provincial Migration Management Manager, Edirne RC Manager, and representatives of Border Guard Command, and with transferring its observations to the attendants by our delegation within the scope of Edirne contacts.

4. Ankara Contacts of HREIT Delegation

Within the scope of our report study, an evaluation meeting was held under the chairmanship of Prof. Dr. Muharrem KILIÇ, with the participation of relevant institutions, organizations and academics, and detailed information on pushbacks was shared with relevant stakeholders.

B. Data Obtained from Site Visits

HREIT Delegation has reached a large number of information, documents and records on pushbacks through site visits and official correspondences. The meetings held with asylum seekers and irregular migrants also contributed to the formation of the views and opinions of the Delegation. In this context, firstly, the institutional data in Aydın, İzmir and Edirne provinces where site visits were made, and then the interviews with RCs in these places and asylum seekers and irregular migrants whose proceedings are ongoing at Kuşadası Coast Guard Station Command will be included.

1. Institutional Data Obtained by HREIT Delegation in Aydın Province and Asylum Seeker/ Migrant Interviews

1.1 Institutional Data Obtained in Aydın Province

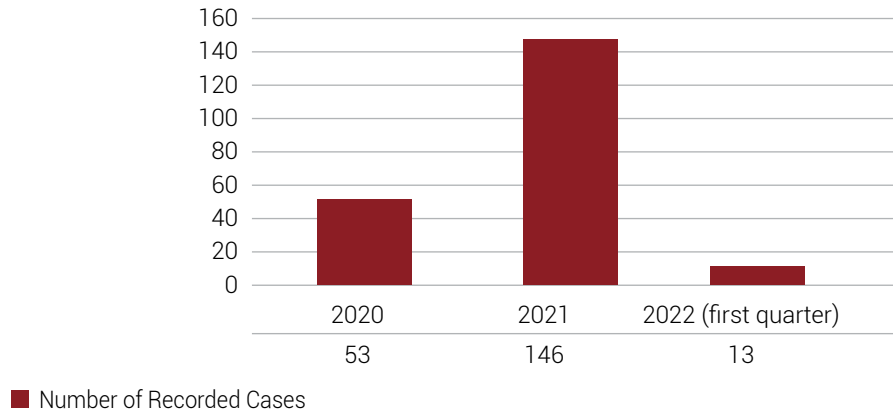
A total of 5 asylum seekers and/or irregular migrants, including **1** during 2020 and **4** during 2021 in Aydın, lost their lives due to Greece-led pushbacks. **1** of those who lost their lives was female and **4** were male, and all of them were between the ages of **18-30**.

NATIONALITY	NAME	SURNAME	GENDER	AGE	SPECIAL SITUATION
Congo	F.	G.M.	Male	23	
Cameroon	S.S.	Y.	Male	18-30	
Cameroon	A.	Y.	Male	18-30	
Somalia	S.A.	A.	Male	18-30	
Somalia	A.A.	J.	Female	18-30	

Table 1: Distribution by Nationality of Persons Who Died in Aydın as a Result of Greece-led Pushback Cases and Statistical Data on Special Situations such as Gender, Age and Disability

Reference: Governorship of Aydın

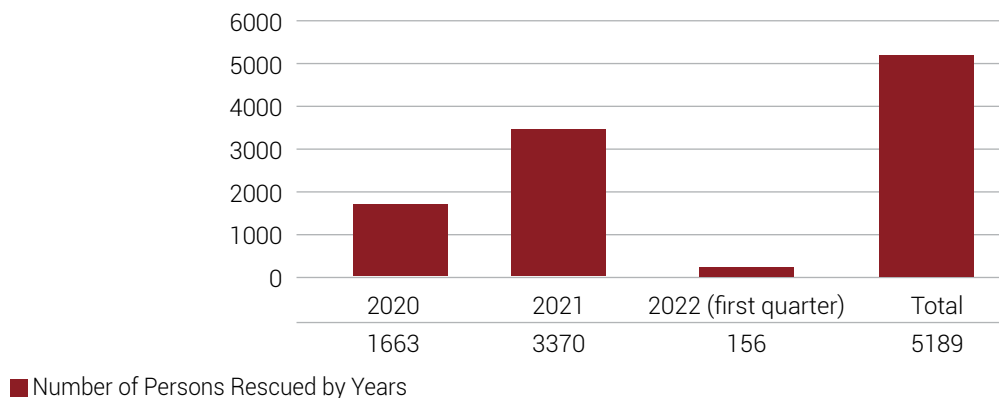
“Rescue operations” are the main preventive measures taken by the Coast Guard Command within the scope of pushback cases. In this context, it is seen that **a total of 212 pushback cases** have been recorded in Aydın since 2020. The distribution of recorded cases by years is given in the graph below.



Graph 1: Statistical Data on Greek Pushback Cases in Aydın in the Last 3 Years

Reference: Governorship of Aydın

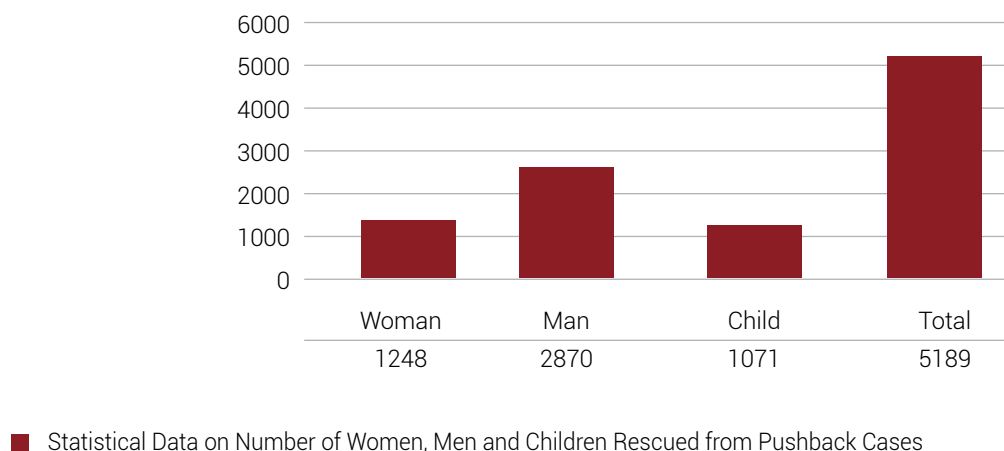
As a result of these pushback cases in the last 3 years, it is seen that a total of **5.189 asylum seekers and/or irregular migrants** were rescued by the rescue activities carried out in Aydın. Statistical data on the number of people rescued by years is given in the graph below.



Graph 2: Statistical Data on the Number of Persons Rescued from Greek-led Pushback Cases in Aydın in the Last 3 Years

Reference: Governorship of Aydın

It was shared that 5.189 refugees and/or irregular migrants rescued include **2.870 men, 1.248 women and 1.071 children**. The severity of pushback actions is revealed by the fact that approximately 45% of the total number of foreigners rescued consists of women and children.¹⁶ Statistical data on the gender and child information of people rescued from Greece-led pushbacks in Aydın for the last 3 years is given in the graph below.

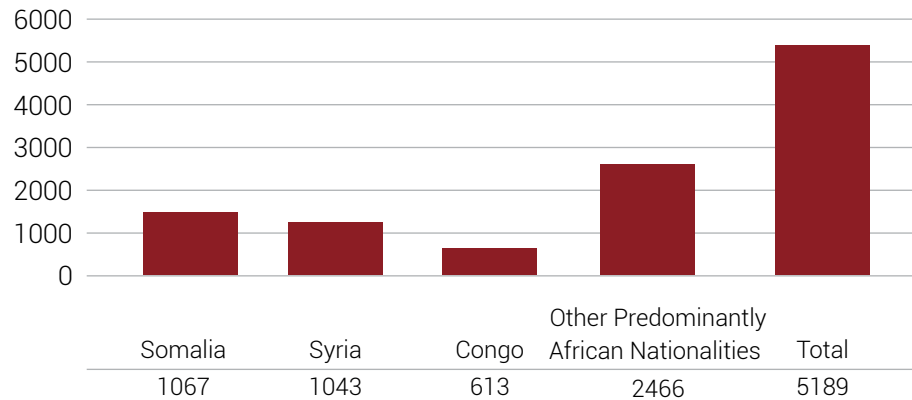


Graph 3: Statistical Data on the Number of Women, Men and Children Rescued from Greek-led Pushbacks in Aydın for the Last 3 Years

Reference: Governorship of Aydın

¹⁶ Relevant numerical data were obtained from Governorship of Aydın. Although the data reached HREIT through the Governorship at the final stage, many institutions and organizations such as Provincial Directorate of Migration Management, Coast Guard Aegean Sea Region Command, Provincial Security Directorate and Provincial Gendarmerie Command took part in the preparation process of the data.

The nationality distribution of the people rescued from Greece-led pushback cases in Aydın for the last 3 years will be a basic data source in order to contribute to the "migration route" specific to the Mediterranean-Europe. In this context, **5.189** asylum seekers and/or irregular migrants rescued consists of **1.067 people from Somalia, 1.043 people from Syria, 613 people from Congo and 2.466 people from other African nationals**. Statistical data on the nationality information of the people rescued from Greek-led pushback cases in Aydın for the last 3 years is given in the graph below.



■ Statistical Data on Nationality of People Rescued from Pushback Cases

Graph 4: Statistical Information on Nationality Information of People Rescued from Greek-led Pushback Cases in Aydın for the Last 3 Years

Reference: Governorship of Aydın

It is seen that Republic of Türkiye Ministry of Interior attaches importance to providing all kinds of facilities to those who want to make an individual application to ECtHR, especially for foreigners rescued from pushback cases and found to have been beaten/forced. In this context; an international complaint mechanism has been established by assigning lawyers within the scope of legal aid and other procedures for those who want to make an individual application to ECtHR, especially foreigners who have been beaten/forced, whose belongings have been stolen, and who have been subjected to inhuman treatment among foreigners who have been pushed back by Greece.¹⁷

It is seen that **34** of **271** foreigners rescued in 9 cases during 2020, **4** of **51** foreigners rescued in 4 cases during 2021, and **10** of **12** foreigners rescued in 3 cases during 2022 that may be evaluated within the scope of this procedure made an individual application to ECtHR within the framework of the information of Aydın Provincial Directorate of Migration Management on access to legal aid. It is important to establish such an opportunity for the rights violations. However, ECtHR states in its interim decision that lawyers should obtain confirmation whether individual applicants continue their complaints or not, in the application made by Aydın Provincial Directorate of Migration Management for 4 asylum seekers and/or irregular migrants, otherwise **the case will be deemed to have not been filed**.

¹⁷ Instruction letter of the Ministry of Interior dated 04/06/2020.

This gets more complicated by the possibilities that asylum seekers and/or irregular migrants may not be kept at RCs for a long time and they may have crossed into Europe despite the human rights violations in pushback cases, they may have died at sea, they may have returned to their country of origin and/or they may have changed their contact information such as phone number.¹⁸

The nationality distribution of foreigners caught in the Aegean Sea in order to pass from Türkiye to European countries is another data to be shared in Aydın province, and it is important as it reveals the migration route. It is seen that 2204 of 3318 foreigners caught within the scope of illegal exit within the borders of Aydın province in 2021 are foreigners of African nationality, and this corresponds to approximately 66.4% of the number of people caught within the scope of illegal exit. It is also understood that these countries are usually subject to visa, foreigners come to our country by obtaining a visa legally and they are trying to exit our country illegally by using Türkiye as a transit pass.¹⁹

1.2. Asylum Seeker/Migrant Interviews Held in Aydın Province

1.2.1. Asylum Seeker/Migrant Interviews Held at Aydın RC

Our Delegation held an interview with 4 migrants who were in Aydın RC and were learned to be pushback victims. Although no clear information could be obtained on the dates of birth of 4 migrants declared to be between 1977 and 1999, it was learned that they did not have any disability. In this context, our delegation was informed that 4 migrants came to Türkiye alone, they had relatives abroad, and they wanted to go to Europe to work and realize their other ideals. As stated in the previous meeting held at RC administration, it was determined that all 4 people interviewed have entered our country legally and have tourist visas. It was learned that their families are in Africa and they wish to take them in case they move to Europe.

When the asylum seekers and irregular migrants interviewed were asked about their attempts to cross into Greece; our Delegation was informed that *"They set out at 22:00 in the evening when the pushback occurred; the crossing boat is large; mostly Congolese nationals, including women, children and a disabled person, reached the Greek island of Samos (presumably) after a 5 hour journey; they stayed here for 24 hours; they were stopped in the city by people dressed in non-civilian clothes before they could reach the camp; they were beaten by armed people in a place under the bridge that no one could see; these people pulled a gun on them upon defending; they took everything they had with them, such as chargers, passports, medicines, IDs and money; their phones were first confiscated in order to prevent them from taking pictures and proving that they had set foot in Greece."* It was also stated that action was taken to take them to the port, their asylum requests were not heard by these people, they were put on a boat at 10:00 and left at the Turkish territorial waters border, and the Turkish coast guard boat reached and rescued them. Migrants interviewed told us that they do not have asylum requests and that they do not intend to make individual applications to ECtHR.

They also stated that they did not know who was crossing them as migrant smugglers, and that these people were hiding or constantly changing.

¹⁸ Official data from Governorship of Aydın.

¹⁹ Official data from Governorship of Aydın.

The story of a Congo national migrant, pushback victim interviewed by HREIT Delegation is as follows:

"I had to leave my country for political reasons. They killed my parents and left my sisters orphans behind. The sheep passed down to us by my father were killed. Our enemies fired a gun on us. I had to quit work. I had to sell everything I owned and leave the country. I wanted to move to Senegal with my family and my wife's family objected to this, they said that let our daughter stay here. I and my brother came to Türkiye by plane. If I can move to Europe one day, I will take my family; my wife and children with me."

1.2.2. Asylum Seeker/Migrant Interviews Held at Kuşadası Coast Guard Station Command

Following the visits to Aydın RC, interviews were held with 35 asylum seekers and irregular migrants, including a baby and a disabled person, who were pushed back at sea by Greece at midnight before. Information about their experiences was obtained from these interviewees who tried to cross to Europe through Greece many times before. It was learned that all the refugees and irregular migrants interviewed came to Türkiye illegally. The refugees and irregular migrants interviewed were asked where they came from to our country. Relevant persons informed our Delegation that they entered into our country from African countries such as Central Africa, Mali and Senegal. We were informed that the group interviewed includes asylum seekers and irregular migrants, with a baby and disabled person. It was reported that some of them have relatives in European countries, but most of them do not have a friend in the countries they want to migrate. It was learned that asylum seekers and irregular migrants have left their country due to war and/or economic motives and they want to start a new life in Europe, and most of them have to migrate since they cannot earn enough money in their country and cannot support their families.

When asylum seekers and irregular migrants were asked about their attempts to cross at night, our Delegation was informed that they were stopped by three Greek ships before they could cross into Greece; they were beaten with batons by black masked persons on board; money, passport, clothes and other personal belongings were confiscated; they treated in the same way to everyone, regardless of whether they are women, men, children, disabled or old; people's faces could not be seen as they were masked; they were never allowed to speak and therefore could not convey their right to benefit from the asylum procedure to the other party. It was stated that boats carrying asylum seekers and irregular migrants were pushed to the Turkish territorial waters border by creating huge waves after such ill-treatment.

There are also different situations alleged on the treatment of Greece, since the refugees and irregular migrants interviewed have tried to cross many times before. Irregular immigrants who have arrived in Greece before, claimed disgracing behaviors that women were harassed and women were undergone "vaginal examination" in order to get their money, incompatible with human dignity. The alleged cases include that people wearing "ninja masks" took part in pushback actions. For this reason, migrants stated that they could not understand whether the masked persons were civilians or not.

So much so that Lighthouse Reports, a Netherlands-based non-profit organization leading transnational investigations, states that *“the hardest part of Europe's migration policy is masked people on land and at sea”*. Masks worn by individuals in order not to take any legal responsibility for the illegal pushbacks of asylum seekers in the Balkans and the Aegean make it impossible to identify the perpetrators.²⁰



Image 1: Masked Persons with a Thin Black Veil, Described by Asylum Seekers and Irregular Migrants

Reference: Lighthouse Reports

20 Lighthouse Reports, Unmasking Europe's Shadow Armies, 2021, <https://www.lighthousereports.nl/investigation/unmasking-europes-shadow-armies/>, (E.T. 20.05.2022)

Pushback victim "H.D.I" interviewed by HREIT Delegation:

"I am 22 years old from Cameroon. There is war in my country. I came to Türkiye in January 2021 with a tourist visa. I stayed in Istanbul for 3 months; in Izmir for 8 months. My dream is to move to Norway or Germany with my sister. We set sail at 2 am with the intention of going to Samos for the first time in September 2021. 27 people in a small boat; everyone is from Congo. We reached the Greek shores at around 5 am. The brave ones got off and started walking. Women and elders were afraid to get off the boat. The soldiers came and fired the gun into the air to make them get off. I resisted. I had an asthma attack, I did not have a ventolin with me and the soldiers said they would take me to the doctor. They searched me, including my sexual organs.

They confiscated everything in a plastic bag. I had 50 euros and 20 dollars. We walked to another shore with soldiers about 10 km. They handed us over to 2 large masked men. They beat us with their fists, put 27 people on a non-motorized boat. They left us in the water, 2 boats came, one was orange and white and had a Greek flag. They shed a very strong light. They shouted "Go back Türkiye". We tried to use our hands as oars, we had no choice but to wait as the boat took on water. We called 158 when it started to dawn. The Turkish Coast Guard found us."

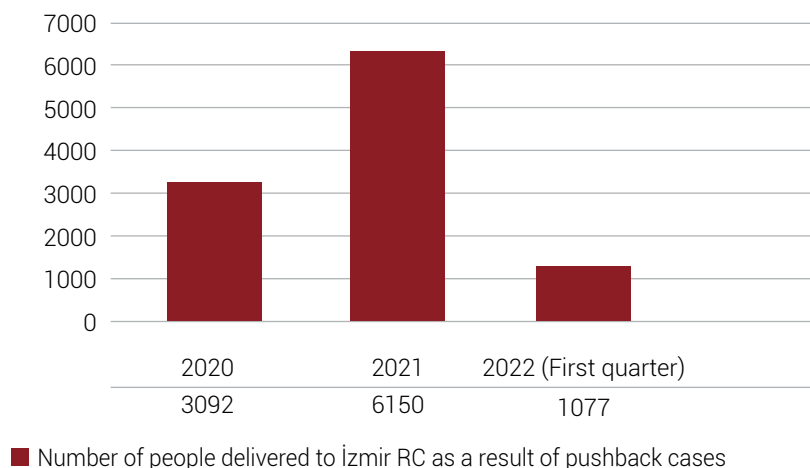
2. Institutional Data Obtained by HREIT Delegation in İzmir Province and Asylum Seeker/ Migrant Interviews

2.1. Institutional Data Obtained in Izmir Province

In Greece-led pushback cases, a total of **12** foreigners lost their lives in İzmir, including **2** in 2020, **8** in 2021, and **2** in the first three months of 2022. There are also at least 3 reports of missing cases due to pushbacks. Considering the distributions by nationality and gender, it was learned that 1 man from Congo nationality died on 22 May 2020 and 1 girl from Afghanistan nationality died on 29 June 2020 during pushback cases in 2020; M.S. from Palestinian nationality born in 1992 died on 14 January 2021 (1 male), S.K. from Sierra Leonean nationality born in 1999 (1 male), A.K. from Sierra Leonean nationality born in 1997 (1 male) and M.M. from Sierra Leonean nationality who is stated to be 25-year-old (1 male) died on 19 March 2021, 2 Cameroon nationals (male) whose identity information could not be determined died on 17 September 2021, 1 female and 1 male whose identity and nationality information could not be determined died on 24 September 2021 during pushback cases in 2021; 1 male person whose identity and nationality could not be determined died after being thrown directly into the sea due to pushback on 31 January 2022²¹ and

21 During İzmir-Aydın high-level coordination meeting regarding fatal pushback case that took place off the coast of Karaada, Çeşme district of İzmir on 31 January 2022: the following information was given to our delegation: "After the interviews conducted with the foreigners, they stated to be put on another boat by Greek Police Officers and thrown into the sea with child's life jacket, 2 persons survived and 1 person died. After interviews conducted with the foreigners who were subject to pushback, a lawyer was requested from the bar association within the scope of legal aid and the legal process was initiated. UNHCR officials also reported the situation by interviewing with the permission of the ministry. The event was also reported as news and provided to appear in the press.

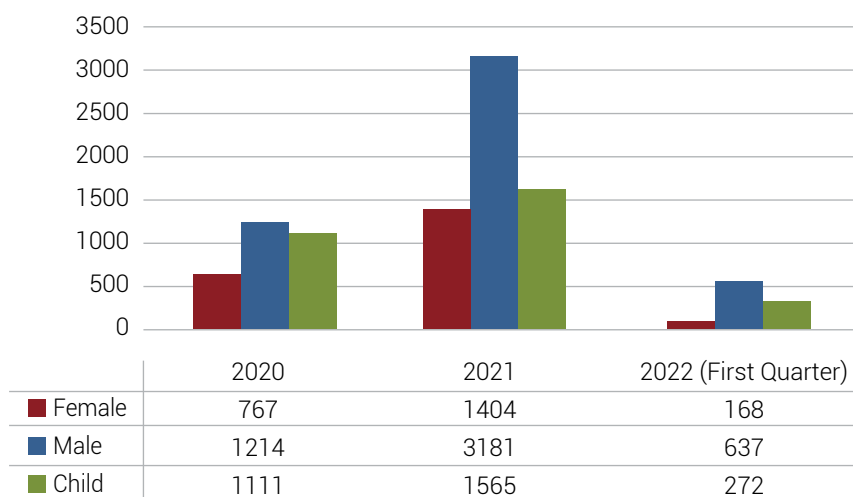
1 male person whose identity and nationality could not be determined died on 10 February 2022 during pushback cases in 2022.²²



Graph 5: Number of people delivered to İzmir RC as a result of pushback cases

The numerical data in the graph above reveal that there has not been a decrease in cases since 2020 when pushback cases started, while there is an increasing trend.

Distribution of people delivered to İzmir RC as a result of pushback cases



Graphic 6: Distribution of people delivered to İzmir RC as a result of pushback cases

22 Data from the Coast Guard Command.

Numerical data on the gender distribution of pushback cases in İzmir reveal that the most of irregular migrants is male. It is also seen that the number of pushback victim women is at a considerable size when compared to men. Another important statistical data drawing attention in the table is irregular child migrants are among the victims of being pushed from the sea.²³

There are "39" files already opened by foreigners who are pushback victims and followed up by co-execution with İzmir Bar Association and Legal Center Lesvos.

		Police	Sahil Güvenlik Yakalamaları	TOPLAM
Number of Events	2021	65	95	160
	2022	11	18	29
	Comparison	83% decrease	81% decrease	82% decrease
Number of Caught Migrants	2021	1.009	2.997	4.006
	2022	229	717	946
	Comparison	77% decrease	76% decrease	76% decrease
Number of Suspects	2021	83	19	102
	2022	22	1	23
	Comparison	73% decrease	95% decrease	77% decrease
Number of Detainees	2021	39	4	43
	2022	5	0	5
	Comparison	87% decrease	100% decrease	86% decrease

Table 2: Statistical data from Provincial Police Department, Anti-Migrant Smuggling and Border Gates Branch Office

Undoubtedly, migrant smuggling constitutes one of the important links of the chain leading to human rights violations. In this context, our country continues its fighting migrant smuggling effectively within the framework of prevention activities.²⁴ Statistics on migrant smugglers caught in İzmir are given in the table below.

²³ Official data from Governorship of İzmir.

²⁴ Annual Report on Combating Human Trafficking in Türkiye for the year 2020 by Presidency of Migration Management, Publication No: 61, June 2020, p. 2.

		Anti-Migrant Smuggling and Border Gates Branch Office	Group Department	Districts	TOTAL
Number of Events	2021	34	15	111	160
	2022	5	3	21	29
	Comparison	85% decrease	80% decrease	81% decrease	82% decrease
Number of Caught Migrants	2021	474	339	3.193	4.006
	2022	59	117	770	946
	Comparison	88% decrease	65% decrease	76% decrease	76% decrease
Number of Suspects	2021	56	11	35	102
	2022	10	7	6	23
	Comparison	82% decrease	36% decrease	83% decrease	77% decrease
Number of Detainees	2021	39	2	2	43
	2022	5	0	0	5
	Comparison	87% decrease	100% decrease	100% decrease	86% decrease

Table 3: Statistical Data on the Number of Events, Caught Migrants, Suspects and Detainees
(Anti-Migrant Smuggling and Border Gates&Group&Districts)

YEARS	Number of Foreign Nationals Rescued				TOTAL
	Female	Girl	Male	Boy	
2020	47	16	69	22	154
2021	348	106	741	110	1305
TOTAL	395	122	810	132	1459

Table 4: Statistical Data on Pushback Events transferred to İzmir Provincial Gendarmerie Command to Intervene and Process by the Coast Guard Command

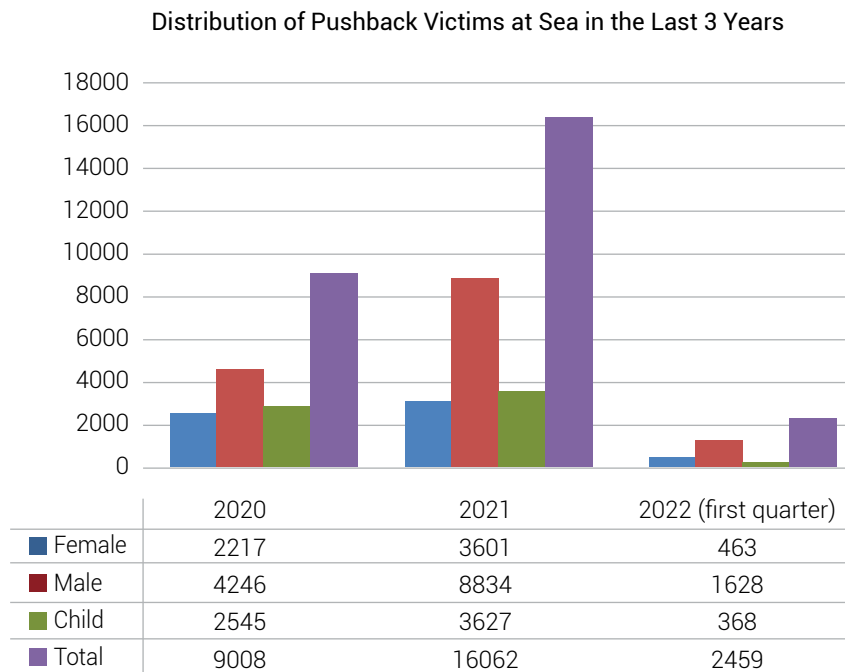
The nationalities of asylum seekers and irregular migrants who are pushback victims are given in the table below. In this context, it is seen that there is an intense wave of migration in African and North African countries and Middle East and West Asian countries, where factors such as war, civil war, politics and poverty are observed, and irregular migrants from these countries are exposed to pushback cases as a result of this.

Nationality	2020	2021	2022
Afghanistan	2.234	2.803	301
Angola	24	56	2
Azerbaijan	1	3	0
Bangladesh	13	204	41
Benin	1	8	0
Bermuda	0	1	0
Biafra	0	3	0
United Arab Emirates	0	1	0
Burkina Faso	2	18	2
Burundi	1	16	0
Botswana	0	10	0
Algeria	4	1	16
Djibouti	0	362	0
Chad	1	4	2
Dominican Republic	2	0	0
Eritrea	120	654	130
Ethiopia	5	21	18
Morocco	1	5	0
Ivory Coast	7	30	3
Palestine	284	1.585	647
Gabon	6	14	1
Gambia	46	50	9
Ghana	23	47	6
Guinea	52	105	31
South Africa	139	169	5
Haiti	10	68	17
India	2	1	0
Iraq	204	381	8
Iran	98	202	2
Cambodia	1	0	0
Cameroon	35	126	28
Kazakhstan	0	0	2
Kenya	1	8	13

Kyrgyzstan	0	4	0
Comoros	2	43	6
Congo	1.306	1.627	238
Cuba	2	0	0
Liberia	23	136	128
Libya	1	13	0
Lebanon	40	71	2
Malaysia	0	1	0
Mali	21	82	41
Egypt	34	139	0
Mauritania	1	17	0
Mozambique	1	0	0
Nepal	6	1	0
Niger	0	4	0
Nigeria	10	15	10
Central Africa	455	491	39
Pakistan	220	371	23
Russia	2	0	0
Rwanda	0	7	0
Senegal	45	113	23
Sierra Leone	9	52	11
Somalia	1.575	3.315	126
Sudan	6	34	1
Syria	1.857	1.828	152
Tanzania	3	6	0
Togo	36	40	11
Tunisia	3	2	0
Uganda	10	17	0
Ukraine	2	5	0
Yemen	20	667	364
Zambia	1	4	0
Zimbabwe	0	1	0
TOTAL	9.008	16.062	2.459

Table 5: Nationality Distribution of Pushback Victims Asylum Seekers and Irregular Migrants Rescued by Years**Reference:** Official data from the Coast Guard Aegean Regional Command

Numerical data on the distribution of pushback victims at sea for the years 2020, 2021 and 2022 are given below.²⁵



Graph 7: Distribution of Pushback Victims at Sea in the Last 3 Years

2.2. Asylum Seeker/Migrant Interviews Held in Izmir

20 asylum seekers and irregular migrants from different nationalities found to be pushback victims were interviewed at İzmir Harmandalı RC visited. It was learned that 5 Pakistan citizens aged between 16 and 25 entered our country illegally. The interviewees informed our Delegation that they wanted to move to Europe due to poverty and other economic reasons in their countries, to establish a life in Europe and to work there.

Most of the interviewees stated that they left their families in their country and they will try to take their family with them after they establish a good standard of living. These people stated that *they wanted to cross into Greece by boat, the migrant smuggler agreed and anticipated to be of Syrian nationality was in Istanbul, they paid a fee of 3000 Euros to cross to Greece, they tried to cross to Greece in a big boat with about 250 asylum seekers and irregular migrants, there were many children and women in the boat, they were beaten with batons by the Greek police who got on their boats, most people's phones were forcibly taken, they were prevented from crossing and they were pushed back by creating a big wave in the sea, Turkish Coast Guard Command reached them in a very short time after an asylum seeker on the boat called upon being pushed back and saved their lives.*

²⁵ Official data from Governorship of İzmir.

Our delegation was informed that most of the people in the boat were migrants from Pakistan, as well as Syrians and Afghans. They stated that they would try to cross again despite their bad experiences and therefore they did not consider to make an individual application to ECtHR. It was determined that the interviewees have a widespread belief that complaining about European countries to ECtHR will prevent crossing again or the process of being admitted to Europe after crossing. It is stated that the low number of individual applications to ECtHR results from the fact that the victims are worried about the length of the process and justice will be manifested late despite the large number of pushback cases.

Although a small number of asylum seekers and irregular migrants declared that they do not want to cross into Europe again due to being pushed back hard by Greek law enforcement or being defrauded by a migrant smuggler, the majority of them informed our delegation that they would try to cross the European border believing that there is a better future in Europe. The fact that a large number of asylum seekers and migrants gathered in the Pazarkule Border Gate area in March 2020 have already left their jobs, homes and belongings and stated that they would try to cross again even if they were pushed back many times, may be an indicator of their determination.²⁶

The story of a 19-year-old Pakistan citizen who was pushback victim, interviewed by HREIT Delegation is as follows:

"My father used drugs and beat me and my mother all the time. We tried to escape from him. My mother went to Bangladesh. She also gave me some money to go abroad. I came to Türkiye illegally through Bangladesh. If I return to my country, my father will find me again. No matter where I am, Türkiye or any other place, I don't want to go back to my country."

2 Lebanese migrants were also interviewed. As a result of the relevant interviews, it was learned that the interviewees were *between the ages of 18 and 23, one of them was working in a company selling medical supplies, the other studied Mechanical Engineering, the conditions were difficult in Lebanon, the dollar exchange rate was very high, there was unemployment, insecurity and theft*. Our delegation was informed that they have been in Türkiye for 3 months with a tourist visa, their family is in Lebanon and some other relatives are in Europe. Our delegation was informed that they paid 1.500 dollars per person, a group of 20 people, one of whom was pregnant, got on a 9 m2 boat, the other people on the boat were Somali citizens, they tried to cross to Chios, they were caught by the Greek police on the shore when they reached the island, they were beaten with batons (the scars of battery were also observed by our delegation), they were handcuffed and put in the car, their 600 dollars and phones were confiscated, and they saw the guns of the Greek police.

Lebanese citizen migrants who said that they had been defrauded by migrant smugglers before stated that they agreed with a Turkish migrant smuggler in their attempt to cross. Despite their bad experiences, they stated that they would cross to Greece again.

26 Migration Research Foundation, Turkish Migration Research Center (TÜGAM), Analysis on Cross-Border Experience and Determination of Irregular Migrants: Pazarkule Border Gate Case, 2020.

Other interviewees are Somali citizens. Somali citizen M.A. stated that he left his country due to poverty, he left his wife and 2 children in the country, he has been in Türkiye for 1 year, and he worked in shoe factories in Istanbul and Konya. He also stated that they agreed with a smuggler stating to be a Pakistan citizen, they set out for Italy with a large ship of 300 people with sick and elderly people, but two policemen with batons stopped this group and beat them when they set foot on a Greek island, and they were pushed back into Turkish territorial waters. He explained that they were saved when a migrant with a phone called the number of the Turkish Coast Guard. It should be noted that asylum seekers and irregular migrants tend to take much more dangerous routes such as the Italian route as a result of pushbacks, and this situation may lead to more human rights violations.

When another Somali citizen asylum seeker and irregular migrant was interviewed, he stated that they set out on a 2-deck boat with 220 people, they had relatives in Germany and Switzerland, but their main goal was to arrive in Italy. Moreover; our delegation was informed that they paid a fee of 1500-2000 dollars, they tried to cross from Izmir to Samos island with 10 asylum seekers and irregular migrants on a different boat, their phones, money and all other valuables were confiscated by men in masks and ninja clothes, beaten with batons, all of them were hit in the dark regardless of women, men, disabled, children, elder, windows of the boat were broken, ropes were cut, they were able to call the Turkish Coast Guard Command thanks to those who hide phones at the border of Turkish territorial waters and the boat coming from Urla rescued them.

3. Institutional Data Obtained by HREIT Delegation in Edirne Province and Asylum Seeker/Migrant Interviews

3.1. Institutional Data Obtained in Edirne Province

Leaving migrants to dune islets on Meriç within the borders of Edirne province appears as a frequent method in cases of pushing from land. In accordance with the rules of international law, Meriç constitutes the border between Greece and Türkiye. In this context, it is accepted that half of each island in m2 belongs to Türkiye and the other half to Greece. There are dune islets on Meriç formed as a result of low tide and its number is learned to reach several thousand. It is seen that there are disagreements about which country will take the sovereignty of these islets with increasing numbers day by day. In this context, it is accepted that half of the islets close to the Greek border will belong to Greece and the other half will belong to Türkiye.²⁷

Leaving asylum seekers and migrants to dune islets by the Greek border forces is not a pushback action in the usual sense, but it is a different method leading to victimization and rights violations of migrants. So much so that migrants abandoned to the islets are exposed to dangers such as hunger, thirst and freezing. It has been determined by the obtained data that Greece often pushes the migrants back by leaving irregular migrants on the side of the islands belonging to its borders. Although this action of Greece is not technically considered a pushback, migrants in life-threatening danger are rescued from these islets within the scope of humanitarian aid. Asylum seekers and irregular migrants left on the islets

27 Information obtained by HREIT Delegation from Edirne high-level coordination meeting.

are rescued by the Turkish Border Infantry Units within the scope of humanitarian aid and delivered first to the law enforcement units and then to the Provincial Directorate of Migration Management.²⁸

In this context, the statistics on the migrants left on the islets and their nationalities for the years 2021 and 2022 are given below.

Statistical Data on Migrants Left on Dune Islets in 2021													
NATIONALITY	January	February	March	April	May	June	July	August	September	October	November	December	Total
Afghanistan	12	5	0	9	54	27	48	3	58	1	60	58	335
Bangladesh	0	0	0	3	31	5	0	4	0	0	15	0	58
Algeria	0	0	0	1	0	1	18	3	3	0	1	0	27
Tunisia	0	2	0	3	0	0	0	2	0	0	3	0	10
Morocco	9	1	0	4	1	3	7	0	15	8	31	1	80
Iran	0	1	0	4	1	0	4	7	5	0	0	2	24
Pakistan	15	7	0	24	8	0	1	1	34	3	22	9	124
Iraq	8	2	0	2	14	48	12	5	2	0	0	13	106
Syria	38	23	0	100	60	92	102	14	177	29	43	84	762
Other	15	10	0	21	9	10	17	5	31	11	14	43	186
TOTAL	97	51	0	171	178	186	209	44	325	52	189	210	1712

Table 6: Statistical Data on Migrants Left on Islets in 2021

Number of Migrants Left on Dunes in the First Quarter of 2022				TOTAL
Nationality	January	February	March	
Afghanistan	82	374	249	705
Bangladesh	1	26	39	66
Algeria	6	2	47	55
Tunisia	1	2	1	4
Morocco	9	56	48	113
Iran	9	16	12	37
Pakistan	4	88	110	202
Iraq	11	19	10	40
Syria	118	399	212	729
Other	28	176	57	261
TOTAL	269	1158	785	2212

Table 7: Statistical Data on Migrants Left on the Islets in the First Quarter of 2022

²⁸ Official data obtained from Governorship of Edirne.

The distribution by nationalities regarding the irregular migrants delivered to the Edirne Governorship Provincial Directorate of Migration Management as a result of the pushback cases from land that took place within the provincial borders of Edirne in 2021 and 2022 is given in the table below.²⁹

Number of Migrants Caught in Edirne and Delivered to RC (2021)													
NATIONALITY	January	February	March	April	May	June	July	August	September	October	November	December	Total
Afghanistan	33	24	58	60	105	159	414	290	187	540	1106	1320	4296
Bangladesh	7	5	5	22	61	38	46	65	41	12	44	6	352
Algeria	11	11	4	2	5	8	26	21	15	10	10	31	154
Tunisia	8	9	11	5	7	5	8	13	4	7	8	8	93
Morocco	52	50	32	28	11	42	40	51	45	140	124	74	689
Iran	3	2	0	7	9	22	17	15	8	11	10	10	114
Pakistan	23	20	2	35	88	39	87	66	46	20	34	57	517
Iraq	17	9	49	26	38	70	36	32	10	17	28	36	368
Syria	86	153	173	284	271	261	325	404	479	701	412	466	4015
Other	35	32	17	53	72	211	257	241	106	82	84	119	1309
TOTAL	275	315	351	522	667	855	1256	1198	941	1540	1860	2127	11907

Table 8: Number of Migrants Caught in Edirne and Delivered to RC (2021)

Statistical Data on the Nationality of Migrants Caught in Edirne and Delivered to RC in the First Quarter of 2022				TOTAL
Nationality	January	February	March	
Afghanistan	1.006	813	557	2.376
Bangladesh	7	64	39	110
Algeria	24	9	20	53
Tunisia	5	4	7	16
Morocco	56	117	150	323
Iran	15	34	23	72
Pakistan	18	168	192	378
Iraq	33	33	26	92
Syria	343	935	406	1.684
Other	113	261	110	484
TOTAL	1.620	2.438	1.530	5.588

Table 9: Statistical Data on the Nationality of Migrants Caught in Edirne and Delivered to RC in the First Quarter of 2022

²⁹ Statistical table is not included since there were no pushback cases by Bulgaria in 2022.

Statistical Data on Persons Delivered to RC as a result of Pushback Actions by Greece (2021)													
NATIONALITY	January	February	March	April	May	June	July	August	September	October	November	December	Total
Afghanistan	0	0	0	6	8	3	20	0	11	5	0	0	53
Bangladesh	0	0	0	0	13	0	0	0	0	0	0	0	13
Algeria	0	0	0	0	3	0	0	1	0	0	0	0	4
Tunisia	0	0	0	0	0	0	0	0	0	0	0	0	0
Morocco	0	0	0	1	0	0	0	0	0	17	0	0	18
Iran	0	0	0	2	3	0	0	0	0	0	0	0	5
Pakistan	8	0	0	13	28	4	2	1	0	0	0	0	56
Iraq	0	0	0	4	18	4	0	4	0	0	0	0	30
Syria	0	0	0	46	78	2	14	12	0	0	1	0	153
Other	0	0	0	6	15	0	1	1	0	0	0	0	23
TOTAL	8	0	0	78	166	13	37	19	11	22	1	0	355

Table 10: Statistical Data on Persons Delivered to RC as a result of Pushback Actions by Greece (2021)

Statistical Data on Pushback Cases by Greece in the First 2 Months of 2022			TOTAL
Nationality	January	February	
Afghanistan	3	7	10
Bangladesh	-	-	-
Algeria	-	-	-
Tunisia	-	-	-
Morocco	-	2	2
Iran	-	-	-
Pakistan	-	4	4
Iraq	-	2	2
Syria	-	38	38
Other	-	17	17
TOTAL	3	70	73

Table 11: Statistical Data on Pushback Cases by Greece in the First 2 Months of 2022

Statistical Data on Persons Delivered to RC as a result of Pushback Actions by Bulgaria (2021)													
NATIONALITY	January	February	March	April	May	June	July	August	September	October	November	December	Total
Afghanistan	0	0	0	0	0	0	0	0	9	2	0	10	21
Bangladesh	0	0	0	0	0	0	0	0	0	0	0	0	0
Algeria	0	0	0	0	0	0	0	0	0	0	0	3	3
Tunisia	0	0	0	0	0	0	0	0	0	0	1	0	1
Morocco	0	0	0	0	0	0	0	0	2	0	0	4	6
Iran	0	0	0	0	0	0	0	0	0	5	0	0	5
Pakistan	8	0	0	0	0	0	0	0	0	2	0	2	4
Iraq	0	0	0	0	0	0	0	1	0	2	0	0	3
Syria	0	0	0	0	3	0	0	0	0	8	3	7	21
Other	0	0	0	0	1	0	0	0	0	0	1	0	2
TOTAL	0	0	0	0	4	0	0	1	11	19	5	26	66

Table 12: Statistical Data on Persons Delivered to RC as a result of Pushback Actions by Bulgaria (2021)

Edirne province appears an important route on the migration route of irregular migrants. This route is frequently preferred by irregular immigrants since Edirne has 204 km border with Greece and 88 km border with Bulgaria, and these borders consist of land and river lines that the crossing is less risky. Irregular migrants within the borders of the province are often caught by law enforcement officers and delivered to the Provincial Migration Management before they can attempt to cross into Greece over Meriç.

3.2. Asylum Seeker/Migrant Interviews Held in Edirne Province

6 migrants from Bangladesh, Pakistan, India and Cuba nationalities who were understood to have been subjected to pushback actions carried out over Meriç were interviewed one-to-one at Edirne RC. Information was obtained from the interviewed migrants about their experiences as a result of the pushback action they suffered during their migration journey to Europe.

Bangladesh citizen interviewees told our Delegation that *they were between 22 and 37 years old; they came to our country through illegal means; their families were staying in Bangladesh. They also stated that there was no war situation in Bangladesh, but they first came to Lebanon and then to Türkiye due to economic reasons, and they wanted to cross over to Europe via Greece. They stated that they had made a deal with a Pakistan citizen smuggler whose name they did not know and they had not seen this person. They also stated that they have not made any payment to this person yet, but if they cross to Greece, their families in Bangladesh will pay 3000-3500 Euros to this person.*

It was reported that *a total of 40 people estimated to be from Bangladesh, Pakistan and Nepal, crossed to Greece with 4 boats (non-motorized, with oars), 10 people per boat, over Meriç, and reached*

Greece at 3:00 am on 31 January 2022, they walked in the forest until 16.00 during the day and they were caught after the villagers informed the police. Our delegation was informed that they claimed that a hunter opened fire on them. 40 people caught together were asked to take out their phones and money, they reached a building, after walking for 2 hours with the police, they were searched, their clothes were taken off, then they were put in a car and brought to the shore of Meriç and sent to Türkiye by boat from there. It was stated that they only wore underwear, they were naked and there were adverse weather conditions (snow, raining). It was stated that their asylum requests were not heard during their stay in Greece and they were not even allowed to speak. It was learned that they made individual applications to ECtHR in Türkiye and complained about ill-treatment they experienced. It was learned that the relevant persons were visited by ASAM before.

Migrants from Pakistan, India and Cuba were also interviewed. It was learned that the ages of the people interviewed were 22, 28 and 33, respectively. It was learned that Migrant from Pakistan has been in Türkiye for 4 years, he came to our country to work after his father died, and he sent money to his family from there. Our delegation was informed that 'he borrowed money from his mother and wanted to cross over to Europe via Greece.' It was learned that they made a deal with a smuggler, who is talking in Arabic but whose origin is not known, for 2000 dollars in order to cross from Edirne, they came to Edirne from Istanbul by a car, they crossed the Meriç from here, they walked with the smuggler in the forest for two days, then the smuggler left them and they were caught by the police. It was reported that 'the police beat them after they were caught, they were shot into the air, they were asked where they were from, and they were not given access to the asylum procedure'. It was learned that the group including the interviewee was brought back to the Meriç shore and pushed back. It was learned that the interviewee did not want to make a complaint and was considering crossing the border again.

It was learned that Indian citizen interviewee "came to Serbia from India with a visa due to economic reasons, and his main goal is to go to Greece and work there". It was reported to our delegation that he was deported to Türkiye after he was caught in Greece. It was learned that he had access to a lawyer after his deportation and applied to ECtHR.

The Cuba citizen migrant interviewed stated that 'he came to Serbia with a visa for political reasons, he wanted to go to Italy by plane via Greece, but he was pushed back to Türkiye after he was caught in Greece. He stated that "there were 8 people in the boat pushed back, and those pushed back, including himself, were beaten by the police". It was concluded that the interviewee did not intend to apply to national or international legal mechanisms for personal reasons. It is considered that pushback of Greece to our country against pushback victims of Cuba citizens after crossing from Serbia to Greece without the will to choose our country as a target or transit country is an attitude contrary to international human rights obligations.





III.

BACKGROUND OF PUSHBACK ACTIONS

III. BACKGROUND OF PUSHBACK ACTIONS

A. Rapidly Increasing Migration Mobility

"2021 Global Trends Report" published by UNHCR reveals that the number of forcibly displaced people on a global scale has an increasing trend. Related Report records that more than 84 million people have already been displaced on a global scale. It is seen that 1% of the world's population has been displaced today. It is also noted that the number of forcibly displaced persons is "twice as much" compared to 2011, when the total number was less than 40 million. It is seen that more than two-thirds (68%) of all people fleeing their country comes from only five countries, namely 'Syria (6.8 million), Venezuela (4.1 million), Afghanistan (2.6 million), South Sudan (2.3 million) and Myanmar (1.1 million)'.³⁰

Numerical data reveal that developing countries host 85% of the world's refugees. It is seen that 73% of refugees resettled to a third safe country live in countries neighboring their country of origin. This may lead political, economic and social problems in neighboring countries. On the other hand, it is seen that countries among high-income countries according to the World Bank's classification³¹ only host 17% of cross-border displaced persons and do not have common sense in sharing responsibility.³² However, *foreword of Geneva Convention dated 1951 emphasizes that the responsibility of fighting refugee issue may not be imposed only on certain states, and any burdens and responsibilities resulting from this should be undertaken with international cooperation.*³³

Frontex also stated in its statement that the number of migrants who are mostly from Afghanistan and Syria, and tried to enter 27 EU countries illegally was more than 40,300 in the first quarter of 2022. It was noted that this figure is the highest in the last 6 years. In the related statement, Frontex stated that this figure showed an increase of 57% compared to the same period of the previous year.³⁴

B. Positions of Türkiye and Greece on the Migration Route

It is seen that the majority of refugees are hosted by the countries neighboring the crisis regions and low- and middle-income countries on a global scale. As one of these countries, Türkiye hosts the largest refugee population³⁵ on a global scale for approximately ten years. According to UNHCR data,

30 UNHCR, Mid-Year Trends, 2021, p. 2

31 World Bank Country and Lending Groups, 2022. <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups> (E.T. 10. 05.2022)

32 UNHCR, Mid-Year Trends, p. 2

33 Sub-Commission on Migration and Integration of Human Rights Investigation Commission, Report on On-Site Investigation of Refugee Crossings in Türkiye- Greece Border Region, p. 28.

34 Euronews, Frontex: The number of migrants trying to reach EU is at the peak of the last 6 years, 2022. <https://tr.euronews.com/2022/04/19/frontex-ab-ye-ulasmaya-cal-san-gocmen-say-s-son-6-y-l-n-zirvesinde>, (E.T. 01. 05. 2022)

35 The phrase "refugee" used here has been preferred in the context of international law and UNHCR data. Again, within the limitations recognized by 1951 Geneva Convention, our country has placed geographical reservations on the Convention and only accepts refugees from Europe due to war and similar reasons. In this context, the status given to Syrian refugees in our country is temporary protection status in accordance with LFIP No.6458.

Türkiye hosting at least 3.7 million refugees is followed by Colombia with 1,7 million, Uganda (1.5 million), Pakistan (1.4 million) and Germany (1.2 million) including Venezuelans displaced abroad.³⁶

Türkiye is used as a 'transit route' by irregular migrants, because our country is located at the intersection of Asia, Europe and Africa continents geopolitically, and it is a transit point between socio-politically and socio-economically undeveloped countries and European nations. It is also seen that Türkiye has become both a target country and a transit country for the migration journey intended to finalize in Europe in the ongoing individual or mass migration movements towards Europe due to the Syrian Civil War in 2011. Türkiye, which has been a transit or target country on migration routes throughout history, has faced an intense mass migration flow after the Syrian Civil War.³⁷



Image 2: Entry-Exit Routes to Türkiye

Reference: İzmir-Aydın High Level Coordination Meeting Presentation

It is seen that our country opening its doors to asylum seekers and migrants acts in accordance with the obligation "Neither state parties shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his (or her) life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion". regulated in the relevant provision of 1951 Geneva Convention.³⁸ Considering the obligations imposed on state parties by international conventions, Türkiye included 'principle of non-refoulement' in domestic law in accordance with LFIP that was entered into for upon publication on Official Gazette.³⁹

36 UNHCR, Mid-Year Trends, p. 2.

37 Presidency of Migration Management, Türkiye's Struggle Against Irregular Migration, <https://www.goc.gov.tr/turkiyenin-duzensiz-gocle-mucadelesi>, (E.T. 01.05.2022)

38 UNHCR Türkiye Representation, Convention on the Status of Refugees, 1951, art. 33.

39 LFIP numbered 6458, art. 4

The nationalities of asylum seekers and irregular migrants coming due to Türkiye's geographical location also vary. Considering the number of irregular migrants caught, it is seen that asylum seekers and irregular migrants are especially from Afghanistan, Pakistan, Syria, Iraq and Iran. Türkiye hosts more than half of Syrian citizens.⁴⁰

As the distance of the countries of origin of migrants to Türkiye increases, the migration routes they cross also lengthen. It is seen that irregular migrants of Afghan, Pakistan and Somali citizens in the region have reached Türkiye by crossing at least one other country border other than their own country borders. Irregular migrants coming from these three countries use the Iranian route to reach Türkiye. Irregular migrants of Afghanistan and Pakistan citizens cross to Türkiye over Iran while Somali citizens usually cross to Iran by sea and then to Türkiye by land.⁴¹ The absence of asylum procedures in Iran, as well as the existence of serious evidence that Iran is encouraging pushback actions against Türkiye also indicates that Iran has a key role on the migration route. As a result of their investigation at the border, Deputies being Members of the GNAT Subcommittee on Migration and Integration shared with the public that Iranian authorities directed Afghan migrants to the Turkish border by saying "Turkish soldiers do not have a characteristic of killing women and children, do not be afraid!"⁴²



Image 3: World Migration Route

Reference: TRT News

40 Data obtained from the Presidency of Migration Management.

41 Migration Research Foundation, Turkish Migration Research Center (TÜGAM), Analysis on Cross-Border Experience and Determination of Irregular Migrants: Pazarkule Border Gate Case, p.16

42 Hürriyet, "This is how Iran sends migrants to Türkiye: Do not be afraid; Turkish military do not kill women, children", 2021, <https://www.hurriyet.com.tr/dunya/iran-gocmenleri-turkiyeye-boyle-gonderiyor-korkmayin-turk-askeri-kadin-cocuk-oldurmez-41937504>, (E.T. 01.05.2022)

As can be seen from the image above, it is seen that Türkiye is at the crossroads of the world migration route due to its strategic location.⁴³ On the other hand, Greece constitutes the migration routes of asylum seekers and irregular migrants as a transit country mostly and a target country sometimes. Asylum seekers and irregular migrants are trying to cross to Europe through 3 main routes, namely the Central Mediterranean, the Western Mediterranean and the Eastern Mediterranean reaching from Türkiye to Greece and Bulgaria. It is seen that the route of pushbacks is the Eastern Mediterranean route, as shown in the image below.⁴⁴



Image 4: Eastern Mediterranean Route

Reference: National Geographic: The World's Congested Human Migration Routes in 5 Maps

C. Process After 18 March Reconciliation

After the irregular crossings to Europe over Türkiye reached the highest level in 2015, irregular and uncontrolled transits of asylum seekers and irregular migrants from our country's lands to Europe, especially the neighbor country Greece are greatly restricted after '18 March Reconciliation' that was announced as the "Summit Declaration" between EU and Türkiye in 2016 and applied for a certain period of time. While the crossings to Europe were at the highest level before the reconciliation, it is seen that the number of irregular crossings decreased significantly as a result of both the implementation of the reconciliation articles and the additional strict measures taken by our country. Although it was not signed, the provisions regarding the delivery of asylum seekers and irregular migrants crossing to the islands to our country and the resettlement of a Syrian citizen to European countries in return for each delivered

43 TRT, "The World Is Under "Migration Shower", 2019. <https://www.trthaber.com/haber/gundem/dunya-goc-saganagi-altinda-427713.html>, (E.T. 01.05.2022).

44 National Geographic, The World's Congested Human Migration Routes in 5 Maps, 2015, <https://www.nationalgeographic.com/culture/article/150919-data-points-refugees-migrants-maps-human-migrations-syria-world>, (E.T. 01.05.2022).

asylum seeker and irregular migrant that is explained as the “1 to 1” formula⁴⁵ was also included in the memorandum of understanding.⁴⁶

Undoubtedly, it is seen that Greece is one of the countries most affected by the wave of migration in the world, as it is located on the Eastern Mediterranean route. It was observed that the crossings to Greece on the route continued even if it is at a minimal level despite the additional strict measures in the period after reconciliation. While the pressure to migrate to European countries decreased after the reconciliation; there has been a period when the pressure of migration towards our country increased. In the period from 2016, when the 18 March Reconciliation was signed, to the present day, it is observed that Türkiye has paid maximum attention to fulfill all its obligations under the reconciliation. Events and processes such as the fact that other states did not adhere to the text of the reconciliation, Türkiye was not provided with sufficient support in the international arena for the operations carried out in Syria for the purpose of securitizing the region, and 33 martyrs were killed in Idlib affected the increasing trend of crossings again.⁴⁷ The news that *“Türkiye will no longer prevent the migrants who want to cross to Europe”* spread rapidly among the migrants and caused a perception that the borders were opened. As a matter of fact, it was observed that thousands of irregular migrants from different nationalities flocked to Edirne from many parts of Türkiye, especially Istanbul, due to its geographical proximity after hearing the news.⁴⁸

This situation faced by Greece has resulted in a series of measures ignoring the basic paradigmatic principles of human rights in the country. Greece tried to eliminate these transitions harshly and used methods including human rights violations that are expressed as pushback in the literature. Human rights violations were accompanied by the generally inadequate and overcrowded camps on the Aegean islands.⁴⁹ This led to the gradual but steady deterioration of migration policies in Greece facilitated by the lack of solidarity and assistance from European countries since 2019. The increasing militarization of Greece's borders to reduce arrivals at the Greek border, including strengthened inspection, deterrent infrastructures and increased deployment of law enforcement in 2020, is considered evidence of the country's tougher approach to migration. However, despite repeated refusals by the Greek authorities, an increasing number of reports were published regarding that the borders have been tightened from 2020, border force officials have used illegal techniques, including violence, arbitrary detention, dangerous maneuvers at sea and pushbacks to deter and counter the arrival of refugees and migrants.⁵⁰ It is seen that countries create physical and mental barriers to avoid migration waves.⁵¹

45 Republic of Türkiye, Ministry of Foreign Affairs, Questions and Answers on the Reconciliation between Türkiye and EU on March 18.

46 Republic of Türkiye, Ministry of Foreign Affairs, Türkiye-EU Summit Statement dated 18 March 2016, 2016, p. 1-4.

47 NTV, “33 martyrs, 32 injured in Idlib, Syria”, 2020, <https://www.ntv.com.tr/turkiye/son-dakika-haberi-suriye-idlibde-33-sehit-32-yarali,8bKetwRLr0qSegN7DFRruA>, (E.T. 01.05.2022).

48 Coast Guard Command officials stated that the aforementioned statement is valid only for land, and that attempts to cross will be subject to strict control due to the high risk in the seas. For the news, see Reuters, “Türkiye Says Will not Stop Syrian Refugees Reaching Europe After Troops Killed, 2020, <https://www.reuters.com/article/us-syria-security-idUSKCN20M0GR>, (E.T. 01.05.2022).

49 Anadolu Agency (AA), “UN calls on Greece to End Overcrowding of Refugee Camps”, 2019, <https://www.aa.com.tr/en/europe/un-calls-on-greece-to-end-overcrowding-of-refugee-camps/1599278>, (E.T. 13.06.2022).

50 Amnesty International, Greece: Violence, Lies, and Pushbacks: Refugees and Migrants Still Denied Safety and Asylum at Europe's Borders, p. 10-11.

51 Kılıç, Muharrem, “Refugee crisis: Humanity coming ashore”, <https://m.turkiyegazetesi.com.tr/yazarlar/prof-dr-muharrem-kilic/587788.aspx>, (E.T. 12.06.2022).

The harsh security measures and approaches taken by both Greece and other European countries will be discussed under the title of “Security Approaches of Countries”.

D. Security Approaches of Countries

The fact that migration has become an international issue area on a global scale and affects many countries has led to some changes in the security approaches and practices of the countries. It is seen that this change of approach in the security paradigm is based on excluding refugees, asylum seekers and migrants. It also represents a break from the human rights-centered approach.

Trying to prevent the crossing to the European borders with wire fences is one of the security approaches adopted. It is seen that the wire fences were previously set in Ceuta-Melilla of Spain, the Hungarian-Serbian border, the Slovenian border and other parts⁵² have begun to be set to the borders by the Balkan states. One of these states is Greece. The measures taken by Greece include ‘the systematic firing gas bomb at migrants waiting in the border area and wishing to cross the border⁵³, reinforcement of the wire fences at Greek border guards along the border line⁵⁴, building a wall on the border, increasing the number of border guards, shooting at migrants who want to cross the border with plastic and real bullets, installing a floating dam in the Aegean Sea to prevent refugees from reaching the Greek islands from Türkiye⁵⁵.

In this context, Greece announced that a new 26-kilometer-long fence will be built along the border of the Meriç, old 10-kilometer fence will be raised, 400 border guards will be assigned to the region, and powerful mobile sirens and security camera systems will be strengthened to cover the entire 120-km2 border.⁵⁶ At this point, it should be stated that the expenditures of millions of Euros for increasing the height of the fence and establishing monitoring systems can be spent on migration management.

It is planned to install the floating dams to be 2.7 km in length and to consist of flashing lights in the north of the island of Lesbos in the Aegean Sea in order to prevent asylum seekers and irregular migrants from reaching the Greek islands from Türkiye. This measure taken by Greece against migrants is described as a “disgrace” by human rights activists. Human rights activists condemn the plan and warn that the relevant plan will increase the dangers faced by asylum seekers and irregular migrants.⁵⁷

52 Amnesty International, *Fear and Wire Fences, Europe's Approach to Keeping Refugees At Bay*, 2015, p. 56.

53 Deutsch Welle, “Greek Police Fire Tear Gas at Migrants on Turkish Border”, 29 February 2020, <https://p.dw.com/p/3Yd0K>; TRT World, “Greek Border Gas Bombs Made Worse Through Giant Fans”, 12 March 2020, <https://www.trtworld.com/europe/greek-border-gas-bombs-made-worse-through-giant-fans-34504>, (E.T. 01.05.2022)

54 The Atlantic, “Thousands of Migrants Attempt to Cross Into Europe From Türkiye”, 02 March 2020, <https://www.theatlantic.com/photo/2020/03/thousands-of-migrants-attempt-to-cross-into-europe-from-turkiye/607321/>; Türkiye Newspaper, “Greek soldiers pulled razor wire to the Meriç”, 01 March 2020, <https://www.turkiyegazetesi.com.tr/dunya/685024.aspx>, (E.T. 01.05.2022)

55 Greek City Times, “Floating Dam to be Installed in the Next Few Days”, 2020. <https://greekcitytimes.com/2020/07/03/floating-dam-to-be-installed-in-the-next-few-days/>, (E.T. 01.05.2022)

56 BBC, “Greece Increases Security Measures at Turkish Border: Wall, Cameras and More Border Guards”, 2020, <https://www.bbc.com/turkiye/haberler-turkiye-54629589>, (E.T. 13.06.2022).

57 The New York Times, “Greece's Answer to Migrants: a Floating Barrier, Is Called a “Disgrace”, 2020. <https://www.nytimes.com/2020/02/01/world/europe/greece-migrants-floating-barrier.html>, (E.T. 01.05.2022)



Image 5: Floating Dams Planned to be Installed by Greece in the Aegean Sea

Reference: Greek City Times: Floating dam to be installed in the next few days

It is seen that asylum seekers and migrants prefer more dangerous and longer migration routes, such as Italy and Spain, as a result of the tight security measures taken and the increasing pushback actions recently. For this reason, in the statement made before becoming involved in the pushback actions, Frontex stated that the widening of the wire fences caused a shift towards sea routes.⁵⁸

It is seen that one of the routes frequently used by asylum seekers and irregular migrants to cross to Europe is Spain over Morocco. As a result of Türkiye-EU Agreement, the Spain has become the country where the highest number of asylum seekers lost their lives in its territorial waters due to the closure of the Eastern Mediterranean route to a large extent.⁵⁹ It should be stated that this is equivalent to the Greek-led tragedy in the Meriç, Mediterranean and Aegean territorial waters. As a matter of fact, 19 refugees trying to cross to Europe over Greece with great determination despite the adverse weather conditions, but pushed back by Greece, froze to death in Paşaköy Mandakoru location in Edirne, İpsala.⁶⁰

The migration figures around the world show an increasing trend, despite the countries trying to prevent the migration movement towards their borders with strict measures under the name of border management and border security. It is seen that the migration mobility has increased especially in some regions.⁶¹ At this point, it is necessary to mention about the border surveillance technology "BorderTech"

58 Frontex, Annual Risk Analysis, 2015, https://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2015.pdf, (E.T. 01.05.2022)

59 NTV, "Which routes do asylum seekers follow to reach Europe?", 2017. <https://www.ntv.com.tr/dunya/siginmacilar-avrupaya-ulasmak-icin-hangi-rotalari-izliyor,plTxpU-KZk6Kxw7IHfu7g>, (E.T. 01.05.2022)

60 Bianet, Seven More Refugees Found Frozen to Death in Border Town in Turkey's Turkey's Edirne, 2022.

61 Amnesty International, Human Rights Violations Experienced by Migrants and Refugees at European Border the Human Cost of Fortress Europe, 2014, s. 1-55.

application increasingly being used to make decisions for millions of people on the move and to prevent and/or deter those who want to apply for asylum. European Digital Rights (EDRi) emphasizes that the use of technology in border policing leads to a deepening of discrimination and an increasing trend in the number of casualties. It also states that monitoring of refugees in camps equipped with high technology such as Samos camp in Greece creates an atmosphere of insecurity, and the people feel oppressed and dehumanized.⁶²

Philippe Leclerc, UNHCR Representative in Greece; points out the importance of the issue saying *"The protection of Greek borders and the protection of refugees are not mutually exclusive. It is possible to protect both borders and refugees. This is not a dilemma, a balance required to be redressed. Otherwise, the consequences may be all-inclusive and damaging. Saving lives both on land and at sea should be a top priority."*⁶³

It should be considered that people who have to leave their country due to factors such as war, natural disaster and political reasons have few options. It is clear that walls and fences do not serve as a meaningful deterrent. It should be noted that such security measures will only contribute to the greater suffering of individuals in need of international protection, especially women and children, and will often prompt people to consider more dangerous ways and possibly lead to a greater risk of death.⁶⁴ At this point, the statement of UNHCR should be considered regarding *"We are concerned about the risk of these deplorable practices now becoming normalized and policy-based. They strengthen a harmful and unnecessary "European castle" narrative. In fact, most of the world's refugees are hosted by low- and middle-income countries with far fewer resources."*⁶⁵

EU law requires border surveillance practices to be implemented in full compliance with fundamental human rights. In this context, states should develop human rights-based policies for refugees. It will be possible to eliminate security concerns with a border management policy in compliance with the obligations of states under 1951 Geneva Convention and international human rights and refugee law.⁶⁶

'Report on On-Site Investigation of Asylum Seekers Crossings in the Türkiye-Greece Border Region' published by GNAT Subcommittee on Migration and Integration in 2020 emphasizes the need to supervise the Greek law enforcement officers for inhumane practices such as pushing back, bombing refugee boats and pressing in the buffer zone. It is stated that all international institutions/organizations and NGOs, especially Amnesty International, UNHCR and NPM should take action if such acts against human dignity are detected.⁶⁷

62 EDRi, <https://twitter.com/edri/status/1524381825937907713>, (E.T. 01.05.2022)

63 UNHCR, UNHCR Concerned by Pushback Reports, Calls for Protection of Refugees and Asylum-Seekers, 2020.

64 UNHCR, News Comment: UNHCR Warns of Increasing Violence and Human Rights Violations at European Borders, 2022.

65 *ibid.*

66 *ibid.*

67 Human Rights Investigation Commission Sub-Commission on Migration and Integration, Report on On-Site Investigation of Asylum Seekers Crossings in the Türkiye-Greece Border Region, p. 42.

There is a dramatic increase in the number of decisions made on this issue in countries where refugee status determination procedures are carried out by national authorities. While some countries, including Austria, Belgium and Canada, have decided on significantly more cases; it should be noted that other countries such as Greece, Australia and the USA took fewer important decisions in 2021. UNHCR states that there is uncertainty as to whether these decreases arise from the changing caseload dynamics; the difficulties resulting from Covid-19 pandemic; reordered priorities or other factors. However, it can be stated that this situation is due to the increased migration density and more energy expenditure on pushbacks for Greece.⁶⁸

E. Pushback Methods of Greece

Irregular migrants are treated in contravention of the human rights in the process of being pushed back by Greek security forces. It was determined that these actions frequently applied contain violence such as extortion of valuables such as money, jewelry, telephone, wallet, purse and passport; handcuffing; deprivation of liberty such as confinement; beating and burning. It was recorded that irregular migrants had been thrown into the sea without a life jacket and sometimes even with their hands in handcuffs, by people in black masks.⁶⁹

According to the data of the Coast Guard Command, the majority of pushback cases is experienced in the Aegean Sea. It is seen that 305 of 312 events occurred in 2020, 625 of 628 events occurred in 2021, and all 109 events occurred in 2022 (as of 04 March 2022) were experienced in the Aegean Sea. Out of 312 pushback cases during 2020, 103 pushback cases were recorded in İzmir, 83 in Muğla, 53 in Çanakkale, 40 in Aydın, 26 in Balıkesir and 7 in Antalya; Out of 628 pushback cases during 2021, 268 pushback cases were recorded in İzmir, 143 in Muğla, 126 in Aydın, 52 in Çanakkale, 36 in Balıkesir and 3 in Antalya; Out of 109 pushback cases during 2022, 41 pushback cases were recorded in Muğla, 38 in İzmir, 13 in Balıkesir, 12 in Aydın and 5 in Çanakkale.⁷⁰

Another pushback action appears as pushing back of asylum seekers and irregular migrants using the wave-generation method.⁷¹ The interviewed refugees and irregular migrants stated that this method is carried out in two ways. It is seen that the first method is intended for people who have crossed the borders of Greece. People who have just arrived at the borders of Greece and sometimes are kept in refugee camps without being registered and without giving the opportunity to apply for asylum are put on boats of five and ten by the Greek security forces and pushed back with this method. As the second method, dragging sea vehicles of migrants in the border into Turkish territorial waters with dangerous maneuvers after stopped before reaching the borders of Greece especially at sea and in open waters are used. It is seen that the reports of other organizations reflect the information that the boats of those trying to reach Greece by sea were towed and surrounded by coast guard boats in a way to put them at

68 UNHCR, Mid-Year Trends, p. 2

69 Data obtained from the Coast Guard Command.

70 Data obtained from the Coast Guard Command.

71 For pushback at sea, see also European Union Fundamental Rights Agency (FRA); Council of Europe, European Law Handbook on Asylum, Borders and Migration, European Union Official Publications Office, 2014, p. 37.

risk of capsizing.⁷² It is stated that there are proven claims that Frontex bodies are also involved in this process.⁷³

Different pushback methods are applied by the Greek Coast Guard bodies according to the detection areas for asylum seekers and irregular migrants. These practices were documented by the Turkish Coast Guard Command and shared with the public.

1. Video of an incident recording dangerous maneuvers by the Greek bodies



Another pushback method for irregular migrants that could not be stopped at the first stage and reached international waters or Greek territorial waters is to push them to the border of another country's territorial waters by immobilizing means of sea transportation with dangerous maneuvers. In the images given above with QR code and obtained from the Coast Guard Command, it is clearly recorded that Greek Coast Guard Forces put their lives at risk by maneuvering around the migrant boats to the extent that they would sink, and that they also pushed back. Asylum seekers and irregular migrants also shared with our Delegation that the Greek coast guard boat carried out pushback actions by pulling them back into Turkish territorial waters after they had toured around the boat in their territorial waters for 10-12 hours. These practices are clearly considered to be a product of the systematic intimidation policy.

2. Video of an incident where boats of irregular migrants were towed and brought to our territorial waters border by the Greek bodies



72 Amnesty International, Human Rights Violations Experienced by Migrants and Refugees at European Borders at the Human Cost of Fortress Europe, p. 21.

73 <https://www.bellingcat.com/news/2020/10/23/frontex-at-fault-european-border-force-complicit-in-illegal-pushbacks/>, (E.T. 14.06.2022).

It is seen that irregular migrants, who could pass the other stages and reach the islands without being stopped at sea, were caught and beaten, and gathered in a certain place after their valuables were forcibly taken. Irregular migrants in the assembly areas are brought to the border of our country's territorial waters by boats of Greek Coast Guard and put on life rafts in scrap condition and left to our borders after they reaches a sufficient number. In the images given above with the QR code and obtained from the Coast Guard Command, it is seen that the boat of migrants was brought to Turkish territorial waters by Greek Coast Guard boat. Meanwhile, it was also recorded that the Greek soldiers took control by getting on the migrant boats.

3. Video of an incident recording that irregular migrants were pushed back to our territorial waters border by being put on life rafts



During the interviews, it was shared with our delegation that asylum seekers and irregular migrants put on a different boat other than their boats and pushed back with a low-capacity boat (mostly with a life raft). It is seen that asylum seekers and irregular migrants, who could not be stopped at sea, were brought to the Turkish territorial waters border by boats of the Greek Coast Guard from assembly areas, and they were thrown into the sea without any sea vessels, even in some cases with their hands in handcuffs. It is obvious that there is a direct intent on the lives of irregular migrants in the pushback cases that take place in this way. It was determined that a **total of 75 irregular migrants were thrown directly into the sea** in 20 incidents carried out by the Greek bodies in the last year (2021 March-December 14 incidents, 2022 January-February 6 incidents). **66 people thrown into the sea were rescued alive, and the dead bodies of 9 were found.**

4. Video of an irregular migrant who was thrown directly into the sea by the Greek security forces, describing the events. (event dated 19 March 2021)



As a result of the interview with foreigners about the fatal pushback case that took place on 19 March 2021 of Çeşme district of İzmir province, our delegation was informed that *"The Greek police beat them by keeping them in a warehouse-like place, took their belongings and threw them into the sea by tying their hands with plastic handcuffs, 3 people survived and 4 people lost their lives"*. After the foreigners exposed to pushback action were interviewed, a lawyer was requested from the bar association within the scope of legal aid and a legal process was initiated. The representatives of their own countries also held a meeting with the foreigners. UNHCR officials reported the situation after they held a meeting with the permission of the ministry.⁷⁴

Actions against human dignity and against the law are carried out by the Greek security forces during the process from their catch to their pushing back against irregular migrants. It is also stated that the dose of violence applied by Greek Coast Guard personnel to irregular migrants who are abandoned to their fate or thrown directly into the sea with unsuitable vessels at sea, has increased to the point of opening fire.

5. Video recording the moment of shooting at irregular migrants in rubber boats by Greek security forces



It was determined that many battery and acts of violence were carried out by the Greek security forces against irregular migrants pushed back by being deprived of their freedom before they were pushed back. Interviewee asylum seekers and irregular migrants stated that they were directed especially on hand, foot and head in pushback cases carried out from the sea by the Greek coast guard boat. It was concluded that the purpose of this policy is to make swimming difficult and to prevent any attempt for this journey again.

6. Video recording the rescue moments of irregular migrants pushed back after being battered by the Greek security forces (event dated 08 December 2020)



74 İzmir-Aydın High Level Coordination Meeting Presentation.

It was observed that irregular migrants pushed back into Turkish territorial waters by using a life raft at night were beaten while they were taken to the Turkish Coast Guard boats, and one of them could not even stand up due to a broken body. It was also seen that the migrants had plastic handcuffs.

7. Video of an irregular migrant who was set on fire by the Greek security forces by pouring gasoline on him. (event dated 17 April 2021)



It was learned that the money and phones of the irregular migrants, whose locations were detected with thermal cameras at night, were taken by the Greek forces, and gasoline was poured on them and set on fire upon their resistance. Later, it is seen that irregular migrants are left into the sea. Another pushback case in which irregular migrants were attempted to be fired occurred in a rubber boat pushed back by Greek bodies in Aydın/Kuşadası. It was alleged that Greek Coast Guard personnel threatened to burn the migrants by pouring gasoline into the rubber boat. It is seen that the irregular migrants were not set on fire directly, but chemical burns occurred in 4 of 11 migrants on whom gasoline was poured.

8. Video of an irregular migrant who was extorted by the Greek security forces describing the events.



As mentioned before, it is seen that the statements about the extortion of some valuables and money of migrants by the Greek security forces are often reflected in the expressions of irregular migrants. These statements include a total of 120,000 Euros of irregular migrants were taken by the Greek security forces personnel who were involved in an event that took place in 2021.

9. Video of irregular migrants, who have chemical burns on their bodies and threatened to be set on fire by pouring gasoline on them by Greek security forces, explaining events. (event dated 20 October 2021)



Although pushback cases are tried to be recorded with documents, it is important to follow and observe on the relevant routes by using technical tools such as ships and drones displaying with camera after determining pushback routes in the process of monitoring, documenting and reporting human rights violations.

F. Human Rights Centered Policy of Türkiye

Migration mobility showing increasing trend on a global scale together with the multidimensional processes of globalization has led to the characterization of the era we live in as 'age of migrations'.⁷⁵ Thus, migration mobility has turned into a 'cross-border' phenomenon affecting economic, political, humanitarian and developmental agenda with its multidimensional dynamics in international relations, beyond being a subject related to the national sovereignty and security of the migration-receiving and sending countries. It is seen that Türkiye is moving in a direction getting stronger, from being a migration sending country and a transit country until recently, to a target country of migration within the international migration system. At the same time, our country has become one of the countries most affected by international forced migration movements due to humanitarian crises and/or instability in neighboring countries.⁷⁶

However, Türkiye continues its human rights-centered migration policy, despite EU's efforts to build a fortress and Greece's pushback cases leading to violations on many rights categories. Coast Guard Command rescues irregular migrants, whose lives are in danger at sea due to the pushback actions of the Greek law enforcement forces in violation of human dignity. In this context, two major operations called "Hope in the Aegean and Confidence in the Mediterranean" was carried out by using more than 70% of the bodies of Coast Guard Command in order to prevent irregular migration by sea, to carry out search and rescue activities when necessary, and to prevent pushback cases.⁷⁷ During on-site observation of the

⁷⁵ Castles, Stephen, Miller, Mark J., The Age of Migrations: International Migration Movements in the Modern World, (trans. Bülent Uğur Bal and İbrahim Akbulut), İstanbul Bilgi University Press, 1st Edition, İstanbul 2008.

⁷⁶ Strategy and Budget Presidency (formerly Ministry of Development), Foreign Migration Policy, Special Expertise Commission Report, Ankara 2018, p. 1-2.

⁷⁷ Data obtained from the Coast Guard Command.

routes and locations where the pushbacks took place with the Turkish Coast Guard boat, our delegation obtained information that 10-12 highly equipped boats from north to south in the Aegean are kept ready for emergency response to asylum seekers and irregular migrants.

Coordinator governorships have been determined to combat irregular migration with the service-specific instruction of the Ministry of Interior in 2019. Governorships of İzmir and Edirne visited within the scope of site visits are included those determined as coordinators. There are the provinces of Uşak, Manisa, İzmir, Aydın, Muğla and Denizli under the coordination of İzmir. The map of the coordinator governorships determined to combat irregular migration is given below.

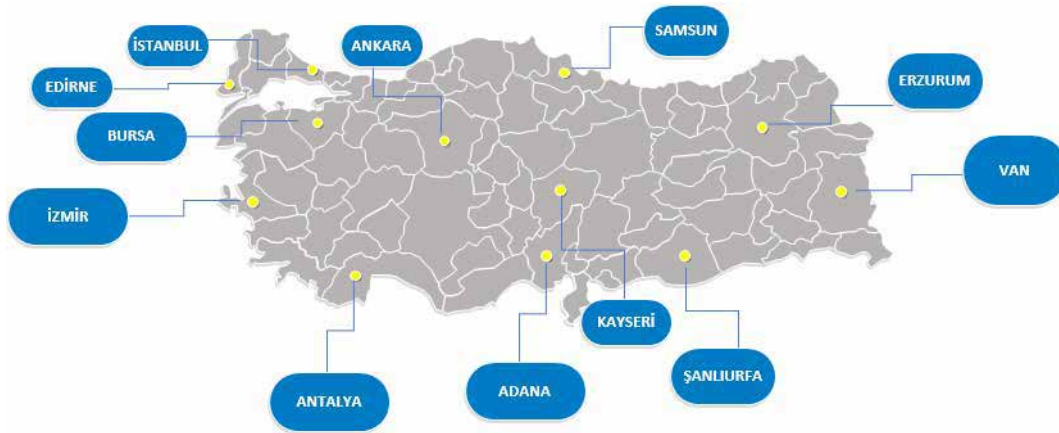


Image 6: Map of Coordinator Governorships in Combating Irregular Migration

Reference: İzmir-Aydın High Level Coordination Meeting Presentation.

Türkiye makes great efforts to prevent pushbacks from the sea and manage this process, as well as to monitor pushbacks from land and prevent potential grievances. In this context, it is seen that the search for asylum seekers and irregular migrants living among the paddy fields in Edirne is continuous. The people left by Greece on various islets on the Meriç are rescued by the infantry, the main combat class in the land army.⁷⁸

Rights violations caused by pushbacks are also observed by the international arena, especially by international press organizations. For this purpose, 106 press members from 45 different foreign media were provided with information about life and death struggle of irregular migrants pushed back to the sea in 2020 and 2021 by Coast Guard boats under the coordination of the The Republic of Türkiye Directorate of Communications.⁷⁹

It was observed that Greece has continuously pushed back irregular migrants arriving at its borders from the sea by different methods since February 2020. All of these methods put the lives of irregular migrants in danger. When the statistics of the past period are examined, it is seen that there are

⁷⁸ Information obtained from interviews with the Presidency of Migration Management and Edirne Provincial Migration Management.

⁷⁹ Data obtained from the Coast Guard Command.

an average of 37 irregular migrants whose lives are in danger every day in the Turkish Search and Rescue Region.

This numerical data reveals that high responsibility is essential for the units in our search and rescue organization of our country standing by all people who need help at sea without any discrimination, remaining in a certain state of preparedness and providing uninterruptedly the requirements such as personnel, equipment and financial resources needed for a state of readiness.⁸⁰

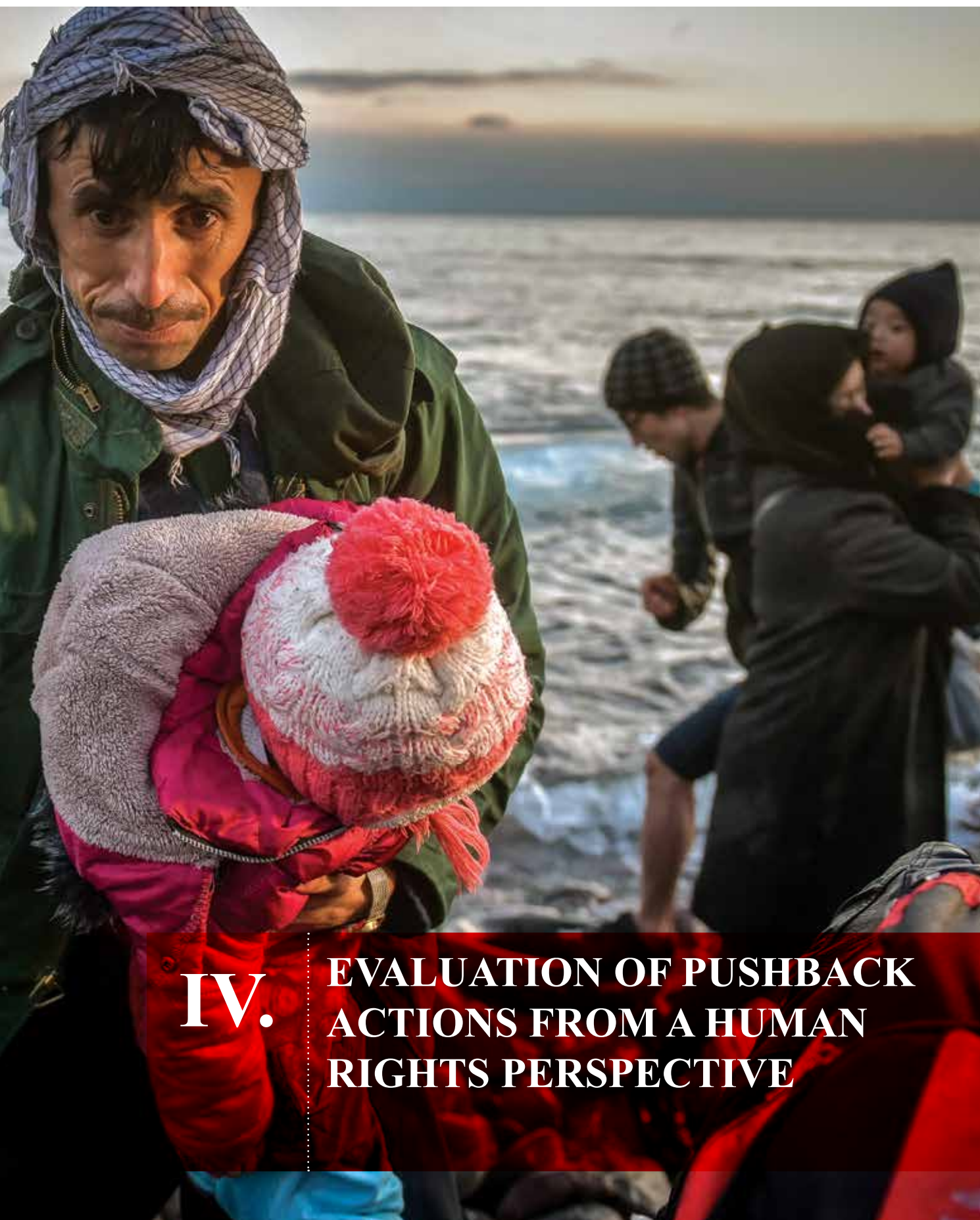
It is seen that the cost of rescuing irregular migrants, whose lives are endangered only by being pushed back, is approximately 3.5 million Turkish Liras. It should be noted that no calculation was made on the cost of preventive measures carried out by the Coast Guard Command within the scope of pushback cases. It should be emphasized that expenditures are made for many different issues such as sheltering and feeding the irregular migrants pushed back until the completion of their procedures by the Directorate of Migration Management, and sending the eligible ones back to their countries.

Although there is no separate expenditure item based on classification as a pushback victim in the Directorate of Migration Management, it is seen that there is a cost equal to the cost of a foreigner staying at RC for 1 day. According to these numerical data, it is stated that the cost is USD 23.14 per day/person if irregular migrants are accommodated in RCs from the lowest day in the most optimistic scenario; 10.32 USD per day/person in the expected or average scenario and 6.6 USD per day/person in the pessimistic scenario.⁸¹

80 Data obtained from the Coast Guard Command.

81 Data obtained from the Presidency of Migration Management.





IV. EVALUATION OF PUSHBACK ACTIONS FROM A HUMAN RIGHTS PERSPECTIVE

IV. EVALUATION OF PUSHBACK ACTIONS FROM A HUMAN RIGHTS PERSPECTIVE

It is seen that pushback actions to be defined as rapid, systematic, unlawful, forced and often violent transfer of asylum seekers and irregular migrants across an international border immediately or shortly after crossing the border are in violation of many right categories. It is observed that Greece, as the active subject of these actions during the pushback process, takes an attitude contrary to the guarantees in the international human rights conventions to which it is a party and the standards it has declared its loyalty.

Pushback actions constitute a violation of the law in terms of many categories of rights defined in the law, especially the right to life, the right to protect and develop one's material and spiritual existence and the prohibition of torture and ill-treatment. The right to access to the asylum procedure since it creates a restriction on the right to object to the de facto refoulement decision taken against them, as well as the right to an effective remedy may also be the subject of a violation. This may also be evaluated for the prohibition of collective expulsions that was prohibited in accordance with EU law and international law, because pushback actions are often carried out against a group.⁸² Although Greece is not a party to the Additional Protocol No. 4 to the European Convention on Human Rights (ECHR) that regulates the prohibition of collective expulsions, this will not prevent Greece's actions from being evaluated on human rights.⁸³

While more effective protection should be provided especially for vulnerable groups such as children, the elderly and the disabled, it is seen that "more restrictive systemic practices have become visible under the name of border security protection and this situation brings with it allegations of treatment contrary to human dignity."⁸⁴ In addition, exposure of vulnerable groups to pushback leads to deepening of the problems they face. Mass pushbacks cause the division of families and violation of the right to respect for private life and family life. Finally, when all these violations of rights are considered as a whole within the framework of the "principle of the integrity and indivisibility of human rights", it brings along the violation of the obligation of respect for human rights and the principle of equality.

Before evaluating Greece's pushback actions in terms of human rights, it is necessary to specify the international organizations to which Greece is a member and the international human rights conventions to which it is a party. In this context, it is seen that Greece is a member of international organizations such as the UN, the CoE and the EU.

82 Amnesty International, Human Rights Violations of the Humanitarian Cost of Fortress Europe Encountered by Migrants and Refugees at European Borders, p. 22.

83 <https://www.CoE.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=046>, (E.T. 13.06.2022).

84 Köksal, Tuğçe Duygu, "Pushbacks as a Way of Protection of European Union Borders" and Evaluation for Post-Pandemic " Euro Policy Journal, 4 (2), 2020, p. 126.

First of all, as a UN member state, it should be stated that Greece is subject to both UN Charter-based inspection and contractual inspection procedures, including Human Rights Council⁸⁵ and Universal Periodic Review⁸⁶ and thematic special procedures⁸⁷. The policies and practices of Greece, which is a party to certain international human rights conventions, are monitored by UN treaty bodies.⁸⁸ Greece seems to have ratified numerous international conventions, notably the 'International Covenant on Civil and Political Rights (CISR), the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities, the Convention on the Rights of the Child and its additional protocols, and the International Convention on the Elimination of All Forms of Racial Discrimination'. It should be noted that Greece is a party to both the 1951 Geneva Convention and the 1967 New York Protocol. It appears that Greece has not ratified only the International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families, one of the international conventions adopted within the UN.⁸⁹

The aim of the Council of Europe, which was established in 1949 with the London Agreement, which includes Greece as one of its founding members, is to 'create a tighter union between its members and share a common heritage in political traditions, ideals, respect for freedoms and the rule of law by ensuring the protection and development of human rights and fundamental freedoms'.⁹⁰ COE member states adopted the ECHR in 1950 in order to ensure that the rights contained in the Universal Declaration of Human Rights (ECHR) are jointly guaranteed. As an COE member, Greece has ratified the ECHR and several additional protocols⁹¹ and has accepted the jurisdiction of the ECHR.⁹² Under the obligations arising from the ECHR, individuals and groups may bring complaints to the ECHR regarding human rights violations committed by Greece.

According to the first article of the Convention, the contracting states are under the obligation to ensure that everyone within their jurisdiction enjoys the rights and freedoms guaranteed by the Convention.⁹³ In this context, it should be emphasized that Greece is subject to the jurisdiction of the ECtHR, which was established to protect the rights contained in the Convention and to ensure the enforcement of the sanction decision against the states in case of violation by the contracting states. The obligation to protect rights and freedoms under the ECHR and Additional Protocols is valid for all citizens of the world. Therefore, Greece must comply with the Convention in order to protect the rights of asylum seekers and irregular migrants at the border and to benefit from the rights granted in the ECHR.

85 OHCHR, United Nations Human Rights Council.

86 OHCHR, United Nations Human Rights Council, Universal Periodic Review.

87 OHCHR, Special Procedures of the Human Rights Council.

88 UN Human Rights Treaty Bodies.

89 https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=68&Lang=EN

90 https://www.echr.coe.int/documents/convention_tur.pdf, (E.T. 11.06.2022)

91 COE, Treaty List for a Specific State.

92 European Court of Human Rights.

93 https://www.echr.coe.int/documents/convention_tur.pdf, (E.T. 11.06.2022)

All final decisions of the court are binding for the state to which it is related. It should even be taken into consideration by other contracting states. It will be possible to impose sanctions on Greece if the applications of asylum seekers and irregular migrants who made individual applications to the ECtHR regarding pushbacks are accepted and examined and if the violation of rights is detected. In this context, ECtHR decisions on pushback actions will be comprehensively included in the following rights-based evaluations.

As a state party to the European Social Charter,⁹⁴ it is seen that Greece recognizes the authority of the European Social Rights Committee to settle complaints. In this context, it is required to submit regular reports to the European Social Rights Committee on the implementation of the provisions of the Charter.⁹⁵

Greece is also an EU member state. Pursuant to Article 51 of the EU Charter of Fundamental Rights, it is imperative that the Union Member States and Union bodies and institutions apply the Charter of Fundamental Rights, which is among the primary sources and is hierarchically superior to the national laws of the Member States.⁹⁶ The competent authority for the detection of violations committed by the Member States under the Charter is the Court of Justice of the European Union (ECJ). Greece must therefore comply with ECJ decisions binding on member states, such as those of the ECtHR, which has ruled on violations of rights guaranteed by the ECHR and the Additional Protocols.⁹⁷

In addition to all these issues, Greece is also monitored by the COE Human Rights Commissioner,⁹⁸ who identifies gaps in human rights policies and practices and human rights protection, visits the country, dialogues with States and prepares thematic reports and recommendations.

CoE Commissioner for Human Rights Dunja Mijatović emphasizes that human rights violations against refugees, asylum seekers and irregular migrants on the borders of member states tend to increase. It states that the practices, which are generally called push-back, constitute a violation of the Convention on the Legal Status of Refugees and the ECHR. It also states that European states should assume joint responsibility for combating actions taken to “protect Europe's borders.”⁹⁹ Therefore, it is necessary for states to develop border security policies by complying with international human rights law.

Pursuant to Article 39 of the Internal Regulation, the ECtHR may issue an interim measure against any State party to the ECHR. Provisional measures emerge as emergency measures applied in cases where there is a possible risk of occurrence of a loss that cannot be compensated according to the established practices of the ECtHR. The adoption of these measures is decided in connection with the case discussed at the ECtHR and without prejudice to the decision of the ECtHR on the admissibility or merits of the case in question.

94 CoE, The European Social Charter.

95 CoE, European Committee of Social Rights

96 EU Charter of Fundamental Rights.

97 The Court of Justice of the European Union.

98 COE, Commissioner for Human Rights.

99 HREIT, Press Release on the Pushback Actions Towards Asylum Seekers and Irregular Migrants, <https://www.tihek.gov.tr/signinmacilara-veduzensiz-gocmenlere-yonelik-geri-itme-eylemlerine-iliskin-basin-aciklamasi/>, (E.T. 20.04.2022)

It should be noted that many cases pending at the ECtHR¹⁰⁰ and the UN Committee on Human Rights and dealing with unlawful refusals are also pending.¹⁰¹

Decisions on interim measures under Rule 39 for acts contrary to the law and human rights of Greece sometimes need to be taken urgently. However, in these decisions, it is seen that the situations that interfere with urgency are not adequately taken into account. On 20 January 2022, the Aegean Boat Report (ABR) requested the ECtHR to intervene with an urgent measure in accordance with Article 39 of the Rules of Court to prevent the repatriation of four asylum seekers from the Greek territory (Aegean islands). It is seen that Palestinian and Somali immigrants did not want to introduce themselves to the authorities because they were hiding in an abandoned street on Chios Island and were afraid of being sent back, and because they were afraid of being subjected to an illegal and life-threatening pushback, as in many cases in which the ABR helped them to apply for interim measures to prevent their pushback. In fact, it is stated that the applicants withdrew their applications.¹⁰²

Lesvos Legal Center (LCL) is another institution that applies to the ECtHR regarding the allegations of violations of immigrant and refugee rights. LCL's fifth application to the ECtHR regarding Greece's actions focus on 11 Syrian nationals who were part of a group of 180-200 refugees who were forcibly deported from Greece to Türkiye between 20-21 October 2020.¹⁰³ The incident, which was the subject of the application, states that *"the group entered Greek territorial waters on the instruction of the Greek Coast Guard Command and was kept for more than five hours with the promise of rescue when they requested assistance from the Greek authorities near the island of Crete while they were on a fishing boat in order to asylum Italy on the morning of 20 October 2020". "As can be understood from the video images in the file, it is seen that they were attacked and their belongings were confiscated by the "Commandos" in unmarked black uniforms who attacked them from the Greek Coast Guard ships." They also suggested that they were "threatened with more violence if they attempted to return to Greece". "Later, the group was transported to two different Greek Coast Guard ships by force; on October 21, it was pushed into Turkish territorial waters and left in life rafts unsuitable for sailing without any food and beverages for basic nutrition."* Although the incident is not isolated, it forms part of a systematic and widespread practice. So much so that it is necessary to underline that the pushback actions against asylum seekers and irregular migrants have become systematic under the guise of protecting Greece's border security. Although the number of similar incidents is unknown, attorney Nastasha NTAILIANI from LCL stated that they were aware of at least 17 similar cases to The Greek Reporter.¹⁰⁴

100 UNHCR, OHCHR & ENNHRI, "Ten Points to Guide the Establishment of An Independent and Effective National Border Monitoring Mechanism in Greece", 2021.

101 ECRE, Greece: Pushbacks by Sea to Go Before ECtHR, Access to Procedures Restricted on Land, Rule of Law Concerns in Asylum System Persist, Commission Challenges Legality of the Safe Third Country Concept, 2022, <https://bit.ly/3uSWi6d>, (E.T. 20.04.2022)

102 Aegean Boat Report, Groundbreaking Decision In Our First Pushback Case Before the European Court of Human Rights, 2022.

103 The Greek City Times, "NGO files suit against Greece at EU Court for 'Massive Pushback Operation", 2021, <https://greekcitytimes.com/2021/04/27/eu-court-greece-pushback-operation/>, (E.T. 20.04.2022)

104 Greekreporter, Greece Accused of Pushing Back Migrants, Refugees at Sea, 2021, <https://greekreporter.com/2021/04/27/greece-accused-of-pushing-back-migrants-refugees-at-sea/>, (E.T. 20.04.2022).

It was announced by the Greek-based non-governmental organizations that eight more cases of maritime pushback had been transferred to the ECtHR as of December 2021.¹⁰⁵ The Court requested information from the applicants and the Greek authorities to identify possible violations of rights. The data that the ECtHR asks Greece and the applicants to inform it of are as follows:

- Whether domestic remedies have been exhausted,
- Whether the applicants' lives are in danger,
- Whether they have been subjected to inhuman and degrading treatment, and
- Whether there is an effective domestic remedy to address allegations of violations of Articles 2 and 3 of the ECHR;

In addition, in some cases;

- Whether persons are legally detained or not,
- Whether they are informed in a language they understand about the reasons for detention and
- whether there is an effective legal remedy to appeal this detention.¹⁰⁶

These questions of the Court aim to clarify whether domestic remedies have been exhausted, whether their lives have been endangered, and whether the applicants have been subjected to inhuman and degrading treatment.¹⁰⁷

The pushback actions carried out for asylum seekers should be evaluated within the scope of Article 1 especially for everyone to benefit from the rights granted in the Convention, Article 2 of the ECHR 'right to life', Article 3 of the ECHR 'prohibition of torture', Article 5 of the ECHR 'right to liberty and security', Article 13 regulating 'the right of everyone whose rights and freedoms are violated before a national authority', Article 14 regarding 'prohibition of discrimination' and Article 4 of the Protocol No 4 annexed to the ECHR 'prohibition of collective expulsion of aliens'.

A. Right to Life

1. Conceptual and Normative Framework of the Right to Life

The right to life emerges as an absolute right that includes the physical, biological and psychological existence of the person, being born in health and integrity, and being able to continue his/her life with moral and intellectual development opportunities, as well as the arbitrary destruction of human existence.¹⁰⁸

¹⁰⁵ ECRE, "Greece: Pushbacks by Sea to Go Before ECtHR, Access to Procedures Restricted on Land, Rule of Law Concerns in Asylum System Persist, Commission Challenges Legality of the Safe Third Country Concept".

¹⁰⁶ <https://racistcrimeswatch.wordpress.com/2021/12/23/2-318/>, (E.T. 14.06.2022).

¹⁰⁷ Greek reporter, Greece Accused of Pushing Back Migrants, Refugees at Sea, 2021, <https://greekreporter.com/2021/04/27/greece-accused-of-pushing-back-migrants-refugees-at-sea/>, (E.T. 20.04.2022).

¹⁰⁸ HREIT, 2019 Report on Protection and Development of Human Rights, HREIT Publications, 1st Edition, 2019, p. 1.

The right to life is expressed as the 'supreme right' that should not be suspended even in armed conflict and other public emergencies that threaten the life of the nation.¹⁰⁹ Since there is an organic relationship between the right to life and other fundamental human rights, it is not possible to benefit from other rights and freedoms without protecting this right. So much so that the 'Vienna Declaration and Programme of Action' adopted on 25 June 1993 emphasizes that human rights are composed of *universal, indivisible and interdependent and interrelated* rights.¹¹⁰ Accordingly, it should be stated that the right to life has a superior value in the hierarchy of indivisibility, inalienability and rights.¹¹¹

The declaratory normative framework of the right to life has been regulated with the provision of *"Everyone has the right to life, liberty and security of person."* on Article 3 of the UDHR.

Another regulation, the normative framework of the right to life on Article 2 of the ECHR Annex 1 Protocol *"1. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:*

- a. in defence of any person from unlawful violence;*
- b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
- c. in action lawfully taken for the purpose of quelling a riot or insurrection."*

Another convention in which the right to life is guaranteed is the 1966 UN Convention on Civil and Political Rights. On Article 6 of the relevant Convention, the right to life is secured by the provision of *"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."*

In addition to all these Declarations and Conventions, the right to life on Article 2 of the EU Charter of Fundamental Rights dated 2000 states that *"Everyone has the right to life. No one shall be condemned to the death penalty, or executed."* and in the 3rd article, *"Everyone has the right to respect for his or her physical and mental integrity."*¹¹²

Article 2 of the Greek Constitution states that respect for and protection of human value constitute the primary obligations of the State. On Article 5 of the relevant Constitution; *"All persons living within the Greek territory shall enjoy full protection of their life, honour and liberty irrespective of nationality, race or language and of religious or political beliefs. Exceptions shall be permitted only in cases provided by international law."* is included.¹¹³

109 UN Human Rights Committee, General Comment No. 36, Article 6 (Right to Life), CCPR/C/GC/35, 2019, p.2.

110 World Conference on Human Rights, "Vienna Declaration and Programme of Action", Vienna, 14-25 June 1993, [https://www.ohchr.org/Documents/Professional Interest/vienna.pdf](https://www.ohchr.org/Documents/Professional%20Interest/vienna.pdf), (E.T. 12.06.2022)

111 Doğru, Osman, The Right to Life, Bireysel Başvuru El Kitapları Series 5, Ankara, 2018, p. 3-4.

112 <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012P/TXT&from=EN>, (E.T. 10.06.2

113 <https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>, (E.T. 12.06.2022)

2. Greece's Obligation to Protect the Right to Life in Terms of International Human Rights Law

The right to life, which is guaranteed at the contractual and declaration level, brings some obligations to both individuals and states. In this context, the obligations of states determine the limits of the protection area of the right. Within the scope of the ECHR, states have three types of obligations: 'obligation not to kill'; 'obligation to protect life'; 'obligation to investigate death'.¹¹⁴ When evaluated in the specific context of the ECHR, the state is given the obligation to avoid causing deliberate and unlawful death. At the same time, the state is obliged to take the necessary measures to protect the lives of the people in its sovereignty and to take positive care in order to prevent such damages caused by a state or private actors when a harm occurs that will constitute other forms of cruel, inhuman treatment, and in cases that cannot be prevented, to effectively investigate and punish. Article 2 of the ECHR imposes preventive positive obligations on states to apply it to third parties under the conditions laid down and to authorities to protect the person against himself in exceptional circumstances.¹¹⁵

This assurance provided by international conventions is also valid for refugees and irregular migrants who enter and stay in the territory of Greece's jurisdiction for a certain period of time. In the event of a death in accordance with the provisions of the relevant contract, the state has the obligation to investigate the causes of death within the scope of its positive obligation and to determine the responsible persons and punish them. If this procedural obligation is not fulfilled properly, it will not be possible to determine whether the state acts in accordance with its negative and positive obligations. Therefore, the obligation to investigate the assurance of the negative and positive obligations of the state under this article constitutes the obligation.¹¹⁶

Pursuant to the ECtHR case-law, Articles 2 and 3 of the Convention also seem to contain a procedural obligation for the effective investigation of these allegations.¹¹⁷ The ECtHR states that the authorities should act ex officio without waiting for the relatives of the deceased person to make an official application and underlines that they can ex officio examine the problem related to a matter falling within the jurisdiction.¹¹⁸ In the ECtHR case-law, the ECtHR sets out a number of criteria for an effective investigation. The criteria determined in this context are; 'conducting an official investigation, conducting the investigation by an independent body from those involved in the crime (*Güleç v. Türkiye*, No. 21593/93, 1998; *Oğur v. Türkiye*, No. 21594/93, 1999), enabling the investigation to monitor the public at an adequate level (*Hugh Jordan v. United Kingdom*, No. 24746/94, 2001 ve *Varnava et al. Türkiye*, No. 16064/90, 2009),

114 Doğru, Right to Life, p. 4.

115 ECtHR, *Keenan v. United Kingdom*, No 27229/95, par. 88-89, 3 April 2001; *Ataman v. Türkiye*, No. 46252/99, par. 54, 27 April 2006; *Abdullah Yılmaz v. Türkiye*, No. 21899/02, par. 55, 17 June 2008.

116 Constitutional Court, 2012/1017 individual application decision, par. 29.

117 ECtHR, *Ergi v. Türkiye*, No. 23818/94, par. 82, 28 July 1998; *Assenov and Others v. Bulgaria*, No. 24760/94, par. 101-106, 28 October 1998; *Mastromatteo v. Italy*, No. 37703/97, 24 October 2002, par. 89.

118 118 ECtHR, *Buzadji v. the Republic of Moldova*, par. 70; *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*, par. 93; *Unifarm Theatre Productions Limited and Others v. Malta*, par. 63-66; *Jakovljević v. Serbia* (dec.), para. 29.

the investigation should be able to identify the violators, the investigation should be carried out promptly and diligently (*Yaşa v. Türkiye*, No. 22495/93, 1998; *Tanrıkulu v. Türkiye*, No. 23763/94, 1999 and *Mahmut Kaya v. Türkiye*, No. 22535/93, 2000).¹¹⁹

Continuously addressing its concerns to the Greek government, the UNHCR is calling for an urgent investigation into a series of media incidents confirmed by most NGOs and direct witnesses.¹²⁰ Given the nature, content, frequency and consistency of the pushback reports, which were also recorded by the UNHCR Bureau in Greece and brought to the attention of the responsible authorities, Greece needs to launch an appropriate investigation without delay.¹²¹

The right to life, which is closely related to the protection of human dignity, makes it necessary to take special measures for refugees and migrants in the vulnerable group. Especially for foreigners in this group who are faced with severe humanitarian crises and difficulties during the pandemic process, it is necessary to provide the opportunity to benefit from food, water and health services that are very difficult to access compared to those who are citizens.¹²²

Considering that the Covid-19 pandemic deepens the situation of people fleeing from war, conflict and persecution, it is a necessity that these people should not be deprived of security and protection. At this point, the UNHCR calls on states to manage border restrictions, including quarantines and health checks, in a manner that respects international human rights and refugee protection standards.¹²³

Expressing its concern about the large number of migrants lost in Greek waters and the criminalization of search and rescue operations, the UN Committee on Enforced Disappearances emphasizes the necessity for Greece that human rights activists and non-governmental actors should not be charged and prosecuted for participating in the search and rescue operations of migrants and/ or for contributing to the monitoring and documentation of disappearances. It also recommends doubling efforts to prevent the disappearance of migrants and conduct an effective investigation, and ensuring that those responsible are identified and prosecuted. It calls on Greece to intensify efforts to locate, locate and identify and extradite the remains of missing migrants, including unaccompanied minors.¹²⁴

States are required to take all reasonable measures to protect the right to life and prevent excessive violence. In fact, states have committed to cooperate internationally in order to prevent migrant deaths and injuries in accordance with international law. The loss of life at international borders appears to be a tragic consequence of States increasingly relying on militarization, border control and deterrence to contain migration.

119 Kozma, Julia, Svanidze, Eric, Doğru, Osman vd., Effective Investigation Training Module, Project for Improving the Effectiveness of the Turkish Criminal Justice System, 2019-2022, p. 5.

120 UNHCR, UNHCR Calls on Greece to Investigate Pushbacks at Sea and Land Borders with Türkiye, 2020.

121 UNHCR, UNHCR Concerned by Pushback Reports, Calls for Protection of Refugees and Asylum-Seekers, 2020.

122 Kılıç, Muharrem, "Pandemic Period Human Rights Politics: The Fragile Nature of the Order of Rights and Freedoms", Journal of Justice, Issue 64, July 2020, p.. 35.

123 UNHCR, UNHCR Calls on Greece to Investigate Pushbacks at Sea and Land Borders with Türkiye, 2020.

124 OHCHR, UN Committee on Enforced Disappearances Publishes Findings on Greece and Niger, 2022.

The negligence of states that lead to the deprivation of access to medical assistance, water, food and basic means of living has the potential to become a threat to the right to torture and to life. Delays in the search for and rescue of migrants who are in danger on land and at sea, as well as in the identification of safe ports for landing, should point to the potential for causing torture or ill-treatment and undermining the right to life.¹²⁵

At this point, the first point that should be emphasized is that the Greek authorities have taken all reasonable measures expected of them in order to collect evidence on the concrete events.¹²⁶ Every deficiency that may prevent the identification of the person or persons responsible for the investigation brings with it the risks related to the effectiveness of the investigation.¹²⁷

According to the settled case-law of the ECtHR,¹²⁸ the opening of an investigation, which is a procedural obligation for the protection of the right to life, is not an obligation of outcome; it is an obligation of means.¹²⁹ This positive obligation in the form of creating an effective judicial control does not necessarily require a criminal case or a conviction in every criminal case; the Court may also consider it sufficient that the administrative and legal remedies that victims can apply to are open in some cases.¹³⁰

The competent authorities need to take reasonable measures to collect evidence of the incidents, in particular the testimony of witnesses, scientific and technical data obtained by the police, an autopsy result that will fully and prominently show the injuries to the victim's body when necessary, and an objective evaluation of the observations made at the hospital.¹³¹ In the concrete case, it is seen that people who go to the Greek border and want to cross the border often encounter excessive and disproportionate intervention by the Greek authorities when they cross the border. Considering the systematization of pushback actions against asylum seekers and refugees by Greece, the aforementioned issues should be determined. Rapid, effective and independent investigations into all allegations of pushback and violence against refugees, asylum seekers and migrants, sanctions against offenders and compensation for damages are required.¹³²

As a result of the interview with the Chief Public Prosecutor's Office in Edirne, it was reported to our Committee that there were 3 deaths, one of them was a Syrian national, one was a Pakistani national near Pazarkule Gate, the other was a Moroccan national near Bosnaköy, all 3 deaths were the **result of the use of real bullets**, other than these, one person died as a result of a knife fight between asylum seekers in the region where Pazarkule Border Gate is located, and only one of the incidents was applied to the ECtHR.

125 UN, Human Rights Council, Report on Means to Address the Human Rights Impact of Pushbacks of Migrants on Land and at Sea, Report of the Special Rapporteur on the Human Rights of Migrants, Felipe González Morales, 12 May 2021, par. 62.

126 ECtHR, *Salman v. Türkiye*, No. 21986/93, par. 106, ECtHR 2000-VII

127 ECtHR, *Aktaş v. Türkiye*, No. 24351/94, par. 300, 24 April 2003.

128 ECtHR, *M.A. v. France*, No. 9373/15, 1 February 2018; *Salah Sheekh v. the Netherlands*, No. 1948/04, 11 January 2007, para. 135; *Soering v. the United Kingdom*, No. 14038/88, 7 Temmuz 1989; *Vilvarajah and Others v. the United Kingdom*, No. 13163/87, 13164/87, 13165/87, 13447/87 ve 13448/87, 30 Ekim 1991.

129 ECtHR, *Salman Davası*, par. 106.

130 ECtHR, *Mastromatteo v. İtalya*, par. 90-95; *Vo v. Fransa*, No. 53924/00, par. 90, 8 July 2004 ve *Calvelli ve Ciglio v. Italy*, No. 32967/96, 17 January 2002, par. 51.

131 ECtHR, *Gül v. Türkiye*, No. 22676/93, 14 December 2000.

132 COE, Pushed Beyond the Limits Four Areas for Urgent Action to End Human Rights Violations at Europe's Borders, Recommendation by the Council of Europe Commissioner for Human Rights, s. 7.

It has been determined in the minutes kept by the law enforcement agencies that there are approximately 150 judicial cases transferred to the Chief Public Prosecutor's Office in Edirne and that these incidents are caused by the crowd and turmoil.

It was understood that the works were carried out in the region by a team formed by the Edirne Bar Association, the cases were identified and reported to the health teams, the minutes were kept with the law enforcement officers after the procedures here, an official letter will be written to the Greek authorities regarding each case, an investigation will be requested and the Greek authorities will be asked to identify the perpetrators.

Considering all these issues, it is concluded that Greece sometimes does not protect the right to life of people in the field of national sovereignty and acts contrary to its obligations to determine the circumstances of death and the responsible persons by establishing an effective and independent legal system and to ensure that those responsible are held accountable when necessary.

3. The Evaluation of Greece's Violations of Right to Life

Investigations conducted in the field by HREIT Delegation, interviews with public institutions and organizations, NGOs and bar associations, interviews with asylum seekers and irregular migrants reveal that Greece tries to prevent transitions by arming law enforcement agencies and even farmers by violating minimum human rights.¹³³ As a result of Greece's actions, it is seen that the right to life is violated in particular. It is stated that Greek law enforcement officers use firearms directly targeting asylum seekers and irregular migrants; they confiscate people's money, passports and clothes and send them back by removing the clothes of some asylum seekers by acting contrary to the prohibition of torture and ill-treatment. In fact, it is seen that many of them were injured by means such as batons, pepper spray, tear gas and pressurized water. Therefore, these actions carried out within the borders of Greece should be evaluated within the scope of individual applications before the ECtHR.

Despite reports of particularly worrying deaths, it is observed that push-back operations continue uninterruptedly. The pushback actions carried out by Greece include threats to the right to life of individuals. In fact, there have been incidents where gas bombs produced in 1980 were used, boats were fired and boots were cut. Such actions constitute a violation of Article 2 of the ECHR regarding the protection of human life. The Association for the Social Support of Youth (ARSIS), the Greek Council for Refugees and HumanRights360, one of the international NGOs, published a joint report on the events that took place in March 2020 at the border with Edirne. With this report, the Greek authorities are urged to investigate the events described and to refrain from taking any similar action in violation of EU law and international law.¹³⁴

According to the data obtained from the Coast Guard Aegean Sea Regional Command, 2 asylum seekers and 2 irregular migrants lost their lives in 2020; 8 in 2021; and in the first 3 months of 2022 in

¹³³ Information obtained by HREIT Delegation from İzmir-Aydın and Edirne high-level coordination meeting.

¹³⁴ The Greek Council for Refugees (GCR), The New Normality: Continuous Pushbacks of Third Country Nationals on the Evros River, p. 1/-30

the Aegean Sea. In addition to the deaths, it is stated that there are 3 cases of irregular immigrants lost in 2020 due to pushbacks. It was determined that the refugees and irregular migrants who lost their lives were nationals of Congo, Sierra Leone, Cameroon, Palestine and Afghanistan. In addition, it was learned that among the irregular migrants who lost their lives as a result of the pushback in 2020, there was also a girl with Afghan nationality. The vast majority of those who lost their lives are irregular migrants who were brought to the border of Turkish territorial waters by Greek Coast Guard boats from the assembly areas on the islands belonging to Greece and thrown into the sea without any sea means. It is obvious that irregular migrants are directly intent on their lives in such incidents. In 20 pushback cases (*March-December 14, 2021; January-February 6, 2022*) carried out by Greek elements in this way, a total of 75 irregular migrants were found to have been thrown directly into the sea. Of the irregular migrants who were thrown into the sea, 66 were rescued alive, and the lifeless bodies of 9 irregular migrants were reached.¹³⁵

Since it is known that Greek law enforcement officers throw asylum seekers and irregular migrants into the sea without life jackets and sometimes in handcuffs, it should be taken into consideration that there may be cases that cannot be detected at all. This is considered to be the minimum figure for the statistics of life losses caused by pushback.

Greece's pushback policy causes direct as well as indirect loss of life. It is seen that irregular migrants have started to turn to more dangerous routes due to these policies that change migration routes. For example, while irregular migration from our country to Italy rarely occurred before 2020 by sea, it tended to increase rapidly after 2020 in parallel with Greece's pushback cases and reached significant dimensions today. While it was reported that 9,058 irregular migrants passed from our country to Greece and 4,113 irregular migrants to Italy in 2020, it was reported that 3,575 irregular migrants passed to Greece and 12,626 irregular migrants to Italy in 2021. When the data are examined, it is seen that the transitions to Greece tended to decrease in 2021 compared to the previous year; and the transitions to Italy increased threefold.

Mass deaths occur in this more dangerous migration route due to the actions of Greece. For example; 35 people lost their lives and 41 people lost their lives at sea as a result of the sinking of 4 boats with asylum seekers and irregular migrants who intended to go to Italy within the Greek Search and Rescue Zone only 3 days between 22-24 December 2021. Pushbacks also increase the likelihood of a maritime disaster resulting in loss of life. Migrant women, girls and boys appear to be at greater risk of suffocation or hypothermia^{136 137}.

135 Official data obtained from the Coast Guard Aegean Regional Command.

136 Hypothermia is an emergency medical condition that occurs as a result of the human body losing the heat required to operate faster than it produces and causes a dangerous decrease in body temperature. Normal body temperature is around 37°C. The diagnosis of hypothermia occurs when the body temperature drops below 35 °C.

The signs and symptoms of the condition vary depending on the low body temperature.

137 UN, Human Rights Council, Report on Means to Address the Human Rights Impact of Pushbacks of Migrants on Land and at Sea, Report of the Special Rapporteur on the Human Rights of Migrants, Felipe González Morales, par. 62.

The UNHCR's *Global Initiative on Maritime Protection*, which was established under the leadership of the Marine Protection Dialogue in 2014, reveals the main elements of the intervention carried out by states with the aim of supporting the creation of protection-sensitive responses to irregular raids from the sea and the reduction of loss of life as well as the exploitation, abuse and violence suffered by irregular passengers at sea. According to the UNHCR, these goals range from international protection beyond search and rescue systems to early identification of the requirements of the principle of humanitarian treatment and non-refoulement to access to fair and effective asylum procedures.¹³⁸

In its resolution of 27 January 2021, the UN Human Rights Committee ruled that *Italy was responsible for the failure to respond in a timely manner to the emergency calls made upon the sinking of the ship containing two hundred immigrants, including AS, DI, OI and G.D v Italy*, and for the failure to send the ship. In the relevant decision, the Committee decided that Article 6 and Article 2/3 of the ICCPR, which secured the right to life, were violated together.¹³⁹

According to the data obtained from Edirne Governorship Provincial Immigration Administration, 121 irregular migrants drowned in the Meriç between 2018 and 2022; 27 migrants due to hypothermia;

A total of 151 immigrants, 3 of them during the Pazarkule events, died as a result of those actions carried out by Greece. Although the nationality distribution of irregular migrants who lost their lives could not be clearly determined, it is known that irregular migrants caught in Edirne province are mostly Moroccan, Syrian and Afghan nationals.¹⁴⁰

Interviewing thousands of people across Europe who report a repulsed and disturbing threat, intimidation, violence and degrading treatment, the UNHCR states that '*people are being dragged at sea on lifeboats and sometimes even pushed directly into the water, exhibiting a disrespect for human life, equally horrific practices are frequently reported at land borders, and there are consistent statements that people are being robbed and brutally pushed back in harsh weather*'.¹⁴¹

When the events at the European borders are examined from the human rights perspective, it is seen that this situation cannot be accepted both as an obligation imposed by the rules of international law and morally. Protecting human life, human rights and dignity must be a common priority. The need to establish 'independent national monitoring mechanisms 'to ensure the reporting and independent/ impartial investigation of incidents, as well as progress on the prevention of human rights violations at borders, is evident.¹⁴²

Asylum seekers and immigrants reported to HREIT, IAO, SGDD, Human Rights Watch (HRW) and other NGOs that real bullets were used against them by shooting both at the air and at themselves while Greek border forces were trying to cross the border with similar expressions.

138 UNHCR, *Global Initiative on Protection at Sea*, 2014, p. 5.

139 Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning Communication No. 3042/2017, 2021, s. 1-23.

140 Official data from the Governorship of Edirne

141 UNHCR, News Comment: UNHCR Warns of Increasing Violence and Human Rights Violations at European Borders, 2022.

142 age.

There are numerous cases of fatal blows after crossing into Greek territory. In the IAS report, documented fatal and/or injury cases are comprehensively addressed. On February 29, 2020, father A of Syrian nationality, his wife F. and her six children tried to cross the Meriç in the south of Edirne to Greece as follows:¹⁴³

"They fired into the air. My wife was scared for our children. She wanted to go with them and went into the river. I went with her. The water reached our waist first. I'm 5 '8 "and my wife is shorter than me. The Greek police yelled at us in a language I didn't understand. I don't think it's English. I think it's Greek. We continued to walk down the river to the Greek side, and by the time we reached a little over halfway, Greece, the water was on our shoulders and around my wife's neck. We raised our hands and kept walking. About two or three meters from the riverbank, the Greek police, who were about seven or eight meters away from us, pointed their rifles at us. They fired, and we got scared into the water. I saw one with a gun, one with a rifle. When I reached the riverbank, my wife was behind me. The last time I saw her, she was standing on the water, about six feet behind me. The soldiers came towards me, I tried to come back to get my wife, but they held me. They pushed my head face down away from the water. I tried to stand up, but the soldier held his rifle to my head so I couldn't move. They fired at least three shots in total. "

It is seen that Greek border forces use tear gas intensively to refugee and immigrant groups, including families with young children trying to cross the border. Some people have been confirmed to have received medical treatment for injuries related to the use of rubber bullets.¹⁴⁴ Therefore, the COE calls on the Greek authorities to end pushback operations on land and at sea.¹⁴⁵

Many reports have been written confirming the expression and approach of "Normalized Impunity" at Europe's Southeast Borders.¹⁴⁶ In addition to being Europe's eastern border, the main reason for this impunity is that it takes too long for an immigration case to be settled in the ECtHR; the priority of asylum seekers and irregular migrants is to reach the destination country; to change their residence on the journey; and the prejudice that they cannot stay in that country if they use the application method. For this reason, it is necessary to follow the investigation of push-backs by an independent authority and to follow them with sufficient evidence. In this sense, the transparency and independence in the trial process as well as the presence of concrete evidence are important.

143 Amnesty International, caught in a Political Game Asylum-Seekers and Migrants on the Greece/Türkiye Border Pay the Price For Europe's Failures, 2020, pp. 8-9.

144 age. p. 9.

145 UNHCR, Profession of Cultural Mediator Becomes Official in Greece, 2021.

146 Ejil Talk, Itamar Mann, A Lost Opportunity for Border Justice at the European Court of Human Rights, February 3, 2022.

In order to apply to the ECtHR individually, national domestic remedies must be used. In this sense, the existence of many investigations conducted in Greece has been reflected in the press. At the request of Lighthouse Reports and nine accompanying European media platforms, an investigation has been launched by the Greek National Transparency Authority (NTA)¹⁴⁷ into unofficial forced pushbacks. As organizations have stated, it is important that all investigations into pushbacks are shared with the public in accordance with the principle of transparency.¹⁴⁸

B. Prohibition of Torture and Ill-Treatment

1. Scope and Normative Framework of the Prohibition of Torture and Ill-Treatment

Torture and ill-treatment are one of the most fundamental rights that are absolutely prohibited in national and international law. It is seen that the prohibition of torture and Ill-Treatment is not dependent on any reason for limitation. It is also considered an absolute (basic) right that includes imperative obligations for states. Since it is an untouchable right for every person, there is a close relationship between not being subjected to torture or similar treatment and protection of human dignity. Because the rights on human body and immunity exist spontaneously in accordance with natural law and are not recognized by anyone and by the state in the meantime. As such, no one, including the state, can interfere with this right.¹⁴⁹

It is seen that regulations have been made in the international human rights acquis regarding the prohibition of torture and ill-treatment. So much so that Article 5 of the UDHR regulates that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”; Article 3 of the ECHR regulates that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”; Article 7 of the ICCPR regulates that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”¹⁵⁰

Pursuant to article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; “The term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.” Article 2 of the relevant Convention states that “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”

147 Hellenic Parliament, Institutions and Transparency Committee: Members of the Committee Hearing on the proposed, by the Cabinet, Candidate for the Governor of National Transparency Authority Two-Year Appointment, 6 September 2019.

148 GCR, National Transparency Authority should publish the full investigation regarding pushbacks in accordance with the principle of transparency, 2022.

149 Atakan, Şahin, Prohibition of Torture in the light of ECHR and ECtHR Decisions, 2021.

150 <https://www.avrupa.info.tr/tr/avrupa-birligi-temel-haklar-bildirgesi-708>, (E.T. 13.06.2022)

It includes "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

"Convinced that the protection of persons deprived of their liberty against torture and inhuman or degrading punishment or treatment can be strengthened by preventive, non-judicial means based on visits"; article 1 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment states that "There shall be established a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment".

According to Article 1 of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: "The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment."¹⁵¹

Article 7 of the Greek Constitution includes the provision that "Torture, any bodily maltreatment, impairment of health or the use of psychological violence, as well as any other offence against human dignity are prohibited and punished as provided by law."

2. Non-Refoulement

The refoulement ban appears as an important principle that should be addressed within the scope of the right to life, the prohibition of torture and ill-treatment and the negative and positive obligations of the state. Article 3 of the UN Convention against Torture prohibits a State Party to expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.¹⁵²

Persons who are planned to be sent from one state's sovereignty area to another state's sovereignty area have the right to benefit from both substantive and procedural guarantees in accordance with international law. Essentially, the principle of "*non-refoulement*" prohibits states from sending any person directly or indirectly to a place where there is a fear of persecution or where there is a risk of exposure to other serious human rights violations or abuses. In terms of procedure; there is an obligation to provide an effective remedy mechanism so that states can object to the decision to send to these people. In the application made by the Greek Refugee Council (GCR) regarding the provision of humanitarian assistance and access to the asylum procedure for Syrian refugees, the ECtHR took a positive approach for all cases with the interim injunction decision. In addition, the Court requested the Greek government to inform whether Syrian refugees had applied for asylum and whether they had access to the asylum procedure and legal aid.

¹⁵¹ UN General Assembly, Additional Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 39/46, para. 1.

¹⁵² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [1984] UN 39/46.

Therefore, the provision of an effective opportunity both in terms of substance and procedure is a fundamental obligation for the States parties to the ECHR.¹⁵³

Because it should be stated that torture and ill-treatment are strictly forbidden regardless of the person in question. Accordingly, *Soering v. the United Kingdom* ruled that the ECtHR pointed out that the obligation of the State party not to deport would arise if there were “*serious indications*” that a foreigner would be at risk of torture and ill-treatment if he was deported for the first time.¹⁵⁴

3. Greece's Obligation to Protect Arising from Prohibition of Torture and Ill-Treatment and Non-Refoulement in Terms of International Human Rights Law

According to the established case-law of the ECtHR, the case must reach a minimum threshold in order to evaluate the mistreatment within the scope of Article 3. Since the determination of this threshold is relative, it should be evaluated as specific to each concrete event. In this context, the duration of the treatment, physical and mental consequences, in some cases, all the circumstances of the case, such as the victim's gender, age and health status, may be related.¹⁵⁵ On the other hand, if a person is injured in custody and under the strict supervision of police officers, the injuries occurring in the meantime lead to strong de facto presumptions.¹⁵⁶ Therefore, the burden of making a convincing explanation of the source of these injuries falls on the relevant states. This is explained by the principle of displacement of the burden of proof.¹⁵⁷

The ECtHR has an established case law that states are under an effective obligation to investigate these allegations in the evaluation of the violation of the prohibition of torture and ill-treatment in terms of procedural obligation. The obligation of states to investigate torture and ill-treatment emerges as a positive procedural obligation. According to the ECtHR, if a person makes a demonstrable claim that he/she has been treated contrary to Article 3 of the Convention, the national authorities have an obligation to conduct an effective official investigation that will clarify the relevant case and ensure that those responsible are determined and punished. In this context, it is emphasized that a deportation decision cannot be made in any way without the identity of the population and without allowing the person to provide a justification for the deportation decision.¹⁵⁸

The prohibition of torture and ill-treatment includes the obligation of states not to engage in acts of torture and ill-treatment against asylum seekers, as well as the obligation to provide the guarantees required by the principle of non-refoulement. As a matter of fact, the ECtHR, in its decision of 2011, underlined the obligation to comply with procedural guarantees within the framework of the principle of non-refoulement in *Belgium v Greece*, and concluded that the Belgian authorities knew or should have

153 GCR, The European Court for Human Rights (ECtHR) grants interim measures for 5th group of Syrian refugees stranded on an islet in the Evros river.

154 ECtHR, *Soering v. UK*, No 14038/88, 7 July 1989.

155 ECtHR, *Germany v. Jalloh*, No. 54810/00, par. 67.

156 ECtHR, *Salman v. Türkiye*, No. 21896/93, par. 100.

157 ECtHR, *Selmouni v. France*, No. 25803/94, par. 87.

158 ECtHR, *Slimani v. France*, No. 57671/00, par. 30-31, 27 July 2004 and *Assenov et al. Bulgaria*, 28 October 1998, Compilation of decisions and provisions 1998-VIII, par. 102.

known that the applicant would be subject to inhuman and degrading treatment if sent to Greece, and therefore that Belgium violated Article 3 of the Convention.¹⁵⁹

Exposure of a state party to the Convention to the risk of subjecting a person to torture or inhuman or degrading treatment under the name of repatriation in a “place within the jurisdiction” and endangering his/her right to life are prohibited in accordance with Articles 2 and 3 of the ECHR. The said obligation also applies to the seas and the Convention is valid for everyone who is in the “jurisdiction” of Greece. As a matter of fact, the ECtHR accepts that persons controlled by a state party on the high seas will enter the jurisdiction of that state. Pursuant to Article 4 of the Protocol No. 4 annexed to¹⁶⁰ ECHR, the collective deportation of foreigners and their deprivation of the right to effective remedy pursuant to Article 13 are also prohibited. In its decisions, the ECtHR held that¹⁶¹ deportations must have sufficient assurance that the personal situation of each of the persons concerned and their asylum applications are dealt with in their true sense and individually.

In this context, *N.D. and N.T. v. Spain* (no. 8675/15 and 8697/15) ECtHR Decision is of great importance.¹⁶² The subject of this application is the claim that applicants who are citizens of Mali and Côte d'Ivoire were expelled from Spain to Morocco collectively in August 2014. Some African asylum seekers, including the applicants, crossed the border by climbing the fence surrounding the Spanish city of Melilla on the African coast, were caught without any identification procedure or opportunity to explain their personal situation, and were handcuffed and handed over to the Moroccan authorities. The Court questioned the parties concerned in accordance with the right to effective remedy application regulated on Article 13 of the Convention and the prohibition on collective expulsion of foreigners regulated on Article 4 of Protocol No. 4.¹⁶³

The Court notes that there will be a violation of Article 4 of Protocol No 4 in cases where the deportation procedure does not take into account the personal circumstances of each individual in fact and individually, and where sufficient safeguards are not provided to demonstrate that their access to any other national procedure that meets the requirements of an effective remedy.¹⁶⁴ According to the settled case-law of the Court, non-citizens have the right to control their entry, stay and removal from the country, without prejudice to their contractual commitments.¹⁶⁵ Pushbacks are a set of state measures where refugees and migrants are often forced to return to a place where they will be persecuted immediately after crossing the border, without taking into account their individual circumstances and without the possibility of submitting an application for asylum or justification.

159 ECtHR, *M.S.S. v. Belgium and Greece*, No. 30696/09, 21 January 2011; *M.A. and Others v. Lithuania*, No. 59793/17, 11 December 2018

160 ECtHR, *Xhavara and Others v. Italy and Albania*, No. 39473/98, 11 January 2001; *Medvedyev et al. v. France*, No. 3394/03, 29 March 2010.

161 ECtHR, *Čonka v. Belgium*, No. 51564-99, 29 January 2019 and *Hirsi Jamaa et al. Italy*, No. 27765/09, 29 May 2021.

162 ECtHR, *N.D. and N.T. v. Spain*, No. 8675/15 and 8697/15, 13 February 2020.

163 *ibid.*

164 ECtHR, *Becker v. Denmark*, *Conka /Belgium*.

165 See, *inter alia*, *Abdulaziz, Cabales Et Balkandali v. United Kingdom*, 28 May 1985, para. 67, Series A No. 94 and *Boujlifa v. France*, 21 October 1997, para. 42, *Decisions and Reports* 1997-VI.

Pushback actions may take the form of rejection at the borders or may take the form of collective rejection.¹⁶⁶

Sending to a place where there is a risk of persecution is also prohibited in accordance with Article 3 of the UN Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment; Article 45/4 of the 1949 Geneva Convention, Article 7 of the UN Convention on Civil and Political Rights; Article 8 of the Declaration on the Protection of All Persons from Disappearance; Article 5 of the Principles on the Effective Prevention and Investigation of Unlawful, Arbitrary and Judicial Executions. In addition, Article 3 of the ECHR constitutes a clear case-law on how the *refoulement* ban should be understood and implemented.

For example, in *Soering v. the United Kingdom* case, the ECtHR ruled that the extradition of a criminal on death row in the United States should be regarded as inhuman and degrading treatment; that it would not be possible to deport or return him; that the opposite conduct would constitute a violation of Article 3 of the Convention; and that the prohibition on Article 3 was definitive and unrestricted, but ruled that the principle of *non-refoulement* could be used not only for asylum seekers but also for criminals.¹⁶⁷

The prohibition of inhuman or degrading treatment on Article 3 of the Convention is one of the most basic values of democratic political societies. It is also a value of civilization closely linked to respect for human dignity, which is a part of the essence of the Convention.¹⁶⁸ The right of contracting States to control the entry, residence and deportation of foreigners as a matter of established international law and subject to treaty obligations, including the Convention, can be cited among the general principles in cases of expulsion.¹⁶⁹

It should also be stated that the elimination of the right of access to deportation, extradition or asylum procedure may lead to a violation within the scope of Article 3, as it will entail the risk of exposure to treatment contrary to the prohibition of ill-treatment. There are numerous decisions of the Court that indicate the obligation not to send the person to that country within the scope of Article 3.¹⁷⁰ In particular, the *Hirsi Jamaa* decision appears as an important decision that emphasizes the Court's view that "*the special nature of the maritime environment cannot justify an illegal area, which is not covered by any legal system capable of enabling individuals to benefit from rights and guarantees.*"¹⁷¹

In order to believe that the applicant faces a real risk of exposure to treatment in violation of Article 3, it is necessary to be meticulous in assessing the existence of substantive reasons.

166 ECtHR, *N.D. and N.T. v. Spain*, No. 8675/15 and 8697/15, 13 February 2020, para. 178.

167 ECCHR, "TERM: Push-back".

168 ECtHR, *Khlaifa and Others v. Italy*, No. 16483/12, par. 158, 15 December 2016.

169 Strasbourg Observers, Jr. and Others V Greece: What Does the Court (not) Say About the EU-Türkiye Statement?, 2018, <https://strasbourgobservers.com/2018/02/21/jr-and-others-v-greece-what-does-the-court-not-say-about-the-eu-türkiye-statement/>, (E.T.20.04.2022)

170 ECtHR, *Soering v. United Kingdom*, 7 July 1989, par. 90-91, Series A No. 161; *Vilvarajah et al. United Kingdom*, 30 October 1991, par. 103, Series A No. 215; *H.L.R v. France*, 29 April 1997, par. 34, Judgment and Decision Reports 1997-III; *Salah Sheekh v. Netherlands*, No. 04.1948, par. 135, January 11, 2007.

171 ECtHR, *Çonka v. Belgium*, No. 51564-99, 29 January 2019 and *Hirsi Jamaa et al. Italy*, No. 27765/09, 29 May 2021.

These standards imply that the applicant must have a minimum level of violence in order to fall within the scope of Article 3 of the ill-treatment he claims he would face if returned. The assessment of this situation appears to be relative, depending on all the circumstances of the applicant.¹⁷² It should therefore be stressed that, if a return is carried out on a person-by-person basis without such an assessment, the State party does not fulfil its positive obligation.¹⁷³ Such obligations are absolute; they are not subject to any derogation, exception or restriction.¹⁷⁴

According to the ECtHR, the exercise of the rights in the ECHR also depends on the border states' proper fulfillment of the legal procedures at the entrance to the country. These legal procedures also cover applications that may be made by those who claim to have escaped persecution. The ECtHR has specifically stated that Spain has procedures that allow legal entry into the country, visa applications have been received, and the Beni Enzar gate is one of the gates where these applications are received. Furthermore, the Court finds that Spanish law has effective remedies for deportation and repatriation.

4. Evaluation of Greece's Violations of the Prohibition of Torture and Ill-Treatment

Asylum seekers and irregular migrants were violently beaten by Greek law enforcement; beyond the confiscation of people's money, passports and clothes, many asylum seekers and irregular migrants were pushed back by removing their clothes by not complying with the prohibition of torture and ill-treatment expressed by foreigners who interviewed with our delegation. It was stated that the abuses in question were carried out by border guards wearing military or police uniforms and by civilian dressed persons who did not have any uniforms on them but cooperated with border guards.

It is understood that the treatment of people has not been transferred to the investigating authorities of the Greek state. In the concrete case, the incidents should be considered as a violation of the prohibition of torture and ill-treatment, as there are no arguments allowing the Greek authorities to say that they took all measures that could reasonably be expected from them to clarify the allegations of ill-treatment.

Repulsions in the Aegean Sea generally take place in two forms.¹⁷⁵ The most common form of repulsion appears to be the Greek Coast Guard's blocking of boats travelling from Türkiye to Greece from reaching Greek territory. This may mean that the boat is physically blocked until it runs out of fuel or the engine is deactivated; when the engine is no longer running, the boat can either be pushed back to the boundaries of the Turkish territorial waters by waves or dragged back if the wind is not appropriate. The second type of pushback is the pushbacks in which asylum seekers and irregular migrants are somehow captured and detained after they have illegally set foot on Greek territory, placed in a life raft without any referral system without any legal procedure, retreated to the middle of the Aegean Sea and abandoned.

172 ECtHR, *Ilias and Ahmed v. Hungary*, No. 47287/15, 21 November 2019.

173 ECtHR, *Hilal v. United Kingdom*, No. 45276/99, par. 60, ECHR 2001-II.

174 ECtHR, *M.S.S. v. Belgium and Greece*, No. 30696/09, 21 January 2011; *M.A. and Others v. Lithuania*, No. 59793/17, 11 December 2018.

175 Bellingcat, *Frontex at Fault: European Border Force Complicit in 'Illegal' Pushbacks*, 2020.

The IAEA reported in 2021 that the pushbacks became Greece's "*de facto border policy*".¹⁷⁶ Although the Greek government formally denies participating in the pushbacks, the incidents and Frontex's role in the pushbacks in Greece¹⁷⁷ have been the subject of numerous investigations by the AP,¹⁷⁸ the EU Anti-Fraud Agency (OLAF) and the European Ombudsman.¹⁷⁹ As a result of these incidents, the Greek authorities recently shared with the public the findings of their report, which they prepared as a result of their investigation.¹⁸⁰ The report states that there is no evidence of "pushbacks" in the Aegean Sea. In addition, Frontex, which works with the Greek coastguard, is rarely mentioned. Given that the Greek government awarded Frontex Director Fabrice Leggeri a reward prior to his resignation, who has been accused of condoning human rights violations, the report's findings should be viewed with scepticism.¹⁸¹

AA's report dated 12 March 2022 states that the ECtHR decided on Greece's controversial pushback practices,¹⁸² that they applied to the ECtHR in March for an urgent decision to prevent the repatriation of four asylum seekers from Greek territory in accordance with Article 39 of the Court's Internal Statute¹⁸³ and that the ECtHR made a decision not to repulse the Greek islands for the first time. In its first interim decision, the court asked the Greek government for information on the steps taken in relation to the pushback allegations.¹⁸⁴

HRW stated in a report published on April 7, 2022 that¹⁸⁵ Greek security forces employed third-country nationals to push male asylum seekers of Middle East or South Asian origin back to the Greek-Turkish land border. In the report titled "*Covering Their Faces: Greece's Use of Immigrants as Police Assistants in Returns*", it was reported that Greek police detained the asylum seekers at the Greek-Turkish land border on the Meriç, confiscated their clothes, money, phones and other belongings in most cases, then the immigrants were delivered to masked men, put on small boats, taken to the middle of the Meriç and pushed to the Turkish side.¹⁸⁶

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), reiterated its recommendation that authorities take action to prevent any repulsion by law enforcement and military personnel at the border with the Meriç River in its 2020 report on its visit to Greece.

176 France24, Pushbacks 'De Facto' Greek Border Policy: Amnesty, <https://www.france24.com/en/live-news/20210622-pushbacks-de-facto-greek-border-policy-amnesty>, 22 June 2021, (E.T. 10.05.2022)

177 Brussels Playbook: Finland's NATO Decision-Brits in Brussels-Sanctions for Schröder?, 2022.

178 ASILE, Marco Stefan and Roberto Cortinovis, "Setting the Right Priorities: Is the New Pact on Migration and Asylum Addressing the Issue of Pushbacks at EU External Borders?", 2020.

179 The Wall Street Journal, "Greece Clamps Down on Aid Groups That Help Migrants", 2021, <https://www.wsj.com/articles/greece-clamps-down-on-aid-groups-that-help-migrants-11628842722>, (E.T. 10.05.2022)

180 Brussels Playbook: Working Weekend Renaissance Man Macron-ECB Still Dovish, 2022.

181 Brussels Playbook: Finland's NATO Decision - Brits in Brussels - Sanctions for Schröder?.

182 AA, "European Court of Human Rights Rules against Greece's Controversial Pushback Practices".

183 Prakken D'oliveira, ECtHR-case Brought against Greece for Pushback' of Minors, <https://www.prakkendoliveira.nl/en/news/news-2021/ECtHR-case-brought-against-greece-for-push-back-of-minors>, (E.T. 10.05.2022)

184 The Independent, "Greek 'Pushbacks' Brought to European Court after Child Refugees 'Towed out to Sea and Abandoned in Raft'", 2021, <https://www.independent.co.uk/news/world/europe/greek-pushbacks-brought-to-european-court-after-child-refugees-placed-back-in-boat-and-abandoned-at-sea-b1812161.html>, (E.T. 10.05.2022)

185 HRW, Their Faces Were Covered: Greece's Use of Migrants as Police Auxiliaries in Pushbacks, 2022.

186 Der Spiegel, Giorgos Christides, Emmanuel Freudenthal, Steffen Lüdke ve Maximilian Popp, EU Border Agency Frontex Complicit in Greek Refugee Pushback Campaign, 2020.

The CPT has emphasized that all foreign nationals who have reached the country's border or request international protection in the country should be effectively protected against the risk of repatriation, including collective expulsions (chain pushback), and that they should be granted access to an effective asylum procedure. For this purpose, the CPT has stated that the police and border guards should be given clear instructions so that irregular migrants entering the country's territory can be individually identified and recorded and brought to a position where they can effectively benefit from legal means against forced return.¹⁸⁷

Another non-governmental organization working actively in this field is the Border Violence Monitoring Network (BVMN). According to the annual report published by BVMN, Greece has pushed about 6,230 asylum seekers back from their shores since January 2020.¹⁸⁸ It is stated that the pushbacks were carried out by putting them on and dragging them onto life-threatening inflatable rafts, which are not able to move intensely at sea.¹⁸⁹ The relevant Report states that disproportionate and excessive use of force was observed in 89% of the pushbacks. This high rate has been shown to normalize the systematic use of illegal force.¹⁹⁰

Cell phones, passports or other identification documents of various migrant groups arriving on the Greek islands or the mainland are confiscated, including large amounts of money and even prescription medicines. Survivors stated that they were verbally harassed by police officers, unable to receive food or water, and had no access to bathing or sanitation facilities. In addition, the records of police officers who inflicted violence on immigrants and detained them for a few days before being pushed back were shared on social media platforms. Within the scope of the report, hundreds of asylum seekers and irregular migrants shared how their inflatable boats were struck, stabbed, almost capsized by their boats or rafts by armed men in black masks while being towed or circled by the Greek Coast Guard boat. While internal investigations into the Greek Coast Guard's pushback allegations have continued, the report also noted that no convincing results have been achieved so far, despite a lot of detailed evidence.¹⁹¹

BVMN's '*Balkan Region Report of April 2022*' reveals that more than 4,000 people have lost their lives trying to cross the Greek border since 1994.

187 CPT, Report to the Greek Government on the visit to Greece carried out by the CPT from 13 to 17 March 2020, s. 25-28

188 Hebrew Immigrant Aid Society (HIAS), Information provided by the NGOs "Human Rights 360" and "HIAS Greece", Violations at International Borders: Trends, Prevention and Accountability, 2021.

189 Global Legal Action Network (Glan), "Drift-backs and Torture on the Aegean", 2021; NGOs such as ABR, LCS and Mare Liberum document violations against immigrants on Greek islands and at sea borders almost every day. Mare Liberum, which is an organization monitoring refugee rights in the Aegean Sea, reported to OHCHR that "there has been a dramatic increase in violence and ill-treatment of refugees in the Aegean". According to the organization, 321 feedbacks, including 9,798 people, were counted between March and December 2020. Lesbos Law Center concludes that "Greek authorities have consistently and systematically conducted collective expulsions at Greece's land and sea borders, put the lives of migrants at risk, and violated their rights, including the right to asylum." based on 17 case studies and a statement of interviews with more than 50 survivors. Since the beginning of 2020, an increasing number of 'pushback' claims have been submitted by the Greek authorities to the ECtHR. The leading media outlets, including Lighthouse Reports, Bellingcat, Der Spiegel and ARD/Report Mainz, and the international press are investigating and extensively reporting pushback cases from Samos and other Aegean islands.

190 International Refugee Rights Association, "Revealed: 2,000 Refugee Deaths Linked to Illegal EU Pushbacks".

191 Pro Asyl, "Pushed back- Systematic Human Rights Violations against Refugees in the Aegean Sea and the Greek-Turkish Land Border", 2013.

BVMN predicts that many more people will die in the coming months if the Greek authorities' response to migration and asylum does not change, taking into account the systematic nature of the pushbacks on the Greek-Turkish borders, the increase in border security and the endemic police violence against people on the move. It therefore stresses the need for accountability mechanisms and rights-based border policies and structural changes to migration and asylum in Greece.¹⁹²

Some of the interviewees stated that while under the supervision of Greek law enforcement, they saw other police wearing uniforms with either the German or Austrian flag patch, but these police did not interact with them or made any effort to intervene in the situation. Considering that Frontex conducted the largest operation in Greece with more than 650 guest service officers, the possibility of pushbacks by these officers was emphasized in¹⁹³ reports that it did not act in line with its legal obligations when faced with systematic fundamental rights violations and 'serious irregularities' in border operations, legitimizing these forms of violence unprecedented at European borders to finance or suspend its operations.¹⁹⁴ In response to the findings of this report, Major General Dimitrios Mallios, who is chief of the Foreigners and Border Protection Branch of the Greek Police Directorate, denied the relevant findings and allegations of misconduct by writing a detailed letter attached to the end of the report.¹⁹⁵

He also stated in his letter that the mandate of the Greek Ombudsman, an independent administrative authority, was not to investigate arbitrary incidents carried out by¹⁹⁶ police officers or members of other security forces, but to carry out studies to collect, record, evaluate, investigate and raise awareness.¹⁹⁷ He stated that they examined complaints that come under four main categories: intent to life, assault on physical integrity, health or personal liberty, illegal use of firearms and racist intentional illegal behavior in carrying out his duties or in relation to other violations of torture and human dignity that may occur through the misuse of their duties (between third parties and Greek police officers). In addition, when the Greek Ombudsman refers a complaint or incident to the competent agencies, the competent agencies are obliged to take all necessary actions in relation to the administrative investigation and then forward the entire content of the file to the Independent Authority.¹⁹⁸

In addition, the national mechanism deals with cases in which the ECtHR has ruled a conviction against Greece. The relevant Letter contains information that two reported cases of unofficial repatriation of migrants who tried to cross the border from Türkiye to Greece in February 2021 and between 01/09/2021-31/01/2022 were submitted to the Ombudsman in February 2021. It is seen that the disciplinary investigations given for both cases are still pending.

192 BVMN, "Illegal Pushbacks and Border Monitoring Violence Reports", April 2022.

193 Glan, "Drift-backs and Torture on the Aegean", 2021.

194 HRW, *Their Faces Were Covered: Greece's Use of Migrants as Police Auxiliaries in Pushbacks*, 2022.

195 HRW, Annex: Response from Hellenic Police Headquarters, Unofficial translation from Greek by Human Rights Watch, 2022.

196 The Greek Ombudsman Independent Authority, *Alleged Pushbacks to Türkiye of Foreign Nationals Who had Arrived in Greece Seeking International Protection*, 2020, p. 20.

197 GCR, *The New Normality: Continuous Pushbacks of Third Country Nationals on the Evros River*.

198 The Greek Ombudsman Independent Authority, *Alleged Pushbacks to Türkiye of Foreign Nationals who Had Arrived in Greece Seeking International Protection*, p. 20.

In the case of allegations and complaints, it was stated that the lack of sufficient evidence regarding the exact location and time of the reported incidents and the details of the alleged perpetrators, witnesses and foreign-victims greatly prevented the verification of the incident, and that it would be possible to impose disciplinary sanctions on the relevant police if the international non-governmental organization HRW presented more evidence related to the reported incidents and sent them to the Greek Police Department.¹⁹⁹

In addition to the national claims and complaints inspection and investigation framework, Article 111 of the EU Regulation 1896/2019 by Frontex established a process called "Complaints" in accordance with the ED Decision dated 06/10/2016 and numbered R-ED-2016-106, the Executive Director of the Agency.²⁰⁰ It is also included in the letter of the Greek Security Directorate that Frontex allows third country citizens who claim that their rights are violated by law enforcement forces or border guards involved in joint operations.²⁰¹

Although the functionality of such application mechanisms has not yet produced any results for Frontex, it is seen that the first compensation lawsuit has been filed against Frontex in front of the ECJ. The applicant has filed a lawsuit in the ECJ in Luxembourg on behalf of a Syrian family returning from Greece to Türkiye on a plane operated by Greece.²⁰² The applicant family also submits that Frontex has failed to fulfill its positive obligations under the Charter of Fundamental Rights, which relates to the prevention of foreseeable violations of the above-mentioned fundamental rights that occurred in the Aegean Sea Region in the context of its operation.²⁰³

The EP Justice and Home Affairs Committee issued the Working Document dated 14 July 2021 on the launch of an investigation into allegations that Frontex was also involved in the pushback actions.²⁰⁴ The Committee recommended continuing its investigation into the failure to monitor and intervene in order to prevent mass expulsion actions and other violations in the area of operations on the Greek-Turkish border.²⁰⁵ As a result of numerous reports and international calls, Frontex Director Fabrice Legger, who is accused of condoning and knowingly concealing asylum-seekers' pushback practices and similar human rights violations in Greece's Aegean Sea, resigned. Apart from resignation, it would be more appropriate for human rights to examine these allegations in a transparent manner and to share the results with the public.²⁰⁶

199 HRW, Annex: Response from Hellenic Police Headquarters, Unofficial translation from Greek by Human Rights Watch, 2022.

200 EUR-LEX-ACCESS to European Union Law, "Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and EU 2016/1624".

201 European Ombudsman, "Report on the Meeting of the European Ombudsman's Inquiry Team with Frontex Representatives", 2021

202 On the First Action for Compensation against Frontex before the ECJ, see Human Rights at Sea, First Legal Action for Damages against Frontex Before The Court of Justice of the European Union, 2021.

203 InfoCuria Case-law, Action brought on 21 May 2021, SS and ST v Frontex, (Case T-282/21).

204 European Parliament, Pushbacks at the EU's External Borders, 2021.

205 European Parliament, 2019-2024, LIBE Committee on Civil Liberties, Justice and Home Affairs, 2021.

206 DW, "pushback" resignation at Frontex, 29 April 2022.

GNCHR,²⁰⁷ on February 1, 2021 to the UN Special Rapporteur on the Human Rights of Migrants on pushback practices and their effects on migrants' human rights included the answers of; on this particular issue,²⁰⁸ that they have prioritized this issue with concern at numerous reports on violent pushbacks and alleged pushbacks using life-threatening practices at sea, that they have brought to the attention of the State reports from NGOs on informal pushback practices occurring in the Evros (Meriç) region, that there has been an increase in the incidents reported by international organizations,²⁰⁹ civil society and the press on individual or collective pushbacks allegedly taking place at the land and sea borders of Greece-Türkiye in recent years, that unfortunately the Greek Courts have yet to decide on such a complaint, that no result has been obtained from several official investigations opened, (a) respect for the principle of non-refoulement, (b) timely and effective access to international protection procedures for all irregular entrants without distinction of race, religion, ethnic origin, political thought, and (c) they have recommended that a mechanism be put in place for the timely and full and independent investigation of all relevant complaints, and that a mechanism be set up to take all the necessary measures to ensure the timely and complete fulfillment of their complaints (2109).²¹⁰

Finally, the GNCHR²¹¹ follows the course of two applications recently brought against Greece by Syrian citizens to the ECHR alleging a violation of the provisions of the ECHR on the grounds that they were pushed back to Türkiye in February 2020.²¹² The right of States to sovereignty guaranteed in international law must be exercised in accordance with their obligations under international human rights law and international refugee law.²¹³ In addition, the GNCHR calls on the EU Member States to ensure that Frontex complies with the principle of non-refoulement of its operations at its external borders with Türkiye and the duty to rescue persons in danger at sea; it proposes to strengthen the role of the National Human Rights Institutions as independent human rights monitoring bodies at EU borders.²¹⁴

In the Report of the Ombudsman of Greece²¹⁵ dated December 31, 2020 "Claiming that foreign nationals who came to Greece for international protection were pushed back to Türkiye", it was stated that "Although they were not equipped with legally necessary legal instruments to investigate the factual foundations of the complaints effectively and comprehensively, there were 15 investigations filed within the Ombudsman as of that date, they also considered the work of organizations such as Der Spiegel and Forensic Architecture in the evidence, immigrant applications were also made to them regarding that they were locked up there foreign nationals whose mobile phones and identity documents were confiscated,

207 The National Commission on Human Rights of Greece (GNCHR) is an independent advisory body that carries out studies for the protection and development of human rights. It was established in accordance with the UN Paris Principles by Law No. 2667/1998. See, GNCHR, Contribution to the UN SR on the HRs of Migrants in Reply to the Questionnaire on Pushback Practices and Their Impact on the Human Rights of Migrants, p. 6-7.

208 age.

209 The UN Committee Against Torture, the UN Working Group on Arbitrary Detention, the CPT and the EC Human Rights Commissioner express their concern about the reported pushback incidents.

210 GNCHR, Statement on the Reported Practices of Pushbacks, 2020.

211 *ibid.*

212 ECtHR, *L.A. a.o. v. Greece and A.A. v. Greece*, No: 12237/10 and 12736/20, 12 May 2020.

213 ECtHR, *N.D. and N.T. v. Spain*, No. 8675/15 and 8697/15, 13 February 2020.

214 ENNHRI, Stronger Human Rights Monitoring at Europe's Borders: Why NHRIs are Part of the Solution, 2020.

215 The Greek Ombudsman Independent Authority, Alleged pushbacks to Türkiye of foreign nationals who had arrived in Greece seeking international protection, p. 20.

were seized by the police, detained by unidentified persons in blue uniforms and brought to a room and were locked up there

He recommended that the *state services or non-governmental organizations are not allowed to communicate with them, that they are not informed about the process, that they are not given food and water, that they are taken to the bank of the Meriç River by other unknown people, that they are pushed to the border of Turkish territorial waters by being put on boats, that the Police Forces conduct official investigations and publish them within a reasonable period of time.*

Full access to fair and efficient asylum procedures is required in order to create assurance for arbitrary displacement. They must also have the right to adequate information and legal advice in a language they understand about the relevant procedures. It is equally important to ensure access to asylum procedures.²¹⁶ Greece unilaterally notifies that it has not accepted an application for a period of time and receives an online application.²¹⁷ This is another aspect that needs to be considered in this context.

When the above-mentioned findings and recommendations of the Greek Human Rights Institution and the Greek Ombudsman are evaluated together with the above-mentioned issues, it is concluded that treatment of individuals was not effectively combated even though it was transferred to the investigating authorities of the Greek state, that there is no argument to allow the Greek authorities to say that they have taken all measures that can reasonably be expected from them to clarify the allegations of mistreatment; therefore, the incidents should be evaluated within the scope of the violation of the prohibition of torture and mistreatment.

For all these reasons, it is necessary for the Greek Government to immediately stop all pushbacks from its territory, to ensure fair treatment of people seeking security and to provide access to asylum procedures to anyone who requests it. The Greek judicial authorities, in particular the Prosecutor of the Supreme Court,²¹⁸ need to conduct a transparent, comprehensive and impartial investigation into allegations that Greek law enforcement was involved in actions that put the lives and security of asylum seekers and irregular migrants at risk. In addition, the officers involved in the incidents and their supervisors should be subjected to disciplinary sanctions and criminal prosecution. In addition to refusing entry across borders, reports that some refugees may have been returned to their country of origin, which may be contrary to the principle of international legal non-refoulement, despite the risks they face there, should be scrutinised.²¹⁹

216 FRA, Fundamental Rights of Refugees, Asylum Applicants and Migrants at the European Borders, 2020.

217 HRW, Greece Using Other Migrants to Expel Asylum Seekers, 2022.

218 Statewatch, "To The Supreme Court Prosecutor Complaint on Push-back Incidents in the Region of Evros During the Months of April-June 2019", 2019.

219 UNHCR, News Comment: UNHCR Warns of Increasing Violence and Human Rights Violations at European Borders, 2022.

C. Right of Access to Asylum Procedure

1. Scope and Normative Framework of the Right of Access to Asylum Procedure

The right of access to asylum procedure is regulated in a declaration and contractual framework.

So much so that Article 14 of the UDHR contains the provisions that *"Everyone has the right to seek and to enjoy in other countries asylum from persecution."*; Article 18 of the EU Charter of Fundamental Rights states that *"The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community"*.

According to Article 1 of the UN Convention on the Legal Status of Refugees the term "refugee" shall apply to any person who: "As a result of events occurring before 1 January 1951 and owing to wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."²²⁰

2. Obligation of Greece to Protect the Right of Access to Asylum Procedure in Terms of International Human Rights Law

Everyone who intends to request international protection has *"full access to a fair and effective asylum procedure", surrounded by adequate safeguards (including access to information, interpreters and lawyers)*. Applying for international protection means the person's desire to receive international protection from any authority. Anyone who expresses an intention to apply for international protection is considered to be an applicant who has all the rights and obligations attached to this status. It is necessary to provide the right of access to the asylum procedure to anyone in need of international protection in order for the right of access to the asylum procedure to be reflected in practice. However, it is seen that many people who need international protection do not know their rights and obligations and do not actively seek asylum in their country of origin. It is precisely at this point that states have a critical role to play in facilitating access to international protection by proactively identifying persons who may wish to apply for international protection, providing information on their right to apply for asylum, and directing them to appropriate procedures.²²¹

Requesting and benefiting from asylum is the most basic human right. Therefore, all asylum seekers should have access to asylum procedures and be protected against pushback or informal forced return. Although Greece has a legitimate right to control its borders and manage irregular migration, this area of legitimacy does not include the authority to prejudice the basic paradigmatic principles of

²²⁰ UN, Convention Relating to the Status of Refugees [1951] UN V429.

²²¹ Frontex, Asylum Procedure Access Practice Guide, 2021, p. 4/-5

international human rights and refugee protection standards or to violate human rights. UNHCR also states that it fully respects the legitimate rights of states to control their borders and acknowledges the challenges posed by mixed migration movements at the EU's external borders.²²²

Before deciding on deportation, the circumstances of the persons returning from the border should be taken into consideration. For example, deportation should be avoided in cases where it is likely that they will be deprived of such basic needs, including access to food, water and emergency health services.

States must guarantee the rights of those seeking international protection in accordance with national and international law in line with the right of access to the court and the right to assess protection needs.²²³

Union member states and Union bodies and institutions are obliged to implement the Charter of Fundamental Rights, which is among the primary sources and hierarchically a higher norm than the national laws of the member states pursuant to Article 51 of the EU Charter of Fundamental Rights, which became binding with the entry into force of the Lisbon Treaty in 2009. In addition, there is an obligation to comply with the decisions of the EU Court of Justice, which is accepted as the competent authority for the detection of violations committed by the member states under the Charter. Since the EU member states are also EC members, they have obligations arising from both the Charter of Fundamental Rights and the ECHR. For this reason, the decisions of the ECtHR, which is the judicial authority to be applied in case of violation of the rights guaranteed in both the ECHR and the Additional Protocols, and the ECJ decisions are binding for Greece.

Unlike the ECHR, the Charter of Fundamental Rights explicitly enshrined the right to asylum on Article 18. According to the relevant article; "The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community." Article 19 of the Charter emphasizes that collective expulsions are prohibited, and then it is referred to the prohibition of non-refoulement: "No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment."

Such regulations bear a serious responsibility on the member states at the point to accept the right to access asylum procedures as a basic right, to admit asylum seekers and to consider applications for asylum. In addition, it protects individuals against practices that prevent them from requesting international protection, such as safe third country practices, by securing the right to asylum. It is seen that Greece's systematic pushback actions lead to violations of international obligations. In this regard, the detention of asylum seekers and irregular migrants by being subjected to mistreatment, the failure to create a civil application area, the failure to recognize the right to effective remedy and the violation of the obligation to host until the application is received constitute a violation of both the abovementioned EU acquis and the 1951 Refugee Convention.

222 UNHCR, UNHCR Calls on Greece to Investigate Pushbacks at Sea and Land Borders with Türkiye, 2020.

223 UNHCR, UNHCR Concerned by Pushback Reports, Calls for Protection of Refugees and Asylum-Seekers, 2020.

European countries should continue to fulfill their existing commitments to refugee protection by admitting asylum seekers to their borders, rescuing them at sea and allowing them to land, and registering and supporting new asylum seekers.²²⁴

3. Evaluation of Greece's Violations of the Right to Access to Asylum Procedure

It is seen that Greece made legal changes in asylum procedures in 2019 and 2020 that reduce assurances. In response to Türkiye's unilateral opening of the border in February 2020, Greece strengthened border control on land and sea and Frontex deployed two rapid border intervention teams. In October 2020, it announced further border control measures, including the creation of a new fence near Feres and the recruitment of 400 border guards. Pushbacks in Meric, arbitrary detentions and increased violence are widely reported by NGOs in Meric. It is seen that most of the people exposed to these violations have not been registered and accordingly, their access to the asylum procedure is limited. The IAS first documented such unlawful practices in 2013. The CPT evaluated the evidence of pushbacks against Meric as "reliable".²²⁵

On 2 March 2020, Greece suspended the registration of asylum requests submitted by irregular entrants for a period of one month from 1 March. It was noted that the new arrivals in the Aegean islands were kept under arbitrary and substandard conditions. The suspension of the operations of the asylum service due to the Covid-19 pandemic between March and May 2020 has made the situation worse for asylum seekers. Greek Coast Guard's growing pushbacks and dangerous practices in the Aegean Sea have been reported by NGOs since spring 2020. In addition, it is seen that the right of access to asylum is prevented in this process.²²⁶

It should be stated that the right to asylum and to request asylum does not depend on the way of arrival in a country. Persons wishing to apply for asylum must be allowed to apply. It is also necessary to inform them about their rights and to provide them with access to legal assistance.²²⁷ It should be stated that the Covid-19 pandemic will not constitute an exception to the right to asylum. Indeed, it is possible to protect against the pandemic and to ensure access to fair and rapid asylum processes.²²⁸

It is seen that people who came by land were also taken into unofficial detention and forcibly returned to neighboring countries without taking into account international protection needs. The 1951 Refugee Convention, ECHR and EU law emphasizes the need to ensure the right of States to seek asylum and protection against pushback, even if persons enter the country irregularly. Pursuant to the provisions of the relevant legislation, it is stated that the authorities cannot automatically refuse people or prevent their entry without making an individual assessment of those in need of protection.²²⁹

224 UNHCR, UNHCR Warns Asylum Under Attack at Europe's Borders, Urges End to Pushbacks and Violence Against Refugees, 2021.

225 COE, Repo

226 Amnesty International, Europe: Pushback Practices and Their Impact on the Human Rights of Migrants and Refugees.

227 UNHCR, News Comment: UNHCR Warns of Increasing Violence and Human Rights Violations at European Borders.

228 UNHCR, UNHCR Warns Asylum Under Attack at Europe's Borders, Urges End to Pushbacks and Violence against Refugees.

229 ibid.

The statements made by the asylum seekers and irregular migrants interviewed to the HREIT (Human Rights and Equality Institution of Türkiye) Delegation reveal that the Greek border forces implemented a government policy to turn down asylum seekers instead of receiving their asylum requests. The asylum seekers interviewed with our delegation reported that there are common practices such as 'baton beatings by border guards, detention periods ranging from hours to a few days in the border area and the pushing back of asylum seeker groups to Türkiye by boats'.

GNCHR noted regarding the situation in the Eastern Aegean islands that the rights of international protection applicants have been violated since 2016 with the signing of the EU-Türkiye Joint Declaration and the closure of borders by European countries and others in the Western Balkan region.

In this context, situations from the practice of actual detention, which does not discriminate between applicants for international protection and illegal masses at borders, from the prevention of effective access to asylum, from security problems affecting shelter, sanitation, education, island residents and asylum seekers due to the disproportionate number of asylum seekers on the islands from violence and racism are mentioned. Consequently, the GNCHR emphasizes that access to international protection procedures must be provided effectively and in a realistic manner through the provision of safe legal transitions, which is a necessary condition for the effective exercise of the right of access to the asylum procedure. It stated that the transfer of asylum-seekers and irregular migrants to the mainland, rather than being held on islands, is an absolute necessity not only for respect for fundamental human rights, but also for the restoration of social peace.²³⁰

Greece's monthly sharing of asylum applications under two separate statistical headings of international protection and asylum provides an important resource for observing the existence of a violation of the ban on collective expulsions, as well as numerical data on pushbacks and the influx of migrants.²³¹

Greece is obliged to give the persons who request protection in accordance with international law and European Law the opportunity to apply for asylum without delay and to ensure that the asylum application is evaluated. So much so that Greece's pushing back to Türkiye without examining the people arriving at the country's border will constitute a violation of the *refoulement* ban. In addition, the complete closure of the border will lead to a violation of the collective repatriation ban.

There is also an uncertainty in the treatment of people who reach Greece and are not directly pushed back. If an asylum application cannot be made, the lack of any legal status of those who reach the country may lead these people to shift to illegal areas. They do not have access to housing, nutrition and health rights, nor can they resettle family members to other EU member countries in accordance with the law. At the same time, the Greek asylum system is in a serious state of incapacity to operate the procedures related to the reception of refugees. Therefore, it is necessary to ensure that at least those who request protection have access to the system first.²³²

230 GNCHR, *Statement: Reviewing Asylum and Immigration Policies and Safeguarding Human Rights at the EU Borders*, 05.03.2020.

231 Migration Greece, Statistics, <https://migration.gov.gr/statistika/>, (E.T. 20. 04. 2022).

232 Deutsches Institut Für Menschenrechte, *Das Vorgehen Griechenlands und der EU an der türkisch-griechischen*, 2020, p. 1/-4

D. Right to Liberty and Security

1. Scope and Normative Framework of the Right to Liberty and Security

The right to freedom and security of individuals emerges as one of the most important fundamental rights in terms of democratic social order, which ensures that the state does not arbitrarily interfere with the freedom of individuals. Everyone benefits from the freedom of the person without exception. This right constitutes a basic assurance in terms of individuals who are kept arbitrarily, those who are arrested or detained on suspicion of a crime, and those who are held for deportation or return.

Foreigners as well as citizens can benefit from the guarantees of this right. Therefore, it is seen that asylum-seekers and irregular migrants who are victims of pushback actions are also the subjects of this right.²³³

According to Article 5 of the ECHR, in which the right to liberty and security of persons is guaranteed; "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law... (f) The lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition; 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him. 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial. 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

It is possible for a foreign national to be deprived of his/her liberty on the grounds that s/he entered the country illegally, resided illegally or violated the law on foreigners in a country. Pursuant to the relevant paragraphs of Article 5 of the ECHR, this form of deprivation of liberty shall be in accordance with the law if the said procedure is carried out either to deport or to prevent unauthorized entry into the country. However, the deprivation of the freedoms of asylum seekers or irregular migrants should neither be an "arbitrary" nor an "automatic consequence" of the alleged violation of the law on foreigners. In other words, the detention of migrants should be an "exceptional", "proportionate" and "individual measure" to prevent illegal immigration.²³⁴

It is seen that the approach of the CPT, which takes a preventive role in this regard and visits to the country, and the case-law of the ECtHR are clear. Deprivation of liberty within the scope of international human rights law should be a measure applied only as a "last resort" after each case is examined meticulously and individually. At this point, alternative measures (not depriving of liberty) should be

²³³ Şirin, Tolga, The Right to Liberty and Security, Individual Application to the Constitutional Court Handbooks Series- 1, 2018, p. 11.

²³⁴ The Right to Liberty and Security, CPT/Inf (2017) 3, p. 1-2.

developed.²³⁵

Another important issue in the context of international human rights law is that maximum efforts should be made to ensure that the practice of detention of asylum seekers or irregular migrants is not "criminal", taking into account the "administrative" structure. First of all, it should be stated that this application is not a sanction or punishment. Therefore, it is critical to provide immigrant detainees with a program and physical conditions appropriate to their legal situation.²³⁶

Each individual case of deprivation of liberty should include a personalized arrest warrant that can be easily found in the institution where the person concerned is held, and this arrest warrant should be issued at the initial stage of deprivation of liberty or immediately afterwards. This basic requirement applies equally to asylum seekers or irregular migrants deprived of their liberty.²³⁷ These persons should benefit from three basic rights from the first moment their liberty is restricted: 'access to a lawyer; access to a medical doctor; and the ability to inform a relative or a third party of a measure restricting their liberty'.²³⁸

Asylum seekers or irregular migrants deprived of their liberty must be accommodated in administrative centers specially designed for this purpose under the national law on foreigners. These centers should have a management and physical conditions appropriate to the legal status of the persons. Maximum attention should be paid to the space arrangement in order to prevent the impression that these buildings are prison environments as much as possible. If these persons are detained in "entry point detention centers", "airport transit points" or "police stations" in compulsory situations such as mass migration, it should be remembered that these places are insufficient places to accommodate for a long time and the time spent in such facilities should be at a minimum, that is, less than 24 hours.²³⁹

2. Greece's Violations of Right to Liberty and Security

The ECtHR decision on²⁴⁰ Jan Conka, who is a Roman expelled from Belgium, includes explanations on the necessity of standards for the places where asylum seekers and irregular migrants are kept. In addition, it is underlined that the legal remedies against the refusal and deportation decisions of the asylum application should not only be at the theoretical level, but also that these remedies should be at an adequate level. Implementation standards of the "collective deportation" prohibition regulated by the Protocol No. 4 of the ECHR have been evaluated in detail in this decision.

ECtHR, Case. It made an even more interesting decision in the UK case, stating that even if the

235 CPT, Malta: 2004 visit, para.14; Serbia and Montenegro: 2004 visit, para. 65.

236 CPT, Immigration Detention, CPT/Inf (2017) 3, p. 2.

237 CPT, 19th General Report on the CPT's activities, para. 85.

238 CPT, 19th General Report on the CPT's activities, para. 81.

239 CPT, 7th General Report on the CPT's activities, para. 27.

240 ECtHR, *Conka v. Belgium*, No. 51564/99, 05/02/2002. In a letter addressed to the Greek Minister for Citizens Protection, the Greek Minister for Immigration and Asylum and the Greek Minister for Maritime and Island Policy, EC Human Rights Commissioner Dunja Mijatovic expressed "concern that the newly established facilities in Greece, which will operate as closed centres, will lead to the deprivation of large-scale and long-term freedom".

conditions defined in the 1951 Convention were not found, the sending of a person living and dying in the last stages of AIDS disease to his/her own country meant leaving him/her completely to deprivation and considered it as a violation of Article 3.

As stated in the other places of the report, there are consistent immigrant statements stating that a large number of immigrants who were pushed back without a judicial or administrative supervision decision were detained, that they were not allowed to request international protection and that the places where they were detained were not official places, that the obligation to inform was not fulfilled in their own language, and that they were kept in humiliating and inhumane conditions until the act of pushing back without food and water.

It also calls for *"a rethink of the closed structure of these centers to ensure that their inhabitants secure freedom of movement"*. It is seen that actions to improve living conditions have already been delayed. It is also likely that such places will be another instrument and reflection of the policy of restricting refugees, asylum seekers and migrants of new reception facilities, which will operate as closed centers, whilst completely far from meeting international standards.²⁴¹

E. Other Fundamental Rights and Freedoms

1. The Right to an Effective Remedy

It is seen that the right to effective remedy can only be subject to infringement by associating it with another right in the ECtHR. In the context of pushback actions, it can be stated that this right is associated with the right to life outside the right to access the asylum procedure, the prohibition of mistreatment, the right to liberty and security of the person and the right to respect for private life and family life. Article 13 of the ECHR includes the provision that *"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."*

In the *Henning Becker v. Danish case* (No. 7011/75, judgment of 3 October 1975) concerning the return by the Danish authorities of about two hundred Vietnamese children, the Commission defined for the first time the measure of *"mass expulsion of foreigners"* as *"any measure which compels foreigners to leave a country in a group, except that it is taken on the basis of a reasonable and impartial examination of the particular situation of each of the foreigners forming the group"*.²⁴²

241 COE, Greek authorities should investigate allegations of pushbacks and ill-treatment of migrants, ensure an enabling environment for NGOs and improve reception conditions, 2021.

242 This definition was then used by other bodies of the Convention in other cases concerning Article 4 of Additional Protocol No. 4. See, *"O. et al v. Luxembourg"*, No. 7757/77, Commission decision of 3 March 1978, *A. et al. Netherlands*, No.14209/88, Commission decision of 16 December 1988, *Andric v. Sweden*, No. 45917/99, 23 February 1999, *Čonka v. Belgium*, No. 51564-99, 29 January 2019, *Davydov v. Estonia*, Decision No.16387/03, 31 May 2005, *Berisha & Haljiti v. Former Yugoslav Republic of Macedonia*, No. 18670/03, judgment of 16 June 2005, *Sultani v. France*, No.45223/05, 2007, *Ghulami v. France*, Decision No. 45302/05, 7 April 2009 and *Dritsas v. Italy*, Decision No. 2344/02, 1 February 2011."

However, this prohibition also applies on the high seas and in the context of non-acceptance and rejection of borders.²⁴³ *IHM's ND and NT v. Spain* (No. 8675/15 and 8697/15) Decision²⁴⁴ is also of great importance in this context. The applicants in the aforementioned application claimed that they were expelled collectively without any personal assessment based on Article 4 of Protocol No. 4 and that they could not request legal assistance. The applicants stated that they wanted to enter Spain by escaping from there due to the armed conflicts in Mali.

Greece has announced that it will suspend asylum applications for 1 month as of 2 March 2020. This appears as a decision that may lead to violation in terms of the right to free movement guaranteed on Article 2 of the Annex 4 of the ECHR Protocol. Due to this decision, asylum seekers who want to pass from Türkiye to Greece cannot find any application mechanism and therefore cannot use their rights of effective remedy.

Greek Helsinki Monitor, in collaboration with²⁴⁵ Mare Liberum, No Name Kitchen, Balkan Info Van, HIAS, published a report from the Greek Supreme Court and the European Commission in 2021 under pressure to investigate cases of pushback and treatment of migrants.²⁴⁶ The related report was submitted to the European Commission by WeMove Europe²⁴⁷ and the international law firm De Brauw Blackstone Westbroek, working on behalf of OXFAM International.

When all these issues and the above-mentioned determinations and recommendations of the Greek Human Rights Institution are evaluated as a whole, it is seen that there is no application mechanism for asylum seekers and irregular migrants to apply for a visa. Consequently, the actions carried out by the Greek authorities must be considered both within the scope of Article 4 of Protocol No. 4 and the violation of Article 13 of the Convention.

The UNHCR has also called for further preventive measures for pushback practices for open process rules and internal monitoring mechanisms at the border, including strengthening the role of the Greek Ombudsman.²⁴⁸

2. The Right to Respect Private and Family Life

UNICEF Geneva Representative Melanie Sharpe, in her statement on April 15, 2020, emphasized that *"as of the beginning of April, there are more than 5,200 unaccompanied and separated children in Greece in need of urgent permanent solutions, including rapid registration, family reunification and displacement; more than 1,600 children are exposed to serious risks, including exploitation and violence; they face overcrowding and dangerous conditions in reception and identification centers on the Aegean*

ECtHR, *N.D. and N.T. v. Spain*, No. 8675/15 and 8697/15, 13 February 2020, para. 185 and 187.

²⁴⁴ *ibid.*

²⁴⁵ OMCT, "Greece: Pushbacks of over 7000 Migrants Including Children may Amount to Torture and Must be Investigated", 18.06.2021.

²⁴⁶ OXFAM International, Rights groups press European Commission to Investigate Violations of EU Law in Greece Over Treatment of Migrants, 2020.

²⁴⁷ WeMove Europe, "Humanity First".

²⁴⁸ UNHCR, UNHCR Concerned by Pushback Reports, Calls for Protection of Refugees and Asylum-Seekers, 2020.

islands; it is very important to increase pledges of resettlement and accelerate family reunification with the support of the EU and member states".

According to Article 8 of the ECHR, *"Everyone has the right to respect for his private and family life, his home and his correspondence."*²⁴⁹ EU Law has included similar regulations with the EU Council Directive on Refugee Qualification for children seeking asylum under the EU Family Reunification Directive. Article 31 of the EU Council Directive on Refugee Qualification emphasizes the need to place the unaccompanied child with his/her adult relatives in the host country where possible, to stay with him/her if he/she has any siblings, and to locate family members who are not with him/her in a sensitive and safe manner as soon as they are available.²⁵⁰

3. Obligation to Respect Human Rights and Principle of Equality

Article 1 of the ECHR, titled "Obligation to respect Human Rights", has the provision that *"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention."*

Article 14 of the ECHR, titled "Prohibition of discrimination", also states that *"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."* The provision of the relevant article is clear and states are expected to take the necessary steps and ensure equal access to the right to asylum for all people.²⁵¹

UNHCR notes that it is deeply concerned by the growing number of credible reports that the Greek authorities unofficially pushed migrants and asylum seekers back to Türkiye immediately after reaching Greek territory or territorial waters.²⁵²

Gillian Triggs, the UNHCR's Assistant High Commissioner for Protection, made statements that *"Respect for human life and refugee rights is not a choice, but a legal and moral imperative. Countries should have legitimate rights to manage their borders in accordance with international law, but also respect human rights. Pushbacks are strictly illegal."*²⁵³

249 ECHR, art. 8.

250 EU Council, Directive on Refugee Qualification, art. 31.

251 HRW, Greece Using Other Migrants to Expel Asylum Seekers, 2022.

252 UNHCR, UNHCR Calls on Greece to Investigate Pushbacks at Sea and Land Borders With Türkiye.

253 UNHCR, UNHCR Warns Asylum Under Attack at Europe's Borders, Urges End to Pushbacks and Violence Against Refugees.

The statement published by GNCHR on 05.03.2020 regarding the developments and violations of rights at the border points out that the number of attacks involving racist and xenophobic activities has increased. In this context, *it is stated that 'the situation in the islands is getting increasingly out of control; the increase in violence, racist attacks, hate speech and xenophobia are worrying; there are violent conflicts between the police and the residents of the region as a result of the Government's decision to build new closed reception centers and land demand despite the objections from local authorities.* The GNCHR also draws attention to specific racist and xenophobic attacks on newcomers, asylum seekers, employees of international organizations, NGOs and journalists through the Racist Violence Recording Network RVRC.²⁵⁴

The GNCHR advises the Greek Police and the Greek Justice Mechanisms 'to effectively investigate and ensure the safety of all complaints of excessive use of force by the Greek police and of racist attacks against new arrivals of asylum seekers, human rights defenders, international and non-governmental personnel, journalists and organized or non-organized groups'.²⁵⁵

The subject of the evaluation of the human rights violations and the EU's attitude towards the events taking place at the border was evaluated in the statement published by the German *Human Rights Institute in March 2020 on the events and observations that took place at the Turkish-Greek border between February 2020 and March 2020, titled "Evaluation of the Current Situation in Terms of Human Rights and Refugee Rights".* The declaration states that, as a rule, states have the right to control and regulate access to their borders based on the right of sovereignty, but that border protection measures must always be appropriate and proportionate to the purpose; in particular, the use of tools that endanger human life or health or that significantly affect it should be subject to strict controls in accordance with basic constitutional principles and human rights, the use of force with the help of pressurized water, tear gas and flash grenades and even the possible use of batons and plastic bullets against people in need of protection, including families with children, cannot be justified and necessary for reasons such as effective border protection and immigration control; the authority of the state to protect border entries brings along the obligation to protect people and to avoid serious human rights violations.²⁵⁶

The EP, with the briefing published in March 2021, pointed out that EU countries have focused on strict border control in recent years and that migration management has been externalized through cooperation with third countries, and that pushback actions erode the values set out in the EU Conventions and that these actions may violate international and European human rights law and humanitarian law principles. Parliament called on member states and EU agencies to respect fundamental rights in their activities to protect the EU's external borders.²⁵⁷

The war in Ukraine has caused the death of thousands of people and also caused severe destruction. It is seen that more than 4 million people are looking for a safe country elsewhere in Europe due to the war. The European countries' response to this enormous migration has been in a warm and

254 GNCHR, Statement: Reviewing Asylum and Immigration Policies and Safeguarding Human Rights at the EU Borders.

255 *ibid.*

256 Deutsches Institut Für Menschenrechte, Das Vorgehen Griechenlands und der EU an der türkisch-griechischen, p. 1/-4

257 European Parliament, Pushbacks at the EU's External Borders.

hospitable direction, with the protection of human dignity and compliance with international obligations. In its last publication of April 2022, the EC Commissioner for Human Rights underlines that this situation is in contrast to widespread human rights violations committed against refugees, asylum seekers and migrants from many other parts of the world, especially Greece, by exposing them to pushback.²⁵⁸ In this regard, Article 3 of the Geneva Convention states that States parties will apply the provisions of the Convention to refugees without discrimination in terms of race, religion or country of origin.²⁵⁹

The principle of non-discrimination and equality should be the basic principle that provides a common response to the current challenges faced by many member states. There should be no double standard for the protection of the right of access to the asylum procedure and the implementation of fair procedures for everyone who comes to the borders of the member states. In the words of EC Human Rights Commissioner Dunja Mijatovic, *"There is no justification for systematically denying the opportunity for a fair and comprehensive assessment of their situation on a case-by-case basis to determine whether others are eligible for asylum or other conditions that would prevent their deportation, while preventing the return of some to danger. And while some are justifiably concerned for their lives and well-being, there is no reason to expose others to practices that deliberately risk their lives or expose them to torture or ill-treatment."*²⁶⁰

As stated by the UN Special Rapporteur on Migrant Rights, states are obliged to respect *"the principle of collective deportation, equality and non-discrimination, the principle of non-refoulement, the right to seek asylum, the right to life, the prohibition of torture, the promotion of gender equality and the principle of child rights and the high benefit of the child while taking border management measures. States are also obliged to ensure that victims of human rights violations have access to justice and to comply with search and rescue obligations under international maritime law."*²⁶¹ Furthermore, the Special Rapporteur states that *'pushbacks, accelerated return procedures, limited access to asylum and other human rights protections, lack of humanitarian assistance, and the criminalization of irregular migrants, as well as human rights defenders, increase the vulnerability of people crossing international borders'*²⁶²

258 COE, Pushed Beyond the Limits Four Areas for Urgent Action to End Human Rights Violations at Europe's Borders, Recommendation by the Council of Europe Commissioner for Human Rights, p. 5.

259 1951 Geneva Convention, art. 3.

260 COE, Pushed Beyond the Limits Four Areas for Urgent Action to End Human Rights Violations at Europe's Borders, Recommendation by the Council of Europe Commissioner for Human Rights, p. 5.

261 UN Human Rights Council, Report on Means to Address the Human Rights Impact of Pushbacks of Migrants on Land and at Sea, para. 62.

262 UN Human Rights Council, Human Rights Violations at International Borders: Trends, Prevention and Accountability, para. 24.





V. **EVALUATION and RECOMMENDATIONS**

V. EVALUATION and RECOMMENDATIONS

HREIT is deeply concerned about the increasing number of violence and serious human rights violations, most of which resulted in loss of life, and calls for an end to the pushback actions by reminding the public that saving lives on land and at sea should be a “first priority”. Many regional and international public, NGO and bar organizations are engaged in activities against human rights violations caused by pushbacks. The process of ordinaryization and normalization of pushback actions create concern, and at this point, all parties need to assume responsibility on the basis of effective stakeholderism without further violations. Avoiding more responsibility will lead to undermining the rule of law in Europe, not only from the point of view of refugees, asylum seekers and migrants, but also to the permanent loss of the human rights protections and values of citizens of the world.²⁶³

Human rights law requires human rights to be at the core of all stages of migration management. Therefore, regardless of the form and scale of the migration movement, it states' treatment of immigrants in their territorial waters or international waters as well as in their land borders must comply with human rights law standards.²⁶⁴ In this regard, the willingness to share responsibility, the commitment to protect human dignity, fair treatment of people and Europe's “commitment to human rights” are obvious in order not to experience pushbacks in Europe.

HREIT calls on the public and responsible stakeholder institutions and organizations to fulfill the following recommendations within the framework of the observations and determinations obtained during the field visits, the information obtained from public institutions and the information obtained from the reports of many organizations documenting the violations.

A. Recommendations to Greek Government Authorities

- Immediate cessation of all pushbacks from land and sea borders without a personalized procedure to prevent violations of the principle of non-refoulement, the prohibition of collective expulsion and/or the right to effective remedies,²⁶⁵
- Independent, impartial and expeditious conduct of all allegations and investigations related to forced pushback, arbitrary detention, non-compliance with asylum procedures, excessive use of force, violence and other abuses in violation of the law,²⁶⁶
- Ensuring that pushback victims and all other actors can report violations safely and that their claims can be duly followed up,

263 COE, Pushed Beyond the Limits Four Areas for Urgent Action to End Human Rights Violations at Europe's Borders, Recommendation by the Council of Europe Commissioner for Human Rights, p. 8.

264 HREIT, Press Statement on pushback Actions for Asylum Seekers and Irregular Immigrants, <https://www.HREIT.go.v.tr/signinmacilara-v-e-disorganized-migrants-orientation-pushback-action-relationship-press-explaining/>, (E.T. 20.04.2022).

265 Amnesty International, Greece: Violence, Lies, and Pushbacks: Refugees and Migrants Still Denied Safety and Asylum at Europe's Borders, p. 43.

266 Ibid., p. 43.

- Avoiding adopting laws and policies that allow people to be pushed back without a personalized procedure,
- Increasing effectiveness in the fight against trafficking, expanding legal options for migration and ensuring effective access for everyone in need of protection,²⁶⁷
- Increasing concerted efforts and cooperation between all relevant states and the EU in order to address the protection concerns of refugees and managing borders with methods referring to human life,
- Considering that the right to request asylum and access to the asylum procedure does not depend on the way of arrival in a country;
 - Preventing the politicization and separation/separation of the asylum issue,
 - Exclusion of irregular entry of refugees and migrants from being considered as a crime based solely on this reason,
 - Allowing these requests of people who want to apply for asylum,
 - Informing and providing legal assistance on the rights of asylum seekers and irregular migrants,²⁶⁸
- To people entering Greece through land and sea borders, including the following;
 - Ensuring that border control operations on land and at sea are carried out in accordance with human rights law and the principle of non-refoulement,
 - Ensuring that all persons subjected to border control operations at sea and on land have access to personalized procedures to enhance their protection needs and to effective remedies against deportation and detention decisions,²⁶⁹
 - Issuing clear and compulsory regulations, instructions, codes of conduct and standard procedures to the authorities responsible for border control on how to approach people crossing the border irregularly in accordance with human rights and refugee protection standards,
- Keeping records of asylum seekers and migrants deprived of their liberty in Greece,
- Raising awareness of the national and international public opinion in order to increase social common sense in Europe, especially in Greece, and ensuring that rejection cases are transparently included in the national and international press,
- Releasing of refugees and migrants arbitrarily detained in Greece,
- Not exception but being norm working closely and constructively with NGOs, human

267 UNHCR, UNHCR Concerned by Pushback Reports, Calls for Protection of Refugees and Asylum-seekers.

268 UNHCR, News Comment: UNHCR Warns of Increasing Violence and Human Rights Violations at European Borders.

269 Amnesty International, Greece: Violence, Lies, and Pushbacks: Refugees and Migrants Still Denied Safety and Asylum at Europe's Borders, p. 44.

rights defenders and the media to ensure the best response and increase transparency in the treatment of refugees, asylum seekers and migrants,²⁷⁰

- Putting an end to criminalization of persons and groups working with refugees, asylum seekers and migrants and creating a conducive environment for NGOs, journalists and activists to do their job freely and unhindered and to report violations encountered.²⁷¹

B. Recommendations to EU Institutions, Frontex and Council of Europe Member States

- Considering that the number of forcibly displaced foreigners has “more than doubled” in the last 10 years and that the factors that cause migration and trigger pushback practices such as civil war, economic problems, security problems, climate change, inadequacies in the field of education, political instability, threat of oppression and persecution and other political problems have continued for many years in many countries of the world such as Syria, Iraq, Yemen and Somalia, the strategic, effective and predictable solution proposals for them should be addressed with effective responsibility sharing,
- Development of human rights-centered migration policies,
- Recognition of push-backs as a Pan-European problem requiring collective action by all member states,
- Promoting the principle of solidarity within the scope of EU and international law by effectively and meaningfully resettling asylum seekers and refugees trying to pass through Greece to Europe,²⁷²
- Establishment of national independent monitoring mechanisms to ensure access to the right to benefit from the asylum procedure, to prevent violations of rights at borders and to ensure accountability,²⁷³
- Ensuring that Greece's existing mechanisms create an Independent Border Monitoring Mechanism by equipping it with sufficient authority, tools and independence,
- Enhancing the transparency of border control activities of EC Member States by strengthening independent monitoring to prevent and detect violations, as well as by strengthening accountability mechanisms when such violations occur,

270 COE, Pushed Beyond the Limits Four Areas for Urgent Action to End Human Rights Violations at Europe's Borders, Recommendation by the Council of Europe Commissioner for Human Rights, p. 6.

271 Amnesty International, Greece: Violence, Lies, and Pushbacks: Refugees and Migrants Still Denied Safety and Asylum at Europe's Borders, p. 44.

272 UNHCR, UNHCR Warns Asylum Under Attack at Europe's Borders, Urges End to Pushbacks and Violence against Refugees.

273 UNHCR, UNHCR Warns Asylum Under Attack at Europe's Borders, Urges End to Pushbacks and Violence against Refugees.

- Considering the evidence of ongoing pushback and violence on land and at sea, evaluation of Frontex's options to suspend or withdraw the human rights consequences of its activities on the Greek land and sea border and its deployment in Greece,
- Taking urgent measures against Greece in order to re-establish the conditions in accordance with European asylum and fundamental rights law,
- Providing emergency support to the humanitarian crisis caused by Greece at the Turkish-Greek land and sea borders,
- Determining the rejection routes and to monitor and observing these routes frequently with vehicles such as ships and drones that make camera images by complying with the protection of personal data, although the rejection cases are tried to be recorded with documents especially by the Turkish Coast Guard Command and many NGOs, in the process of monitoring, documenting and reporting human rights violations, including Frontex,
- Establishment of 'Push-back Cases Monitoring and Reporting System' for effective and systematic monitoring and reporting of push-backs,
- Suing counter violation by EU Commission against Greece for violations of the EU Asylum and Fundamental Rights Act on the basis of serious and consistent evidence that pushbacks continue,
- Re-focusing EC Member States, especially Greece, on the implementation of human rights obligations in good faith, and putting into practice the practical application of the rights specified in the ECHR by refugees, asylum seekers and migrants at the borders,
- Considering Greece's failure to send the information and documents requested by the Court and its failure to cooperate as a separate violation in the cases brought to the ECtHR for rejection cases,
- Giving priority to cases related to rejection cases by the ECtHR; handling these cases urgently if given priority,
- Parliamentarians, acting as both the legislator and the cornerstone of the democratic political system, must take action to counteract pushback, including holding their governments to account and preventing the adoption of laws or policies that are not in line with human rights.²⁷⁴

In addition to all these issues, it is of great importance to encourage applications to the ECtHR considering the prejudice of "Europe will not accept us if an application is made to the ECtHR" with the difficulty of applying to and following the ECtHR by asylum seekers and irregular migrants who are the victims of pushback. It is our wish that the ECtHR will also continue its rights-based attitude in the cases concerning the allegations of human rights violations of asylum seekers and irregular migrants.

274 UNHCR, UNHCR Warns Asylum Under Attack at Europe's Borders, Urges End to Pushbacks and Violence against Refugees.





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VII. ANNEXES

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I. Site Visits



Photo 1: Meeting of HREIT Delegation with UN Refugee Organization Türkiye Office



Photo 2: Meeting of the HREIT Delegation with the Turkish Office of the International Organization for Migration



Photo 3: Meeting of HREIT Delegation with International Migration Policy Development Center



Photo 4: Meeting of HREIT Delegation with COE Special Representative on Migration and Refugees



Photo 5: Meeting of HREIT Delegation with A21 Greece Directorate



Photo 6: Meeting of HREIT Delegation with Aydın Governor Hüseyin AKSOY



Photo 7: Visit of HREIT Delegation to Aydın Removal Center



Photo 8: Interviews of HREIT Delegation with Refugees and Irregular Immigrants Victims of pushback at Aydın Removal Center



Photo 9: Interviews of HREIT Delegation with Asylum Seekers and Irregular Immigrants Rescued by Aydın, Kuşadası Coast Guard Station Command and Turkish Coast Guard Command



Photo 10: Follow-ups of HREIT Delegation by Turkish Coast Guard Boat in Aydın Kuşadası



Photo 11: Visit of HREIT Delegation to Coast Guard Aegean Maritime Regional Command



Photo 12: Visit of HREIT Delegation to İzmir Harmandalı Removal Center



Photo 13: HREIT Delegation's Interviews with Refugees and Irregular Immigrants who are pushback Victims at İzmir Harmandalı Removal Center



Photo 14: Meeting of HREIT Delegation with İzmir Governor Mr. Yavuz Selim KÖŞGER



Photo 15: Follow-ups of HREIT Delegation by Turkish Coast Guard Boat in İzmir Çeşme



Photo 16: Visit of HREIT Delegation to Izmir Bar Association



Photo 17: SGDD/ASAM Visit of HREIT Delegation



Photo 18: High Level Coordination Meeting of HREIT Delegation between İzmir and Aydın



Photo 19: Visit of HREIT Delegation to Edirne Removal Center



Photo 20: Interviews of HREIT Delegation with Refugees and Irregular Immigrants who are the victims of pushback in Edirne Removal Center



Photo 21: Visit of HREIT Delegation to Edirne Governorship



Photo 22: Visit of HREIT Delegation to Edirne Bar Association



Photo 23: Edirne High Level Coordination Meeting of HREIT Delegation



Photo 24: Pushback Observation Group Meeting



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HUMAN RIGHTS AND EQUALITY INSTITUTE OF TÜRKİYE

Yüksel Street No: 23 06650 Kızılay / ANKARA / TÜRKİYE
Phone: +90 312 422 78 00

www.tihek.gov.tr



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