
ADiM BLOG
June 2023
ANALYSES & OPINIONS

Push-backs and International Law Violations at Greek Borders

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Key Words

Push-backs – Prohibition of collective expulsions – Law of the sea – Right to life – NGOs

Abstract

In May 2023, The New York Times published a video documenting the forced expulsion of a group of migrants from the island of Lesbos, at the hands of what appears to be a group of men wearing black balaclavas. EU Home Affairs Commissioner Ylva Johansson commented on the video by demanding Greece to promptly investigate the matter, while Greek PM Kyriakos Mitsotakis defended his government, claiming that Greek migration policies are “tough but fair”, thus implicitly acknowledging the role of Greek police officers in the push-back. This post builds on the footage unearthed by The New York Times, seizing the opportunity to address the Greek authorities’ long-standing practice of pushing-back asylum-seekers, both at sea and on land. The international law violations entailed by push-backs and informal returns are illustrated by reference to the jurisprudence of the European Court of Human Rights. In addition, the contribution highlights the fundamental watchdog role fulfilled by NGOs and civil society organizations when witnessing and documenting human rights violations at European external borders.

1. *Introduction*

On the 19th of May, The New York Times published a [video](#) showing a group of migrants, including women and children, being transported in a white van to a remote spot on the island of Lesbos, forcibly transferred on an inflatable raft by masked men, and abandoned at sea. As reported by The New York Times and other news [outlets](#), the migrants – reportedly Somalis, Eritreans, and Ethiopians – were eventually rescued by a Turkish Coast Guard vessel. Allegedly, the footage was captured on the [11th of April](#) by an Austrian activist. After the publication of the video, [EU Home Affairs Commissioner](#) Ylva Johansson contacted Athens and urged the Greek government to thoroughly investigate the incident. For its part, the Greek government confirmed it will start a probe of the episode and strongly opposed suggestions that it engages in illegal practices against asylum-seekers.

2. *NGOs' fundamental watchdog role at European borders*

Greek authorities' practice of pushing back refugees and asylum-seekers is [well documented](#) and represents a long-standing feature of Greek migration policies. A [research on the Common European Asylum System](#) published in 2019 documented numerous push-backs carried out by Greek authorities during the so-called "refugee crisis". In an interview contained in the report, an Afghan man declared that «[the police] had dogs and they let them come up to us, and this is how they caught us. They apprehended us, took our clothes, everything we had with us, and eventually returned us to Turkey». Similarly, a Syrian man shared that he was misled by what appeared to be Greek police officers. He testified that «[the police] found us very quickly. They wore masks and dark clothes and they spoke to us in English». The migrants were asked their nationality and destination and then «one of the men said this is not Greece, you took the wrong way, but we can take you to Greece». The migrants were eventually guided to what was presented as the Greek border and were told to walk in the direction of what was, in fact, Turkey.

Despite repeated allegations of the government's involvement in push-backs, both at land and at sea, Greece has [consistently denied](#) it engages in such practices, alleging that both Hellenic Coast Guard officers and the Greek police always act in compliance with international and European law. Nonetheless, NGOs and civil society groups such as [Amnesty International](#), [Oxfam](#), Consolidated Rescue Group, Monitoring Rescue Cell, Alarm Phone, Lighthouse Relief, and Aegean Boat Report increasingly [witness and report](#) episodes in which migrants are mistreated and push-backs are carried out on Greek territory or at sea. In these instances, as reported by Amnesty International in 2021, migrants often experience or witness «violence from people they describe as uniformed Greek officials, as well as men in civilian

clothing. This includes blows with sticks or truncheons, kicks, punches, slaps, and pushes, sometimes resulting in severe injuries».

Furthermore, in November 2020, the Norwegian NGO Aegean Boat Report denounced that [Greek officers forced a group of migrants](#) arrived on the island of Lesbos into life rafts which were left to drift towards Turkish territorial waters. Similarly, in May 2020, [Bellingcat](#) – an investigative journalism group – documented that a group of migrants and asylum-seekers who had safely landed on the Greek island of Samos were towed out to sea by a Hellenic Coast Guard vessel and left adrift in Turkish territorial waters. In February 2021, the Platform for International Cooperation on Undocumented Migrants (PICUM), representing a network of 167 organizations working with undocumented migrants worldwide, published a [report](#) describing push-back practices in Greece, the Balkans and Italy. In the report, PICUM claims that, on 26 July 2020, a group of more than twenty persons, including two babies, were taken at night from a detention centre in the island of Rhodes and left to drift in an inflatable raft before being rescued by the Turkish Coast Guard.

Today, the watchdog role fulfilled by NGOs and civil society organizations represents one of the few obstacles to states' increasing disregard for the procedural guarantees granted by international and EU law to people seeking international protection in Europe. For this reason, states are often irritated (to say the least) by the presence of NGOs on their territory, since this may hinder their ability to carry out hostile practices against migrants and refugees, while escaping legal accountability for their actions. In this regard, [scholars](#) explained that «the social construction of the Mediterranean as an empty space allows the EU and its Member States to avoid responsibility for deaths at sea». Nonetheless, «NGOs' activities at sea disrupts this construction, illustrating Europe's complicity in the deaths of thousands of people at its edge». The idea that states do not wish to have independent observers at the border space of the Aegean Sea was a common explanation for the criminalisation of SAR and boat-spotting activities on Greek islands. As stressed by [Schack and Witcher](#), in fact, the «principal reason for the criminalisation of SAR appears to be related to [civil society organizations'] positioning at the border, and their ability and willingness to witness and speak out about the activities of border authorities».

3. The international law violations entailed by the conduct of Greek authorities

In addition to unveiling the crucial watchdog function of NGOs and civil society organisations, the [pattern](#) of push-backs and informal returns at Greek borders presents some interesting legal aspects, hinged on the violation of EU law, international human rights law, and the law of the sea.

Firstly, although Greece has not ratified Protocol no.4 of the ECHR, Greek authorities may be held responsible of a violation of Article 3 of the ECHR (see for example *Soering v. The United Kingdom*, Application no.14038/88). In addition, as far as EU law is concerned, they may be

held responsible of a violation of the Asylum Procedures Directive as well as the Dublin Regulation III, requiring Member States to allow asylum-seekers effective access to an asylum procedure which hinges on exhaustive and comprehensive information, as stressed by the ECtHR in *Sharifi and Others v. Italy and Greece* (§169).

In addition, considering that Turkey adopts personal and territorial limitations to the definition of refugee contained in the Refugee Convention, it may be argued that Greek authorities violated the provision of *non-refoulement* contained, *inter alia*, in the Convention. In this regard, [many scholars and human rights advocates](#) agree on the fact that Turkey may not be considered a “safe third country” where asylum claimants are able to apply for international protection. In fact, Turkey restricted the scope of the Convention to «events occurring in Europe». Consequently, only those fleeing «events occurring in Europe» can enjoy refugee status in Turkey. In turn, this means that people forcibly expelled to Turkey may suffer chain (that is [indirect refoulement](#)) to their countries of origin.

Finally, Greek authorities’ actions were also in breach of the duty to rescue as prescribed by the United Nations Convention on the Law of the Sea ([UNCLOS](#)), the International Convention on Maritime Search and Rescue (so-called [SAR Convention](#)), and the Convention on the Safety of Life at Sea ([SOLAS Convention](#)).

4. The violation of the prohibition of collective expulsions in the jurisprudence of the Strasbourg Court

Although Greece is not bound by Protocol no.4 of the ECHR – having failed to sign and ratify it – and thus cannot formally violate it, it is important to stress that push-backs and informal returns are generally prohibited by Article 4 of this legal instrument, prescribing that «collective expulsion of aliens is prohibited».

As explained by the registry of the ECtHR in its [Guide on Article 4 of Protocol no.4 – a soft-law instrument clarifying the content of the prohibition at hand](#) – «the core purpose of the Article is to prevent States from being able to remove a certain number of aliens without examining their personal circumstances and, consequently, without enabling them to put forward their arguments against the measure taken by the relevant authority». Accordingly, the provision in question represents a crucial procedural guarantee for the rights of people seeking asylum in the territory of one of the contracting states.

The European Court of Human Rights dealt with numerous cases of collective expulsions, among which the landmark case of *Hirsi Jamaa and Others v. Italy* (Application no.27765/09), in 2012, is one of the most relevant. Through its jurisprudence, the Court clarified that the notion of collective expulsion is to be understood as «any measure compelling aliens, as a group, to leave the country, except where such a measure is taken on the basis of a reasonable and

objective examination of the particular case of each individual alien of the group» (see, inter alia, *Khlaifia and Others v. Italy*, [GC] §237). A particularly relevant judgment for present purposes is represented by the case of *Sharifi v. Italy and Greece* (application n.16643/09), which concerned the interception and immediate deportation to Greece of migrants who had clandestinely boarded vessels for Italy and arrived in the Italian port of Ancona. In *Sharifi* the Court stressed that the lack of access to a refugee status determination procedure in the port of disembarkation constitutes a violation of Article 4 of Protocol no.4. On that occasion, the Court observed that, once arrived in Italy, the applicants had been handed back to the captains of the ferries which they had disembarked, without having had access to an interpreter or to anyone who could provide them with information regarding the request for international protection and related procedure (§242). The Court therefore considered that the measures to which the applicants had been subjected once disembarked in Italy had amounted to collective and indiscriminate expulsions. It is almost superfluous to observe that the episode commented in this contribution presents more than one similarity with the judgment in *Sharifi v. Italy and Greece*.

5. *The violation of the prohibition of refoulement*

As for the prohibition of *refoulement*, many [scholars](#) argue that «EU member states' border practices and their unwillingness to admit third-country nationals to a refugee status determination procedure on their territory can result in *refoulement*». As anticipated, this may be the case of Greek push-back practices, since they may result in indirect/chain *refoulement* at the hands of Turkish authorities. As well known, the prohibition of *refoulement* is primarily contained in the Geneva Convention on the status of refugee. Additionally, other legal instruments refer to this prohibition. For instance, Article 4 of the Schengen Borders Code binds EU Member States to act in compliance with the Geneva Convention and with the obligations related to access to international protection, in particular with the principle of *non-refoulement*, when applying the Code. Further, Article 8 of the Asylum Procedures Directive obliges border guards to provide information about the possibility to apply for asylum if there are indications that a person may wish to do so. Regrettably, as explained by [Goldner Lang and Nagy](#), push-backs prevent individuals from applying for asylum, therefore resulting in a potential violation of border authorities' duty to respect the principle of *non-refoulement*.

6. *The violation of the duty to rescue people in distress at sea*

The push-back documented by The New York Times also enshrines a blatant violation of the law of the sea, since Greek authorities did not assist a vessel in danger, but rather actively caused the situation of distress by forcing the migrants on an inflatable raft and abandoning them at sea. Such a reckless behavior carried the potential to cause several deaths amongst the migrants on board. In this regard, it needs to be recalled that, in 2022, Greece was condemned

by the Strasbourg Court in a similar case, that of *Safi and others v. Greece* (Application no.5418/15). The case concerned the sinking of a fishing boat transporting 27 third-country nationals in the Aegean Sea in January 2014, off the island of Farmakonisi, resulting in the death of eleven people. According to the applicants, a coastguard vessel was travelling at very high speed in order to push the refugees back towards Turkish waters and this conduct caused the fishing boat to capsize. The Strasbourg Court found a violation of the right to life, both due to the authorities' failure to investigate such a significant case responsibly and effectively, and to the omission to take those actions that they should and could have taken to protect human lives and prevent the tragic incident (§§166-167).

Despite not being officially confirmed, it seems that the horrific [shipwreck](#) occurred off the coast of Greece in early June may have been the result of a similar behavior of Greek authorities. According to several [survivors](#), in fact, the Greek Coast Guard was present on the site of the shipwreck and did not act to save the lives in peril, rather trying to tow the boat with a rope, probably in the attempt to push it outside Greek territorial waters and towards Turkey.

Unfortunately, as underlined by [Omer Schatz](#), the likelihood of Greece being taken to court under failure to uphold the law of the sea is slim. In fact, «only states, not individuals, can take Greece to court and given the complicity of the 27 members of the EU in this policy this is unlikely in this case».

7. The Greek forced return monitoring system

Finally, it should be noted that a [Recording Mechanism of Informal Forced Returns](#) was set up by Greece under Article 8(6) of the EU Return Directive (2008/115/EC), prescribing that «Member States shall provide for an effective forced-return monitoring system». The mechanism commenced operations in early 2022 under the supervision of the Greek National Commission for Human Rights (GNCHR), and presented its first Interim Report in January 2023. In the framework of this mechanism, ten NGOs and civil society organisations – including the Greek Council for Refugees, the Hellenic League for Human Rights, and Danish Refugee Council – recorded at least 50 incidents and 58 testimonies of informal forced returns, occurred between April 2020 and October 2022. The total number of alleged victims was approximately 2,157 third-country nationals, including asylum-seekers and people enjoying refugee status in Greece.

8. Conclusion

The first report of the Recording Mechanism of Informal Forced Returns demonstrates the systematic recourse to push-backs and forced expulsions by Greek authorities. On a brighter note, however, the monitoring system reveals the human rights potential inherent in the

activities of NGOs and civil society organizations working at European external borders. The mechanism shows how the synergy between national human rights institutions and NGOs may promote international human rights law at the national level and consolidate the substantial and procedural guarantees reserved to migrants and asylum-seekers. In fact, although courts, international tribunals, and legally binding instruments have failed so far to improve the behavior of border authorities in states of first entry, NGOs highlight the cognitive dissonance between provisions of international and EU law protecting the rights of refugees and the legal and/or political strategies enacted in EU states to curb migration flows. In turn, such a fundamental contribution to the implementation of international law might galvanize public opinion and influence the debate on migration at the national, supranational and international level.

SUGGESTED READINGS

Doctrine:

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Case-law:

Hirsi Jamaa and Others v. Italy [GC], 27765/09, Judgment of 23 February 2012

Khlaifia and Others v. Italy [GC], 16483/12, Judgment of 15 December 2016

N.D. and N.T. v. Spain [GC], 8675/15 and 8697/15, Judgment of 13 February 2020

Safi and Others v. Greece, 5418/15, Judgment of 7 July 2022

Sharifi and Others v. Italy and Greece, 16643/09, Judgment of 21 October 2014

Soering v. The United Kingdom [GC], 14038/88, Judgment of 7 July 1989

To cite this contribution: F.R. PARTIPILO, *Push-backs and International Law Violations at Greek Borders*, ADiM Blog, Analyses & Opinions, June 2023.