



# Border Violence Monitoring Network

September 2021

## **K.A. and Others v. Greece and Türkiye B.A. and Others v. Greece and Türkiye Applications 35090/22 and 38444/22**

**Third Party Intervention to the  
European Court of Human Rights**





**Border Violence  
Monitoring Network**

EUROPEAN COURT OF HUMAN RIGHTS  
Council of Europe  
67075 Strasbourg  
Cedex France  
BY FAX and POST

Date: 21 September 2023

**Application nos.**

**35090/22 K.A. and others v. Greece and Türkiye**

**38444/22 B.A. and others v. Greece and Türkiye**

***Third party intervention on behalf of the Border Violence Monitoring Network.***

*Pursuant to the Registrar's notification dated 30 August 2023 that the President of the Section has granted leave, under Rule 44(3) of the Rules of the European Court of Human Rights.*

## I. Introduction

The Border Violence Monitoring Network (BVMN) is a network of non-governmental organisations situated along the Balkan and Greek migration route, whose purpose is to monitor, document and litigate human rights violations at European borders.<sup>1</sup> Since 2017, BVMN has collected more than 1,600 testimonies of pushbacks, and has produced comprehensive reports that trace and analyse trends in border violence. In this submission, BVMN has drawn on these testimonies to provide information and analysis of the prevailing situation in and around Evros, with the aim of assisting this Court in understanding the wider context relevant to these Applications.<sup>2</sup>

## II. The documented practice of pushbacks to islets and abandonment at islets

BVMN began operating on the Greek mainland, taking first-hand testimonies of pushbacks in 2019. Since then, operatives on the ground have taken 186 testimonies pertaining to the Evros border between Greece and Türkiye. Given that each incident of pushback typically impacts multiple individuals, BVMN estimates that approximately 13,027 people were subjected to pushbacks at the Evros border, based on these testimonies alone.<sup>3</sup>

The scope of pushback practices at the Evros border peaked in 2020 when Greece engaged in a new practice at the Evros border, whereby transit groups appeared to be intentionally brought to and stranded on small islets in the Evros archipelago by Greek border forces, rather than being assisted or rescued. Data gathered by BVMN through monitoring distress calls, shows that since the beginning of 2022, 40% of distress calls pertain to groups stuck on islets, of which only a third were successfully rescued.<sup>4</sup>

Pushbacks to islets and the abandonment of people on these islets represent a dangerous shift in the pushback practice in Northern Greece, elucidating a new trend by which Greek border forces only force people halfway across the Evros river and abandon them on small uninhabitable islets, or force them to jump into the water.

The first case documented by BVMN was in November 2020, when member organisation Josoor received reports of a case in which a 16-year-old boy from Pakistan was presumed to have drowned after he and his transit group were stranded on an islet.<sup>5</sup> In November of the same year, BVMN recorded multiple incidents in which large transit groups were stranded on islets in the Evros river for days, in freezing temperatures and without access to food or water. In its report on the erosion of the rule of law in Greece, BVMN focussed on three cases that took place between May and June 2022.<sup>6</sup> During this period alone, the Greek Refugee Council, Human Rights 360 and Alarm Phone reported that 173 people, including 38 minors and a disabled person were left on an islet for several days with no food, water or medical care.<sup>7</sup> Notably, these events transpired less than a month prior to the alleged incidents currently under assessment before this Court.

Between February 2022 and July 2023, BVMN recorded 37 cases where people were stranded on Greek islets between the Greek-Turkish Evros border. In all cases, the Greek authorities were notified of their location, their intention to seek asylum, as well as relevant health conditions among the groups' members.

<sup>1</sup> BVMN is represented under the legal framework of Rigardu e.V., Wurzner Str. 34, 04315 Leipzig, Germany.

<sup>2</sup> See for example: BVMN. 2021. Annual Torture Report 2020. Available at: <https://www.borderviolence.eu/annual-torture-report-2020/>; BVMN. 2020. *Violations at the Greek Borders. Sea and Land Report (February/March)*. Available at <https://www.borderviolence.eu/new-report-on-violations-at-greek-borders/>; BVMN. 2020. *Special Report: COVID-19 and Border Violence along the Balkan Route*. Available at: <https://www.borderviolence.eu/special-report-covid-19-and-border-violence-along-the-balkan-route/>; Mobile Info Team (member of BVMN). 2019. *Illegal Pushbacks at the Border: Denying Refugees the Right to Claim Asylum*. Available at: <https://www.mobileinfoteam.org/pushbacks>.

<sup>3</sup> BVMN. Testimony Database available at: <https://borderviolence.eu/testimonies/>

<sup>4</sup> BVMN, 'A football between the Greek and the Turkish Army': Evros Islets, One Year On' 09/08/2023, available at <https://borderviolence.eu/reports/a-football-between-the-greek-and-turkish-army-evros-islets-one-year-on/>

<sup>5</sup> BVMN, 'Islets, Interim Measures, and Illegal Pushbacks: Erosion of the Rule of Law in Greece' 1/07/2022, available at <https://borderviolence.eu/reports/20548-2/>

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

Evidence gathered by BVMN shows a number of different scenarios causing people to end up on islets in the Evros area. These include: people on the move who were intentionally placed on a Greek islet as a result of a pushback operation from the Greek authorities; people who were intentionally placed on a Greek islet by smugglers and the Greek authorities refused to rescue them or pushed them back to Türkiye; and people unintentionally arrived on a Greek islet, requested assistance and were refused rescue by the Greek authorities or were pushed back to Türkiye.

With regards to the *modus operandi* of intentional stranding on islets by Greek authorities, evidence gathered by BVMN shows that typically, people on the move are apprehended by the authorities and made to board small boats, are then driven across the river to an islet and left there without means of communication, food, or water.<sup>8</sup> For instance in November 2020, a respondent told BVMN that 200 people were abandoned on an islet, some for as long as four days, as the Greek authorities gradually brought more people to the islet.<sup>9</sup> Other respondents have reported being pushed back and stranded on islets in extremely harsh weather conditions, particularly during the winter months.<sup>10</sup> Pushback operations are in 92% of cases perpetrated with violence amounting to a violation of Article 3, as evidenced in this submission.<sup>11</sup>

Due to the nature of the river and the Evros delta, banks and islets alter continuously. Therefore, islets rise and sink depending on the season and the density of the river. The border between Greece and Türkiye does not follow a fixed curved line through the centre of the river, and even if it would, this is subject to change as a result of the river's agency.<sup>12</sup> As demonstrated in testimonies received by BVMN, people on the move are frequently left stranded on islets near the Turkish mainland, regardless of whether these islets are still considered Greek territory or not. The second element of the *modus operandi* of pushbacks is that the Greek authorities conduct these operations at night, or under cover. As one respondent noted, he was transported and removed from the car in one location and as the Greek authorities observed their Turkish counterparts were present on the other side of the bank, they loaded the people back into the cars and transported them to another location from which they were then pushed back.<sup>13</sup>

The shifting of the natural border and that of the river, also results in people being pushed back to islets from which they cannot cross over to Turkish mainland. BVMN is aware of several incidents where people tried to swim from the island but were carried away by the river and drowned.<sup>14</sup>

As outlined in BVMN reports<sup>15</sup> and in light of significant policy shifts in November 2021, access to asylum procedures on mainland Greece has been heavily curtailed as a result of increased pushbacks. This diminished accessibility has compelled transit groups to seek alternative, often riskier methods to access asylum in Greece. The outcome of these policies has been that people ended up stranded on islets either abandoned by smugglers or by unintentionally disembarking on an islet<sup>16</sup>.

<sup>8</sup> BVMN. They beat everyone. Even the women. Except the children... 19/08/2020, available at: <https://borderviolence.eu/testimonies/august-19-2020-2200-north-east-of-nea-vyssa-greece/>; BVMN. One of us sank in the river. He died. We couldn't find him later. 03/01/2021, available at: <https://borderviolence.eu/testimonies/january-3-2021-0200-dilofos-kapikule/>

<sup>9</sup> BVMN. Stranded on an Evros island for five days. 11/11/2021, available at:

<https://borderviolence.eu/testimonies/november-11-2021-0000-island-near-nei-psathades/>

<sup>10</sup> BVMN. We had to crawl to the shore and then get in the boat. 28/11/2020, available at:

<https://borderviolence.eu/testimonies/november-28-2020-2000-pythion-kurttepe/>; BVMN. They keep hitting you every time they get a

chance. 02/02/2021, available at: <https://borderviolence.eu/testimonies/january-2-2021-0000-orestiada-karakasim/>

<sup>11</sup> BVMN. "A football between the Greek and Turkish Army": Evros Islets, One Year On. 09/08/2023. Available at:

<https://borderviolence.eu/reports/a-football-between-the-greek-and-turkish-army-evros-islets-one-year-on/>; Alarm Phone. Twitter Account. 22 July 2023. Available at:

[https://twitter.com/alarm\\_phone/status/1682790981756764160?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1686756260085936129%7Ctwgr%5E29fa9c7fd3cd5c88065c2fbd288ae87653debbd%7Ctwcon%5Es3\\_&ref\\_url=https%3A%2F%2Falarmphone.org%2Ffen%2F2023%2F08%2F07%2Fevros-the-brutal-face-of-the-european-border-regime%2F](https://twitter.com/alarm_phone/status/1682790981756764160?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1686756260085936129%7Ctwgr%5E29fa9c7fd3cd5c88065c2fbd288ae87653debbd%7Ctwcon%5Es3_&ref_url=https%3A%2F%2Falarmphone.org%2Ffen%2F2023%2F08%2F07%2Fevros-the-brutal-face-of-the-european-border-regime%2F)

<sup>12</sup> Ifor Duncan and Stefanos Levidis. Weaponizing a River. 04/2020. Available at:

<https://www.e-flux.com/architecture/at-the-border/325751/weaponizing-a-river/>

<sup>13</sup> BVMN. They kept saying to us "Arab dog". You can't imagine how much hatred was there. It felt like it was a retaliation. 04/10/2021, available at: <https://borderviolence.eu/testimonies/april-10-2021-0000-soufli-to-nasuhbey-via-evros-meric-river/>

<sup>14</sup> Ibid.

<sup>15</sup> BVMN. Special Report. Islets, Interim Measures, and Illegal Pushbacks: Erosion of Rule of Law in Greece. 01/07/2022, accessible on: <https://www.borderviolence.eu/20548-2/>

<sup>16</sup> BVMN. Press Release. 18/08/2022, available at: [https://borderviolence.eu/app/uploads/Press-release\\_IMdecision.pdf](https://borderviolence.eu/app/uploads/Press-release_IMdecision.pdf)

In either cases described above where BVMN was either contacted directly or notified, BVMN operatives communicated as a matter of urgency the geo-location of the people, their intention to seek asylum, identification information and other type of information shared by the group (e.g. lack of food and water, medical conditions of the persons, vulnerabilities). This communication was transmitted to local Greek police stations, the UNHCR, and Frontex. After multiple situations where the authorities ignored the notifications and requests to intervene, emails were also sent to the Greek Ombudsman.

In response to BVMN's and others notifying such emergency situations, Greek authorities have adopted a uniform stance. Frequently, they assert an inability to detect transit groups<sup>17</sup> or contend that the transit groups' whereabouts fall outside Greek territory.<sup>18</sup> This line of argumentation lacks credibility when one considers the precise GPS coordinates provided and takes into account the reported extensive deployment of surveillance technologies along the Evros border.<sup>19</sup>

### **III. Pushbacks at the Evros border and the abandonment at islets, as inhuman or degrading treatment or punishment**

Through the comprehensive database maintained by BVMN, along with reports from international and non-governmental organisations, it becomes undeniably clear that Greece is implicated in a systematic and widespread practice of subjecting people on the move to degrading and inhuman treatment, in violation of Article 3 of the Convention.<sup>20</sup>

People on the move in the Evros region have consistently recounted distressing experiences during pushbacks such as being forced to undress, having their personal belongings confiscated, and/or being detained in extremely cramped conditions without access to essential provisions such as medication, basic hygiene facilities, food, or water.<sup>21</sup> A BVMN respondent stated, "I thought we were going to die because we were hungry and so thirsty".<sup>22</sup> Another respondent reported that some members of his group were told to drink toilet water which subsequently made them sick.<sup>23</sup> Moreover, instances of verbal intimidation and degrading language have also been reported. For example, a respondent from Tunisia reported that he repeatedly faced derogatory slurs from a uniformed man with a Greek flag on their arm, being referred to as an "Arab dog".<sup>24</sup> In another pushback testimony, the respondent recounted that a perpetrator wearing "black clothes and balaclava" put a bottle of water in front of him and warned him not to touch the bottle or he would be punished.<sup>25</sup>

The testimonies of people having been abandoned on islets paint a particularly grim picture of the nature of inhuman or degrading treatment or punishment used by Greece as the victims are left on their own on uninhabitable islands, isolated with no means to cross the river. The islets in the Evros River are small

<sup>17</sup> Kathimerini. ΕΛ.ΑΣ.: Νέα ανακοίνωση για τους πρόσφυγες σε νησίδα του Έβρου. 14/08/2022, available at: <https://www.kathimerini.gr/society/561999922/el-as-nea-anakoinosi-gia-toys-prosfyges-se-nisida-toy-evrov/>

<sup>18</sup> Twitter. Notis Mitarakis (former Greek Minister for Migration). 14/08/2022, available at: <https://twitter.com/nmitarakis/status/1558845236251660288>

<sup>19</sup> European Commission. Managing Migration. EU Financial Support for Greece. 01/2022, accessible on: [https://home-affairs.ec.europa.eu/system/files/2022-01/202202\\_Eu%20Budget-financial%20support%20to%20greece.pdf](https://home-affairs.ec.europa.eu/system/files/2022-01/202202_Eu%20Budget-financial%20support%20to%20greece.pdf)

<sup>20</sup> See for instance, Council of Europe, 'Report to the Greek Government on the ad hoc visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment From November 2021 to 1 December 2021', 2/09/2022, available at: <https://rm.coe.int/1680a7ce96> and Amnesty International, 'Greece: violence, lies and pushbacks', (2021), available at: <https://www.amnesty.org/en/documents/eur25/4307/2021/en/>. For BVMN testimonies see, <https://borderviolence.eu/testimonies/>.

<sup>21</sup> BVMN, 'I asked for the simple thing to give me back my medicine and they didn't - you think they will give me asylum?', (2 December 2021), available at: <https://borderviolence.eu/testimonies/february-12-2021-0000-tychero-balbancik/>.

<sup>22</sup> BVMN, 'Detained for 18 hours and pushed back via the Evros river: "I thought we were going to die because we were hungry and so thirsty"', 1/05/2022), available at: <https://www.borderviolence.eu/violence-reports/may-10-2022-2200-palea-sagini-gr-to-karakasim-tr/>.

<sup>23</sup> Mobile Info Team, 'Illegal Pushbacks in Evros: Evidence of Human Rights Abuses at the Greece/Turkey Border', 11/2019, available at: <https://www.mobileinfoteam.org/wp-content/uploads/2019/11/Illegal-Evros-pushbacks-Report-Mobile-Info-Team-final.pdf> ([squarespace.com](https://www.squarespace.com)).

<sup>24</sup> BVMN, 'They kept saying to us "Arab dog". You can't imagine how much hatred was there. It felt like it was a retaliation', 10/04/2021, available at: <https://borderviolence.eu/testimonies/april-10-2021-0000-soufli-to-nasuhbey-via-evros-meric-river/>.

<sup>25</sup> BVMN, 'The officer put a bottle of water in front of the respondent and told him: "if you touch this bottle, I will leave you a souvenir you will never forget"', 18/02/2021, available at: <https://borderviolence.eu/testimonies/february-18-2021-0200-pythion-cakmakkov/>.

sandbanks that can contain very few people. There is no access to food, safe drinking water, shelter, the means to keep warm, medical care, or any other form of material conditions. Keeping groups of people, including children and vulnerable people, in such conditions has led to (pre-existing) illnesses, bodily harm, mental suffering, and death in the most extreme cases.

Inhuman and degrading treatment by the Greek authorities is clearly evident from a testimony where the respondent was reduced to harming himself in order to be rescued from the islet. In this testimony, the respondent was in a group of around 30 people who had, at this point, been trapped on the islet for two days. He explained: “I got mad and crazy. I started hitting myself. I found a piece of glass on the ground and started cutting myself with it.”<sup>26</sup> This clearly demonstrates the mental suffering experienced by individuals stranded on islets who are oftentimes not rescued by the Greek state, or are rescued only after the situation has been unnecessarily prolonged. The extremely stressful situation imposed on caretakers of children when they see their children suffering deserves special attention as an extremely harsh instance of degrading and inhuman treatment imposed by the Greek government.<sup>27</sup>

In April 2022, five deaths were recorded of people who were neglected at the Evros islets. Among them, two individuals lost their lives due to drowning after being stranded on the islet in April 2021.<sup>28</sup> In August 2021, a sick man died after being abandoned on an islet without access to necessary medical care.<sup>29</sup> Another tragic death involved a four-year-old Syrian boy who drowned when his group was pushed back by the Greek authorities to an islet in the river. The fifth reported death before April 2022 was a woman who urgently required kidney dialysis. Despite being aware of her condition, the Greek authorities allegedly reportedly left her without medical care on the islet.<sup>30</sup> These incidents highlight a disturbing pattern where the Greek government is refusing to provide necessary medical care to individuals in their remit, leading to severe bodily harm in violation of Article 3 of the Convention.<sup>31</sup>

#### IV. Pushbacks across the Evros River as instances of torture

In a significant share of the cases documented by BVMN, treatment towards people on the move during pushbacks at the Evros border is extremely violent. This treatment can often be classified as torture as it constitutes deliberate inhuman treatment causing very serious and cruel suffering with the purpose of instilling fear or intimidation.<sup>32</sup> Moreover, BVMN believes that when individuals are pushed back through the Evros River, or to islets therein, the pushback in itself constitutes acts of torture regardless of the use of excessive violence.<sup>33</sup>

As demonstrated by the testimonies of people on the move, the Greek authorities engage in systematic and premeditated violent treatment, including beatings, forced stripping, use of zip ties, and deprivation of senses, before unlawfully forcibly returning people to Türkiye over the Evros river.<sup>34</sup> For example, a 19-year old respondent reported in February 2021, that people he identified as Greek officers cuffed his hands with zip ties

<sup>26</sup> BVMN, ‘Self harm during pushback: stranded on an Evros island for days, respondent inflicted 20 lacerations on his chest with a piece of glass in a desperate attempt to end the group’s ordeal’, 20/06/2021, available at : <https://borderviolence.eu/testimonies/june-20-2021-0000-1st-pushback-point-svilengrad-2nd-pushback-point-pythion-sigircili/>

<sup>27</sup> Case of Mubilanzila Mayeka and Kaniki Mitunga v. Belgium, ECtHR, 12/10/2007, application no. 13178/03 par 60 - 63

<sup>28</sup> BVMN, ‘If anyone can speak English, you can come work for them [Greek police] for six months and then you will be given papers for asylum’, 04/08/2021, available at : <https://borderviolence.eu/testimonies/april-8-2021-0600-island-near-karayusufllu/>

<sup>29</sup> Watch the Med Alarm Phone Investigations, ‘Deadly Push-Back in the Evros Region’ 30/082021  
Accessible at: <https://watchthemed.net/reports/view/1962>

<sup>30</sup> BVMN, ‘Islets, Interim Measures, and Illegal Pushbacks: Erosion of the Rule of Law in Greece’ 1/07/2022, available at <https://borderviolence.eu/reports/20548-2/>

<sup>31</sup> Blokhin v. Russia, ECtHR, 23/03/2016, application no. 47152/06 par. 136 and Mozer v. Moldova and Russia, ECtHR, 23/02/2016, application no. 11138/10 par. 178

<sup>32</sup> Council of Europe, ‘Prohibition of Torture’, available at: <https://www.coe.int/en/web/echr-toolkit/interdiction-de-la-torture>.

<sup>33</sup> BVMN, ‘Islets, Interim Measures, and Illegal Pushbacks: Erosion of the Rule of Law in Greece’ 1/07/2022, available at <https://borderviolence.eu/reports/20548-2/>

<sup>34</sup> Marion MacGregor, ‘Social Media Video: Migrants in Greece blindfolded and handcuffed’, (Info Migrants), 27/06 2023,, available at: <https://www.infomigrants.net/en/post/49955/social-media-video-migrants-in-greece-blindfolded-and-handcuffed>.

whilst another officer held him down to let two others beat him with a metal baton for an estimated duration of 15 minutes.<sup>35</sup> When the respondent was subsequently brought to the Evros River, he was separated from the group, reportedly forced to undress completely, and again had his hands cuffed with zip ties. He also described being gagged with a sock after which he was severely beaten with wooden sticks until they broke and the perpetrators switched to metal poles.<sup>36</sup> Another respondent reported that uniformed men put their knees on children's necks after beating them with sticks before pushing the group back over the Evros to Türkiye.<sup>37</sup>

Evidently, this violent treatment can be classified as torture as it constitutes deliberate inhuman treatment causing very serious and cruel suffering with the purpose of instilling fear or intimidation.<sup>38</sup> In fact, it can be concluded confidently that the extreme use of violence on people on the move in the Evros region falls within the definition of torture adhered to by the Court by drawing a parallel between the aforementioned testimonies and the Court's reasoning in *Selmouni* and *El-Masri*.<sup>39</sup> The latter is especially compelling bearing in mind that when *Selmouni v. France* was decided in 1999, the Court considered that the threshold of torture was evolving and that acts that would previously be considered inhuman and degrading treatment could be classified as torture in the future to maintain an increasingly high standard, as required for the protection of human rights and fundamental liberties.<sup>40</sup> This reflects the current need to critically evaluate and adapt the understanding of torture to align with contemporary instances of very serious and cruel suffering.

The latter includes pushbacks, which regardless of whether they involve severe violence or not, can be evaluated within the framework of torture based on their inherent elements. Pushback operations inherently involve several elements that result in deliberate and often serious and cruel suffering inflicted upon people with the purpose of intimidating them to dissuade them from seeking protection in Greece; removal from the protection of the law, the use of unjustified and disproportionate physical force, the redirection to dangerous terrain, and the removal of essential protective items including warm clothes and mobile devices to request assistance.<sup>41</sup> These aspects become even more pronounced in pushback operations to the islets in the Evros River, which is a militarised zone where medical or humanitarian actors are denied access. Therefore, the majority of pushback operations, infallibly those to the islets in the Evros River, clearly meet the definition of torture as defined by the Court.

Within other frameworks on the prohibition of torture, a broader definition of torture is maintained. For instance, the UNCAT definition of torture not only involves positive acts, but also omissions.<sup>42</sup> Previously the Committee against Torture has hinted at the fact that the refusal of emergency medical care can amount to torture.

The definition of torture maintained in the Inter-American Convention to Prevent and Punish Torture is broader than that of the Court in that it does not require the pain or suffering to be severe, does not limit the prohibited conduct to a specified purpose and includes methods intended to obliterate the personality of the victim or diminish her capabilities regardless of those methods causing physical pain or suffering.<sup>43</sup> In determining which acts constitute as torture, the Inter-American Commission on Human Rights ("the Commission") and the Inter-American Court on Human Rights have taken into account objective elements including the length of time

<sup>35</sup> BVMN, 'They put zip ties on my hands and one officer pressed my head with his foot and 2 others beat me with a metal beton', 11/02/2021, available at: <https://borderviolence.eu/testimonies/february-11-2021-0000-didymoteicho-serem/>.

<sup>36</sup> Ibid.

<sup>37</sup> BVMN, 'It was like what happened when George Floyd was killed, the officer's put their knees on the children's necks', 27/05/2021, available at: <https://borderviolence.eu/testimonies/may-27-2021-0000-poros-feres-near-to-perifereiaki-zoni-parkou/>.

<sup>38</sup> Council of Europe, 'Prohibition of Torture', available at: <https://www.coe.int/en/web/echr-toolkit/interdiction-de-la-torture>.

<sup>39</sup> *Selmouni v. France*, ECtHR, 28/07/1999, App. no. 25803/94 and *El-Masri v The Former Yugoslav Republic of Macedonia* 13/12/2012 App. no. 39630/09.

<sup>40</sup> *Selmouni v. France*, par. 101.

<sup>41</sup> For a similar view see; Human Rights Council, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment' A/HRC/37/50 (26/02/2018) p. 15 and Council of Europe 'Pushed beyond the limits: four areas for urgent action to end human rights violations at Europe's borders' 04/2022 p. 27

<sup>42</sup> See Nigel Rodley and Matt Pollard, "Criminalisation of Torture: State Obligations under the United Nations Convention against Torture" (2006) E.H.R.L.R 2/115, at p. 120. See also, for example, CAT, 'Concluding Observations on Chile', UN Doc. CAT/C/CR/32/5 14/06/2004), where the Committee recommended that Chile eliminate the practice of refusing to provide emergency medical care to women suffering complications from illegal abortions, unless the women confessed to information about those who performed the abortions.

<sup>43</sup> Inter-American Convention to Prevent and Punish Torture, 9/12/1985, OAS TS no. 67, art. 2.

for which the suffering was inflicted and the wider socio-political circumstances, as well as subjective elements such as the age and particular vulnerability of the victim.<sup>44</sup>

In the case of *Ximenes-Lopes v Brazil*, the Commission recommended that the state had a supreme duty to protect the victim because of his vulnerability as a patient of a psychiatric clinic. Given the extreme vulnerability of the victim, the state had a greater responsibility in his protection.<sup>45</sup> The Inter-American Court acknowledged this interpretation in its judgement.<sup>46</sup> The Commission held that when isolation and strength are used as punishment or coercion or with improper objectives, a human rights violation is even more serious. Moreover, where this use of strength with improper purposes has caused great pain or physical or mental suffering, it may constitute torture.<sup>47</sup> The Commission hung particular weight to the fact that the victim was unarmed, hence, the action used against him was not proportional to the potential threat he could pose.<sup>48</sup>

BVMN believes that a greater burden of protection rests upon the Greek government when it comes to people on the move, as they are extremely vulnerable, not only because of the arduous journey they have endured but even more so because of the de facto lawless situation they face. To use strength and isolation with improper objectives on extremely vulnerable people, causing extreme physical and mental suffering can constitute torture according to the Inter-American framework on human rights. This interpretation can fit within the definition of torture adhered to by the ECtHR, hence, BVMN urges this present Court to rule in line with *Ximenes-Lopes v. Brazil*, awarding a greater form of protection to those vulnerable people who need it the most, and thereby setting an essential precedent.

#### V. Pushbacks to - and abandonment at islets, as violations of the right to life

There is sufficient evidence to suggest that this systematic practice of pushbacks carried out by the Greek authorities at the Evros land border, or to the islets therein, pose a direct risk to the lives of those seeking international protection in Greece.

Frequent reports continue to emerge spotlighting the arbitrary loss of migrants' lives at the Evros River. According to Pavlos Pavlidis, a forensic pathologist at the General Hospital of Alexandroupoli, Evros has the “largest number of buried and unidentified people-on-the-move in Greece”.<sup>49</sup> In a February 2022 interview, Pavlidis reported that 23 bodies had emerged from Evros in the first 2 months of 2022 alone. These statements correspond with the internal BVMN database of dead and missing cases at the Evros land border. From November 2020 until July 2022, BVMN member organisations compiled 42 missing cases in the Evros border area, 26 of which (62%) involved individuals who went missing in the Evros river.<sup>50</sup>

With specific regard to groups who become trapped on islets, the risk to life is further exacerbated as a result of the dire conditions on the islets, coupled with significant delays in medical assistance and a lack of intervention by state authorities. As the Court is aware, despite the indication of Rule 39 interim measures, the Greek state has routinely delayed assistance to those stranded, resulting in the prolongation of suffering, in direct contravention of Article 2.

BVMN alone has reported five deaths relating to islet pushbacks since April 2021. Three of these deaths were caused by drowning, including an incident confirmed by BVMN in April 2021, where two individuals drowned

<sup>44</sup> Association for the Prevention of Torture and Centre of Justice and International Law, ‘Torture in International Law, a guide to jurisprudence (2008) p. 96, accessible on: <https://www.appt.ch/sites/default/files/publications/jurisprudenceguide.pdf>

<sup>45</sup> *Ximenes-Lopes v. Brazil*, IACHR, 04/07/2006, petition no. 12,237, p. 13

<sup>46</sup> Ibid. par. 101 -108

<sup>47</sup> Ibid. p. 13

<sup>48</sup> Ibid.

<sup>49</sup> International Committee of the Red Cross (ICRC), ‘Tragedy at Evros: A perilous river crossing to Greece.’, 30/08/ 2017, available at: <https://www.icrc.org/en/document/tragedy-evros-perilous-river-crossing-greece#:~:text=Wet%2C%20cold%2C%20tired%20and%20lost,walking%20along%20nearby%20tracks>.

<sup>50</sup> BVMN, ‘Islets, Interim Measures and Illegal Pushbacks’, 1/07/2022, available at: [https://borderviolence.eu/app/uploads/Islets\\_4.pdf](https://borderviolence.eu/app/uploads/Islets_4.pdf).



after being stranded on an islet.<sup>51</sup> In two other recorded cases, individuals stranded on islets died of pre-existing medical conditions, which became fatal as a result of a lack of access to medical attention. In August 2021, Josoor and Alarm Phone confirmed an ill Syrian man had died, after being abandoned on an islet without access to necessary medical care.<sup>52</sup> In April 2022, a woman who urgently required dialysis treatment for a long-term kidney problem was left trapped on an islet. Despite being aware of her condition, the Greek authorities allegedly reportedly left her without medical care on the islet, resulting in her subsequent death.<sup>53</sup>

It is safe to assume that these cases are merely the tip of the iceberg and that the true figures representing loss of life are significantly higher. The Evros border area is a military zone, inaccessible to the majority of the public, isolated from civil society organisations and human rights monitors, and largely inhabited by local farmers, fisherman and military personnel. This fact, alongside the well-established practice of confiscating belongings during the pushback process, particularly recording and communication devices like phones, obscures accurate data and concrete evidence collection.

The above cases provide irrefutable evidence that persons trapped on islets are at immediate risk of irreparable harm, in violation of Article 2. These consequences could have been entirely avoidable and underscore the gravity of the Greek state's failure to act in accordance with its legal obligations.

## VI. Pushbacks to - and abandonment at islets, as violations of the right to liberty and security

The testimonies collected by BVMN consistently reveal a systematic violation of the right to liberty and security for people on the move, which goes against the guarantees outlined in Article 5 of the Convention. For a deprivation of liberty to be considered lawful, it must adhere to legal standards of domestic and international law, be non-discriminatory, and free from arbitrariness.<sup>54</sup>

In the case of *Gillan and Quintin v. the UK*, the Court established that various criteria, such as "the type, duration, effects, and manner of implementation of the measure in question," should be taken into account when determining whether a person has been deprived of their liberty.<sup>55</sup> During this case, the Court acknowledged that individuals were effectively compelled to stay where they were and comply with a search and any refusal would have resulted in their arrest, detention at a police station, and potential criminal charges. Consequently, this element of coercion was deemed indicative of a deprivation of liberty under the provisions of Article 5 § 1.<sup>56</sup>

While the Greek Constitution unequivocally guarantees the inviolable right to personal liberty, specifying that "no one shall be ... arrested, imprisoned, or otherwise confined except when and as the law provides,"<sup>57</sup> and emphasising that this right is applicable to all individuals in Greece "irrespective of nationality, race, language, and religious or political beliefs,"<sup>58</sup> the testimonies collected by both BVMN and other human rights organisations undeniably underscore the frequent imposition of arbitrary detention of people on the move by Greek authorities in the context of pushbacks across the Evros region.

Testimonies collected by Amnesty International indicate that Greece uses both "official" and "unofficial" detention sites to hold people arbitrarily before pushbacks.<sup>59</sup> However, substantial evidence reveals the increase in the use of informal and incommunicado detention sites, such as abandoned buildings and farm outbuildings, during pushbacks.<sup>60</sup> The continued use of informal detention sites is known to serve as a mechanism for authorities to attempt to escape legal or administrative oversight whilst conducting pushbacks.<sup>61</sup> In March 2020,

<sup>51</sup> BVMN, If anyone can speak English, you can come work for them [Greek police] for six months and then you will be given papers for asylum. 08/04/2021, available at: <https://borderviolence.eu/testimonies/april-8-2021-0600-island-near-karavusufu/>

<sup>52</sup> Watch the Med Alarm Phone Investigations, 'Deadly Push-Back in the Evros Region' 30/08/2021  
Accessible at: <https://watchthemed.net/reports/view/1962>

<sup>53</sup> BVMN, 'Islets, Interim Measures, and Illegal Pushbacks: Erosion of the Rule of Law in Greece' 1/07/2022, accessible on <https://borderviolence.eu/reports/20548-2/>

<sup>54</sup> Human Rights Watch (2013). Available at: <https://www.hrw.org/report/2013/06/12/unwelcome-guests/greek-police-abuses-migrants-athens>

<sup>55</sup> *Gillan and Quintin v. the UK*, ECtHR, 12/01/2010 app no. 4158/05

<sup>56</sup> *Ibid.* para. 57.

<sup>57</sup> Greek Constitution, art. 5(3).

<sup>58</sup> *Ibid.* art. 5(2).

<sup>59</sup> Amnesty International (2022) 'SUBMISSION TO THE UN COMMITTEE AGAINST TORTURE 73RD SESSION, 19 APRIL - 13 MAY 2022', available at: <https://www.amnesty.org/en/wp-content/uploads/2022/01/EUR2551782022ENGLISH.pdf>

<sup>60</sup> The Left, 'Black Book of Pushbacks', (2022), available at: <https://left.eu/issues/publications/black-book-of-pushbacks-2022/>.

<sup>61</sup> BVMN, 'Briefing: Torture and Pushbacks - Greece 2020' (2020), available at: <https://borderviolence.eu/app/uploads/Greece-Torture-Report-2020.pdf>.

*The New York Times* published an extensive report documenting the Greek government's use of a secret extrajudicial location where people were incommunicado detained before being expelled to Türkiye without due process.<sup>62</sup> Similarly, the UN Committee on Enforced Disappearances has stated that pushbacks, which may involve secret detention, are conducive to enforced disappearances.<sup>63</sup>

The prohibition of arbitrary detention is inextricably linked to the broader right of liberty.<sup>64</sup> To avoid being branded as arbitrary, detention under Article 5 § 1 (f) must be carried out in good faith; it must be closely connected to the grounds of detention relied on by the Government, the place and conditions of detention must be appropriate, and the length of the detention must not exceed that reasonably required for the purpose pursued.<sup>65</sup> However, it is widely acknowledged in international declarations and legal decisions that prolonged incommunicado detention constitutes ill-treatment.<sup>66</sup> Even shorter periods of such detention, as illustrated in the case of *El Masri*, can be considered a violation of human rights.

In fact, testimonies from BVMN and other international organisations consistently demonstrate the various ways in which Greek authorities arbitrarily detain people on the move. Despite the urging of the UN Committee on Enforced Disappearances for the right to access to a lawyer, contact with a person of their choice, and the ability to challenge their detention for those held in secret and informal detentions, violations continue to prevail. For example, three Kurdish-Turkish nationals reported being held in incommunicado detention during their pushback from Greece in September 2020.<sup>67</sup> They detailed that their Greek lawyer had contacted all the police stations in the Evros border region inquiring about their whereabouts, including the one where they were held, but the officers at the police station reportedly denied their presence.<sup>68</sup> Similarly, in June 2021, Amnesty International's research into pushbacks from Greece found that all participants held in incommunicado detention reported having no access to consult with lawyers or the opportunity to make phone calls.<sup>69</sup>

Evidence also suggests that individuals held in incommunicado detention are not informed of the reason for their apprehension and detention,<sup>70</sup> constituting a clear violation of Article 5 § 2. Studies found that individuals held incommunicado in Greece were not informed of the reason for their arrest or without knowing the reason in a language they understood, and any information provided regarding reasons for people's apprehension and detention was false.<sup>71</sup> As such, the apprehensions and detentions reported clearly occur outside of identifiable legal procedures and meet the definition of arbitrary arrest and detention, thus violating the right to liberty and security.

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<sup>62</sup> The New York Times, 'We Are Like Animals': Inside Greece's Secret Site for Migrants', 10/0/ 2020, available at: <https://www.nytimes.com/2020/03/10/world/europe/greece-migrants-secret-site.html>.

<sup>63</sup> UN. Committee on Enforced Disappearances (22nd sess. : 2022 : Geneva), available at: <https://digitallibrary.un.org/record/3987990>

<sup>64</sup> de Londras, 'The Right to Challenge the Lawfulness of Detention: An International Perspective on US Detention of Suspected Terrorists' (2007) 12 Journal of Conflict & Security Law 2007 at 238.)

<sup>65</sup> See *Saadi v. the United Kingdom*, ECtHR, 29/01/2008, App. No. 13229/03, par. 74,

<sup>66</sup> *Munira MUJKANOVIC against Bosnia and Herzegovina and 5 other applications*, ECtHR, 21/08/1992, App. No. 47063/08, para 16.

<sup>67</sup> BVMN, 'Witnessing torture in the Soufli Police Station', 26/09/2020, available at: <https://www.borderviolence.eu/violence-reports/september-26-2020-0000-411929-9n-262943-1e-2/>.

<sup>68</sup> Ibid.

<sup>69</sup> Amnesty International, 'Greece: violence, lies, and pushbacks', (2021), available at: <https://www.justice.gov/eoir/page/file/1411031/download>.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.