



- CUSTOMS -

Response to Greek Ombudsman's Interim Report on Alleged Pushbacks to Turkey

On 28 April, the Greek Ombudsman released an interim report (updated up to 31 December, 2020) on pushbacks of people-on-the-move from Greece to Turkey at the land border, in the area of the Evros river. This report is an update on the Ombudsman's own-initiative investigation spread over a period of 3.5 years into allegations of pushbacks which was launched on 9 June 2017. Whilst the investigation continues, this interim report presents key aspects of the practice that have been reported, records how allegations have been responded to, and makes proposals for change.

The Ombudsman has received, looked into, and cited in this report allegations from numerous Greek and international human rights organizations, media outlets, NGOs and grassroots groups (Council of Europe Commissioner for Human Rights, UNHCR, Democratic Alignment Party, the Hellenic League for Human Rights, MSF, Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Forensic Architecture, Der Spiegel, BVMN, HumanRights360, ARSIS, the Greek Council for Refugees). In spite of the diversity of source material, and the corroboration of trends and patterns, the majority of the findings are still under assessment, or have been considered insufficient to conclude that officers or other state agents are conducting pushbacks.

The fifth section of the report details how police directorates of Alexandroupoli, Orestiada, the Reception and Identification Service, the Aliens' and Border Protection Division, and the Regional Director for Eastern Macedonia and Thrace, all investigated themselves and their own departments and found no evidence of wrongdoing, and in fact denied the occurrence of such incidents.



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Instead, the police attributed all allegations for pushbacks to “traffickers and unidentified individuals” aiming to destabilize the operational capacities of the Greek authorities.

Whilst the Ombudsman accepts that complaints indicate a standard practice of pushbacks that has affected several thousands of individuals, it is also stated that the necessary statutory tools and means to investigate effectively have not been provided to the Ombudsman and thus definitive conclusions have not been reached insofar. In line with this, the proposals submitted by the Ombudsman are two pronged: for the Greek police to formally investigate allegations of pushbacks that have not been investigated insofar, and for the authorities to develop a specific and detailed operational plan to address the possibility of private groups or militias carrying out illegal pushbacks.

The Report States

“All police replies to the Ombudsman’s inquiries included the following: the local police directorates noted that no evidence or indications emerged to confirm the allegations or to provide at least the necessary basis for a formal internal investigation for human rights violations by acts or omissions of police officers.”

This statement is in direct contradiction to BVMN’s findings after being present in the region since mid-2019. Network members on the ground - Josoor, Mobile Info Team and anonymous partners - have documented 114 pushback reports over the Evros region, which have affected approximately 6,150 people to date. This is just a snapshot into the true numbers, with BVMN being just one set of reporters on the ground with limited access and capacity. In light of these numbers it seems implausible that no evidence or indications have emerged that would confirm allegations of systematic pushbacks taking place regularly in the Evros border area.

Further data collected by BVMN indicates that even more extreme and concerning trends have developed since the start of 2020, in conjunction with the COVID-19 lockdown and the actions of the Turkish government in February and March 2020.



These observed trends include an increase in group sizes, the apprehension and pushback of groups from deep into the mainland, e.g. Thessaloniki and Igoumenitsa, abandoning people on islands in the Evros river, and outsourcing the role of ferrying the dinghies across the Evros river to people-on-the-move in order to avoid interactions with Turkish authorities and in an attempt to avoid accountability. Furthermore, in BVMN's recently released Torture Report it is noted that almost 90% of all Greek pushback testimonies contain one or more types of torture or ill-treatment, with up to 52% of all pushback groups subject to such treatment also containing minors. Data gathered by BVMN suggests a standardised, systematic practice with clear stages of events and patterns of abuse.

“Traffickers and unidentified individuals” - an implausible suggestion.

This section rebuts the implausible suggestion of the Ombudsperson that “traffickers and unidentified individuals” groups are orchestrating pushbacks. While it is accepted that civilians may be participating in pushbacks, they are not the primary actors instigating them. Instead, civilian involvement in pushbacks is marginal when contextualized within the network of state operated forced returns, which involve the collaboration of multiple police units across Greece. In this regard, further clarification should be requested from police directorates about the transport of people in police vehicles from Thessaloniki and Igoumenitsa to the Greek - Turkish border, and their subsequent pushback to Turkey.

Since April 2020, BVMN has also recorded mass pushbacks from pre-removal detention centers. Around 300 people-on-the-move were violently pushed back from Paranesti, Drama to Turkey after a series of hunger strikes. Four respondents, independently from one another, had stated that Greek authorities had informed them that they would be transferred to a detention centre near Athens and issued documentation that would permit them to register an asylum application. All five respondents reported that they were transferred from the Paranesti pre-removal detention centre into a large blue van, truck or bus, describing vehicles similar to police issued buses, and transported to the border. One other report records the testimony of a Moroccan man, detained for six months in Xanthi pre-removal detention centre and then transported from the detention centre to the Evros border in a blue bus.



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Regularly, people-on-the-move have been apprehended by police officers on the streets of Thessaloniki, on the pretext of document checking and denied access to asylum. Reports from 2020 and up until today describe a standard practice of people being transferred between police stations, until a larger group is gathered and transferred in a bus to the border area. Multiple respondents describe that men in civilian clothing or police officers in uniform transfer them from police stations in the Thessaloniki area, into dark-blue buses with grated windows, and transport them to the border area.

In the Evros area, people-on-the-move describe a cooperation of officers in Greek police and army uniforms with “masked men” in civilian or plain black clothes. Respondents often refer to these groups as “commandos”, “army” or “officers”. Upon further detailed questioning, people seem to describe Greek officers, as the weapons they carry fit the description of service weapons issued to Greek police, such as batons and guns. Among the equipment identified are also tasers and stun guns in the possession of officers. Often, uniforms are described in great detail as having the Greek flag and police insignia. Vehicles spotted by respondents have blue strobe lights and radio intercoms inside. All testimonies collected describe, at the land border area between Greece and Turkey, infrastructure, equipment and vehicles that could only belong to Greek law enforcement directorates.

BVMN reports and testimonies collected since 2019 seem to reflect the reality at the Greek borders for longer than several years. Our findings correspond with the reply from the police directorate of Orestiada who informed the Greek Ombudsman that it deterred the crossing from Turkey to Greece of approximately 57,000 persons between 2017-2018.

We find the Ombudsman’s finding improbable, and even impossible, that if pushbacks are not perpetrated “by Greek state agents themselves, they are at least tolerated or encouraged and facilitated by the Greek authorities”. Taking into account the level of organization, the infrastructure, the equipment and the description of vehicles used, Greek officers are clearly conducting pushbacks, from transport, transfer, use of violence, illegal detention of people-on-the-move to the final act of ferrying people over or pushing people into the Evros river.

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In the improbable case that it would be accurate, Greek officers and other state agents involved remain accountable for serious crimes according to national and international criminal law. Whilst Greece would still be in violation of its international obligations as, despite numerous reports from NGOs and grassroots groups, as well as media and investigative groups the government has been unwilling to investigate.

The Legal Context

The Evros border is one of Europe's most heavily guarded and fortified borders, with a 5 km operational buffer-zone. This makes it highly improbable, if not impossible, that there would be a consistent civilian presence, with the exception of the local farmers and fishermen, without the support of the Greek authorities. In this way, the Greek police's argument that 'traffickers and unidentified individuals' are conducting illegal deportations at the border is untenable.

Despite this, even if we accept the implausible arguments of ignorance on behalf of the State, Greece can still be found to be in violation of its various human rights obligations, for example Article 3 of the ECHR which prohibits torture and the return of people to states where they fear serious human rights violations. Whilst ill-treatment by a non-state agent does not in itself constitute a breach of Article 3, the European Court of Human Rights (ECtHR) has interpreted Article 3 to provide safeguards that are broader than the bare prohibition of acts of torture or ill-treatment by servants of the state.

The positive obligation to conduct an effective investigation is not limited solely to cases of ill-treatment by state agents, as the duty to conduct an effective investigation into alleged ill-treatment by private individuals is inherent to Article 3. Having established this, the lack of investigation on behalf of Greece, who has been informed by various NGOs and human rights watch dogs, may well amount to a violation of Article 3. The tardy request of the Ombudsperson for Greece to investigate pushbacks, years on from the Ombudsperson being informed of reliable testimonies of pushbacks may well be deemed as being too late, with the liability of Greece remaining intact, even if such acts are performed only by private actors.



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Furthermore, the use of spaces governed and maintained by the state, such as the Evros border, by private actors, raises questions as to the connivance of Greek authorities in the ill-treatment of individuals by private parties, which may also engage State responsibility (Ilaşcu and others v. Moldova and Russia 2004 para 318; Cyprus v. Turkey 2014 para 81). In this regard, the Ombudsperson's recommendation is in variance with recognised standards for effective investigations, in particular the "Istanbul Protocol" which requires that "investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial" (2000 para 2). The police investigating itself for direct involvement in pushbacks or their support of 'private groups' clearly falls short of this standard. Therefore, the recommendation of the Ombudsperson for the Greek police to investigate themselves ipso facto results in an ineffective investigation, with the fact that the police have consistently denied the existence of pushbacks only confirming why perpetrators should not investigate themselves.

Regarding the legal responsibility of the police, an adequate reparative response requires an effective and impartial investigation as well as the prosecution and punishment of the perpetrators of pushbacks. This stands in relation to police who simply 'followed orders' with ECtHR jurisprudence supporting this approach. In *Streletz, Kessler And Krenz v. Germany* (2001) the ECtHR unanimously upheld the criminal prosecution of the leaders of the German Democratic Republic (GDR) who ordered the murder of individuals attempting to flee the GDR who they defined as 'border transgressors' (at paras 102-103 of the judgement). Subsequently, in *K.-H.W. v. Germany* (2001) the Court affirmed *Streletz*, applying criminal responsibility for a low-ranking soldier (Oxman and Rudolf 2001).

Regarding the responsibility of police officers involved in pushbacks, we would like to draw attention to their individual criminal responsibility both according to Greek criminal law, and within the framework of international criminal law. In this sense, the Ombudsman should have included in its report recommendations regarding that perpetrators of human rights violations are personally responsible and if the acts are committed in the discharge of their duties, it does not absolve them from criminal responsibility.



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Relevant legal precedent in international criminal law are the Nuremberg trials where the judges rejected the “following orders” defense. They found that when an officer follows an order that is illegal under international law, they are responsible for that choice, unless they can prove they were ignorant of the fact that the order was illegal. As in the Nuremberg trials, courts judicating on pushbacks would more than likely maintain that it is impossible for police to not know that torturing, endangering lives and, as in the Greek context, violating the jus cogens norm of non-refoulement, is illegal (Minlow 2007).

The Minnesota Protocol (1991) clarifies that responses to serious rights abuses require that investigations seek to determine both individual criminal responsibility and the larger truth about ‘policies and systematic failures that may have contributed to a death, and identify patterns where they exist’ (2001 para 26). Thus, investigations require two tracks – the establishment of individual responsibility and another inquiry focused on systematic failures and related political accountability (Hessbruegge 2017).



Recommendations

We commend the Ombudsman's interim report that it acknowledges that pushbacks from Greece to Turkey at the Evros land border take place and that they are a standard practice. However, an investigation into private actors as suggested by the Ombudsperson, is insufficient in scope, as it ignores the collaboration and collusion of the state with such private actors and the fact that pushbacks are, in fact, systematically practiced by the Greek authorities. In this way, the request of the Ombudsperson to the Greek state to merely investigate the existence of private actors not only disregards the fact that the Greek authorities themselves are conducting pushbacks, but is also a long overdue and insufficient remedy.

We recommend that the Ombudsman fulfills its mandate of guardian of the people's rights and effectively protects the rights of vulnerable groups and safeguards the right of access to international protection.

We appeal to the Ombudsman to employ all resources available at its disposal to ensure that human rights violations at Greece's borders are prevented and that perpetrators are brought to justice irrespective of their function. We recommend that the Ombudsman conduct unannounced on-site investigations, further demands from the relevant police directorates for effective cooperation, and calls for disciplinary actions of officials refusing to cooperate.

We insist that a report be submitted to the Public Prosecutor and an investigation into these violations is finally initiated.

We believe that the Ombudsman has been sufficiently informed and the findings of his report are indicative of the involvement of law enforcement officers in human rights violations. We therefore request to trigger an investigation urgently under its mandate as National Mechanism for the Investigation of Arbitrary Incidents (EMIDIPA).

We remind the Ombudsman of the immediacy of the situation as pushbacks and other severe fundamental rights violations are being perpetrated on a daily basis and the rights of people on the move are not being safeguarded nor have the victims obtained reparations. We consider that the Ombudsman's investigations on pushbacks covers a lengthy period of time of over 3 years and that justice has been long denied to the victims and to their families.



Further Readings

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