



Submission of Legal Centre Lesbos to the UN Special Rapporteur on Torture

27 November 2022

1. The Legal Centre Lesbos AMKE (“LCL”), is a civil non profit organization, registered in Mytilene, Greece, operating since May 2019. Between 2016 and 2019, LCL operated as “Legal Centre Lesbos,” a grassroots organisation registered under Prism the Gift Fund Charity in the UK. The organisation provides free and individual legal support to migrants, and advocates for human rights and for equal access to legal and safe routes of migration in Lesbos, Greece and globally. We also work to document rights violations and advance the rights of migrants and refugees on the Greek island of Lesbos, and throughout Greece. This submission is based on evidence collected directly by LCL, and representation of several survivors of pushbacks before the European Court of Human Rights.¹

I. The violent practice of pushbacks carried out by Greek authorities constitutes torture

2. Starting in March of 2020, reports² started emerging of an escalation of the practice of violent collective expulsions (“pushbacks”³) in the Aegean region by the Greek State, including two

¹ LCL, ‘Crimes Against Humanity in the Aegean’, 1 February 2021, available at: <https://legalcentrelesvos.org/2021/02/01/crimesagainsthumanityintheaegean/>; accessed 1 February 2021; Legal Centre Lesbos, European Court of Human Rights to examine 32 cases filed against Greece concerning illegal collective expulsions, December 2021, available at: <https://legalcentrelesvos.org/2021/12/22/european-court-of-human-rights-to-examine-two-cases-filed-against-greece-concerning-illegal-collective-expulsions/>; European Court of Human Rights, H.T. et autres contre la Grèce, 2021, no.4177/21, available at: [https://hudoc.echr.coe.int/eng#{"appno":\["4177/21"\],"itemid":\["001-214578"\]}](https://hudoc.echr.coe.int/eng#{); European Court of Human Rights, S.A.A et autres contre la Grèce, 2021, no. 22146/21, available at: [https://hudoc.echr.coe.int/eng/#{"fulltext":\["22146"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"COMMUNICATEDCASES"},"itemid":\["001-214581"\]}](https://hudoc.echr.coe.int/eng/#{).

² See, among others:

Refugee Support Aegean, ‘Push backs and violations of human rights at sea: a timeline’, 29 December 2020, available at: <https://rsagean.org/en/push-backs-and-violations-of-human-rights-at-sea-a-timeline/>;

Bashar Deeb, ‘Samos and the Anatomy of a Maritime Push-Backs’, Bellingcat, 20 May 2020, available at:

<https://www.bellingcat.com/news/uk-and-europe/2020/05/20/samos-and-the-anatomy-of-a-maritime-push-back/>;

Bashar Deeb and Leone Hadavi, ‘Masked Men on a Hellenic Coast Guard Boat Involved in a Pushback Incident’, Bellingcat, 23 June 2020, available at:

<https://www.bellingcat.com/news/uk-and-europe/2020/06/23/masked-men-on-a-hellenic-coast-guard-boat-involved-in-pushback-incident/>;

Giorgos Christides and Steffen Lüdke, ‘Greece Suspected of Abandoning Refugees at Sea’, Spiegel International, 16 June, 2020, available at: <https://www.spiegel.de/international/europe/videos-and-eyewitness-accounts-greece-apparently-abandoning-refugees-at-sea-a-84c06c61-7f11-4e83-ae70-3905017b49d5>;

HRW, et al (including LCL), Open Letter to Members of the Hellenic Parliament Calling for an Investigation into Border Abuses, 6 October 2020, available at:

https://www.hrw.org/sites/default/files/media_2020/10/ENG%20Joint%20NGO%20Letter%20to%20Parliament.pdf;

HRW, ‘Greece: Investigate Pushbacks, Collective Expulsions’, 16 July 2020, available at:

<https://www.hrw.org/news/2020/07/16/greece-investigate-pushbacks-collective-expulsions>.

³ The Special Rapporteur on Human Rights of Migrants, Felipe González Morales, describes “pushbacks” as “various measures taken by States which result in migrants, including asylum seekers, being summarily forced back to the country from where they attempted to cross or have crossed an international border without access to international protection or asylum procedures or denied of any individual assessment on their protection needs which may lead to a violation of the principle of non-refoulement.” Special Rapporteur on the human rights of migrants, *Call for inputs for the Special Rapporteur’s report on pushback practices and their impact on the human rights of migrants* available at:

<https://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/Pushback-practices.aspx>. When we refer to pushbacks in this submission, we are referring to this definition.

comprehensive reports published by the Legal Centre Lesvos, based on testimonies collected of survivors of these pushbacks.⁴ Given that the Legal Centre is based on the Greek island of Lesvos, the present submission will focus on pushbacks in the Aegean – however, the principle considerations can also be transferred to other contexts, e.g. the Evros border region between Greece and Turkey, as well as other land borders along the so called Balkanroute, and the Mediterranean. The documented pushbacks fit a systematic, well-documented and widespread operative pattern on the part of Greek authorities.

3. As demonstrated below, the practice of pushbacks carried out by Greek authorities constitutes a form of torture (and degrading and inhuman treatment), given the extremely violent manner in which it is carried out, with disregard to the lives of those impacted, with the dual purpose of punishing migrants for entering Greece without authorisation, and preventing their access to the asylum procedure in Greece.
4. As documented by the Legal Centre Lesvos, through the collection of testimonies and evidence from survivors of pushbacks, the pushbacks carried in the Aegean region follow a consistent modus operandi, in which Greek authorities deny access to asylum procedures to migrants' who have recently arrived to Greece – either its territorial waters or who have landed on Greek islands, by: (1) subjecting them to physical violence and other inhuman acts, including the stealing of personal belongings including phones and identification documents; (2) arbitrarily detaining them in inadequate and inhuman conditions with the purpose of illegally expelling them from Greece; (3) summarily expelling them from Greek territory through forcible transfer via Hellenic Coast Guard vessels towards Turkish waters, (4) ultimately abandoned them at sea, putting their lives in grave danger, and causing extreme mental anguish and physical exhaustion, and (5) conducting all of the above acts by unidentified agents of the Greek state who normally have their faces covered with masks or balaclavas.⁵ This practice of pushbacks in the Aegean by the Greek State has persisted without abating for nearly three years since March 2020.⁶
5. Torture is defined in Greek law as “any intentional infliction of severe physical pain or physical exhaustion dangerous to health or mental suffering capable of causing serious mental harm, as well as any unlawful use of chemical, narcotic or other physical or technical means with the purpose of breaking the will of the victim.” Law 4619/2019, Article 137(a)(6). The European

⁴ Legal Centre Lesvos, ‘Crimes Against Humanity in the Aegean Sea’ (1 February 2021), available at: <http://legalcentrelesvos.org/wp-content/uploads/2021/02/Collective-Expulsions-in-the-Aegean-LCL-01.02.2021-1.pdf> ; Legal Centre Lesvos, ‘Collective Expulsions in the Aegean Sea: March-July 2020’ (15 July 2020), <http://legalcentrelesvos.org/wp-content/uploads/2020/07/Collective-Expulsions-in-the-Aegean-July-2020-LCL.pdf>.

⁵ Ibid. See detailed accounts in two reports published by the Legal Centre Lesvos.

⁶ Forensic Architecture, Drift-Backs in The Aegean Sea, 15 July 2022, available at: <https://forensic-architecture.org/investigation/drift-backs-in-the-aegean-sea>, accessed 22 September 2022; ECRE, Access to the territory and pushbacks, 30 May 2022, available at: <https://asylumineurope.org/reports/country/greece/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>, Accessed 23 September 2022; United Nations, Stop violence at European borders and protect refugees – UNHCR, 21 February 2022, available at <https://news.un.org/en/story/2022/02/1112342>, Accessed 26 September 2022; Council of Europe, Pushed beyond the limits. Urgent action needed to stop pushbacks at Europe’s borders, 7 April 2022, available at: <https://www.coe.int/en/web/commissioner/-/pushed-beyond-the-limits-urgent-action-needed-to-stop-push-back-at-europe-s-borders>, accessed 12 June 2022; Special Rapporteur on the human rights of migrants, Report on means to address the human rights impact of pushbacks of migrants on land and at sea, 12 May 2021, available at: <https://www.ohchr.org/en/documents/thematic-reports/ahrc4730-report-means-address-human-rights-impact-pushbacks-migrants>.

Court of Human Rights has held that torture is defined as “deliberate inhuman treatment causing very serious and cruel suffering” with a purpose (*Gäfgen v. Germany* [GC], no. 22978/05, § 90, ECHR 2010). Such purpose might include punishing the victim for an act they or a third person has committed or is suspected of having committed, or intimidating or coercing the victim or a third person, or for any reason based on discrimination of any kind (see, for example, *Selmouni v. France* [GC], no. 25803/94, § 97, 28 July 1999; *Salman v. Turkey* [GC], no. 21986/93, § 114, 27 June 2000; and *Petrosyan v. Azerbaijan*, no. 32427/16, § 68, 4 November 2021).

6. The practice of pushbacks in the Aegean meet both the Greek and European definitions of torture, in that the pushbacks at a minimum consists of (1) intentional/deliberate (2) inhuman treatment which causes extreme mental anguish (3) with the purpose of punishment for having crossed the border without authorisation and/or intimidation against subsequent crossings. As such, all acts of pushbacks in the Aegean should be assists as acts of torture by the Greek state.

II. Greek Regulatory Framework for investigating and prosecuting pushbacks

7. As the only EU Member State, Greece has not ratified Protocol No. 4 of the ECHR, which specifically prohibits collective expulsions under its Article 4. In any case, a criminal investigation related to collective expulsions in Greece could only focus on the constitutive recognised criminal acts, including causing severe bodily harm, kidnapping, and torture.
8. Torture is prohibited under Article 137(a) of Greek Criminal Code, Law 4619/2019 (Government Gazette A' 95/11.06.2019)⁷, as amended by Law 4855/2021.⁸

⁷ Law 4619/2019, available in original Greek at: <<https://www.kodiko.gr/nomothesia/document/529099>>.

⁸ Unofficial translation of Article 137(a), as amended, follows:

1. An employee or military officer, whose duties include the prosecution, interrogation or examination of criminal offences or disciplinary offences or the execution of sentences or the custody or care of prisoners, shall be punished by imprisonment for a term not exceeding ten years if he subjects a person in his authority to torture in the performance of those duties for the purpose of: (a) to extract from him or from a third person a confession, statement, information or declaration, in particular a renunciation or acceptance of a political or other ideology; (b) to punish him; or (c) to intimidate him or third persons. The same penalty shall be imposed on an official or military officer who, on the orders of his superiors or of his own free will, usurps such duties and commits the acts referred to in the preceding subparagraph.
2. Torture committed by persons and under the circumstances provided for in the preceding paragraph even without the purpose stated therein, shall be punishable by the same penalty, if the selection of the victim is made on the basis of the characteristics of race, colour, national or ethnic origin, genealogical background, religion, disability, sexual orientation, identity or gender characteristics. In this case Article 82 A shall not apply.
3. Imprisonment of at least ten years shall be imposed if the acts referred to in the preceding paragraphs: a) are committed by means or methods of systematic torture, in particular blows to the victim's feet (phalanx), electric shocks, mock execution or hallucinogenic substances; or b) result in serious bodily harm to the victim. This penalty shall also be imposed when the perpetrator, as a superior, gave the order to commit them.
4. Physical injury, damage to health, unlawful physical or psychological violence and any other serious violation of human dignity, committed by the persons and under the circumstances provided for in paragraphs 1 and 2, if it does not fall within the concept of torture, shall be punishable by imprisonment of at least three years and a fine, if not more severely punished by another provision. Imprisonment shall be for a maximum of ten years if case (b) of the preceding paragraph applies. Offences against human dignity shall be considered in particular: (a) the use of a lie detector; (b) prolonged isolation; (c) serious offence against sexual dignity.
5. If the acts of the preceding paragraphs resulted in the death of the victim, a sentence of life imprisonment or a provisional sentence of at least ten years shall be imposed.
6. Torture shall constitute, according to this Article, any intentional infliction of severe physical pain or physical exhaustion dangerous to health or mental suffering capable of causing serious mental harm, as well as any unlawful use of chemical, narcotic or other physical or technical means with the purpose of breaking the will of the victim. The concept of torture shall not include acts or consequences incidental to the lawful execution of a sentence or other lawful restriction of liberty or other lawful measure of legal coercion.
7. Conviction for the acts referred to in paragraphs 1 to 5 shall entail an automatic disqualification from holding offices and positions, which shall take effect as soon as the conviction becomes final.
8. Where the acts referred to in paragraphs 1 to 5 are committed under usurpation of popular sovereignty, the limitation period shall begin to run as soon as legal authority is restored.

9. The statute of limitations to prosecute acts of torture is twenty years under Article 111(2) of Law 4619/2019.
10. Criminal complaints for allegations of torture are brought to the prosecutor or investigating authority directly by victims of torture, or through their authorised attorneys under Article 51 in conjunction with Article 42 of the Criminal Procedure Code, Law 4620/2019 (Government Gazette A' 96//11-6-2019). However, under Article 42 para. 2, the authenticity of the complainant's signature "must be certified by any public, municipal or community authority or by a lawyer, after identifying themselves with an original document provided or recognised by the state."
11. Under the same Law 4620/2019, Article 245(3) "[i]f the preliminary investigation has not revealed the identity of the perpetrator of a certain crime, the case file is placed on archive by an act of the competent public prosecutor. The prosecutor may do the same if the perpetrator remains unknown after a preliminary investigation."

III. Political barriers to hold Greek authorities accountable for practice of pushbacks as a form of torture.

12. Migrants' access to justice in Greece is scarce. Greece's courts have been used repeatedly to criminalise migrants for their acts in seeking asylum, and have displayed a widespread disregard for complaints brought by migrants and other minority groups regarding the Respondent State's unlawful treatment of them. The Racist Violence Recording Network (RVRN) is an initiative of the Greek National Commission for Human Rights (GNCHR) and the Office of the United Nations High Commissioner for Refugees in Greece (UNHCR).⁹ The RVRN produces an annual report that includes quantitative and qualitative analysis of racist violence incidents reported and recorded in Greece.¹⁰ In 2021, the RVRN not only found an "increase in reports and testimonies about informal forced returns at the country's borders, upon arrival on Greek territory", but also found that less than 10 percent of all reported cases of racist violence resulted in a criminal investigation, and less than two percent had also been reported to the police.¹¹ Most individuals reporting to the RVRN during 2021 stated that they "would not take further action due to fear, lack of trust in the authorities, as well as due to bureaucracy."¹² The Hellenic Police's own records show that in 2021, in all of Greece there were only 218 official complaints made to the police of racist violence, and amongst those official complaints, only 46 were investigated (21%)¹³. Also of note is that approximately one fourth of the complaints of racist violence made to the police in 2021 implicated police officers as the perpetrators of such racist violence¹⁴. The data from the RVRN are by no means exhaustive, but rather indicative of the legal assault on the

9. The existence of the conditions of Articles 20 to 25 does not in any way remove the unjust character of the acts of this article.

10. The perpetrator of the acts under this Article shall be entitled to claim from the person who has been convicted and from the public authorities, who are liable in full, compensation for the damages suffered and monetary compensation for mental anguish or property damage.

⁹ Website of Racist Violence Recording Network, available at: <<https://rvrn.org/en/>>.

¹⁰ Racist Violence Recording Network, 2021 Annual Report, available at <https://rvrn.org/wp-content/uploads/2022/09/ETHSIA-EKTHESH-2021_ENG_fn.pdf>, last accessed 24 September 2022.

¹¹ Ibid, pages 199, 33, respectively.

¹² Ibid, page 33.

¹³ Ibid, page 35.

¹⁴ Ibid, page 34.

rights of migrants and other minority groups, the lack of any accessible remedy or reasonable prospect of success, and the simultaneous impunity enjoyed by the authorities that violate their rights.

13. There have also been documented obstructions to investigation of pushbacks in Greece, due to failure of competent authorities to thoroughly investigate reported cases of these pushbacks. The Greek Ombudsperson's 2020 Interim Report¹⁵, which focused on reports of violent collective expulsions carried out in the Evros region between Greece and Turkey, found the response of the authorities to complaints and reports of pushbacks, to have been uniformly insufficient (emphasis added): "...the competent police services, in most cases, responded to the complaints of third country nationals and of civil society organisations regarding illegal pushbacks, by way of sending them a formal and more or less standardised letter. In that letter, the general legal and institutional framework was outlined, making particular reference to the mandate of the police and the framework of cooperation in the border area with European agencies. A standard paragraph followed that there was no indication of wrongdoing on the part of the police officers on the ground and that the complaints about pushbacks are likely to come from traffickers aiming to compromise the operational capabilities of the police. The letter concluded that the police are performing their duties with full and unconditional respect to human rights."
14. Despite insurmountable evidence that Greek authorities are systematically carrying out pushbacks in the Aegean, the Respondent State continues to deny its practice of pushbacks.¹⁶ At the same time, over the past two and a half years, public statements from the highest levels of the Greek government have insinuated that those who denounce, report on, and advocate against pushbacks, or provide humanitarian assistance to newly arrived asylum seekers, are themselves involved in smuggling networks.¹⁷ These have not always been empty threats, as the Respondent State authorities have sought to criminalise civil society actors that work in solidarity with

¹⁵ Greek Ombudsman, Interim Report: *Alleged pushbacks to Turkey of foreign nationals who had arrived in Greece* 2020, available at: <<https://www.statewatch.org/media/2325/gr-ombudsman-pushbacks-interim-report-4-21.pdf>>.

¹⁶ See, e.g. Notis Mitarachis, Minister of Migration and Asylum, untitled tweet (Twitter, 7 October 2021), available at: <<https://twitter.com/nmitarakis/status/1446089296696467457>>, accessed 13 September 2022, ("We strongly deny these allegations. Greek borders are EU borders and we operate within international and European law to protect them"); Human Rights Watch, Greece Is Still Denying Migrant Pushbacks, 30 August 2020, available at: <<https://www.hrw.org/news/2020/08/21/greece-still-denying-migrant-pushbacks>>, last accessed 25 September 2022; European Parliament, Investigate alleged pushbacks of asylum-seekers at the Greek-Turkish border, MEPs demand, available at: <<https://www.europarl.europa.eu/news/en/press-room/20200703IPR82627/investigate-pushbacks-of-asylum-seekers-at-the-greek-turkish-border-meps-demand>>, last accessed 25 September 2022, ("Greek Ministers for Citizen Protection, Michalis Chrisochoidis, and for Migration and Asylum, Notis Mitarachi, dismissed the accusations, describing them as "fake news", and underlined the key role that Greece plays in "keeping EU borders safe, always respecting fundamental rights"").

¹⁷ InfoMigrants, "Greece minister: Smugglers spread false rumors about pushbacks", 1 September 2020, available at <https://www.infomigrants.net/en/post/26966/greece-minister-smugglers-spread-false-rumors-about-pushbacks>; New York Times, "Greece Accuses Aid Groups of Helping Smugglers of Migrants", 11 August 2021, <https://www.nytimes.com/2021/07/30/world/europe/greece-migrants-aid-groups.html>; Efsyn, "Iasonas Apostolopoulos responds to the vulgar targeting of him", 8 June 2022, available at, (Greek) https://www.efsyn.gr/ellada/dikaiomata/347450_o-iasonas-apostolopoulos-apanta-sti-hydaia-stohopoiisi-toy

migrants, and in particular those who document and advocate against the policy of pushbacks.¹⁸ The UN Special Rapporteur on Human Rights Defenders, concluded after a recent trip to Greece that “human rights defenders have found it increasingly difficult to carry out their work, especially in fields that might be considered controversial or geopolitically complicated or sensitive. This is particularly tangible in relation to those who defend the rights of asylum seekers, migrants and refugees, including those providing humanitarian assistance, legal aid, participating in search and rescue operations and documenting pushbacks,” and that this repression of human rights work “has undergone a significant shift since 2019”.¹⁹

15. Given this political context, there is no reasonable prospect of success in accessing domestic remedies, even though criminal complaints could potentially be brought by victims of pushbacks alleging acts of torture, or other criminal acts. On the contrary, despite thousands of documented pushbacks in the Aegean since March 2020²⁰, not a single individual or entity has been held accountable for these actions in Greece, creating a climate of impunity in which the torturous conduct continue.

IV. Procedural barriers which prevent the prosecution of acts of torture associated with Greece’ pushback policy.

16. In addition to the political barriers, victims face further procedural obstacles in obtaining remedy for the torture suffered through pushback operations. First, given that pushback operations target migrants who have entered Greece without authorisation and result in the removal of these individuals from Greek territory, it is unlikely if not impossible for these same individuals to obtain visas to travel to Greece to present a criminal complaint or evidence. While a complaint can be filed by an attorney, a complainant can be asked to appear before Greek authorities to verify the content and the evidence of their complaint, pursuant to Article 31 of Criminal Procedure Code, Law 4620/2019. As the only witnesses of the crimes described therein, this is particularly likely in the case of complaints regarding pushbacks. However, given the likely impossibility of the victims to travel to Greece, a thorough investigation of a complaint filed through an attorney is unlikely if not impossible.
17. Second, while the Public Prosecutor’s Office could, in principle, order preliminary investigation of pushbacks, against unknown perpetrators, pursuant to Article 243 and Article 245 CPC, the factual circumstances of pushbacks preclude individual identification of perpetrators through an investigation (see above). If perpetrators cannot be identified, the prosecutor’s office archives the

¹⁸ EFSYN, “He was charged for giving water and food to refugees” 5 June 2022, available at (Greek) https://www.efsyn.gr/ellada/koinonia/346965_katigoreitai-giati-edine-nero-kai-fagito-se-prosfyges; Sto Nisi, 8 May 2022, “Transporting migrants by taxi: The son of a taxi owner who transported migrants from the area of Mandamados was arrested on Saturday morning” available at (Greek) <https://www.stonisi.gr/post/29684/metefere-metanastes-me-taksi>; North Aegean Journalists Information Office, 33 NGO members, 3 foreign nationals charged with operating migrant smuggling network; Lesvos at the epicenter, 28 September 2020, available at (Greek): <https://www.naftemporiki.gr/story/1640729/33-ngo-members-3-foreign-nationals-charged-with-operating-migrant-smuggling-network-lesvos-at-the-epicenter>; Hellenic Police, “Four members of N.G.O. and six third country nationals are included in a case file for organized action of persons who were active in facilitating the illegal entry of foreigners into Greek territory through the islands of the Northeastern Aegean.19 July 2022, available at (Greek): http://www.astynomia.gr/index.php?option=ozo_content&lang=%27.%27&perform=view&cid=103779&Itemid=2662&lang=

¹⁹ UN Special Rapporteur on Human Rights Defenders, Statement on preliminary observations and recommendations following official visit to Greece, 22 June 2022, available at:

<<https://srdefenders.org/statement-on-preliminary-observations-and-recommendations-following-official-visit-to-greece/>>.

²⁰ Forensic Architecture, Drift-Backs in The Aegean Sea, 15 July 2022, available at:

<<https://forensic-architecture.org/investigation/drift-backs-in-the-aegean-sea>>, accessed 22 September 2022

case under “unknown perpetrators” pursuant to Article 245(3) CPC. Given that pushback operations are carried out in a clandestine manner, so as to prevent the identification of the perpetrators and collection of evidence, it is all the more likely that any preliminary investigation would be archived, as has been in fact the result as documented by the Ombudsman’s Office.²¹

Recommendations

1. Recognition of the act of pushbacks, as carried out by Greek authorities in the Aegean against migrants who have recently arrived to Greek territory, as acts of torture.
2. Introduction of prohibition of collective expulsion into the Greek Criminal Code, as a felony offence, with an aggravating factor when victims are abandoned at sea, when they are carried out with the use of violence, and when personal belongings of victims are confiscated.
3. Bring an end to the practice of collective expulsion, or “pushbacks”, including through criminal investigation of unlawful conduct carried out by State agents in connection with collective expulsions, or “pushbacks” from Greece to Turkey from 2020.

²¹ Greek Ombudsman, Interim Report: *Alleged pushbacks to Turkey of foreign nationals who had arrived in Greece* 2020, available at: <<https://www.statewatch.org/media/2325/gr-ombudsman-pushbacks-interim-report-4-21.pdf>>.