



**Welcome the stranger.  
Protect the refugee.**

**Information provided by the NGOs “Human Rights 360” and “HIAS Greece”**

for the

**Report of the Special Rapporteur on the human rights of migrants**

**Human rights violations at international borders: trends, prevention and  
accountability**

1. Since May 2021, Greece’s legal framework on international protection procedures has undergone the following changes,

(i) On June 4<sup>th</sup> 2021, [Law 4825/2021](#) (Government Gazette A 157 / 4.9 .2021) on "Reform of expulsion and return procedures of third country nationals, attraction of investors and digital nomads, issues of residence permits and procedures for granting international protection, provisions in the competence of the Ministry of Migration and Asylum and the Ministry of Civil Protection and other urgent provisions" was adopted. This law introduced provisions that are consistent with Greece’s focus on detention and expulsion/returns.

Article [1 of Law 4825/2021](#)<sup>1</sup> foresees that the Articles 16 to 33 of L. 3907/2011 transposing the EU Return Directive are not applicable to *inter alia* the persons who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State (Article 2(2) of the EU Return Directive). In their [comments on the Bill amending deportation and return procedures, resident permits and asylum procedures](#), the legal aid NGOs HIAS, GCR, RSA and DRC underscored that “Articles 17(2) and 34 L 3907/2011 already set out the circumstances under which the authorities may derogate from the procedures laid down in the Directive pursuant to its Article 2(2) and opt for deportation procedures as set out in Articles 76 et seq. L 3386/2005 [...] Even where they derogate from return procedures, Member States must comply with the minimum safeguards set out in **Article 4(4)** of the Directive (**Article 19(2) L 3907/2011**). Yet, Article 1 of the bill purports to circumvent the very minimum standards that bind the authorities even where they permissibly apply L 3386/2005 instead of L 3907/2011, in direct contravention of EU law. The proposed provision must therefore be deleted.”

According to Article 4(4) of the Return Directive “With regard to third-country nationals excluded from the scope of this Directive in accordance with Article 2(2)(a), Member States shall: (a) ensure that their treatment and level of protection are no less favourable than as set out in Article 8(4) and (5) (**limitations on use of coercive measures**), Article 9(2)(a) (**postponement of removal**), Article 14(1) (b) and (d) (**emergency health care and taking into account needs of vulnerable persons**), and Articles 16 and 17 (**detention conditions**) and (b) **respect the principle of non-refoulement**.”

The Greek authorities have been routinely issuing deportation decisions under Law 3386/2005 instead of return decisions under L. 3907/2011 for all asylum seekers arriving at the Greek “hotspot” islands and Evros region. However, as explained in the abovementioned comments on the Bill, the EU Commission’s Return Handbook ‘interprets the term “have not subsequently obtained an authorisation or a right to stay” contained in Article 2(2)(a) of the Directive as excluding from “border cases” “irregular entrants who had been apprehended at the external border and subsequently obtained a

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<sup>1</sup> See Article 1 of Law 4825/2021 in the Annex.

right to stay as asylum seekers”. The European Commission therefore excludes asylum seekers from Article 2(2)(a) of the Return Directive, given that they enjoy the right to remain on the territory until the completion of the asylum procedure”.

Furthermore, [article 28 of Law 4825/2021](#)<sup>2</sup> henceforth only foresees the following reception, identification and accommodation structures: a) Reception and Identification Centers (RIC), b) Reception Structures and c) Closed Monitored Structures. According to the new provision, the latter are facilities that “are structured and have the functions of the RIC of category (a) and in which, in separate areas, temporary accommodation facilities and special detention facilities of [article 31 of Law 3907/2011](#)(A’ 7) operate. Within the perimeter of the area, where the Regional Services of this paragraph are located, there are separate areas with appropriate specifications for the stay of third country nationals or stateless persons belonging to the vulnerable groups of para. 8 of article 14”. This provision raises concerns about the conversion of all accommodation structures into closed monitored ones, equipped with detention centers.

Finally, [article 40 of Law 4825/2021](#)<sup>3</sup> essentially criminalizes operations of search and rescue and human rights monitoring at sea by humanitarian organizations. Article 40 provides that, in order to conduct their operations legally, such organizations and their natural persons are required to register with the Greek Registries of NGOs operating in the field of migration and their natural persons. These Registries have been [heavily criticized](#) for their undue interference with the right to freedom of association. Article 40 further provides that these organizations may only operate under the orders and instructions of the port authorities, provided that the action of the Greek Coast Guard is not possible, and only upon prior written approval from the Port Authorities. In the event of breach, Article 40 foresees significant fines for both the organizations and its members, removal from the Registries and a sentence of imprisonment of at least 3 years if an accident is caused as a result of a breach of the article.

(ii) On February 15<sup>th</sup> 2022, the Ministry of Foreign Affairs and the Ministry of Migration and Asylum issued the Joint Ministerial Decision (JMD) [No. 78391](#)<sup>4</sup> which added Egypt, Benin and Nepal to Greece’s list of “safe countries of origin”. According to Article 87(3) of Law 4636/2019, “[a] country shall be deemed to be a safe country

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<sup>2</sup> See Article 28 of Law 4825/2021 in the Annex.

<sup>3</sup> See Article 40 of Law 4825/2021 in the Annex

<sup>4</sup> See Joint Ministerial Decision No. 78391 in the Annex.

of origin if, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9, no torture or inhumane or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict". Egypt's inclusion in this list despite its [widely documented practices](#) (torture, arrests, [extrajudicial](#) and judicial executions, enforced disappearances, etc.) is indicative of the lack of thorough investigation that characterizes the preparation of these lists.

2. Regarding the daily, systematic and widespread practice of pushbacks to Turkey, as far as Evros is concerned, the [reduced number of registered arrivals](#) proves the extent of this practice. HumanRights360 continues to receive complaints about the violent pushbacks of applicants for international protection upon their entry into Greece.<sup>5</sup> In July 2021, [Human Rights 360](#) submitted a report<sup>6</sup> to the Ombudsman about the arbitrary arrest and forced disappearance of a recognized refugee in Thessaloniki, his transfer to Evros and his pushback to Turkey. HIAS Greece has also handled 2 cases of recognized Syrian refugees illegally pushed-back to Turkey. [The pushback of a FRONTEX interpreter to Turkey](#) is also indicative. The systematic practice of pushbacks has led to asylum seekers seeking [new, often more perilous, migratory routes](#), as evidenced in [the increase in deaths - and disappearances - at the borders of Evros and at the Aegean sea](#).

In addition, the authorities continue to criminally prosecute<sup>7</sup> and convict newly arrived asylum seekers in the Evros region for the crime of illegal entry, including unaccompanied minors.

Moreover, the Asylum Offices in the mainland refuse to register applications for international protection. Conversely, they refer prospective applicants to the RIC of Samos, Chios, Lesbos, Leros and Kos islands as well as to Orestiada (Evros region). This practice results in thousands of prospective applicants, including vulnerable ones,

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<sup>5</sup><https://twitter.com/tekinycel10/status/1473596340655566848?t=hsC3gsu0yDkAngksnBt6Qg&s=19&fbclid=IwAR3KEuWFfnuKtT1h7svUmmde3Y4RpXCWDqYL2vGYYVICNF5M5Vi7Yckb9gg>.

<sup>6</sup> HumanRights360, "The Doctrine of the 'Instrumentalization of Refugees' – The Borders of Evros in the Era of Border Securitization", 2021, p. 25, available at: [https://www.humanrights360.org/wp-content/uploads/2021/11/Evros\\_en.pdf](https://www.humanrights360.org/wp-content/uploads/2021/11/Evros_en.pdf)

<sup>7</sup> HumanRights360, "The Doctrine of the 'Instrumentalization of Refugees' – The Borders of Evros in the Era of Border Securitization", 2021, p. 20-21, available at: [https://www.humanrights360.org/wp-content/uploads/2021/11/Evros\\_en.pdf](https://www.humanrights360.org/wp-content/uploads/2021/11/Evros_en.pdf)

remaining unregistered because moving to these border areas without legal documentation would expose them to the risk of detention and deportation.

3. On 7.6.2021, the Minister of Migration and Asylum and the Deputy Minister of Foreign Affairs issued [a Joint Ministerial Decision](#)<sup>8</sup> designating Turkey as a safe third country for asylum seekers from Syria, Afghanistan, Pakistan, Bangladesh and Somalia. Although it came into force on 7.6.21, the JMD is applied retroactively to applicants who arrived before its publication but have not yet undergone an asylum interview. In other words, the JMD affects the majority of asylum applicants, as most interviews had been postponed due to COVID-19 measures. In fact, the JMD is estimated to affect approximately 70% of all asylum seekers in Greece.<sup>9</sup> It is worth noting that the Asylum Service has not made public its Opinion on the basis of which Turkey was designated a safe third country, nor its internal guidelines regarding the application of the JMD.

Additionally, Turkey has stopped readmitting asylum seekers from Greece since March 2020. Nevertheless, Greece refuses to examine the asylum applications of persons from the above 5 countries on the merits, as provided by Article 86(5) of Law 4636/2019 (Article 38(4) of the European Directive 2013/32/EU). As a result, the largest percentage of refugees are in a state of legal limbo, deprived of their rights to access the asylum procedures and material reception conditions and, therefore, unable to secure their dignified survival in Greece. Furthermore, Law 4825/2021, published on 4 September 2021, introduced a fee of 100 euros for the submission of any subsequent application after the first subsequent application. As a result, the great majority of these asylum seekers are unable to access the asylum procedure.

On 16.12.2021, Greece published [JMD No. 458568/2021](#), which added Albania and Northern Macedonia to the list of safe third countries, further externalizing its obligations under the Geneva Convention.

We strongly believe that Greece's resort to the concept of safe third country is aimed at legitimizing its pushback practices to these countries. Namely, Greece argues that

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<sup>8</sup> See Joint Ministerial Decision 42799 in the Annex.

<sup>9</sup> Efsyn.gr, Πολιτικά παιχνίδια Μηταράκη με την «ασφαλή» χώρα Τουρκία, 07/06/2020, available at: <https://www.efsyn.gr/node/297421>

informal forced returns to Turkey do not amount to a violation of the principle of non-refoulement as Turkey is considered a “safe third country”.

4. In light of the systemic right violations at the border, HIAS and HumanRights360 consider it imperative that there be an independent monitoring mechanism for violation at the borders. However, the Minister of Migration and Asylum stated that he refuses to proceed with the establishment of any such mechanism, because ["Greece has the capacity of independent monitoring institutions \(Judiciary, National Transparency Authority, Internal Affairs Service of the Hellenic Police\)."](#)

Following the rising number of reports from NGOs about illegal pushbacks at the borders, the Greek National Commission for Human Rights has decided to form an “Informal Forced Returns Recording Mechanism”, with the main goal of monitoring, recording and highlighting the phenomenon of the practices of informal forced pushbacks of third-country nationals from Greece to other countries. HumanRights360 and HIAS Greece, together with other civil society organizations and the UN High Commissioner for Refugees participate in this initiative.