EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
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"Pushback" of Turkish national to Türkiye without examining risks she faced on her return was in breach of Convention

In today's **Chamber** judgment[1] in the case of A.R.E. v. Greece (application no. 15783/21) the European Court of Human Rights held, unanimously, that there had been:

- a violation of Article 3 (prohibition of inhuman or degrading treatment) and 13 (right to an effective remedy) of the European Convention on Human Rights on account of the applicant's "pushback" to Türkiye. The Court considered that there were strong indications to suggest that there had existed, at the time of the events alleged, a systematic practice of "pushbacks" of foreign nationals by the Greek authorities, from the Evros region to Türkiye. In this connection, it noted that the applicant had been sent back to her home country, Türkiye – from which she had fled – without carrying out a prior examination of the risks she faced in the light of Article 3 of the Convention or, therefore, taking account of her request for international protection.

- a violation of Article 5 §§ 1, 2 and 4 (right to liberty and security) on account of the applicant's detention prior to "pushback" to Türkiye. The Court took the view that the applicant's informal detention had been a preliminary to her "pushback" and lacked any legal basis.

- a violation of Article 13 (right to an effective remedy), read in conjunction with Articles 2 and 3 (risk to life and ill-treatment during "pushback"). The Court held that the national legal system did not provide an effective remedy, including in respect of alleged violations of Articles 2 and 3 of the Convention during a "pushback".

The Court further held, by a majority (6 votes to 1), that there had been **no violation of Articles 2 and 3 (risk to life and ill-treatment during "pushback")**, taking the view that the applicant had not produced any prima facie evidence to substantiate her allegations.

In addition, the Court has today delivered an inadmissibility decision in the case of G.R.J. v. Greece (application no. 15067/21) – which concerned the alleged "pushback" of an Afghan national from Greece to Türkiye – in which it considered that the applicant could not claim victim status for the purposes of Article 35 of the Convention since he had failed to provide prima facie evidence of his presence in Greece or of his "pushback" to Türkiye from the island of Samos on the dates alleged (link to the press release)

Principal facts

The applicant, A.R.E., is a Turkish national who was born in 1992. In March 2019 the Turkish courts sentenced her to six years and three months' imprisonment for membership of an organisation described by the Turkish authorities as the "Fetullahist Terror Organisation/Parallel State Structure" ("FETÖ/PDY").

A.R.E. submitted that she had entered Greece at around 5.30 a.m. on 4 May 2019 after crossing the Evros River from Türkiye to seek international protection. At 5.51 a.m. the same day, she used the WhatsApp application to contact her brother from a wooded area near Nea Vyssa (Greece) and

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

activated the “live location” function to enable him to track her position in real time. She clarified that she had continued to communicate with her brother – who had been in Greece since 2018 and had requested asylum there – at various times throughout the day, in particular to send him photos or videos of her whereabouts in Greece and obtain the contact details of a lawyer.

In A.R.E.’s submission, shortly after 2.25 p.m., while awaiting a lawyer (N.O.), the police arrested her on the square in Nea Vyssa and took her to the Neo Cheimonio border post, where she was held, unofficially, by two police officers until 7 p.m. and where, for the first time, she requested asylum.

The applicant’s “pushback” to Türkiye allegedly began after 7 p.m. According to her, following a roughly 15 to 20-minute trip, she was transferred to an unidentified police station, where her personal belongings (in particular her shoes, money and mobile phone) were confiscated. She alleged that she and others had then been transported by lorry to a spot near the Evros River, where they had been taken out of the lorry by individuals wearing balaclavas. At around 11 p.m. the applicant, along with others, was allegedly made to board a small inflatable boat to be sent back to Türkiye.

She was arrested by the Turkish authorities on 5 May 2019. The following day, the Izmir Criminal Court observed that, despite having been forbidden to leave the country, A.R.E. had fled abroad, where a “pushback” had taken place, and that she had been arrested in the prohibited military zone.

The applicant was initially held in Edirne Prison and subsequently transferred to Gebze Prison, near Izmir (Türkiye).

In June 2019 the Greek Council for Refugees lodged a criminal complaint on behalf of the applicant which was rejected by the prosecutor for lack of evidence.

Complaints, procedure and composition of the Court

Relying on Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security) and 13 (right to an effective remedy) of the Convention, the applicant alleged that she had been the victim of a “pushback” to Türkiye by the Greek authorities. She also complained that she had been unlawfully deprived of her liberty and submitted that her removal to Türkiye had placed her life at risk and had amounted to inhuman and degrading treatment. Lastly, she complained that no effective remedy had been available to her in respect of her complaints.

Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 19 March 2021.

A number of third parties were given leave to intervene in the written procedure. The Greek Ombudsman and the National Commission for Human Rights submitted observations in reply to a question as to whether there was a systematic practice of “pushbacks” from Greece to Türkiye.

A hearing was held before the Court on 4 June 2024.

Judgment was given by a Chamber of seven judges, composed as follows:

Peeter **Roosma** (Estonia), *President*,
Pere **Pastor Vilanova** (Andorra),
Ioannis **Ktistakis** (Greece),
Jolien **Schukking** (the Netherlands),
Georgios A. **Serghides** (Cyprus),
Darian **Pavli** (Albania),
Andreas **Zünd** (Switzerland),

and also Milan **Blaško**, *Section Registrar.*

Decision of the Court

Exhaustion of domestic remedies

The Court took the view that, as national practice currently stood, the domestic remedies put forward by the Government were ineffective in respect of the complaints about a "pushback" as such and about other Convention violations allegedly committed during that "pushback".

Assessment of evidence and establishment of facts

The Greek Government contested in its entirety the applicant's version of the facts as to her "pushback" on the dates alleged and denied that there was a systematic practice of "pushbacks" from Greece to Türkiye.

The Court chose to examine the question whether a systematic practice of "pushbacks" from Greece to Türkiye was in place, in particular from the Evros region, before turning to the assessment of the evidence submitted by the applicant in support of her account. In this connection, it emphasised that a systematic practice of "pushbacks" – assuming such a practice was established – did not exempt an applicant from the duty to provide prima facie evidence to substantiate his or her allegations.

Systematic practice of "pushbacks" from Greece to Türkiye

The Court noted that a great many official reports detailed a systematic practice on the part of the Greek authorities whereby foreign nationals who entered Greek territory unlawfully in order to seek asylum were sent back to Türkiye from the Evros region and the Greek islands. On the basis of the complaints and testimony of persons who claimed to have been the victims of "pushbacks" at the Greek land or sea borders, the reports in question described a fairly uniform *modus operandi* on the part of the Greek authorities in this regard. Moreover, the same finding had been reached both by the national institutions for the defence of human rights and by international organisations such as the Council of Europe or even the United Nations, whose Special Rapporteur on the human rights of migrants had asserted that, in Greece, "pushbacks" at land and sea borders were now essentially standard practice.

Having regard to the significant number, variety and concordance of the relevant sources, the Court concluded that there were strong indications to suggest that there had existed, at the time of the events alleged, a systematic practice of "pushbacks" of foreign nationals, by the Greek authorities, from the Evros region to Türkiye. It considered that the Government had not successfully refuted the evidence in question by providing a satisfactory and convincing alternative explanation.

Prima facie evidence

The Court considered that the applicant had provided several elements that could be taken to constitute – including when taken separately – prima facie evidence in favour of her version of events and that it had fallen to the Greek authorities to prove that she had not entered Greece and had not been subjected to a "pushback" to Türkiye on the dates alleged. The Government, however, had failed to put forward any arguments or other evidence that refuted the prima facie evidence supplied by the applicant.

In particular, the Court took the view that it was sufficiently established that the applicant had been present in Greece and, most importantly, that she had been seen for the last time in the custody of Greek officials on the square in Nea Vyssa in the late afternoon/early evening of 4 May 2019, before turning up again in the early hours of the following morning on the Turkish side of the Evros River, where she had been arrested. Moreover, referring to the judgment of the Izmir Criminal Court, the

Court considered that it could be inferred from those two irrefutable facts that she had been subjected to a "pushback" in the interim. The Government, for their part, had given no convincing alternative explanation as to what might have occurred in the period of time between the two facts in question. The Court therefore found that it was sufficiently established that the applicant had entered Greece on 4 May 2019 and had been arrested and held there, before being sent back to Türkiye, where she had been arrested the following day. **It concluded that the applicant's allegations were sufficiently convincing and established beyond reasonable doubt.**

"Pushback" to Türkiye (Articles 3 and 13)

The Court noted that, based on multiple reports, there was no doubt as to the genuine risks faced by suspected political opponents following the attempted coup in Türkiye in 2016[2].

It considered that, in the circumstances of the case, its task was to determine whether the Greek authorities had spontaneously and appropriately taken into account the general information available on Türkiye and whether the applicant had been given sufficient opportunity to apply for international protection in Greece and to explain her personal situation.

The Court pointed out that it had already established that the applicant had entered Greece from the Evros River and had been sent back Türkiye. It took the view that the respondent State's conduct in the present case, which had consisted in the "pushback" of a person without allowing her to apply for asylum, had manifestly been in breach of both domestic and international law.

The Court observed that the applicant had been sent back to her country of origin, Türkiye – from which she had fled – without carrying out a prior examination of the risks she faced in the light of Article 3 of the Convention or, therefore, taking account of her request for international protection. It noted that even though the applicant had expressed fears as to the ill-treatment to which she might be subjected if she were sent back to Türkiye, the Greek authorities had ignored her request for international protection, **in breach of Articles 3 and 13 of the Convention**.

Detention prior to "pushback" to Türkiye (Article 5)

The Court noted that the relevant reports and the observations of certain third-party interveners showed that the arrest and detention of irregular migrants – that is, a kind of temporary forced disappearance – formed part of the *modus operandi* noted in connection with the practice of "pushbacks". The file clearly showed that the applicant had been arrested by the Greek authorities, then transferred to the Neo Cheimonio border post on the date alleged, since her location had been shared in real time with the lawyer, N.O., who had forwarded the location "pin" to her brother. It noted that the Government, with whom lay the burden of proof, had not succeeded in refuting the applicant's allegations. In particular, they had provided no information as to whether the Orestiada border post in Neo Cheimonio had been equipped with video-surveillance cameras on the date alleged. Accordingly, the Court had no reason to doubt that the applicant had been the victim of detention with a view to her "pushback".

The Court therefore considered that, to the extent that the applicant's informal detention had been a preliminary to her "pushback", it had lacked any legal basis for the purposes of Article 5 § 1 (right to liberty and security) of the Convention. It had also infringed the rights guaranteed by paragraphs 2 (right to be informed promptly of the reasons for detention) and 4 (right to have the lawfulness of detention decided speedily by a court) of Article 5 of the Convention. **There had therefore been a violation of that Article.**

[2] See, in particular, *D v. Bulgaria*, (no. 29447/17, 20 July 2021), §§ 5-11 and, especially, 78-86, concerning the removal to Türkiye of a journalist who alleged that he had been convicted of membership of the "FETÖ/PDY".

Risk to life and ill-treatment during "pushback" (Articles 2, 3 and 13)

As to the allegations of risk to life and ill-treatment during "pushback": the Court observed that the applicant had not provided prima facie evidence to substantiate her allegation that her life had effectively been at risk during her "pushback" to Türkiye across the Evros River. It did not deny that the applicant might have experienced some distress owing to the manner in which her "pushback" had been effected. It nevertheless considered that, even assuming they were established, the "pushback" methods employed had not reached the threshold of severity required for the treatment to which the applicant had been subjected to be characterised as inhuman or degrading within the meaning of Article 3 of the Convention. **There had therefore been no violation of Articles 2 and 3 of the Convention.**

As to the lack of an effective remedy in respect of the complaints in question: the Court took the view that the national legal system had not provided an effective remedy, including in respect of allegations of violations of Articles 2 and 3 of the Convention during a "pushback". In addition, it noted that the investigation conducted by the national authorities following the criminal complaint filed by the applicant had fallen far short of satisfying the effectiveness requirements established by the Convention. **There had therefore been a violation of Article 13, taken in conjunction with Articles 2 and 3 of the Convention.**

Just satisfaction (Article 41)

The Court held that Greece was to pay the applicant 20,000 euros in respect of non-pecuniary damage.

Separate opinion

Judge Serghides expressed a dissenting opinion, which is annexed to the judgment.

The judgment is available only in French.

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