

MAPPING POTENTIAL ELEMENTS OF AN INDEPENDENT BORDER MONITORING MECHANISM IN GREECE

Apostolis Fotiadis

October 2021

Commissioned by the International Rescue Committee

Table of Contents

Executive Summary	2
1. Introduction and Objective	3
2. Methodology	3
3. Findings	4
a. Institutional Independence	4
b. Financial Independence	6
c. Access	7
d. Transparency	8
4. Spotlight - Considerations regarding the National Transparency Authority	9
5. Recommendations	11
Annexes	12
Annex I – Assessing Actors against Criteria for Effective Monitoring Mechanisms	12
Annex II – Mapping the State of Play (Actors, Capacity, Legal Framework)	13

Executive Summary

This report analyzes the institutional and policy context within which the creation of an independent border monitoring mechanism (IBMM) in Greece is developing.

The issue regarding the establishment of a border monitoring mechanism in Greece was raised by the European Union's Commissioner for Home Affairs, Ylva Johansson, during a LIBE meeting in July 2020 addressing concerns about mounting allegations of pushbacks since early 2020. The Commissioner referred to the "need to put in place a new mechanism to monitor and verify reports of pushbacks"¹.

This report presents a comparative analysis of Greek and international stakeholders that are associated with the debate on a Greek IBMM either due to their legal mandate, operational capacity, institutional standing, or their past activity:

- the Greek Ombudsman,
- Greek civil society organizations,
- the Greek National Commission for Human Rights (GNCHR),
- UNHCR Greece.

In this report, they are assessed against criteria set by human rights institutions and international organizations:

- Joint Statement by ECRE and INGOs: "Turning rhetoric into reality: New monitoring mechanism at European borders should ensure fundamental rights and accountability"², November 2020,
- CPT Annual Report 2020, Independent Border Monitoring (page 15-16)³,
- ENNHRI's Opinion on Independent Human Rights Monitoring Mechanisms at Borders under the EU Pact on Migration and Asylum⁴, March 2021,
- Criteria compiled from UNHCR Greece recommendations to Greek authorities April 2021, the HNHR European Regional Office and UNHCR 'Note on Joint Consultation on Independent National Monitoring Mechanisms proposed in the EU Pact on Migration and Asylum 23 February 2021'⁵,
- "Ten points to guide the establishment of an independent and effective national border monitoring mechanism in Greece" published jointly by ENNHRI, OHCHR and UNHCR on 15 September 2021⁶.

The comparative analysis leads to the conclusion that no institution/stakeholder in Greece holds a clear, explicit mandate to act as an independent border monitoring mechanism. Except for the Greek Ombudsman and UNHCR, none of the actors appear to have strong operational capacity or the potential for it to be put in place.

¹Intervention in the European Parliament LIBE Committee on the situation at the Greek/Turkish border and respect for fundamental rights: https://ec.europa.eu/commission/commissioners/2019-2024/johansson/announcements/intervention-european-parliament-libe-committee-situation-greekturkish-border-and-respect_en.

²<https://ecre.org/turning-rhetoric-into-reality-new-monitoring-mechanism-at-european-borders-should-ensure-fundamental-rights-and-accountability/>.

³30th general report CPT, <https://rm.coe.int/1680a25e6b>.

⁴<https://ennhri.org/wp-content/uploads/2021/03/ENNHRI's-Opinion-on-Independent-Human-Rights-Monitoring-Mechanisms-at-Borders-under-the-EU-Pact-on-Migration-and-Asylum.pdf>.

⁵<https://europe.ohchr.org/Documents/Publications/Final%20Note%20of%20the%20Joint%20OHCHR%20and%20UNHCR%20Consultation.pdf>.

⁶<https://www.unhcr.org/gr/en/23391-ten-points-to-guide-the-establishment-of-an-independent-and-effective-national-border-monitoring-mechanism-in-greece.html>.

The most approximate authority to carry out the duties of a new independent monitoring mechanism in Greece would be the Greek Ombudsman.

A synthesis of existing capacities based on current mandates the Greek Ombudsman already holds (the Forced Returns Monitor, the National Preventive Mechanism Against Torture and Ill Treatment, as well as the implementation of the 'National Mechanism for the Investigation of Arbitrary Incidents by Law Enforcement and Prison Officers) and the existing operational experience of Ombudsman's officials could constitute a suitable foundation for the creation of an IBMM.

While Greek authorities have come under pressure to present progress on the establishment of a border monitoring mechanism by the European Commission since early September 2021, it remains uncertain if they will make the de facto obvious choice of entrusting the Greek Ombudsman with this task.

1. Introduction and Objective

As part of a proposed new Screening Regulation under the Pact on Migration and Asylum, the European Commission is envisioning the establishment of an independent border monitoring mechanism (IBMM) to investigate allegations of fundamental rights violations during screening of newcomer asylum seekers at the borders. Under the proposed regulation, member states would “adopt relevant provisions to investigate allegations of non-respect for fundamental rights” and “put in place adequate safeguards to guarantee the independence of the mechanism.” In essence, this means that member state can set their mechanism ‘as they see fit’, given that there are no clear, detailed, and binding conditions on its modalities.

As EU institutions are considering the new Screening Regulation and other legislative proposals, human rights advocates have identified preconditions for effective monitoring. In their view, the proposed mechanism has the potential to address violations but only if it is expanded in scope to include actions of authorities everywhere at the border; independence is ensured; accountability for violations is strengthened; and suitable consequences follow governments’ non-compliance.

At a time when plans for future border monitoring mechanisms are becoming more concrete, detailed conditions on their modalities are missing, and certain member states even suggest their mechanisms are mostly in place already, it is necessary to set the record straight by taking a closer look at the status quo of monitoring against key criteria for effectiveness. This report therefore presents a comparative analysis of stakeholders that could be involved in the establishment of an independent and effective national border monitoring mechanism in Greece, against criteria set by human rights institutions and international organizations.

2. Methodology

The author of this report has analyzed criteria for IBMMs proposed by NGOs and international organizations to identify common points that shape a minimum threshold required for the establishment of an independent and effective monitoring mechanism in Greece.

In particular, the following criteria were analyzed:

- Joint Statement by ECRE and INGOs “Turning rhetoric into reality: New monitoring mechanism at European borders should ensure fundamental rights and accountability”⁷ November 2020
- CPT Annual Report 2020, Independent Border Monitoring, (page 15-16)⁸
- ENNHRI’s Opinion on Independent Human Rights Monitoring Mechanisms at Borders under the EU Pact on Migration and Asylum⁹, March 2021
- Criteria compiled from UNHCR Greece recommendations to Greek authorities April 2021, the HNHR European Regional Office and UNHCR 'Note on Joint Consultation on Independent National Monitoring Mechanisms proposed in the EU Pact on Migration and Asylum 23 February 2021¹⁰
- “Ten points to guide the establishment of an independent and effective national border monitoring mechanism in Greece” published jointly by ENNHRI, OHCHR and UNHCR on 15 September 2021¹¹

In a comparative analysis, the composite minimum threshold developed from the above-mentioned criteria was then applied to the legal mandates and operational capacities of Greek stakeholders that could play a role in a new border monitoring structure under discussion¹²:

- the Greek Ombudsman
- Greek civil society organizations
- the Greek National Commission for Human Rights (GNCHR)
- UNHCR Greece.

3. Findings

The composite minimum threshold developed for this comparative analysis consists of four categories: a) institutional independence, b) financial independence, c) access, d) transparency. The findings of the analysis are structured based on these categories.

- a. Institutional independence - independence from the executive power and the authorities being monitored or which may be responsible for violations

The Greek Ombudsman

The National Ombudsman, as all heads of independent authorities, is elected by the Conference of Presidents of the Greek Parliament, a bipartisan body that oversees the organization of legislative works in the parliament.

“The Conference consists of the Speaker and the Deputy Speakers of the Parliament, former Speakers who are still elected MPs, the Presidents of Standing Committees and that of the Special Standing Committee on Institutions and Transparency, Parliamentary Group Presidents and a representative of independent MPs (provided there are at least five of them)”¹³.

⁷<https://ecre.org/turning-rhetoric-into-reality-new-monitoring-mechanism-at-european-borders-should-ensure-fundamental-rights-and-accountability/>.

⁸30th general report CPT, <https://rm.coe.int/1680a25e6b>.

⁹<https://ennhri.org/wp-content/uploads/2021/03/ENNHRI's-Opinion-on-Independent-Human-Rights-Monitoring-Mechanisms-at-Borders-under-the-EU-Pact-on-Migration-and-Asylum.pdf>.

¹⁰<https://europe.ohchr.org/Documents/Publications/Final%20Note%20of%20the%20Joint%20OHCHR%20and%20UNHCR%20Consultation.pdf>.

¹¹<https://www.unhcr.org/gr/en/23391-ten-points-to-guide-the-establishment-of-an-independent-and-effective-national-border-monitoring-mechanism-in-greece.html>.

¹²A more comprehensive analysis of stakeholder mandates, capacity and activities related to border monitoring issues is provided in ANNEX II.

¹³<https://www.hellenicparliament.gr/en/Organosi-kai-Leitourgia/Diaskepsi-Proedron/>.

It requires a 3/5 majority in the Conference which enables the ratification of a proposed candidate without bipartisan support, as was the case prior to 2001. This means that the ruling party's choice can be predominant at the expense of parliamentary consensus, but still the process remains sealed by direct intervention of the executive power.

The Greek Ombudsman unsuccessfully requested that a provision offering him security clearance during monitoring missions be introduced in the 2020 law amending his mandate. His position on the issue is that an IBMM should be empowered with a legal safeguard providing an adequate security clearance. This is considered necessary for the mechanism to be able to conduct effective monitoring, especially when police, coast guard and other national security officials may invoke national security reasons for denying access to sites or evidence¹⁴.

*The Greek National Commission for Human Rights and Civil Society Organizations*¹⁵

In Greece, the institutional role of the National Human Rights Institution (NHRI) has been assigned to the Greek National Commission for Human Rights (GNCHR). It was established as the independent advisory body to the Greek state in accordance with the UN Paris Principles.¹⁶ The GNCHR has a status A 'Fully Compliant' accreditation in accordance with the UN Paris Principles, which define the independence of NHRI institutions¹⁷.

In the GNCHR's view, its independence, "through the dual mandate for the promotion and protection of human rights entrusted to it by the legislator, is guaranteed by its law and ensured, inter alia, by providing for a mandate as broad and clear as possible in the legislation."¹⁸ The GNCHR has a general mandate of monitoring the compliance of state authorities with international, regional, and national human rights standards.

The GNCHR also emphasizes that its pluralistic composition can be seen as an additional guarantee of its independence, "with the participation of 43 bodies, which allows and cultivates a unique dialogue between the various bodies of civil society and the state. Reflecting the pluralism of views on human rights issues, this collective composition, which includes, among others, independent authorities, universities of law and political science, trade unions, NGOs, political parties and ministries, provides a very high level of expertise."¹⁹

Following a hearing of civil society actors and experts in June 2020, the Greek National Commission for Human Rights (GNCHR) concluded that "the deficit of an independent mechanism for recording and monitoring allegations of irregular pushbacks" was a very essential issue. It called on Greek authorities to proceed to the creation of an independent mechanism of recording and monitoring of allegations²⁰.

Additionally, in the annual 'National Report on the Situation of Human Rights of Migrants at the Borders' issued by NHHRI and GNCHR in May 2021, it was reported that "a new Mechanism for

¹⁴Interview with Greek Ombudsman, 30 August 2021.

¹⁵It is understood that the Greek NHRI has not been set up or designed to function as an operational institution. It is assessed for the purposes of this report to examine how it would potentially respond to the challenges that occur from the implementation of an IBMM in Greece, and how its contribution can enhance the role of civil society in the undergoing discussions and policy making procedures.

¹⁶ GNCHR website, <https://nchr.gr/en/gnchr.html>.

¹⁷ UN Paris Principle and Accreditation, <https://ennhri.org/about-nhris/un-paris-principles-and-accreditation/>.

¹⁸ GNCHR website, <https://nchr.gr/en/gnchr.html>.

¹⁹ GNCHR website, <https://nchr.gr/en/gnchr.html>.

²⁰September 2020 Report on Refugee and Migration Issue, page 31.

recording incidents of push-backs to contribute to filling this accountability gap” would soon be established²¹. This mechanism is still under construction.

The new recording mechanism's scope is not to directly function as a border monitoring mechanism. However, its capacity to enhance the transparency and accountability of motioning procedures will make it a crucial stakeholder.

GNCHR has a general mandate of monitoring the compliance of state authorities with international, regional, and national human rights standards. It has the status of an advisor towards the Prime Minister of the country. Furthermore, it has a status A 'Fully Compliant' accreditation in accordance with the UN Paris Principles, which define the independence of NHRI institutions²².

UNHCR Greece

UNHCR is implementing monitoring functions at the Greek-Turkish border based on its mandate to oversee implementation of the 1951 Convention, especially regarding the situation of persons that might need international protection or request access to UNHCR representatives.

There are no institutional links between UNHCR and executive authorities concerning border monitoring. Within UNHCR Greece, transparent recruitment and working procedures based on specific protocols are in place. The quality and independence of its monitoring is assessed and remains under intra-institutional oversight of the UN Refugee Agency.

- b. Financial independence - financial viability, resourced with qualified staff to carry out the monitoring

The Greek Ombudsman

The Greek Ombudsman's financial means occur mainly from a state budget contribution, which is programmed by the government on an annual basis. The institution publishes a monthly analysis of its budget implementation on its website²³. It is entitled to seek additional support from corresponding EU funds through National Programs to finance its activities, namely the Asylum Migration and Integration Fund and the Internal Security Fund.

The direct association of the Ombudsman's financial means to the state budget could be seen as the weakest point in ensuring viability and independence of a mechanism potentially exposing violations by state security actors, as in theory the financing of the institution could be politicized to put pressure on it.

Another weakness is the Ombudsman's dependence on public administrative procedures for recruiting new personnel. This could implicitly hamper the swift establishment of a border monitoring mechanism and the recruitment of personnel with the appropriate expertise, either due to inefficiency or political manipulation of administrative procedures.

Carrying out its functions of the National Prevention Mechanism, the “National Mechanism for the Investigation of Arbitrary Incidents by Law Enforcement and Prison Officers” and Forced Returns Monitor, the Ombudsman has put in place a number of pools of expert personnel, with acquired field experience and trained by expert institutions, that could potentially reinforce a new border monitoring mechanism. There are 44 people involved in these structures with various roles:

²¹ENNHRI – GNCHR, May 2021, Annual National Report on the Situation of Human Rights of Migrants at the Borders, Executive Summary, page 2.

²²UN Paris Principle and Accreditation, <https://ennhri.org/about-nhris/un-paris-principles-and-accreditation/>.

²³<https://www.synigoros.gr/?i=stp.el.budget>.

- NPM: 10 + 2 administrative support,
- Forced Returns Monitors: 10 experts + 2 administrative support,
- 10 experts participating in both NPM and Forced Returns Monitoring functions,
- National Mechanism for the Investigation of Arbitrary Incidents by Law Enforcement and Prison Officers 4 + 2 administrative,

Furthermore, there are 4 experts that formally belong to the latter but also contribute to the first two.

The Greek National Commission for Human Rights and Civil Society Organizations

The GNCHR does not have dedicated financial means for establishing the new recording mechanism. There are plans for a position coordinating the network, streamlining communications, and engaging the partner SCOs that will become members of the new structures. The means for this position will probably occur from UNHCR offering technical assistance to the new mechanism.

The capacity to provide additional financial means and personnel for recording incidents and allegations will depend on the means and personnel CSOs can dedicate to be involved with the recording network.

There is an inherent weakness in CSOs' dependency on fundraising for maintaining their activities, as it exposes them to the volatility of donor agendas. Based on this, NGOs themselves could radically shift from time to time, thus leading them to withdraw resources previously allocated to monitoring tasks.

GNHCR finances occur from the national budget. Possible reductions of its budget have been mentioned as a pressure tool against it by governments in the past.

UNHCR Greece

Funding of its activities comes from allocations in the organization's annual budget. Implementation of programs takes place in coordination with state and local authorities.

Currently UNHCR Greece has the capacity to deploy approximately 3 to 4 officials for monitoring purposes in the areas a regional office is situated, namely the five hot-spot islands Lesbos, Samos, Chios, Leros and Kws as well as well as the Evros region in northeastern Greece, plus the coordination team at the Central Office in Athens. However, such deployments are only possible on an ad hoc and part-time basis since officials are involved with numerous other tasks.

UNHCR Greece could allocate additional financial resources and personnel for monitoring tasks if this was prioritized more, but UNHCR is not inclined to be operationally involved in broader SCO initiatives or a national monitoring mechanism. The most likely scenario is that the level of its engagement will be to contribute to preparatory consultations for the IBMM and assist as a member of any Advisory Body that might accompany its creation.

- c. Access – no procedural or geographical limitations, no restrictions to access any location or evidence material in the possession of authorities

The Greek Ombudsman

Under its mandate as a National Preventive Mechanism, the Ombudsman experts may make unannounced visits and request access to any facility utilized by state authorities for the restriction of

freedom, apprehension, or detention of individuals. Access to documents related to these procedures is also established. Refusal to conform to requests can only be based on national security reasons.

Under its mandate as the Forced Returns Monitor, Ombudsman experts can follow every step of the administrative procedure and ask for access to all related documents and files.

As a National Mechanism for the Investigation of Arbitrary Incidents by Law Enforcement and Prison Officers, Ombudsman's experts can access all evidence in relation to incidents of abuse of power by state security structures that are referred to them via individual complaints or authorities themselves. They can examine the conduct of disciplinary procedures and request additional actions from authorities or launch their own investigative inquiries.

Under its general mandate, the Ombudsman is entitled to launch its own initiative inquiries into issues of concern when these occur from complaints or other information publicized by the press.

In June 2017, following allegations of pushbacks in the region raised by international organizations, political parties and press reports, the Ombudsman launched an inquiry to investigate allegations. On April 28, 2021, an interim report on alleged illegal pushbacks of foreign nationals from Greece to Turkey, in the area of Evros river, was released by the Ombudsman.

In his conclusions, the Ombudsman acknowledged his “limited powers to effectively investigate the factual basis” of complaints and incidents that come to its attention²⁴.

The Greek National Commission for Human Rights and Civil Society Organizations

The Greek NHRC and Greek CSOs could not claim unrestricted access without geographical or procedural limitations to conduct basic monitoring tasks, even within the remit of the recording mechanism. Additionally, an increasingly hostile environment has been put in place by recent legislative amendments, which has hindered the capability of CSOs to act in border areas without risking criminalization²⁵.

Last August, the Greek government introduced additional legal measures with legislation²⁶ “inextricably linked to the ongoing allegations against Greece regarding pushbacks of refugees in the Aegean Sea”²⁷. This introduces additional geographical restrictions and conditions on organizations active in “competence areas” of the Hellenic Coast Guard. The provision has been criticized by SCOs and the Council of Europe Commissioner for Human Rights for disregarding Law of the Sea obligations towards persons in distress and further criminalizing independent NGOs by introducing sanctions and fines of up to 2,000 € per person and 12,000 € per institution.

UNHCR Greece

UNHCR border monitoring functions have taken place since the 90s'. Since 2010 there has been an uninterrupted presence of UNHCR officials at border areas.

In theory, UNHCR staff ought to have full access and meet no procedural or geographical limitation when carrying out these monitoring duties within an Area of Concern. UNHCR is guaranteed access

²⁴Interim Report, Own initiative investigation by the Greek Ombudsman on alleged pushbacks to Turkey of foreign nationals who had arrived in Greece seeking international protection, published April 2021 (updated as of December 2020).

²⁵Expert Council on NGO Law Using Criminal Law to Restrict the Work of NGOs Supporting Refugees and Other Migrants in Council of Europe Member States, <https://rm.coe.int/expert-council-conf-exp-2019-1-criminal-law-ngo-restrictions-migration/1680996969>

²⁶ Article 40 Law 4825/2021.

²⁷ Refugee Support Aegean: <https://rsaegean.org/en/reject-the-unlawful-deportations-bill/>.

by Greek law as regards facilities where persons in need of international protection are staying. In general, according to Art. 35 of the 1951 Convention, States are obliged to cooperate with UNHCR for the exercise of its mandate.

Practical limitations are two-fold: one is the capacity of UNHCR to deploy monitors; the other are restrictions by authorities arguing that no persons of concern to UNHCR are present in facilities or border areas the UN Refugee agency is requesting access to.

UNHCR cannot effectively make unannounced visits to facilities and has avoided unannounced monitoring visits to open areas given its strategy has been to inform authorities prior to any monitoring visit to a detention facility or coastal area. Police or Coast Guard can and often do deny UNHCR access. At the beginning of summer 2021, while allegations and indications of pushbacks had constantly increased, UNHCR tried to adapt its approach.

UNHCR officials have visited certain areas to look for asylum seekers after authorities had informed UNHCR that the whereabouts of these asylum seekers could not be traced. According to the UNHCR official responsible for coordinating border monitoring activities, the new approach of not accepting reasons invoked to discourage access has increased tensions between UNHCR and Hellenic Coast Guard officers in some cases. The UN Refugee agency's monitoring functions are therefore performed within an increasingly hostile environment, but the priority for the UN agency remains on maintaining open communication and cooperation with Greek authorities.

- d. Transparency – capacity to seek information from relevant stakeholders, ability to publicly report findings, report directly to prosecutors, establish links with organizations outside EU territory (countries neighboring EU external borders)

The Greek Ombudsman

The Ombudsman can receive complaints or information from individuals or organizations. It can also take notice and react to press reports disclosing cases of maladministration and misconduct by authorities.

It publishes annual reports regarding the monitoring it undertakes as an NPM, returns monitor and National Mechanism for the Investigation of Arbitrary Incidents by Law Enforcement and Prison Officers. The reports are public and are forwarded to competent authorities, executive powers and justice officials as appropriate.

The Greek National Commission for Human Rights and Civil Society Organizations

Greek NHRI, NGOs and INGOs can use any open source to seek information for monitoring activities and assessments of border management by authorities.

NHRI publishes annual reports about the state of play on human rights issues, including the rights of migrants and refugees, which contains an analysis of compliance with fundamental rights by authorities controlling the border.

CSOs regularly report on information and evidence they record regarding violations during border control operations.

GNHRI participates in NHHRI's Asylum and Migration working group which facilitates collaboration among NHRIs in this area of migrant rights at the border, e.g., regarding immigrant detention. The WG also involves neighboring countries in the Western Balkans countries (including Bulgaria, North Macedonia, Albania, Kosovo, Serbia and Croatia).

CSOs have several active ongoing partnerships with NGOs in the Western Balkans and Turkey through which they exchange information and coordinate research and monitoring activities.

NHRI and CSOs can directly report their findings to the prosecutor.

UNHCR Greece

UNHCR exchanges and consults with CSOs and the Ombudsman. It also cross-references press reports with the material gathered through its own monitoring functions.

Rather than making public the details that occur from its monitoring, it forwards them to authorities as part of its advocacy strategy and intervenes with public statements on the issue of pushbacks.

The Greek representation of the UN Refugee Agency relates to UN representations in all neighboring countries, in Turkey and the Western Balkans, constantly exchanging information about the situation at the external borders of the EU.

It can inform the prosecutions about its findings.

4. Spotlight – Considerations regarding the National Transparency Authority

The option of the National Transparency Authority (EAD) as a potential instrument to carry the duties of a Greek national border monitoring mechanism initially surfaced in the summer of 2021.

Pressure from the European Union's Commissioner for Home Affairs, Ylva Johansson, on Greek officials to investigate pushbacks escalated in early October 2021 following press reports about pushbacks²⁸. At that time, discussions on the issue between Johansson and the Greek Minister for Migration, who had constantly denied the need for establishing an independent monitoring mechanism, appeared to have stalled.

In mid-October, a report in the *Kathimerini* newspaper informed about the Greek government's plan to designate EAD to act as the national border monitoring mechanism²⁹. The report also mentioned the existence of a detailed plan regarding the design and mandate of the mechanism, which would be staffed by representatives of the Migration Ministry, court officials and academics, but would not include UNHCR or civil society representatives.

EAD was constituted by new legislation during the summer of 2019, after the current government administration took office. It incorporated and replaced five existing public sector inspectorate authorities (Office of the Inspector General of Public Administration, Body of Inspectors-Auditors of Public Administration, Body of Inspectors of Health and Welfare Services, Body of Inspectors of Public Works, the Body of Inspectors -Transport Controllers, the General Directorate of Transport, as well as the General Secretariat for Combating Corruption).

Neither EAD nor any of these inspectorate authorities were/are specialized in the monitoring of security structures, or on border, migration, or asylum issues.

²⁸Greece promises investigation into migrant pushback accusations, <https://www.reuters.com/world/europe/eu-executive-pushes-greece-launch-investigation-into-pushback-reports-2021-10-08/>.

²⁹Transparency Authority may probe pushback claims, <https://www.ekathimerini.com/news/1169960/transparency-authority-may-probe-pushback-claims/>.

In early May 2020, the National Transparency Authority participated in inspections of non-governmental organizations operating in the sector of migrant support. Mainstream Greek media reported on this audit as a crackdown on non-transparent civil society activities. EAD has not communicated publicly the findings of its investigation. This led Metadrasi, an organization recognized internationally for its contribution to migration management in Greece, to publish its own corrective press release regarding EAD's investigation in February 2021, questioning EAD's decision not to publicize the results of its audits. In the case of Metadrasi, these findings were known as early as July 2020, and concerned two minor recommendations regarding the streamlining of procedures.

“One of the main objectives of the audit, as referenced on the National Transparency Authority's website, is to restore citizens' confidence in institutions. How is this goal achieved when the citizen is not then informed about the outcomes of the audits?” asked Metadrasi³⁰.

According to the law³¹, EAD “enjoys functional independence, administrative and financial autonomy and is not subject to control or supervision by government bodies, government agencies or other Administrative Authorities”. Additionally, its chairman, the members of the Board of Directors, and the Executive Director of the Authority “enjoy personal and operational independence”. EAD is formally accountable to the Greek Parliament.

Several points occur when EAD's status is cross-checked against the minimum threshold criteria used in this report.

EAD's independence is indeed safeguarded by law but this remains a lower guarantee than the one sealing the independence of Independent Authorities in Greece, which occurs directly from the Constitution. This practically means that new legislation could amend the safeguards put in place currently.

EAD's financial means occur directly from the State Budget and are re-assessed on an annual basis³².

Also, the selection procedure of the Board of Directors and the Executive Director of EAD is directly linked with the executive.

EAD's board of directors occurs from a Selection Committee composed of high-ranking public officials. The Selection Committee submits a list of candidates, which occurs from an open application procedure to the Council of Ministers (the executive). The Ministers choose candidates from the list for the open posts and submit these for approval to the Parliamentary Permanent Committee on Institutions and Transparency. In case the Committee does not approve one or more of the proposed candidates, the Council of Ministers proposes new candidates from the list of candidates put in place by the Selection Committee. Formally, the appointment of the Chairman and of the members of the Board of Directors is ratified by the Council of Ministers³³.

A similar process is followed for the appointment of the Executive Director of EAD. After an open procedure the Selection Committee decides on four candidates. The Board of Directors of EAD decides on the two most prominent cases among these candidates and forwards them to the Council of Ministers, which itself chooses who the Director should be. The decision of the Council of Ministers needs the approval of the Permanent Parliamentary Committee on Institutions and Transparency. In

³⁰The Findings of the National Transparency Authority Audit, <https://metadrasi.org/en/the-findings-of-the-national-transparency-authority-audit/>

³¹Νόμος 4622/2019: Επιτελικό Κράτος: οργάνωση, λειτουργία και διαφάνεια της Κυβέρνησης, των κυβερνητικών οργάνων και της κεντρικής δημόσιας διοίκησης, Articles 82-103 and 118-119, <https://www.e-nomothesia.gr/kubernese/nomos-4622-2019-phek-133a-7-8-2019.html> (in Greek only).

³²EAD's legislation Article 92.

³³EAD's legislation Article 88.

case the Committee does not approve the chosen candidate, then the second in line is considered. Formally, the Director is appointed by a deed of the Prime Minister³⁴.

5. Recommendations

Greek Government

Initiate a transparent consultation process involving Greek Ombudsman and NCHR, European Commission, UNHCR, and civil society actors to produce a road map on establishing an effective and independent border monitoring mechanism.

European Commission

Consult with the Greek Ombudsman and GNCHR on policy and technical issues related to the establishment of an IBMM.

Expand analysis of the legal basis for introducing conditionality as leverage for the creation of IBMMs based on the Greek example.

Explore possibilities of direct financing of national IBMMs from the Integrated Border Management Fund.

The Greek Ombudsman

Conduct and publish a feasibility study of how a synthesis of NMP, Forced Returns Monitor and National Mechanism for the Investigation of Arbitrary Incidents by Law Enforcement and Prison Officers, mandates, human resources, and expertise can result in the consolidation of an IBMM mandate and structure under the Ombudsman's supervision. Estimate additional legal and financial resources required.

Civil Society and GNHCR

Further clarify the scope and mandate and establish a mechanism to record incidents of pushbacks.

UNHCR

Support GNHCR and CSOs with technical assistance as they establish a mechanism to record incidents of pushbacks.

Advocate towards the government in favor of holding a transparent consultation process with stakeholders

³⁴EAD's legislation Article 90.

Annex I - Assessing Actors against Criteria for Effective Monitoring Mechanisms

The table below assesses four (categories) of institutions against criteria established by civil society (see methodology section) to characterize effective and independent border monitoring mechanisms.

	GNCHR - new mechanism to record pushbacks	Civil society / NGOs	UNHCR Greece	National Ombudsperson
Access without geographical and procedural limitations	No access without geographical or procedural limitations.	No access without geographical or procedural limitations.	In principle, UNHCR should have access to any space where persons of concern are situated. In practice, authorities often deny access.	According to the independent authority's legal mandate, no geographical or procedural limitations should apply.
Involvement of NHRIs, NGO, int. org or Ombudsperson in management of mechanism	GNCHR is the Greek NHRI, accredited with an A level status according to UN Paris Principles.	NGOs with expertise in border monitoring are in place and could support the implementation of an IBMM.	UNHCR would be the key international organization to support a national IBMM and has reserved its interest in holding an advisory role towards the Greek authorities.	The National Ombudsperson has the most approximate legal mandate in playing a key role for the implementation of a national IBMM.
Financial independence	GNCHR financial resources occur from the national budget, but NGO members of the recording network provide for their own financial resources independent of national budget.	NGOs active on border monitoring receive financial support from EU funds and the private sector or depend on volunteer work.	Not depending on national financial resources.	Most of the institution's resources occur from the national budget.
Capacity to “trigger concrete action	No capacity to trigger concrete action.	No capacity to trigger concrete action.	UNHCR informs authorities about its findings and requests that allegations are investigated, but it is not able to trigger concrete actions at will.	Ombudsperson able to refer cases for disciplinary investigation and oversee disciplinary process for serious unlawful conduct.
Political or financial cost in case IBMM is not established or is obstructed	No concrete sanctions for ignoring or obstructing the recording network.	No concrete sanctions for ignoring or obstructing the function of an IBMM supported by CSOs in place.	No political or financial cost for not responding to UNHCR recommendations	No political or financial cost for not accepting Ombudsperson's authority to act as national IBMM.

Annex II - Mapping the State of Play (Actors, Capacity, Legal Framework)

The Greek Ombudsman

The Greek Ombudsman appears to be the most approximate authority to an IBMM in terms of mandate as well as operational capacity and expertise.

Although the Ombudsman's mandate does not explicitly mention monitoring of incidents of pushbacks or violations that occur at the border, there is a clear capacity of the institution to perform monitoring tasks at the border due to its operational involvement with national and Frontex 'Forced Returns Monitoring', National Preventive Mechanism Against Torture and Ill Treatment tasks, as well as the implementation of the 'National Mechanism for the Investigation of Arbitrary Incidents by Law Enforcement and Prison Officers'.

Forced Returns Monitoring

The creation of the Ombudsman's forced returns monitoring team is the result of the Return's Directive as well as national legislation 3907/11, which transposes the Directive and awards this external monitoring of forced returns mandate under his office³⁵.

The team includes 22 experts and has been co-financed through the national budget and the National Program of the Asylum, Migration and Integration Fund (2014-2020).

This team has received training from international experts including FRA, Frontex, CPT through the ICMPD's FreM³⁶ programs and are certified monitors. Twelve of them have been made available as monitors via the Frontex pool of forced returns monitors.

Several experts also are available to Frontex's pool of monitors and participate in the EU's coordinated return operations³⁷.

National Prevention Mechanism

2020 was the seventh year of exercise by the Ombudsman of the special remit of the National Prevention Mechanism (NPM), according to Law 4228/2014, by which Greece ratified the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)³⁸. As the NPM, it conducts several interventions in places and facilities used for the administrative detention of aliens.

"National Mechanism for the Investigation of Arbitrary Incidents by Law Enforcement and Prison Officers"

This body was introduced in 2016 with legislation number 4443/2016. It became operational and started examining cases in June 2017. It was tasked to work in cooperation with the Greek Police internal disciplinary body and was integrated under the National Ombudsman's Office.

³⁵Greek Ombudsman, Returns of Third Country Nationals, Special Report 2020:
https://www.synigoros.gr/resources/docs/ekthesi_epistrofes-2020_english_site.pdf.

³⁶<https://www.icmpd.org/our-work/projects/forced-return-monitoring-frem>.

³⁷Greek Ombudsman monitors have also received training from Austrian special police force, and they have also provided training to monitors from all the Western Balkan countries as well as Ukraine, Georgia, and Moldova.

³⁸Greek Ombudsman's Annual Report 2020, page 63: https://www.synigoros.gr/resources/annual_report_2020.pdf.

The law has entrusted the Ombudsman with a “mandate to collect data; to record, evaluate and forward for disciplinary control cases of illegal acts allegedly perpetrated by the uniformed personnel of the Hellenic Police (ELAS), the Hellenic Coast Guard (LS –ELAKT), the Fire Brigade and employees of penitentiary facilities during the performance of their duties or in abuse of their powers”³⁹

Further to transmitting findings to the competent internal disciplinary bodies of the security structures, it was also advising on how to improve investigation procedures in cases of complaints or allegation of violations by police personnel.

The Mechanism was initially resourced with 2 lawyers that initially belonged to the Greek Police personnel and expert personnel of the Greek Ombudsman. A group of 10 new recruits for the mechanism was approved by the government, but their recruitment occurred through public administrative procedures and was not prioritized. As a result, they only became available four years later, at the end of 2020. Also, the Ombudsman was not involved in their selection at any stage. Instead, the recruitment was handled by a body unfamiliar with the issues and expertise required for the positions.

Another five positions for the mechanism are provided in Law 4622/2020, which updated the mandate of the National Ombudsman. However, these positions have not been created yet.

The Mechanism was institutionally enhanced by Article 188 of Law 4622/2020. As a result, the Ombudsman's mandate currently allows it to monitor, refer for disciplinary investigation and oversee the disciplinary process for serious unlawful conduct regarding:

- torture and other violations of human dignity within the meaning of Article 137 A of the Criminal Code,
- intentional and unlawful violations of life, physical integrity, health, personal or sexual freedom,
- unlawful use of a firearm,
- racist or hate crimes.

In March 2021, following serious protests about cases of police malpractice against Greek citizens, the Prime Minister announced new measures including the introduction of bodycams in police units. However, these measures did not concern border guards. A Deputy Ombudsman Assistant and 10 more officials for the mechanism were also announced, but no follow-up on these announcements has taken place.

Within the operational aspect, the Ombudsman acting as the Mechanism, evaluates all submitted complaints which fall within his specific competence. He then “decides either to investigate them himself or to refer the investigation to the competent disciplinary body under the supervision of the Mechanism. If the Ombudsman decides to investigate the complaint himself, the competent disciplinary body is not prevented from continuing its investigation but is obliged to suspend its decision on the case pending receipt of the Ombudsman’s findings. If the Ombudsman decides to refer the case to the competent disciplinary body, the latter is obliged to investigate it as a priority and inform the Ombudsman of the outcome. The Ombudsman evaluates the findings of the disciplinary proceedings and may send the case back to the disciplinary body for further investigation if specific shortcomings are identified. The Ombudsman’s findings are not legally binding, but the disciplinary body concerned is obliged to provide specific and detailed reasoning in case of any divergence from

³⁹Greek Ombudsman, National Mechanism for the Investigation of Arbitrary Incidents:
https://www.synigoros.gr/resources/docs/report-2020_en_web.pdf.

them. The Ombudsman can also forward his findings to state prosecutors when he determines that there is evidence of criminal activity.”⁴⁰

According to a CPT evaluation of the Mechanism in 2019, there have been several weaknesses regarding the mandate of this body:

“[T]he Mechanism only provides an oversight of disciplinary cases whereas cases of alleged ill-treatment should primarily fall under criminal law”.

“If a case is considered to be of a criminal nature the disciplinary investigation is suspended until the end of the criminal investigation which in Greece appears to mean around three years or more. Additionally, the Mechanism provides no oversight of the criminal investigation”.

The Mechanism has no powers to compel action by law enforcement agencies; it can only make recommendations. This effectively means that it does not have the capacity to affect the outcome of investigations.

The Mechanism cannot directly influence or compel specific investigative procedures “for example, by ensuring from the outset that the police investigator is independent from the police officers accused of the alleged ill-treatment”. It can only issue recommendations regarding processes of forensic medical examination, witnesses interviewed or other evidence.

The CPT has recommended to Greek authorities to increase the resources provided to the Mechanism and to grant it with supplementary powers such as the power to compel officials to take action and to be given the mandate to order forensic medical examinations⁴¹.

In June 2019, the Ombudsman's office issued the first findings report in its capacity as National Mechanism. In this report, it enumerated several concerns, the most important being 'lack of impartiality' of police personnel carrying out internal disciplinary investigations 'due to close service relationship with the accused'⁴². The Ombudsman has also issued several accompanying recommendations for the improvement of the Mechanism's independence including that it could autonomously call witnesses to testify, to receive sworn statements and order expert reports.

In 2020, the mandate of the Mechanism was indeed amended to allow it to carry out investigations.

In November 2019, following several alleged abuses of power by police officers against Greek citizens, the Ministry of Citizens Protection established an ad hoc working group to examine and monitor the compliance of the internal disciplinary body of the Greek police with directions and recommendations issued by the Mechanism run by the Ombudsman.

The working group was composed of independent legal experts as well as police officers. It finalized its work in May 2020 and has issued an advisory notice to the Ministry warning about the structural phenomenon of impunity of accused personnel of Greek Police and enumerating a number of concerns including:

⁴⁰Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 28 March to 9 April 2019
<https://rm.coe.int/16809e2058>, para 85 and 86, Strasbourg, 9 April 2020.

⁴¹Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 28 March to 9 April 2019,
<https://rm.coe.int/16809e2058> para 85 and 86, Strasbourg, 9 April 2020.

⁴²Ad-Hoc Committee final report, page 3, 4 May 2020 (in Greek):
<https://sdppa.aegean.gr/sites/default/files/anakoinoseis/files/%CE%A0%CF%8C%CF%81%CE%B9%CF%83%CE%BC%CE%B1%20%CE%B5%CF%80%CE%B9%CF%84%CF%81%CE%BF%CF%80%CE%AE%CF%82%20%CE%91%CE%BB%CE%B9%CE%B2%CE%B9%CE%B6%CE%AC%CF%84%CE%BF%CF%85.pdf>.

- the unwillingness of police investigators to co-operate with the Greek Ombudsman,
- impartiality of police investigating personnel,
- irregular details in submitting documents requested by the Ombudsman,
- failure to conform with reports issued by the Ombudsman,
- incomplete reasoning of decisions issued by the police disciplinary body.

The working group made several suggestions to improve the capacity for investigating allegations that included:

- implementation of the decision to introduce individual numbers on all police personnel uniforms,
- introduction of CCTV cameras inside police vehicles, detention cells and police station offices where interrogations take place, in cooperation with the Greek Data Protection Authority,
- introduction of protection measures for whistleblowers and witnesses to incidents of police violence,
- reinforcement of the National Ombudsman's Mechanism with additional full-time expert personnel, police officers as well as the technical means necessary,
- transformation of the ad-hoc Committee to an independent standing oversight body.

Interim Report on Pushbacks

On April 28, 2021, an interim report on alleged illegal pushbacks of foreign nationals from Greece to Turkey (in the area of the Evros river) was published by the Ombudsman. The report is part of an inquiry and investigation launched on the Ombudsman's own initiative in June 2017 following allegations of pushbacks in the region made by international organizations, political parties, and media outlets.

The decision of the Ombudsman to open the inquiry has drawn from its general institutional mandate.

Initially the report focused on alleged pushbacks of Turkish nationals, but while allegations about incidents of pushbacks in the region mounted "on 10 September 2018, the Ombudsman decided to broaden the scope of the investigation to include alleged pushbacks, from Greece to Turkey, in the area of Evros river, also of third country nationals who were reportedly seeking international protection"⁴³.

Following the March 2020 'border crisis' in the Evros region, the importance and scope of the report have increased given the number of new allegations of systematic, indiscriminate pushbacks in the Evros region.

The interim report "presents key aspects of the reported incidents, records the handling of the allegations by Greek authorities and makes proposals, in the direction of shielding legality, enhancing transparency, and ensuring full respect for the principles of the rule of law"⁴⁴. A special investigator from the Ombudsman office has been assigned by the Ombudsman to investigate and author the interim report. The action has been financed exclusively from the authorities' own funds. It is still ongoing.

⁴³Interim Report, Own initiative investigation by the Greek Ombudsman on alleged pushbacks to Turkey of foreign nationals who had arrived in Greece seeking international protection, published April 2021 (updated up to December 2020), page 4.

⁴⁴Interim Report, Own initiative investigation by the Greek Ombudsman on alleged pushbacks to Turkey of foreign nationals who had arrived in Greece seeking international protection: <https://www.synigoros.gr/?i=human-rights.en.recentinterventions.791674>.

In his conclusions, the Ombudsman acknowledged his “limited powers to effectively investigate the factual basis” of complaints and incidents that come to his attention. According to the special investigator that worked on the interim report, limitations occurred due to practical limitations, lack of resources and real-time access, although in principle the mandate of the independent authority should safeguard it from procedural and geographical limitations.

The interim report refers to “repeated patterns” as described in the allegations and complaints about the practice of pushbacks in the Evros region, involving uniformed officials as well as clandestine groups or individuals “who are likely to engage in illegal pushbacks”. The Ombudsman asserts that authorities have failed to effectively address those concerns through a comprehensive investigation” and proposes:

- “The Greek police to investigate formally those allegations of pushbacks not formally investigated, especially those involving third country nationals already registered in Greece or whose presence in the country was otherwise recorded; to publicize within a reasonable timeframe the findings of the said investigations with specific reference to each alleged incident.
- The Greek police to develop a specific and detailed operational plan to effectively address the possibility of private groups or militias engaged in illegal pushbacks of foreign nationals in the area of Evros river and to effectively protect foreign nationals who enter Greece by any means, to seek international protection; and to inform/train accordingly the police officers.”⁴⁵

Greek Ombudsman's perspective

The experience of Ombudsman experts in monitoring and investigating various aspects of malpractice by authorities are relevant to the creation of an independent border monitoring mechanism.

The Greek Ombudsman had unsuccessfully requested that a provision offering him security clearance during monitoring missions be introduced in the 2020 law amending his mandate. His position on the issue is that an IBMM should be empowered with a legal safeguard that provides a strong security clearance. This is considered necessary for the mechanism to be able to conduct effective monitoring, given that under pressure police, coast guard and other national security officials increasingly invoke national security reasons to deny access to sites or evidence⁴⁶. The current mandate of the Ombudsman, also as the National Prevention Mechanism, provides for unannounced and unrestricted access to any case of individuals apprehended or detained under any circumstances. But the Ombudsman's authority ceases in cases of national security or when a case implicates in any way the Greek intelligence services. Still these additional powers would seriously increase the threshold of what kind of entities are enabled and entrusted with participating in an IBMM structure either as monitors or advisors.

For the Ombudsman the issue of unrestricted real-time access is of greater importance to the capacity of the mechanism. This perspective is also the result of an understanding that while border control will be increasingly based on technological and surveillance means, monitoring will also have to adapt to obtain basic evidence through these channels. The logic followed is that without prejudice to the important role of current border monitoring modalities, eventually the number of monitors deployed in the field, although important, will be an issue secondary to the actual skills and qualities this personnel has in understanding and exploiting the surveillance means used by border guards to conduct border control⁴⁷.

⁴⁵Interim Report, Own initiative investigation by the Greek Ombudsman on alleged pushbacks to Turkey of foreign nationals who had arrived in Greece seeking international protection, page 23 -24.

⁴⁶Interview with Greek Ombudsman, 30 August 2021.

⁴⁷Greece to introduce high-tech border security system | DW News: https://www.youtube.com/watch?v=CNGPgDp_5Cc.

Another serious barrier in reinforcing the mechanism occurs from the long delays experienced in the implementation of the 'National Mechanism for the Investigation of Arbitrary Incidents by Law Enforcement and Prison Officers'. It is a vivid example of how implementation of a promised robust body with a considerable legal mandate can still be delayed and its effectiveness limited through administrative gerrymandering. An aspect which, according to the Greek Ombudsman, should not be missed from the policy debate regarding the creation of an IBMM in Greece.

Also of importance in the decision of who will carry the responsibility for a national IBMM is previous understanding and knowledge of the culture within the bodies the mechanism will be tasked to monitor and control. This means a good understanding of implications that occur from internal disciplinary law and procedures, chain of command, culture of impunity as well as the administrative limits of security strictures.

Greek National Commission for Human Rights (GNCHR) - member of ENNHRI

In its 2021 annual report, the GNCHR noted a lack of effective investigations on alleged incidents of pushbacks and made the following recommendations:

1. The Greek State shall effectively investigate allegations of informal pushbacks, disproportionate use of force and lethal injuries, underlining that any failure to do so not only contravenes international human rights obligations binding Greek authorities but also exposes the country under international human rights law.
2. The Greek State shall bring those responsible for any such illegal act to justice.
3. The Greek State shall ensure, through the use of technological equipment and other ways of operational action, the collection of objective data available to the police and judicial authorities for the effective investigation of complaints on pushbacks.
4. The Greek State shall ensure an effective cooperation with the judicial authorities as required in the context of investigations of complaints on pushbacks.
5. Frontex shall ensure that its operations at the EU external borders with Turkey comply with the non-refoulement principle and the duty to rescue persons in distress at sea
6. National Human Rights Institutions shall be strengthened in their role as independent human rights monitoring bodies at EU borders.⁴⁸

“The GNCHR has recommended to Greek authorities to establish an official independent mechanism for recording and monitoring informal pushback complaints and to effectively investigate allegations of pushback and disproportionate use of force in order to hold those responsible accountable and protect victims”.

Following a hearing of civil society actors and experts in June 2020, the GNHCR concluded that “the deficit of an independent mechanism for recording and monitoring allegations of irregular pushbacks” was a very essential issue. It called on Greek authorities to proceed to the creation of an independent mechanism of recording and monitoring of allegations⁴⁹.

Additionally, in the 'National Report on the Situation of Human Rights of Migrants at the Borders' issued by ENNHRI and the GNCHR in May 2021, it was reported that “a new Mechanism for recording incidents of pushbacks to contribute to filling this accountability gap” would soon be established⁵⁰.

⁴⁸ENHRRRI – GNCHR, May 2021, Annual National Report on the Situation of Human Rights of Migrants at the Borders.

⁴⁹September 2020 Report on Refugee and Migration Issue, page 3.

⁵⁰ENNRHI – GNCHR, May 2021, Annual National Report on the Situation of Human Rights of Migrants at the Borders, Executive Summary, page 2.

According to a representative of the GNCHR, the new Mechanism will largely copy another successful structure, the Racist Violence Recording Network (RVRN), monitoring incidents of racist violence in Greece, which is also facilitated by this NHRI.

RVRN⁵¹ is a civil society network, like an umbrella structure, which hosts about 50 civil society organizations. It is jointly coordinated by UNHCR's office in Greece and the GNCHR. Members of the network, when approached by victims of racist violence or proactively, record such incidents following a commonly shared methodology and tools, including the same recording format. Based on the findings of this recording, RVRN produces yearly reports that have contributed crucially to enhancing transparency and accountability on the issue and have strengthened advocacy that led to policy changes. UNHCR provides the funds for an RVRN assistant coordinator who compiles the data and runs the daily tasks of the network.

The new Mechanism to record incidents of pushbacks will follow the same format but will admit members based on strict criteria depending on expertise and experience on the issue. Its capacity will initially depend on the means of its members and will try to establish a mechanism that will press for more transparency and accountability on the issue. There is an expectation that UNHCR will provide technical assistance and expertise to this initiative, including the funding for an assistant coordinator. It is possible that UNHCR will not opt for acting as a joint coordinator given the political risks involved and that it is carrying out its own monitoring functions and advocates on the pushbacks issue independently.

The new structure will be limited to recording incidents of pushbacks. There is no explicit aspiration to develop this into an actual IBMM, but it is certainly a crucial element in the effort to leverage the issue of accountability and contribute to a dynamic for the establishment of an independent and effective border monitoring mechanism in Greece. Although the structure poses additional coordinating and managerial challenges, the co-existence of many members is understood as another layer of oversight and cross-checks that can guarantee independence. It will also play a very important role in institutionalizing further the attempts of Greek NGOs to conduct recording of incidents in a uniformed manner.

Still, it is expected that the new Mechanism and its members will face limitations regarding access to procedures or geographical locations when carrying out recording or monitoring tasks as neither the mandate of the GNCHR nor any of the Mechanism's prospective members provides an obligation on the side of national authorities to comply with their recordings and findings. These difficulties are also expected to be recorded and presented along with the recordings of the new Mechanism.

UNHCR Monitoring

UNHCR is implementing monitoring functions at the Greek–Turkish border based on its mandate to oversee implementation of the 1951 Convention. This includes all persons in need of international protection or request to access UNHCR.

UNHCR border monitoring functions have taken place since the 1990s'. Since 2010, there has been an uninterrupted presence of UNHCR officials at the border areas.

In theory, UNHCR monitors ought to have full access and meet no procedural or geographical limitation when carrying out these monitoring duties within the Area of Concern. However, there are practical limitations: one is the capacity of UNHCR to deploy monitors; the other are restrictions by

⁵¹Racist Violence Recording Network: <http://rvrn.org/category/english/>.

authorities arguing that no persons of concern to UNHCR are present in facilities or border areas UNHCR is asking access to.

UNHCR cannot effectively make unannounced visits to facilities and has also avoided unannounced monitoring visits to open areas given its strategy to inform authorities prior to any monitoring visit to a detention facility or coastal area. Police or Coast Guard can and often do reject the reason cited by UNHCR for access. In early summer 2021, while allegations and indications of pushbacks constantly increased, UNHCR adapted its approach. UNHCR officials did visit areas to look for asylum seekers on their own initiative after authorities had informed UNHCR that they have been unable to trace their whereabouts. According to the UNHCR official responsible for coordinating border monitoring activities, the new approach of not immediately accepting limitations has increased tensions between UNHCR and Hellenic Coast Guard officers in some cases. According to the UNHCR official, monitoring functions are performed within an increasingly hostile environment. The priority for the UN agency remains on continued communication and co-operation with authorities.

UNHCR has the capacity to deploy approximately 3 to 4 officials to carry out monitoring tasks in the areas its regional offices are situated in, namely the five hot-spot islands of Lesbos, Samos, Chios, Leros and Kws as well as well as the Evros region in northeastern Greece. In addition, it has a coordination team at the central office in Athens. Monitoring consists of recording testimonies of individual victims and witnesses as well as cross-checking information with public sources. UNHCR monitors also record cases they are informed of indirectly through the media or other organizations in order to triangulate information already held (e.g. direct testimonies or direct observations).

UNHCR has no mandate to investigate. However, they bring forward the agency's observations calling for investigations by all competent authorities, notably the Ministry of Migration and Asylum, the Ministry of Citizens Protection and Police, and the Ministry of Maritime Affairs and Coast Guard. Currently there is a standing Memorandum of Cooperation with the Coast Guard, which is under-performing.

Reportedly UNHCR has taken the initiative to organize a stakeholder consultation on the IBMM issue. A first meeting took place on August 31st, 2021, and hosted representatives of FRA, GNCHR, the EC, ENNRI, Council of Europe – CPT, ICRC, OHCHR. The national Ombudsman was invited but did not attend.

As a result of this consultation in September 2021, UNHCR, United Nations Human Rights, and ENNRHI have co-signed an updated and more elaborate version of a set of criteria publicized by OHCHR and UNHCR in February 2021, which is entitled “Ten points to guide the establishment of an independent and effective national border monitoring mechanism in Greece”⁵²

Although key points remained similar to the ones already contributed in February, the action was a direct advocacy intervention in the discussion between Greece and the European Commission regarding the creation on a national IBMM.

The Council of Europe’s Committee for the Prevention of Torture (CPT)

The Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Greece from 13 to 17 March 2020 following the border crisis that occurred at the end of February 2020. The crisis saw the arrival of a significant number of migrants and asylum seekers and the suspension of asylum procedures by Greece on March 4.

⁵²<https://www.unhcr.org/gr/en/23391-ten-points-to-guide-the-establishment-of-an-independent-and-effective-national-border-monitoring-mechanism-in-greece.html>.

During the monitoring mission, the CPT extensively visited police stations and border guard facilities in the Evros region and visited Samos island.

The report of the visit was issued by the CPT in November 2020⁵³.

Although the CPT informed the Greek authorities of its intention to visit the country “less than 48 hours in advance”, cooperation with the Hellenic Police and the Ministry of Citizen Protection has enabled the Committee to perform its tasks. The CPT “enjoyed access to all the places it wished to visit, none of which had been notified in advance, was provided with the information necessary for carrying out its task and was able to speak in private with persons deprived of their liberty”⁵⁴.

Following a number of interviews with individuals and police personnel, the CPT, in its report, deliberated that “[t]he evidence supporting the case that migrants are pushed back across the Evros River to Turkey after having been detained for a number of hours, without benefiting from any of the fundamental guarantees, by Greek officers operating in an official capacity is credible”.

It called on Greek authorities to make sure “that this practice ends once and for all, and that any officers (police or military) operating outside of official command structures are held to account and sanctioned accordingly”⁵⁵. It also characterized allegations of migrants being re-embarked on dinghies by Greek officers and towed by Greek Coast Guard vessels back to Turkish waters as “credible”.

The CPT is the only body that has a clear mandate to conduct unrestricted and unannounced visits during monitoring operations, a mandate with which Greek authorities have complied. The difference between this and the efforts of other national authorities, civil society actors and international organizations is vividly portrayed in the gravity of findings of the Committee as well as the certainty of its conclusions following its monitoring visit.

Civil Society Actors Active in Recording Monitoring and Reporting to Authorities and the Public

Greek Council for Refugees

Through its legal aid programs, the GCR has consistently recorded testimonies of refugees and migrants about incidents of pushbacks, which reveal an “established procedure on the part of the authorities”. It has publicized⁵⁶ many of those either individually or in co-operation with other organizations.

The GCR is a member of the PRAB initiative which has collected reports on pushbacks, including chain pushbacks from EU Member States (MS) and neighboring countries between April and June 2021.

Partner organizations participating in PRAB operate across a range of different countries including Italy (Associazione per gli Studi Giuridici sull'Immigrazione (ASGI), Diaconia Valdese (DV) and Danish Refugee Council (DRC) Italy); Hungary (Hungarian Helsinki Committee); Bosnia and Herzegovina (DRC BiH); Serbia (Humanitarian Center for Integration and Tolerance (HCIT)); North Macedonia (Macedonian Young Lawyers Association (MYLA)); Greece (Greek Council for Refugees (GCR) and

⁵³Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 17 March 2020.

⁵⁴Ibid. page 5.

⁵⁵Ibid. page 25.

⁵⁶Reports of systematic pushbacks in the Evros region: <https://www.gcr.gr/en/ekdoseis-media/reports/reports/item/790-reports-of-systematic-pushbacks-in-the-evros-region>.

DRC Greece); and Brussels (DRC Brussels). The program has issued two reports in April 2021⁵⁷ and July 2021⁵⁸.

Greek Helsinki Watch

The Greek Helsinki Watch has been recording and publicizing information regarding allegations of pushback incidents to the Greek authorities. It has also been reporting its findings directly to the prosecutor and the Greek Ombudsman. Over 200 allegations of incidents, involving thousands of people, have been reported and pending investigation by authorities as the result of GHW reports submitted in May and July 2021, covering a period from March 2020 to May 2021⁵⁹. From March to August 2021, GHW estimates that 13 incidents of potential pushbacks have been averted (in cooperation with HumanRights360 and the Greek Council for Refugees) due to direct intervention to authorities⁶⁰. GHW conducts its monitoring function with the help of four volunteers and does not receive funding from donors.

HumanRights360

HumanRights360 has conducted their own recording of pushback testimonies either alone or in cooperation with other organizations during the last two years⁶¹.

To increase credibility of the process, they have put in place a formalized recording form to be used in all cases. This form attempts to extract information regarding the alleged perpetrators, conditions of the incidents, legal as well as spatial details to help further cross-reference evidence. Their recording has been influenced by their cooperation with Forensic Architecture with which they have worked to analyze and visualize several incidents in order to maximize impact of advocacy and litigation. Over the past two years, they have issued five summaries of recorded testimonies – one in cooperation with the Greek Council of Refugees (GCR) and Arsis organizations and four alone. They have one lawyer co-coordinating recording efforts through missions and two legal officers based in the Evros region who also assist in identifying and recording cases.

Findings have been disseminated in coordination with other organizations in various cases towards the Council of Europe, the UN Special Rapporteur on the Human Rights of Migrants and the European Commission DG Home. The conclusion is that exposure of the proportion of pushbacks through recording of as many cases as possible did not produce a desirable impact, thus the last six months the organization has focused on litigation efforts following up on cases they have brought forward to the European Court of Justice and the UN Human Rights Committee.

HumanRights360 is part of the effort to consolidate the GNCHR's new Mechanism for Recording Incidents of Pushbacks and will participate in its implementation.

Refugee Support Aegean

The organization records cases when they encounter testimonies of people they interact with through their legal aid activity but do not proactively engage in systematic recording or monitoring.

They currently litigate on several cases that include pushbacks, the most notable being:

⁵⁷https://drc.ngo/media/mnglzsro/prab-report-january-may-2021-_final_10052021.pdf.

⁵⁸https://www.gcr.gr/media/k2/attachments/PRAB_Report_April_to_June_2021.pdf.

⁵⁹250+ illegal deportations of about 10,000 foreigners are being investigated by the Supreme Court Prosecutor's Office and the Ombudsman following appeals of the GHM: <https://racistcrimeswatch.wordpress.com/2021/07/21/1-1211/>.

⁶⁰13 deportation detentions and announcement to the authorities of 178 asylum seekers from GHM (2 together with ESP or HumanRights360), March - August 2021: <https://racistcrimeswatch.wordpress.com/2021/08/31/1-1237/>.

⁶¹<https://www.humanrights360.org/promote-and-defend-vulnerable-persons-rights-in-the-land-border-of-evros/>.

A pushback case from Rhodes Island which was submitted to the European Court of Human Rights in March 2020.

A potential pushback incident they have averted through appealing for interim measures in October 2020⁶².

⁶²<https://rsaegean.org/en/>.