



# BOFAXE

## From Denial to Accountability (PART 1)

### Systematic Pushbacks and Enforced Disappearances in Greece and the Future of EU Border

— A long-denied reality by the Greek authorities is now on court record. Through its judgement in *A.R.E. v Greece* the European Court of Human Rights (Court) has confirmed the longstanding practice of systematic pushbacks at the Greek land and sea borders. The already celebrated judgement (see [here](#), [here](#) and [here](#)) has been perceived as confirming warnings about illegal pushbacks being the de facto Greek border policy. This blogpost will highlight the significance of the judgement, while also drawing attention to the need for a refined evidentiary approach in the Court's subsequent jurisprudence.

#### Background of the Judgment

The judgment originated from the application of a Turkish woman, who had been sentenced to over six years of imprisonment in Türkiye for suspected involvement in political opposition (*A.R.E. v Greece*, para. 12). Following her sentence, A.R.E. alleged that she entered Greece through Evros in 2019 to apply for international protection (para. 13). Fearing refoulement, the applicant documented her arrival thoroughly. Precisely, she frequently sent photos and videos to her brother and shared with him her live location via WhatsApp (paras. 13-29). To obtain legal assistance she further contacted a Greek lawyer, whom she had arranged to meet (paras. 14, 22-25).

A.R.E. was soon arrested by the police and taken to a border guard post (paras. 26-28). Until then, the applicant's location continued to be transmitted to her brother through WhatsApp (para. 29). She was subsequently taken to another police station, where her phone and other belongings, were confiscated (para. 31). A.R.E. was then forced to board on another truck, which transported her to an unknown location near Evros River (para. 33). Despite the reiteration of her intention to seek asylum, the applicant was forced by hooded police agents to get off the truck and board on a small inflatable boat, which transferred her to Türkiye, where she was eventually imprisoned (paras. 33-38). Greece denied the applicant's allegations, as summarised above, as well as her ever being present on Greek territory.

#### The Court's Findings

To assess the applicant's claims, the Court examined whether a systematic practice of pushbacks existed at the Greek-Turkish border. Although this examination is not always necessary in non-refoulement claims, it was warranted by the applicant's argument that the verification of such systematic practice would assist the Court in assessing the evidence (para. 217). Regarding the burden of proof, the applicant was required to establish that the refoulement is linked to the State's systematic practice by supporting her 'detailed, specific and coherent' account with 'concrete, circumstantial and consistent evidence' (*ibid.*). Subsequently, the burden of proof would be reversed (*ibid.*).

To determine the existence of a systematic practice of refoulement, the Court consulted reports from competent independent national and international institutions (paras. 226-229). These reports revealed a systematic practice by the Greek authorities of returning to Türkiye, from the region of Evros and the Greek islands, prospective asylum-seekers who entered Greece irregularly (paras. 226-227). The Greek state did not convincingly refute this evidence (*ibid.*).

Moreover, the Court accepted that the applicant's account was detailed, specific and coherent, and largely corresponded to the *modus operandi* found in the reports on pushbacks (para. 230). Considering that the applicant had been seen for the last time in the custody of Greek officials in Greece, before turning up again on the following day in Türkiye and referencing the imprisonment decision of the Izmir Criminal Court, which confirmed that the applicant had sought to flee and was returned to Türkiye from Greece, the ECtHR inferred that the applicant's allegations were established beyond reasonable doubt (paras. 266-267).

Hence, the Court concluded that Greece breached Article 3 (prohibition of torture and inhuman or degrading treatment) and Article 13 (right to an effective remedy) in conjunction with Articles 2 (right to life) and 3 of the European Convention on Human Rights (ECHR) on account of the applicant's return to Türkiye without prior access to asylum or risk assessment procedures (paras. 282-284), and due to the lack of an effective investigation and of an effective remedy which could have prevented or remedied the applicant's rights violations (paras. 303-304). Moreover, the Court found a violation of Article 5 of the ECHR (right to liberty and security) on account of the applicant's detention prior to her pushback, which constituted a form of temporary enforced disappearance (paras. 288-291).

#### The Significance of the Judicial Recognition of Systematic Practice

Growing alarm over the rule of law in Greece has prompted closer examination in 2024 by the European Commission and the European Parliament. Central among these concerns are severe human rights violations in the context of border management under the excuse of alleged 'hybrid threats' at the Greek borders, as well as inhumane reception conditions, arbitrary detentions even of asylum NGOs and human rights defenders under the guise of smuggling, deadly omissions to rescue lives at sea, pushbacks, enforced disappearances and deadly interceptions of protection-seekers, all compounded by the absence of effective investigations and of disregards to interim measures issued by the ECtHR. These practices have also been a source of concern for several international bodies (see [here](#), [here](#) and [here](#)).

Against this background, the acknowledgement of Greece's systematic practice of pushbacks in *A.R.E. v. Greece* may seem unsurprising. Yet, the importance of this acknowledgement is far-reaching. First, it is particularly significant from an advocacy viewpoint as it challenges Greece's consistent denial of such practices. By recognising pushbacks as part of a systematic pattern, the ECtHR has effectively provided an authoritative basis for the claims made by refugees, human rights advocates and numerous governmental and non-governmental bodies internationally.

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## From Denial to Accountability (PART 2)

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— The Court also found that the state of the judicial system in Greece fails to provide an effective domestic remedy in cases of pushbacks (paras. 282-284). Doing so, the Court underlined the systemic failure the domestic judicial system to uphold fundamental rights and exposed a judicial framework that falls short of the ECHR standards. This finding indicates not only the need for an amendment in the relevant domestic framework, but also the broader erosion of accountability within the Greek judicial system.

Moreover, this judgment has the potential to act as a pilot judgment (Rule 61 of the [Rules of the Court](#)), streamlining the processing of the [similar pending](#) and forthcoming applications against Greece, possibly even interim measures requests. Likewise, the potential impact of this ruling lies in its capacity to create a ripple effect. The 'systematic practice' acknowledgement can have a [profound impact](#) on the many pending cases concerning alleged pushbacks at the Belarus-EU border between 2021 and 2023 ([R.A. and Others v. Poland](#), [H.M.M. v. Latvia](#), and [C.O.C.G v. Lithuania](#)). More specifically, the recognition of these practices as systematic patterns could provide a significant precedent for reference in the Court's subsequent similar judgements. Eventually, this can pave the way for [greater accountability in future pushback cases](#).

Finally, a significant element of the judgment lies in the Court's acknowledgment of the fact that A.R.E.'s detention with a view to her pushback constituted a form of temporary enforced disappearance and was part of the state's established practice of refoulement (paras. 288-289). With this acknowledgment the Court [confirmed](#) the need to contextualise these short-term unlawful detentions against the background of the purposed subsequent pushbacks. Under this light administrative detention goes beyond a violation of Article 5 of the ECHR and amounts to enforced disappearance. The judgment sets an important precedent that can influence human rights treaty bodies to recognise these temporary detentions as violations of states' obligation to refrain from and investigate enforced disappearances.

#### The Battle of Evidence

In practical terms, the judgment has implications for the evidentiary standards regarding pushbacks. By acknowledging the systemic pattern, the Court could overcome the difficulty of having to establish a non-refoulement violation in each individual case, which is notoriously difficult in such circumstances. Instead, this judgment opens the door to the development of the Court's evidentiary standards, which could be met not only through direct evidence but also through the consideration of patterns of state conduct and corroborating testimonies.

However, as critical voices have highlighted, the Court failed to fully incorporate its finding on Greece's systematic pushbacks into its evidentiary assessment. According to [Kienzle and Riemer](#), where a systematic practice of pushbacks has been confirmed, 'it should suffice for the applicant to demonstrate their presence on the respondent state's territory and their subsequent presence in the third state'. From their viewpoint, 'the systematic practice should serve as the link between both events' and the burden should immediately shift to the state to provide a credible alternative explanation. Yet, the state's systematic practice did not absolve A.R.E. from the requirement to present a 'detailed, specific and coherent' account of the facts supported by *prima facie* evidence, despite the Court's acknowledgement of the inherently difficult evidentiary position of the applicant in such cases, where the state engages in a strategy of [blanket denial of crucial facts](#) (A.R.E., para. 218; G.R.J., para. 183).

This approach seems to be confirming the persisting problem of pushback evidence erasure at borders and during litigation ([Alpes and Baranowska](#), pp. 5-9), all while the omission to reverse the burden exacerbates the inequality of the disputant parties and the evidentiary difficulties of the applicant ([Baranowska](#), pp. 487-493). In fact, the inadmissibility decision of the Court in [G.R.J. v. Greece](#), which was issued jointly with the one on A.R.E.'s application, reveals precisely that the [heightened expectations of the evidence](#) set by the Court for victims of pushbacks can quickly prove insurmountable (paras. 205-217, 225). Nonetheless, this can be seen as the beginning of a broader process, where the Court will continue to refine its approach, assessing the adequacy of evidence on a case-by-case basis. In this sense, the G.R.J. and A.R.E. rulings do not need to be seen as a strict threshold, but rather as a first step in the Court's process of refining its evidentiary assessment in cases of systematic push-back practices of States.

#### Concluding Thoughts

This judgment is particularly significant given the current developments of widespread pushback practices being both normalised and formalised in Europe and beyond ([De Genova](#), p. 1189). For instance, Poland's parliament has recently approved a bill allowing for the [temporary suspension of asylum rights at the Poland-Belarus border](#). At the EU level, the Crisis and Instrumentalization Regulation raises concerns about human rights exceptionalism and suspension of protections.

This decision is especially timely, as we are witnessing an [authoritarian moment in border management governance](#) also in the USA and Australia, where borders are increasingly becoming spectacles of political power ([De Genova](#), p. 1184). This judgment has arrived at a crucial juncture, when the politics of border enforcement are being shaped by policies and legal frameworks that threaten to undermine fundamental human rights protections. A.R.E. has the potential to create a systematic pushbacks doctrine and impact the ECtHR's (and other fora's) jurisprudence on pending similar applications. To realize this potential, however, the Court must seize the opportunity to refine its evidentiary approach in subsequent cases to ensure a more realistic and context-aware method of proof evaluation.