

# A LEGAL VACUUM

THE SYSTEMATIC  
CRIMINALISATION  
OF MIGRANTS FOR DRIVING  
A BOAT OR CAR TO GREECE.

*A STUDY BY BORDERLINE EUROPE*

# AUTHORS

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*BORDERLINE-EUROPE*

Borderline-Europe is an independent non-governmental association with offices in Berlin, Lesbos and Palermo, which researches and campaigns on issues related to European migration policy. It stands for freedom of movement and the right to stay. *borderline-europe's* work in Greece involves close collaboration and coordination with other organisations such as Aegean Migrant Solidarity, the Legal Centre Lesbos, and the Human Rights Legal Project on Samos. We would like to highlight the valuable work these organisations carry out on the ground, which constitutes an essential part of this report.

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1 To ensure the privacy of the person, the name of the person was changed.

2 To ensure the privacy of the person, the name of the person was changed.

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# 1. EXECUTIVE SUMMARY

The fight against migrant smuggling has been a top priority of European migration policy since 2015<sup>4</sup>, with a vast amount of resources being invested into this policy goal. This study examines the reality of anti-smuggling efforts in Greece, analysing the current legal framework as well as its practical enforcement. It shows that instead of protecting the rights of smuggled migrants and asylum seekers, these policies criminalise them and expose them to long prison sentences with the accusation of smuggling, all simply for having crossed the border by boat or car. This is made possible both by the legal framework set up in Greece and the EU, which is formulated very broadly, and further reinforced by an implementation that is characterised by gross rights violations such as arbitrary arrests, torture, abuse, coercion, and lack of access to legal support and interpretation. Individuals are typically arrested immediately upon arrival, held in pre-trial detention for months, and have very limited options to defend themselves and access support. The trials that tackle these accusations are very short and flout basic standards of fairness. Consequently, people convicted of smuggling form the second largest group by crime in Greek prisons, with almost 90% of them being third-country nationals. Given the gravity and extent to which criminalization and related human rights violations take place, there is an urgent need to address this issue.

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<sup>4</sup> European Commission (2015): Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. The EU Action Plan against migrant smuggling (2015 - 2021).

## 2. MAIN FINDINGS

- The report examines a total of 81 trials of 95 people who were arrested and tried in Greece for smuggling in eight different locations, namely in Komotini, Thessaloniki, Rhodes, Samos, Lesvos, Crete, Syros and Kalamata;
- Arresting boat / car drivers or other individuals on board for the offence of smuggling is a routine practice by law enforcement, with little regard for the actual involvement or intention of the accused;
- Smuggled people themselves, including asylum seekers, are systematically convicted of smuggling because they (allegedly) drove or assisted in driving the boat or car;
- At least 1374 people were arrested for smuggling in 2022;
- Arrests and preliminary investigations are riddled with gross human rights violations; including arbitrary arrests, violence and coercion, little to no access to interpretation or legal support as well as problems in accessing the asylum procedure during detention;
- 84% of the cases are subjected to pre-trial detention, lasting an average of 8 months. As of February 28, 2023 there are 634 people in pre-trial detention for smuggling.
- Judgements are issued on the basis of limited and questionable evidence, such as the testimony of a single police or coast guard officer; the police or coast guard officers who provided the testimony on which the indictments were based did not appear in 68% of all documented cases to be cross-examined;
- On average, trials last for 37 minutes, which drops to 17 minutes in trials with state-appointed lawyers; the shortest trial we documented lasted 6 minutes;
- Trials lead to an average prison sentence of 46 years and a fine of 332.209 Euros;
- 52% of all convicted people are serving a prison sentence of 15 years to life;
- As of February 28, 2023 there are 2154 people who are detained in Greek prisons with the accusation of smuggling (which remains the second largest group per crime); nearly 90% of them are third-country nationals (1897).

# 3. INTRODUCTION

As a “solution” to the migration movements, the European Commission declared the fight against migrant smuggling as a top priority in 2015<sup>5</sup>. Since then, the implementation of efforts to combat smuggling has been constantly growing, and also became a key task of the European Border and Coast Guard Agency Frontex. In Greece, the police routinely arrest one, two, or sometimes up to seven people per boat (or car) crossing the border into Greece for “smuggling”, regardless of their actual role in driving or the circumstances that led them to do so.

While the criminalisation of civil sea rescue organisations or other European<sup>6</sup> activists acting in solidarity with people on the move in the EU attracts a certain degree of media and public attention, the everyday practice of European authorities to incarcerate people on the move themselves with the same accusations goes almost unnoticed. However, the latter make up the majority of the people who are arrested and imprisoned on the grounds of “facilitating unauthorised entry” / “smuggling” into Europe.

As of 28 February 2023, the number of individuals detained in Greek prisons for smuggling is 2154; this constitutes the second largest group of people by crime in Greek prisons; a staggering 88% of them – 1897 people – are third-country nationals<sup>7</sup>. Given that the prison population in Greece amounts to a total of 10.723 people<sup>8</sup>, third-country nationals imprisoned for smuggling make up nearly 20% of the total prison population.

The Geneva Refugee Convention grants the right to enter a country without prior authorization to every person intending to seek asylum. In addition to being a party to the Geneva Convention, Greece is also a signatory state to the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air, which it ratified in 2004. Article 5 of this protocol states that migrants, including asylum seekers, shall not become liable to criminal prosecution for having been the object of smuggling. But what happens when these people drive themselves to Greece? If people want to reach Europe, someone simply has to steer the boat; some undertake the task voluntarily, others because they cannot afford to cross as passengers (or to take their families with them) and can lower the price by doing so; still others pilot the boat because they are forced to do so by force of arms or physical violence. By criminalising asylum seekers who have steered a boat or driven a car as part of their journey, Greece is in breach of its obligations under this protocol. Individuals are typically arrested immediately upon arrival, held in pre-trial detention for months, and have very limited access to adequate legal counsel, let alone other external support. The subsequent court proceedings often violate basic procedural standards and fair trial rights, as enshrined both in domestic as well as European law.

Given the severity and extent of this type of criminalisation, there is an urgent need for action at the EU level. To this end, this report aims to give new and in-depth insights about the criminalisation of people on the move for “smuggling” in Greece.

Borderline-europe has been researching, documenting and working on the topic of criminalisation of people on the move as smugglers for several years. In 2017, an extensive report (“[Criminalization of Flight and Escape Aid](#)”<sup>9</sup>) was published, providing a first insight into the issue in different regions.

5 European Commission (2015): Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. The EU Action Plan against migrant smuggling (2015 - 2021).

6 In this study, we use the notation “European” to differentiate and emphasise that we are referring to the European Union, rather than the geographical entity of Europe.

7 Figures provided by the Greek Ministry of Citizen Protection in a response to an inquiry we sent, 28.02.2023.

8 Number as of 16.11.2022; source: World Prison Brief: Greece; <https://www.prisonstudies.org/country/greece> (accessed on 08.04.23).

9 borderline-europe (2017): Criminalization of Flight and Escape Aid.

This was followed in 2019 by an in-depth research on the criminalisation of boat driving specifically in Greece, in collaboration with Aegean Migrant Solidarity (AGM), formerly CPT-Lesvos, and bordermonitoring.eu ("[Incarcerating the Marginalised - The Fight Against Alleged 'Smugglers' on the Greek Hotspot Islands](#)"<sup>10</sup>), which analysed 45 smuggling trials documented by AGM that took place on the islands of Lesbos and Chios between 2014 and 2019.

Since then, borderline-europe – together with a growing civil society network – has worked on a number of other cases in various locations in Greece, monitoring and documenting them in detail<sup>11</sup>.

In this report, we provide up-to-date information and data on the situation of criminalised persons in Greece. Data was obtained through the detailed documentation of criminal proceedings and trial monitoring in eight different locations in Greece, interviews with criminalised people and legal practitioners, as well as desk research.

Because of the great number of people who are criminalised and the limited amount of time in which this study was conducted, the report can only capture a segment of the full complexity of the issue. Moreover, the scarcity of information and data provided by state authorities poses a significant obstacle for gaining a full picture of the phenomenon. It is evident that further research and political measures must be taken to stop the criminalization of people on the move for smuggling, also at other EU external borders.

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<sup>10</sup> bordermonitoring.eu et al. (2020): *Incarcerating the Marginalized – The Fight Against Alleged 'Smugglers' in the Greek Hotspot Islands*.

<sup>11</sup> Publications on numerous individual cases can be found on borderline-europe's website: [www.borderline-europe.de](http://www.borderline-europe.de)

## 4. METHODOLOGY

In the research for this study we employed a mixed-methods approach, which involved both qualitative and quantitative methods. These included on-site empirical research, interviews as well as desk research. The primary data set builds on the analysis of a total of 81 trials of 95 people who were arrested and tried in Greece for smuggling in eight different locations, namely in Komotini, Thessaloniki, Rhodes, Samos, Lesvos, Crete, Syros and Kalamata. Out of these 95 cases, we followed 22 individuals more closely, in addition to their court proceedings, and over a longer period of time, i.e. from the time of their arrest until their conviction or acquittal and release from prison. The time frame of these 22 cases spans from February 2020 until March 2023. In addition, we monitored trials between December 2022 and March 2023, documenting an additional 62 trials, involving a total of 73 individuals in Thessaloniki, Komotini, Rhodes, Lesvos and Samos. The locations for the trial observations were selected according to their relevance for the study, i.e. they represent the main entry points to Greece. Research that we conducted in advance showed that arrests and court proceedings for smuggling regularly take place there. Likewise, we focused on combining courts of different regions and migration routes in order to make the data set more comprehensive<sup>12</sup>. Access to information about court hearings was also a key factor in the selection, as courts in Greece differ insofar as the schedule for court hearings and their content can be viewed in advance. Some are available online, while others are only accessible on site and on the day of the trial itself.

The findings are complemented by in-depth<sup>13</sup> semi-structured interviews with five persons who were charged with steering the boat on which they were travelling to different places in Greece, namely the Evros region, the island of Lesvos and the island of Samos. By sharing their personal accounts, they offered valuable insights into the enforcement of the Greek border and legal system. The detailed description of their experiences, from the moment of their arrest to their final acquittal or their release from prison after serving time, provide a nuanced and comprehensive understanding of the reality faced by those targeted by Greek anti-smuggling policies.

Finally, we conducted in-depth interviews with four other experts, of which three are criminal lawyers who deal with such cases in different locations in Greece, and one is a sociology professor who specialises in migration on the Greek island of Lesvos. The lawyers that were interviewed are based in Athens, Samos and Lesvos. However, as criminal defence lawyers, they also defend people in a number of other places in Greece. Interviewees were selected through purposive sampling based on the testimony's relevance and the person's availability for an interview. For instance, for the interviews with criminalised persons, only individuals who were acquitted or already released from prison were considered. Additionally, we ensured that all participants provided explicit and informed consent for the interviews and had their wishes for anonymity respected. This approach ensured that the sample consisted only of individuals who were willing and able to share their experience.

All the collected data was analysed to identify common patterns and themes, and the court proceedings were analysed to identify patterns in the legal process. Further, we conducted desk research to collect current data and statistics on the legal framework, arrests, pre-trial detention, sentencing, and the prison population in Greece.

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<sup>12</sup> For example, the courts in Thessaloniki and Komotini are the courts that handle cases which occur following entry via the Evros region, while courts in Samos, Rhodes, and Lesvos handle cases arising from arrivals via the Aegean route. In addition, people who try to reach Italy directly and end up in Greece, e.g. because they were shipwrecked and rescued on their way, are more likely to end up in courts further west, such as Syros, Crete or Kalamata.

<sup>13</sup> An in-depth interview is a qualitative research method that involves a face-to-face conversation between an interviewer and a participant. Its goal is to gain a comprehensive understanding of the participant's experiences, attitudes, beliefs, and perspectives. Unlike other data collection methods such as surveys or questionnaires, in-depth interviews are open-ended and flexible, allowing for the exploration of complex and sensitive topics, resulting in extensive and nuanced data.



# 5. LEGAL FRAMEWORK

## NATIONAL LEGISLATION ON THE CRIMINALISATION OF FACILITATION OF UNAUTHORISED ENTRY

Greece has implemented one of the harshest anti-smuggling laws in the European Union. Its anti-smuggling legislation provides for extremely high penalties and is very broad, allowing anyone who plays even a minimal or insignificant role in the facilitation of unauthorised entry to be subjected to severe punishment. Criminalization for smuggling in Greece does not require an individual to act for profit, be part of an organised criminal group, or to pose a risk to the safety of the smuggled individuals. These factors are only considered aggravating circumstances.

As such, simply driving a boat or car or assisting the driver – for example by checking the engine – can be enough for someone to be found guilty of “facilitating unauthorised entry”, including those who drive the vehicle in circumstances that forced them to do so. This results in a blanket criminalization where profit-driven members of a smuggling organisation and individuals compelled to drive a boat to reach safety are criminalised and punished in the same exact way, as we will demonstrate below.

Over the last three decades, the legal framework for criminalising facilitation in Greece has undergone several changes and developments, which resulted in a gradual tightening of the law<sup>14</sup>. In 2009, a crucial and significant change occurred when the offence of facilitation was upgraded from a misdemeanour (plemelima) to a felony (kakourgima), resulting in significantly increased penalties. Furthermore, the offence was placed under the jurisdiction of the Appeal Courts, which handle serious crimes punishable with over five years of imprisonment<sup>15</sup>. This change was criticised by human rights organisations and lawyers who questioned the proportionality of the punishment<sup>16</sup>. Despite these criticisms, the 2009 amendment was fully incorporated into Law 4251/2014 of the “Immigration and Social Integration Code”, which is the current legal framework for the criminalization of facilitation in Greece. Articles 29 and 30 of this law address the facilitation of unauthorised entry, exit, or stay.

Art. 29 par. 5 establishes the punishment for the facilitation of unauthorised border crossing by “private individuals and employees”, with up to ten years imprisonment and a fine of at least €20.000.

### **“Law 4251/2014 Article 29, par. 5: Obligations of private individuals and employees - penalties**

5. Persons who facilitate the entry or exit from the Greek territory of third-country nationals without performance of the checks stipulated in Article 5 shall be sentenced up to ten (10) years of imprisonment and a fine of twenty thousand (20 000) euros as a minimum. If the act was carried out with a view to making a profit or by profession or habit, or if two (2) or more persons acted jointly, the above shall be sentenced to at least ten (10) years of imprisonment and a fine of fifty thousand (50 000) euros as a minimum.”<sup>17</sup>

14 For a detailed description of the genesis of the Greek anti-smuggling law, see Georgios Maniatis (2017): “Country report Greece. The development of the legal framework concerning the facilitation of illegal entry, exit and transport”, in: *borderline-europe* (2017): *Criminalization of Flight and Escape Aid*.

15 Law 3386/2005 in 2009, with Law 3772.

16 Georgios Maniatis (2017): “Country report Greece. The development of the legal framework concerning the facilitation of illegal entry, exit and transport”, in: *borderline-europe* (2017): *Criminalization of Flight and Escape Aid*.

17 European Commission (2014): Law 4251/2014 - Immigration, Social Integration Code and other provisions; [https://ec.europa.eu/migrant-integration/library-document/law-42512014-immigration-social-integration-code-and-other-provisions\\_en](https://ec.europa.eu/migrant-integration/library-document/law-42512014-immigration-social-integration-code-and-other-provisions_en); accessed on 28.03.2023.

The majority of people arriving by car or boat are charged with Article 30. Differently from Art. 29, under this article the penalty is multiplied *per transported person*. This means that if a person helps a group of people enter the country without authorization in a single instance, each transported person is treated as a separate offence that carries its own penalty. Thus, the accused person ends up being sentenced for a series of offences instead of one. After upgrading the offence to a felony in 2009, a case of “facilitation” of entry for more than one person is, in practice, treated by the courts as a series of felonies, resulting in extremely high sentences.

More concretely, art. 30 par. 1 criminalises “captains” of a ship or “drivers of any means of transportation” to a sentence of up to 10 years and a fine of €10.000 to €30.000 (par. 1a) *per transported person*. The law also provides for aggravating circumstances that can increase the penalties. Art. 30 par. 1b includes cases where smuggling is committed for profit, in a repeated manner or jointly with others, and foresees a punishment of a minimum of 10 years and a fine from €30.000 to €60.000 per transported person. If smuggled migrants are exposed to danger (Art. 30 par. 1c.), transportation is punished with at least 15 years and a fine of €200.000 per person. In cases where smuggled people die as a result of the smuggling, the penalty can be increased to life imprisonment per deceased person and a fine of €700.000 per person (Art 30, par. 1d).

### **“Law 4251/2014 Article 30, par. 1: Obligations of carriers - penalties**

1. Captains of ships or other vessels or aircrafts and drivers of any means of transportation transferring into Greece third-country nationals from abroad who do not have the right to enter the Greek territory or whose entry has been prohibited for any reason, as well as persons who collect them from entry points, external or internal borders, with a view to move them inland or to the territory of an EU Member State or a third country, or facilitate their transportation or provide them with accommodation for concealment, shall be sentenced to:

- a. imprisonment of up to ten (10) years and a fine from ten thousand (10 000) to thirty thousand (30 000) euros for each transported person;
- b. at least ten (10) years of imprisonment and a fine from thirty thousand (30 000) to sixty thousand (60 000) euros for each transported person, if the offender acted with a view to making a profit or by profession or habit, or is a relapsing offender, or acts in the capacity of civil servant or tour or shipping or travel agent, or if two or more persons acted jointly;
- c. at least fifteen (15) years of imprisonment and a fine of two hundred thousand (200 000) euros as a minimum for each transported person, if the act could endanger human life;
- d. life imprisonment and a fine of seven hundred thousand (700 000) euros as a minimum for each transported person, if the act referred to in c) above resulted in the loss of life.”<sup>18</sup>

Article 30 also provides for a so-called “humanitarian exception”, introduced in July 2015:

“6. The above sanctions shall not be imposed in the case of rescue at sea, transport of people in need of international protection as required by international law, as well as in the case of push to the inland or facilitation of travel, for the purpose of falling under the procedures of Article 83 of Law 3386/2005 or of Article 13 of Law 3907/2011 after the competent police and coast guard authorities are notified.”<sup>19</sup>

However, there is no evidence to suggest that it has had any significant impact on the documented cases, and it has never been accepted in court. On the other hand, the latest amendment to the law, made in 2019, increased the monetary penalties for the offence of facilitation<sup>20</sup>. Art. 30 Par. 1a now foresees a penalty from €30.000 to €60.000 per transported person and par. 1b from €60.000 to €100.000.

<sup>18</sup> European Commission (2014): Law 4251/2014 - Immigration, Social Integration Code and other provisions; [https://ec.europa.eu/migrant-integration/library-document/law-42512014-immigration-social-integration-code-and-other-provisions\\_en](https://ec.europa.eu/migrant-integration/library-document/law-42512014-immigration-social-integration-code-and-other-provisions_en); accessed on 28.03.2023.

<sup>19</sup> Law 4332/2015 amended Article 6 of Law 4251/2014.

<sup>20</sup> Law 4637/2019, Article 12 par. 4 and par. 5.

In Greece, the maximum duration of imprisonment in most cases cannot exceed 20 years and 25 years for individuals sentenced to multiple life sentences<sup>21</sup>. This also applies to individuals who have been sentenced to several decades or even centuries. The actual time people have to serve in prison is then a rather complicated process calculated along different criteria.

According to the Greek penal code, there are two types of custodial sentences: “heavy” custodial sentences (kathirxi) and “light” custodial sentences (filakisi)<sup>22</sup>. Kathirxi is imposed for crimes punished with at least five years imprisonment, filakisi for those punished with up to five years imprisonment. Exactly five years can be both kathirxi or filakisi<sup>23</sup>. The type of the sentence imposed determines both prison conditions and the length of the minimum period of imprisonment to be served before being eligible for conditional release<sup>24</sup>. If the sentence imposed for each person transported is up to five years (filakisi), the time of imprisonment cannot exceed 8 years, regardless of the final sum of the aggregated penalties<sup>25</sup>. Conditional release is possible after 2/5 of the time.<sup>26</sup> If the sentence is 5 or more years per transported person, it is kathirxi, and conditional release is possible after 3/5 of the imposed prison sentence.<sup>27</sup> Since the maximum term of imprisonment cannot exceed 20 years, this means in practice that people have the possibility to be conditionally released from prison after 12 years in case of kathirxi<sup>28</sup>, or earlier if the total sum of the aggregated penalties is below 20 years. If the sentence consists of life imprisonment, for example in the case of death (30 par. 1b), the minimum period of imprisonment to be served is 18 years.<sup>29</sup>

Mitigating factors can further decrease the length of prison sentences, as well as if the person is working in prison, for example in agricultural prisons. However, space in these types of prisons is limited.

Greek anti-smuggling legislation has been consistently criticised for its excessive punishments, as the proportionality of the sentences is questionable, as well as its broad scope, which allows for widespread criminalization.<sup>30</sup> These conditions are all the more alarming considering that the accused experience severe violations of their rights throughout the process of, as revealed in our report. Therefore, there is an urgent need to address this issue on a significant legal and political level.

## EUROPEAN AND INTERNATIONAL CONTEXT

Greek legislation cannot be examined without taking the broader European context into account. As part of the process of European integration, Greece’s national policies engage with “Europeanized” migration and border management measures. Upon joining the Schengen agreement, the borders of Greece were redefined as “external borders of the EU”; this has impacted Greece’s national legislation and led to significant changes both institutionally and operationally.<sup>31</sup> Situated at the EU’s external borders and constituting a primary entry point into the Union<sup>32</sup>, Greece’s migration policies are of great interest to the EU, which encourages a migration approach aimed at preventing transit

21 Law 4619/2019, Article 94 par. 1.

22 Article 52 and Article 53 of the Greek Penal Code.

23 Ibid.

24 The distinction between filakisi (Φυλάκιση) and kathirxi (Κάθειρξη) is not only important for the conditions of early release, but also for the conditions of imprisonment. Serving a kathirxi sentence means a harsher form of imprisonment. In practice, prisoners sentenced to kathirxi are often placed in special wings of the prison and may be subject to additional restrictions.

25 Law 4619/2019, Article 94 Greek Penal Code.

26 Article 105 par. 1 Greek Penal Code.

27 Ibid.

28 For kathirxi sentences below 20 years, the conditional release can also be before 12 years. For example, if a person receives a prison sentence of 18 years kathirxi, conditional release is possible after 10,8 years.

29 Article 94b of the Greek Penal Code.

30 Legal Centre Lesvos (2022): Submission of Legal Centre Lesvos to the Special Rapporteur on the situation of human rights defenders; <https://usercontent.one/wp/legalcentresvos.org/wp-content/uploads/2022/06/15.06.2022-LCL-to-Spec-Rap-on-human-rights-defenders.pdf> (accessed on 14.04.23).

31 For a detailed genesis of the Greek anti-smuggling law, see Georgios Maniatis: “The development of the legal framework concerning the facilitation of illegal entry, exit and transport”, in: *borderline-europe* (2017): Criminalization of Flight and Escape Aid.

32 European Council (2023): Infographic – Migration flows: Eastern, Central and Western routes; <https://www.consilium.europa.eu/en/infographics/migration-flows-to-europe/> (accessed on 26.04.23).

migration between countries. Therefore, EUropean funding has steadily increased and become a critical resource and guidance for Greece's policy implementation.

In 2015, the European "solution" to the migration movements was to define migrant smuggling as a form of organised crime and to declare the fight against it as a top priority.<sup>33</sup> Since then, the implementation of efforts to combat smuggling has been constantly growing, and has also become a key task of the European Border and Coast Guard Agency Frontex. Greece in particular faced strong pressure to reinforce control over migration and borders, made evident through the EU Commission's threat to exclude the country from the Schengen-Zone.<sup>34</sup>

The relevant EU Directive on the criminalisation of smuggling of migrants passed in 2002, and known as the "Facilitation Package", requires EU Member States to introduce legislation that punishes facilitation by "effective, proportionate and dissuasive sanctions".<sup>35</sup> However, it contains only minimum indications for the constituent elements of the offence, as it does not provide a clear definition of 'smuggling' or other central concepts such as 'financial gain' and 'humanitarian assistance'. For example, it is the individual Member States' discretionary decision whether facilitation of unauthorised entry should be punished even if it is not performed for profit, or if profit should merely be considered as an aggravating circumstance. Another example is generally how each member state defines the 'offence' and implements these sanctions in their national legislation. This lack of clarity consequently creates a considerable amount of legal ambiguity and leeway.

Because of this great leeway in implementing the EU directive in national legislation and applying them in practice, criticism of specific implementation can always be directed to the national government responsible. However, the European Commission has failed to respond to the criticisms that have persisted for years, and have particularly grown after the consistent criminalisation efforts that took place after 2015<sup>36</sup>, and has not created a clear legal framework that could at least prevent indiscriminate and disproportionate criminalisation.

Moreover, it is important to note that both EUropean and Greek legislation do not comply with the standards set out in the United Nations Convention against Transnational Organized Crime and its "Protocol Against the Smuggling of Migrants by Land, Sea and Air"<sup>37</sup>, to which the European Union as well as Greece are parties. The protocol mandates states to prevent and combat migrant smuggling while safeguarding the rights of migrants who have been smuggled. Although the protocol does not take into account the underlying reasons and circumstances for people relying on smuggling either, it provides a clear definition of the term 'smuggling' and sets out additional criteria required for criminalisation. According to the protocol, a material or financial benefit is a crucial condition for criminalisation (Art 3a). Smuggling people across borders for humanitarian reasons should not be criminalised, and certainly not the smuggled people themselves (Art 5). The EU's Facilitator's Package has been consistently criticised for deviating from the standards established by the protocol by broadening its definition of the crime.

Consequently, instead of protecting the rights of migrants who depend on smuggling, the implementation of the Greek anti-smuggling legislation results in the opposite effect.

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33 European Commission (2015): Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. The EU Action Plan against migrant smuggling (2015 - 2021).

34 The Guardian (2016): EU migration crisis: Greece threatened with Schengen area expulsion; <https://www.theguardian.com/world/2016/jan/25/greece-under-growing-pressure-to-stem-flow-of-refugees-and-migrants-into-eu> (accessed on 16.04.23).

35 Council of the European Union (2022): Council Framework Decision 2002/946/JHA.

36 see for example: European Union Agency for Fundamental Rights (2018): Criminalisation of migrants in an irregular situation and of persons engaging with them.

37 United Nations (2000): Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime.

# 6. ARRESTS AND INVESTIGATIONS:

## “THE AIM IS TO CHARGE SOMEONE FOR EVERY ARRIVAL”<sup>38</sup>

Arrests under the accusation of “smuggling” after every disembarkation or border crossing have become common practice since the EU’s agenda on migration in 2015 defined the “fight against smuggling” as a top priority. In Greece, the police and port authorities are in fact required to open an investigation for every arrival of boats or cars with travelling migrants in order to identify the so-called “smuggler”. As a consequence, the arrival of a boat or car with migrants on board in Greece usually results in one, or sometimes even up to seven persons in cases of bigger boats, being sent to prison.<sup>39</sup>

### NUMBER OF ARRESTS

The Greek government has stopped releasing official statistics on arrests made in connection with smuggling offences since 2020, when the latest dataset for 2019 was published.<sup>40</sup> Since then, information about the places of arrest, the nationalities of those arrested and the total number of arrests carried out each year have no longer been publicly available. The absence or inaccessibility of this data is a problematic development, as the provision of precise and up-to-date information on the government’s activities is essential to ensure transparency and accountability, as well as to allow for public scrutiny, particularly on matters concerning arrests and the deprivation of liberty.

An official request for current figures that we sent to the competent authorities also went unanswered. Therefore, we rely on alternative sources of information, such as a press release from the Greek police and a public statement by the Minister of Citizen Protection on arrest figures. The press release by the Greek police published in August 2022 stated that in 2022, up until July, 386 individuals had been arrested for smuggling activities at the Greek-Turkish land and sea borders.<sup>41</sup> Of these arrests, 80% occurred in the Northern Evros area (312).<sup>42</sup> In January 2023, the Minister of Citizen Protection Takis Theodorikakos stated in an interview that the total number of arrests in 2022 for the same area amounted to 1300.<sup>43</sup> It can therefore be inferred from these sources that there were **at least 1374 arrests made in 2022**; the actual number of arrests made on the islands remains unknown.

38 Quoted from expert interview no. 2, conducted on 19.01.23.

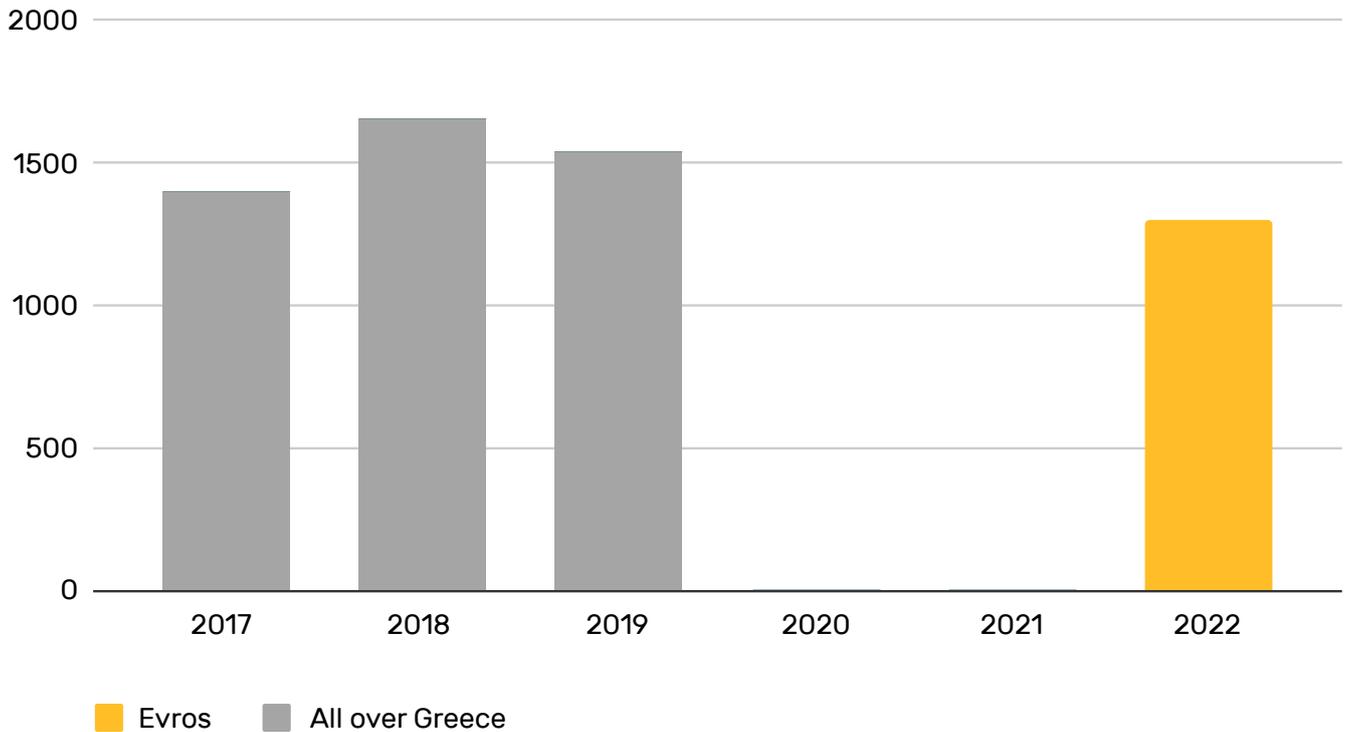
39 *borderline-europe* (2023): “Crete: Fisherman faces 4760 years in prison for smuggling”, <https://www.borderline-europe.de/unsere-arbeit/kreta-fischer-drohen-4760-jahre-haft-wegen-schmuggel?l=en>; There are also cases in which authorities refrain from making arrests; arrivals followed by pushbacks never result in any arrest, following the logic of leaving no traces or evidence of presence/arrival on Greek territory.

40 Greek Police (2023): Στατιστικά στοιχεία παράνομης μετανάστευσης; <https://www.astynomia.gr/statistika-stoicheia/statistika-stoicheia/statistika-stoicheia-paranomis-metanastefsis/> (accessed on 04.04.23).

41 Greek Police (2022): 16-08-2022: 386 συλλήψεις διακινητών μη νόμιμων μεταναστών στα Ελληνοτουρκικά χερσαία και θαλάσσια σύνορα το πρώτο 7μηνο του 2022; [https://www.astynomia.gr/2022/08/16/16-08-2022-386-syllipseis-diakiniton-mi-nomimon-metanaston-sta-ellinotourkika-chersaia-kai-thalassia-synora-to-proto-7mino-tou-2022/?\\_x\\_tr\\_sl=el&\\_x\\_tr\\_tl=en&\\_x\\_tr\\_hl=de&\\_x\\_tr\\_pto=wapp](https://www.astynomia.gr/2022/08/16/16-08-2022-386-syllipseis-diakiniton-mi-nomimon-metanaston-sta-ellinotourkika-chersaia-kai-thalassia-synora-to-proto-7mino-tou-2022/?_x_tr_sl=el&_x_tr_tl=en&_x_tr_hl=de&_x_tr_pto=wapp) (accessed on 31.03.2023).

42 *Ibid.*

43 Takis Theodorikakos (2023): <https://twitter.com/theodorikakosp/status/1611667608990011392> (accessed on 31.03.2023).



Number of Arrests

Sources: 2017, 2018 and 2019 as on the website of the Greek police<sup>44</sup>, 2022 as communicated by the Minister of Citizen Protection.<sup>45</sup>

## HOW ARRESTS TAKE PLACE: 'IDENTIFYING' THE DRIVER

Arrests usually occur when police or coast guard officials witness the person(s) steering the vehicle. In such cases, the arrest takes place immediately upon arrival, or when being picked up or rescued by police or coast guard; the officer's testimony alone is enough to press charges against the person(s). Furthermore, our findings also reveal that arrests occur based on **arbitrary criteria**, such as:

- The person is the only one speaking English
- The person is the only one not speaking English
- The person is of Turkish nationality
- The person is the only one with a different nationality than the rest of the group
- The person sent a GPS signal on the way<sup>46</sup>
- The person sat next to the tiller
- No apparent reason why this person was 'chosen'<sup>47</sup>

Authorities in charge of arrests are either the police, the border guards or the port authorities / coast guard. Two of our interviewees<sup>48</sup> also report that some men without uniform intercepted and forcibly detained them upon arrival; they referred to them as "some kind of secret service police."<sup>49</sup> These unidentified forces seemed to be either affiliated or at least in contact with the police and later transferred the arrested persons to an official police station. As Said recalls, he was transferred

44 Greek Police (2023): Στατιστικά στοιχεία παράνομης μετανάστευσης; <https://www.astynomia.gr/statistika-stoicheia/statistika-stoicheia/statistika-stoicheia-paranomis-metanastefsis/> (accessed on 04.04.23).

45 Takis Theodorikakos (2023); <https://twitter.com/theodorikakosp/status/1611667608990011392> (accessed on 31.03.2023).

46 Case 015, trial on 14.02.22 on Samos.

47 Case 014, trial on 05.12.22 on Lesvos (postponed).

48 One after crossing the Evros river and one after arriving on the island of Samos; interview with criminalised person no. 1, conducted on 18.12.22 and no. 5, conducted on 12.03.23.

49 Quoted from interview no. 5, conducted on 12.03.23.

to the police station while being handcuffed in the trunk of a car.<sup>50</sup> Hasan was only taken to the official police station after several days of interrogation and after signing his arrest warrant.<sup>51</sup> Authorities may also interrogate passengers, particularly in cases where the individuals that steered the vehicle are not immediately apparent. These interrogations typically focus on identifying who steered the vehicle, with little exploration of the individual's knowledge of the driver's actual role or relationship with smugglers in the place of departure or other relevant circumstances. Even after shipwrecks, when survivors are often in a state of shock and trauma, identifying the driver seems to be the authorities' top priority. In one case we followed from the arrest in December 2021 until conviction in May 2022, survivors of a shipwreck in which 18 people died reported being questioned about the driver immediately upon arriving on the island of Paros.<sup>52</sup> They were guarded and had their phones confiscated, and no one was allowed to talk to them, neither journalists nor the local volunteers who had supported them just a few hours before. A coast guard official even referred to them as "prisoners" suspected of people smuggling and murder. Consequently, within two days of their arrival, three individuals were identified as the culprits and held responsible for the journey and for the deaths.

Police often select only one or two witnesses for questioning, based on factors such as English skills or willingness to cooperate.<sup>53</sup> For example, one of our interviewees reports that the police only went to question the single male passengers from the outset.<sup>54</sup> It is important to note that the testimonies provided by other passengers are usually not subjected to cross-examination or verification, even at a later stage, when the witness does not appear for the court hearing, potentially undermining the reliability of such evidence.<sup>55</sup>

*"The policemen don't try to cross-examine or to verify the testimony. To avoid too much trouble, they usually take only one testimony of one guy who says 'he was driving the car when we entered'. So it's enough to get somebody arrested and then send him to the investigating judge."*

- Harris Ladis, criminal defence lawyer in Athens

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50 Interview with criminalised person no. 1, conducted on 18.12.22.

51 Interview with criminalised person no. 5, conducted on 12.03.23.

52 Case 07, trial on 05.05.22 on Syros.

53 Expert interview no. 1, conducted on 20.12.22.

54 Interview with criminalised person no. 5, conducted on 12.03.23.

55 Expert interview no. 2, conducted on 19.01.23 and no. 3, conducted on 02.02.23.

*“The first thing they did, they asked me:  
‘Who drove the boat?’ You try to tell them that the Turkish  
driver drove us here and then took off and swam back to  
Turkey.  
That it’s always like that.  
Every trip, every boat.  
Everyone reports the same thing.  
But the police don’t care.*

*They asked me: ‘Did you drive the boat?’  
I said: ‘no’.  
‘Who drove the boat then?’  
I said: ‘I don’t know’.  
‘How don’t you know?’  
I said: ‘it was dark’.  
They said: ‘So who drove the boat?’  
I said: ‘all of us’.  
They said: ‘Okay, tell me one of them’.  
I said: ‘I don’t know. I don’t want to say anything,  
any names.’”*

- Hasan

Individuals also unwittingly incriminate themselves by admitting to having driven the boat (or car), without realising that this constitutes a criminal offence.<sup>56</sup> In one case on Samos – which we followed from the person’s arrest in November 2020 until his trial in May 2022 – it was the accused person’s sister who had proudly told the authorities that it was her brother who had steered the boat.<sup>57</sup>

Criminalised persons report that they were **neither provided with an explanation detailing the reason for their arrest nor were they informed about their rights**. In fact, all interviewees recall not knowing why they were arrested and what was happening to them when they were separated from the other people they had arrived with and taken to the police station; some had still not understood their situation when brought in front of the investigating judge or taken to prison. Some also note that they received wrong information, for example that this was simply part of the regular asylum procedure, or that they were being taken to a camp.

*“They can’t understand why, because they are part of the  
group. The whole group is left free, but they – one person  
each time – they end up in prison.”*

- Dimitris Choulis, criminal defence lawyer on the island of Samos

<sup>56</sup> Expert interview no. 1, conducted on 20.12.22 and no. 2, conducted on 19.01.23.

<sup>57</sup> Case 013, trial on 19.05.22 on Samos.

It is worth noting that we also documented one case where charges were only pressed long after the group had arrived.<sup>58</sup> When A. B. arrived on Lesbos together with 28 other people in March 2020, the police did not arrest anyone. It was only a year later that he was charged with steering the boat, based on testimony from two coast guard officers, one of whom testified months after A. B.'s arrival in Greece and months after A. B. himself was transferred off the island.

### *POLICE CUSTODY*

Either way, after the authorities have 'identified' the 'culprit(s)', either immediately upon arrival or after having interrogated some of the passengers, the person(s) are separated from the rest of the group and taken into police custody. They are then interrogated and may be asked to sign a statement or confession, usually written in Greek, a language they may not understand. This was the case for all our interviewees, who did not receive a translation of this document. Additionally, several interviewees recount the officers writing down and formulating statements without prior interrogation or the person having answered any questions at all.<sup>59</sup>

*“But the policeman was writing and writing. – I didn’t say anything. But still he was writing.”*

- Said

In police custody, all interviewees report that they were locked up in a small room for three to up to 16 days, even though Greek law stipulates that in the case of crimes “caught in the act,” defendants must be brought before a court within three days of arrest to decide on the legality of their arrest and pre-trial detention.<sup>60</sup> Most recount that during this detention, there was no communication at all from the police, and they did not know why they were being kept there, for how long they would have to stay or what would happen to them. During this time, they had their phones taken away, **no possibility to contact anyone or get information about access to legal advice and representation.** Mousafir is the only interviewee who mentions being offered a lawyer at the police station, but was unable to pay the fee required to hire him. The lawyers we interviewed confirm that, in their experience, this is a common occurrence.

*“(…) [E]ven if an arrested guy is well-informed and prepared and fast enough to say in the first moment, ‘I want to contact this lawyer’, the policemen will do their best to prevent him from doing so. (…) [T]his can be either through burdens of any kind, like ‘you cannot call right now and you need a telephone card and we don’t have a telephone card’, or it can also happen through intimidating him and saying ‘a lawyer will destroy you, it’s no good advice, if you just say the truth be sure that the judge will show mercy’; things like that.”*

- Harris Ladis, criminal defence lawyer in Athens

<sup>58</sup> Case 014, trial on 05.12.22 on Lesbos (postponed).

<sup>59</sup> Interview with criminalised person no. 1, conducted on 18.12.22., and no. 2, conducted on 19.01.2023.

<sup>60</sup> Centre for European Constitutional Law (2015): The practice of pre-trial detention in Greece.

For the most part, there are **no interpreters present** at all, or the interpretation is insufficient. Of the five interviewees, while all had an interpreter during their interrogation at the police station, three report that they **did not speak the same language or understand each other sufficiently**.<sup>61</sup> This lack of interpretation services is also confirmed by all the lawyers we interviewed who work with individuals arrested for smuggling offences.

*“We had cases whose mother tongue is Arabic, they had a Farsi translator, or a Farsi speaker who had a Turkish translator. They just write down whatever they want and send the case to the prosecutor.”*

- Vicky Aggelidou, criminal defence lawyer on the island of Lesbos

According to one of the lawyers, it is not uncommon for police officers conducting the preliminary investigation to try to “convince” the arrested person that their English is good enough for the interrogation, and to deny interpretation into their mother tongue.<sup>62</sup> The interpretation from Greek into English and vice-versa is usually conducted by a regular police officer who speaks some English rather than an official interpreter. This practice is reported as a repeated experience by the lawyer.

*“They say: ‘So don’t you speak English? Say hello. Yes, see, you understand everything, so it’s no problem.’ Because they are doing their best to get (...) a self-incriminating testimony of his before a lawyer appears. In many cases, they don’t even have a translator into English, and they use a policeman from the police station who speaks English.”*

- Harris Ladis, criminal defence lawyer in Athens

The described scenario represents a serious breach of the fundamental rights of the arrested individuals under both Greek and European law in regards to their right to a fair trial.<sup>63</sup> It is crucial that anyone who is under arrest have a comprehensive understanding of the legal consequences of their statements and actions, as well as their overall situation. Moreover, access to an interpreter and legal defence at all stages of the criminal proceedings must be ensured so that the arrested individuals are given the opportunity to effectively participate and defend themselves against any charges brought against them.

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<sup>61</sup> For Said, from Morocco, the translator was Syrian. For Mousafir, from Afghanistan and speaking Pashtu, the translator was Iranian, speaking Farsi. For Hasan, from Syria, the translator was Algerian.

<sup>62</sup> Expert interview no. 3, conducted on 02.02.23.

<sup>63</sup> European Court of Human Rights (2022): Guide on Article 6 of the European Convention on Human Rights; [https://www.echr.coe.int/documents/guide\\_art\\_6\\_criminal\\_eng.pdf](https://www.echr.coe.int/documents/guide_art_6_criminal_eng.pdf) (accessed on 28.03.23).

## VIOLENCE

In some cases, people are also physically, verbally or psychologically abused during arrest and detention. We were informed of several instances in which detained people were subjected to violence aimed at coercing a confession, and of other instances in which the violence did not have any apparent aim other than ill-treatment and humiliation.

Three interviewees recall violence during what they later realised was their arrest; they were severely beaten and one person was even threatened with a gun, with the aggressor firing shots close to him.<sup>64</sup> As previously mentioned, this person and the other passengers travelling with him were apprehended by individuals in plain clothes who handcuffed them and placed them in the trunk of a car. At that moment, he feared he had been kidnapped by an organ trafficking ring. All of the five interviewees report various forms of violence and abuse during their detention at the police station. Three of the interviewed people describe that the recording camera had been turned off at some point during the interrogation, and several rounds of heavy beating by the interrogating officers.<sup>65</sup> This approach suggests not only that the responsible officers were aware that their behaviour was illegal, as they were hiding it by interrupting the camera footage, but also that the use of force was intended to force answers or a confession of having driven the boat. One interviewee recalled being beaten by a police officer also after the interrogation had ended, back in the small room where he was detained alone.<sup>66</sup> Additionally, two interviewees report that they were forced to undress completely and perform humiliating tasks in front of the police officers before the questioning had begun at all.<sup>67</sup>

Said also reports being deprived of food and water during these interrogations. Several interviewees describe being cold, not having a blanket or not being able to close the windows, as well as constant camera surveillance even in the toilet for the whole duration of their detention at the police station, which lasted up to 16 days.<sup>68</sup>

The accounts of regular and systematic violence inflicted by the Greek police demonstrates the high probability of abuse and human rights violations to which people are subjected while being detained, and highlight the consequent vulnerability of individuals affected by this criminalization practice.

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<sup>64</sup> Interview with criminalised person no. 2, conducted on 19.01.23, no. 4, conducted on 04.03.23, and lastly no. 1, conducted on 18.12.22.

<sup>65</sup> Interview with criminalised person no. 5, conducted on 12.03.23, no. 2, conducted on 19.01.23 and no. 4, conducted on 04.03.23.

<sup>66</sup> Interview with criminalised person no. 3, conducted on 25.02.23

<sup>67</sup> Interview with criminalised person no. 1, conducted on 18.12.22, and no. 5, conducted on 12.03.23

<sup>68</sup> Interview with criminalised person no. 1, conducted on 18.12.22, and no. 5, conducted on 12.03.23, and lastly no. 4, conducted on 04.03.23

*“So in the afternoon. It was a camera working the whole time. They closed the camera, and they closed the door. And they asked the translator to leave the room and they ha[d] a stick with them. Like a plastic stick. They asked me to take off my clothes. Which I did. I was so shy about that. Because nobody saw me naked in all my entire life. Only my mom when I was a child. And they started to hit me. And one of them (...) h[e]ld my face. And slapped me more than ten times. I swear. (...) They slapped me in the face. They hit me, they started speaking bad words in Greek, which I learned later. And then I thought, stop all of this, like only this word, like stop sir! You know, like, just stop. And then they asked me to put my clothes back on. Then (...) they said: ‘Okay, speak’. I said: ‘What do you want me to say? Tell me, and I will say it.’”*

- Hasan

These accounts provided by the interviewees constitute a blatant violation of Article 3 of the European Convention on Human Rights, which prohibits any form of torture, inhuman or degrading treatment and punishment. Moreover, they undermine the reliability of any testimony or admissions of guilt obtained under such circumstances. This is particularly concerning as these testimonies often constitute crucial evidence, sometimes the only evidence on the basis of which an individual is convicted, as discussed in the chapter on “trials and sentences”. In turn, this infringes on the right to a fair trial, as outlined in Article 6 of the European Convention on Human Rights.



# 7. PRELIMINARY HEARING AND PRE-TRIAL DETENTION

At the preliminary hearing, the investigating judge or magistrate examines the available evidence to determine whether it is sufficient to press charges against the person and whether they may be held in detention pending trial or released on bail with conditions such as reporting to the police station regularly<sup>69</sup> or not leaving the country.

According to Greek law, pre-trial detention serves a double purpose: to prevent the risk of new crimes and to ensure that the accused will be present at the investigation or trial and will be subjected to the execution of the judgement.<sup>70</sup> Pre-trial detention is a measure which severely restricts personal freedom. Both Greek as well as EU law requires pre-trial to be a measure of last resort and to be applied only in such cases where alternatives cannot safeguard the presence of the accused at the trial. In Greece, pre-trial detention for one charge cannot exceed one year in the case of felonies, or six months in the case of misdemeanours. In exceptional circumstances, pre-trial detention can be extended for a maximum of six or three months respectively with a specially reasoned decision documenting the need for such an exception.<sup>71</sup> Moreover, under the European Court of Human Rights case-law, in every decision ordering pre-trial detention, justification for decisions ordering pre-trial detention needs to be convincingly demonstrated, while all facts arguing for or against the existence of a genuine requirement for detention need to be examined and related arguments need to be set out in the court's order.

## *FREQUENCY AND DURATION OF PRE-TRIAL DETENTION*

When we inquired about current data and statistics on pre-trial detention for third-country nationals who have been charged with smuggling, the Greek Ministry of Citizen Protection replied that as of 28.02.2023, **a total of 634 people are in pre-trial detention for "smuggling"**. However, the competent authorities failed to provide any recent data or statistics on the frequency and duration of pre-trial detention, turning the topic of pre-trial detention into another black hole.

According to the interviewed lawyers, pre-trial detention orders are routinely issued for third country nationals accused of smuggling, with little consideration for the specific circumstances of the case. This is consistent with other reports, which indicate that the mere lack of a fixed residence is often considered a decisive factor for ordering pre-trial detention<sup>72</sup> – a characteristic that applies to everyone who is arrested upon arrival. Additionally, this research suggests that pre-trial detention orders rarely include references to specific evidence or arguments presented by the defence.<sup>73</sup> Greece has been repeatedly condemned by the ECtHR for its excessive use of pre-trial detention<sup>74</sup>, emphasising that the decision for detention should be sufficiently reasoned and not rely on "stereotyped forms of words and general arguments".<sup>75</sup> This situation, along with the systematic infringements of foreign defendants' rights during the preliminary hearing, such as lacking or incorrect interpretation and lack of legal support, significantly increase the likelihood of pre-trial detention for migrants facing smuggling charges.

<sup>69</sup> For two of our interviewees (no 3. and no. 5), who had to report to the police station on the island of Samos in the period awaiting their trial, this ranged from once a week to once a month.

<sup>70</sup> Centre for European Constitutional Law (2015): The practice of pre-trial detention in Greece.

<sup>71</sup> Article 287 of the Code of Criminal Procedure.

<sup>72</sup> See for example: Centre for European Constitutional Law (2015): The Practice of pre-trial detention in Greece.

<sup>73</sup> Ibid.

<sup>74</sup> Dimitrios Dimopoulos v. Greece (App. No 49658/09, Judgment from 09/10/2012)

<sup>75</sup> See for example Yagci and Sargin v Turkey, App 16419/90, 16426/90, 8 June 1995, para 52, or Smirnova v Russia, App 46133/99, 48183/99, 24 July 2003, para 63.

The cases examined for this study reflect this problem, as **84% of the cases have been subjected to pre-trial detention** and only 16% have been released with restrictive conditions. Out of the 95 cases that were documented, it was not possible to determine whether the person had been in pre-trial detention or not in 25 cases. Out of the remaining 70 cases, 59 had been in pre-trial detention while 11 had not. Notably, 7 out of these 11 cases occurred on the island of Samos, which is the only known exception to the practice of pre-trial detention in Greece (more info to follow below). When the data is assessed without taking into account the rulings in Samos, the rate is as high as 93%.

For people who have just arrived in Greece, pre-trial detention significantly curtails their possibility to obtain adequate legal aid and other types of support, since they usually have no previous connections to the country and do not speak the language, let alone have knowledge of the legal system and helpful contact points to turn to or reach out to from prison.

Collecting data on the duration of pre-trial detention through trial monitoring constitutes a challenge, as the court proceedings may only indicate whether an individual has been in pre-trial detention or not, and not necessarily the date of the arrest. The exact duration of pre-trial detention is often unknown if the data about a case is obtained exclusively through trial monitoring. For the cases where the duration of pre-trial detention could be ascertained (34), **its average length was 8 months**. The annual report on penal statistics by the European Council has shown that, up until 31.01.21, the average length of all people held in pre-trial in Greece was as high as as 13.2 months<sup>76</sup>, with one in four people being held for more than a year.<sup>77</sup>

#### *LACK OF LEGAL REPRESENTATION AND INTERPRETATION*

Only one of our interviewees had legal representation during their preliminary hearing in front of the investigating judge. Said recounts he was assigned a state lawyer; however, he adds, the lawyer did not talk or defend him during the hearing.<sup>78</sup> This is consistent with previous studies examining the situation of foreign defendants during preliminary hearings<sup>79</sup>, which found that the accused are not adequately informed about their right to have a lawyer and that the fact that state-appointed lawyers have such a short time to prepare limits their ability to provide an effective defence. The experiences reported by the lawyers we interviewed confirm that the majority of people they represented at a later stage of their criminal proceedings either had no legal representation before or were provided with a state-appointed lawyer who typically could not provide adequate help.<sup>80</sup>

*“[The lawyers appointed by the state] primarily serve the purpose of providing an appearance of compliance with Article 6 of the European Convention on Human Rights, rather than ensuring a proper defence. Practically, individuals are assigned legal representation to fulfil formalities, with little to no regard for their effectiveness.”*

- Harris Ladis, criminal defence lawyer in Athens

<sup>76</sup> The European average is 4,5 months.

<sup>77</sup> Council of Europe (2021): Space I - 2021.

<sup>78</sup> Interview with criminalised person no. 1, conducted on 18.12.22.

<sup>79</sup> See for example: Centre for European Constitutional Law (2015): The Practice of pre-trial detention in Greece.

<sup>80</sup> More information on the challenges associated with representation by a state-appointed lawyer is provided in the chapter “Legal defence problems”.

*“Most of the time, because the state-appointed lawyers don’t have [neither the] interpreters nor the time, they are unable to meet the defendant before the trial, which is totally problematic.”*

- Vicky Aggelidou, criminal defence lawyer on Lesbos

This is all the more problematic as the preliminary hearing is not only decisive for the aspect of pre-trial detention, but also, according to all the lawyers we interviewed, represents a critical step in the legal process as a whole. The presence of a competent and motivated lawyer can have a significant impact on the outcome of the case, even just by explaining the situation properly to the accused and ensuring that they do not inadvertently say anything that could later be used against them. For instance, in A. B.’s case mentioned above, a lawyer from a legal organisation with experience in such cases presented video evidence at the preliminary hearing proving that the accused was not at the helm of the boat. Although this evidence still did not lead to the charges being dropped, it did result in A. B.’s release from pre-trial detention.<sup>81</sup> At the same time, the case also highlights that the arbitrary accusations brought forward by the police officer held more weight for the investigating judge than the video evidence, even though they had been formulated six months after the defendant’s arrival. This does not seem to be a unique incident either, as another lawyer on the island of Samos reported a similar experience.

*“We even had a video that proved that he was not even sitting near the tiller.  
However, charges were filed against him.”*

- Dimitris Choulis, criminal defence lawyer on the island of Samos

None of the individuals that we interviewed had their file documents translated into their mother tongue; with one exception, no one had an interpreter during their preliminary investigation hearing. They describe their hearings as a bilateral conversation in Greek between the prosecutor and the judge, while they were unable to follow or understand what was going on.

In sum, the accounts provided by the interviewees, along with the experiences of the lawyers, show that the period between the arrest and the preliminary hearing is characterised by flawed investigations and evidence collection, as well as grave human rights violations committed by the authorities. The accused are consistently denied information about the reasons for their arrest and knowledge of their rights, as well as translation/interpretation and adequate legal assistance. These findings are in line with other research conducted on the situation of foreigners in the Greek legal system.<sup>82</sup> The pervasive use of violence and degrading treatment further exacerbates the situation, and ultimately undermines the credibility and legality of the entire process.

<sup>81</sup> Case 014, trial on 05.12.22 on Lesbos (postponed).

<sup>82</sup> See for example: Centre for European Constitutional Law (2015): The Practice of pre-trial detention in Greece.

## INSIDE PRE-TRIAL DETENTION

Third-country nationals who are placed in pre-trial detention just after their arrival in Greece face significant difficulties in accessing legal representation and counsel. Some of our interviewees were approached by lawyers while in prison, who offered to represent them, however they asked for disproportionate sums of money.<sup>83</sup> Those represented by a state-appointed lawyer did not meet until their trial, if at all.<sup>84</sup>

According to our interviewees, information regarding trial dates and charges was communicated only in Greek. Consequently, the accused relied on the translation provided by other Greek-speaking people inside of prison to prepare for their trial; this stands in violation of their right to effective participation and adds a further factor of stress to an already difficult situation, as Said describes:

*“So when I got my report in Greek, it was another psychological terror because everyone provided a different translation or explanation to me.”*

- Said

As a result, none of our interviewees was fully informed about the charges against them or of the potential sentences they faced before attending their first trial hearing. This lack of information creates significant challenges for the accused in preparing their defence and presenting themselves in court. In order to uphold their right to a fair trial as enshrined both in domestic and European law, it is vital to ensure that individuals accused of a crime have access to all relevant information concerning their cases and potential consequences, and are provided with interpretation and legal support during proceedings.

## PRISON CONDITIONS

Additionally, Greek prisons are known to flout fundamental human rights standards and fail to guarantee the well-being and safety of the persons held in detention. This has been repeatedly documented and reported on by the Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, denouncing inter-prisoner violence, severe understaffing, inadequate health care provisions and severe overcrowding; the resulting conditions are “an affront to the human dignity of prisoners.”<sup>85</sup>

Likewise, the accounts provided by our interviewees paint a bleak picture of the conditions and physical safety of imprisoned people. Our interviewees all report overcrowded cells, with two of them not even having a bed and having to sleep on the floor.<sup>86</sup> Mousafir explains that this was common, with almost every cell having three or four more persons than it had beds. The quality and quantity of the food in prison is denounced by all, as well as the lack of access to medical care. Moreover, all interviewees mention the scarcity of clothes and blankets, as well as a high level of violence amongst the detained people. All of them report experiencing frequent physical attacks, and one survived several knife attacks.<sup>87</sup> In addition to these forms of violence, one interviewee reports the use of isolation cells, and describes how prison guards would regularly administer

83 Mousafir reports being offered to be represented by a lawyer for 25.000€, as reported in interview no. 2, conducted on 19.01.23. Interviewee no. 1, conducted on 18.12.22, was also approached by a private lawyer inside the prison.

84 As reported in the interviews with criminalised persons no. 4, conducted on 04.03.23, and no. 2, conducted on 19.01.23

85 Council of Europe (2022): Report to the Greek Government on the ad hoc visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 November 2021 to 1 December 2021, p. 45; <https://rm.coe.int/1680a7ce96> (accessed on 08.03.23).

86 Interview with criminalised person no. 1, conducted on 18.12.22, and no. 2, conducted on 19.01.23.

87 Interview with criminalised person no. 1, conducted on 18.12.22.

heavy sedatives through forced injections as a means of controlling individuals who exhibited behaviour that was deemed “conspicuous” or “undesirable”, such as complaining about prison conditions.<sup>88</sup> This practice is highly concerning, given the implications and long term effects of forcibly administering psychotropic drugs to individuals. What is even more alarming is that, according to his account, this was done without any prior consultation or prescription by a medical professional, suggesting a serious disregard for the wellbeing and the rights of detained people. After this particular interviewee was released from prison, he was diagnosed with severe addiction to psychotropic medication, which is yet another grave and long-term consequence of the criminalisation of migrants.

*“(...) [I]f you complain about things, or maybe sometimes you fight with someone, they will give you injections by force. For example, when someone is really sick and complains and raises his voice. Then the prison guards come and they send you to another room and you get the injection.”*

*- Jafar*

#### **ISOLATION DURING PRE-TRIAL DETENTION**

The situation of people charged with smuggling in detention is compounded by the fact that Greek prisons only allow visits from lawyers and relatives of the detained people, which can present significant difficulties for third-country nationals. Even if family members did come with them, detained people are often transferred to a prison that is not necessarily at the point of arrival, making it more or less impossible for relatives, who are themselves asylum seekers, during which time they have little financial means and may be affected by a residence restriction, to visit them.

Most people do not receive *any* visitors during the entire time of their imprisonment, given the fact that their family members usually are outside of the European Union and therefore not allowed to travel there legally. For example, in the case of K. A., M. B., and A. J., they left their wives and children in Turkey with the hope of making the dangerous journey to Greece on their own first and then enabling their families to travel through safe and legal routes based on their right to family reunification.<sup>89</sup> Due to the lack of legal routes, their wives and children are not allowed to travel to Greece to visit their husbands and fathers in prison, which means that the three men spend their time in prison in a situation of complete isolation. This was also the case for all of our interviewees.

Even if persons in detention have family ties and relatives residing in the EU, they may not necessarily live in Greece, making regular visits challenging due to the time and cost factors of travelling from abroad.

Another factor increasing isolation in detention is the high cost of phone calls from prison - money that people usually cannot pay, having sometimes just paid for their passage with the last of their belongings, sometimes even having shipwrecked, and not having connections to people on the ground who could send them money. For example, all of our interviewees report that they could not pay for a phone call and thus could not contact anyone for the entire duration of their detention.

<sup>88</sup> Interview with criminalised person no. 4, conducted on 04.03.23.

<sup>89</sup> Case 07, trial on 05.05.22 on Syros.

This not only further exacerbates their isolation, but also means that in many cases family and friends left behind know nothing about the whereabouts and circumstances of their detained relatives after they left for Europe. As a result, they cannot support them, for example by contacting legal organisations or lawyers; these people effectively disappear into the Greek prison system.

### *SEPARATION FROM FAMILY AND MINORS*

Family separation is another concerning aspect of a legal system that routinely employs pre-trial detention without consideration of individual circumstances. This practice disregards the fundamental right of the accused to family unity and fails to consider the best interests of the child. Even in cases where the accused is the sole caretaker of one or more minors, they are still remanded in custody, causing immense stress and trauma for both the parent and the child(ren).

In a case that occurred in Kalamata, one of the passengers that was arrested immediately after arrival for their alleged involvement in steering the boat was the father of two young children.<sup>90</sup> Despite the fact that he was travelling with his two kids for whom he was the sole caregiver and despite the fact that the evidence against him was weak, he was separated from them and placed in pre-trial detention. While in pre-trial detention, his children were placed with a Greek foster family. After one year, he was ultimately acquitted and reunited with his children.

E.H., a man who arrived on the island of Crete with his 15-year-old minor son, was separated from him the moment he was arrested for steering the boat.<sup>91</sup> The father was placed in pre-trial detention and the son in a shelter, but despite being on the same island, they could not even see each other for months. The separation of father and son massively affected the mental well-being of both. It was only after pressure exerted by lawyers on the authorities that the minor was eventually permitted to at least visit his father in prison. The case gained the attention and support of external parties, such as non-governmental organisations, who hired and compensated lawyers to secure the visitation rights. It can be surmised that minors, who are separated from their parents upon arrival, are not even granted to visit them regularly in prison, and that this case is an exception rather than the norm.

The aspect of family separation adds another layer to an already disturbing reality, with potentially long-term effects not only on the accused person but also on their children.

### *WAITING FOR COURT OUTSIDE OF PRISON*

The Greek island of Samos is the only known exception to the practice of pre-trial detention. For the past two years, people there have no longer been placed in pre-trial detention, but are instead given the condition that they do not leave the island or Greece until the end of their trial and that they report regularly to the police. Two of our interviewees were arrested on Samos and consequently did not have to go into pre-trial detention following their preliminary hearing, but instead reported to the police station monthly or weekly, respectively.<sup>92</sup> Both report that they were able to look for a lawyer outside and were consequently referred to an organisation that specialises in such cases and offers legal aid, and were connected with local civil society networks and organisations that could support them with the compensation of their lawyers. At the same time, even if their overall situation was comparatively better than that of those isolated inside prison, waiting for trial outside of prison still constitutes an enormous physical strain and the travel restrictions and reporting requirements constitute a significant restriction of their freedom and of the possibility to move on with their lives. In these cases they have to wait longer, since the maximum time defendants have

<sup>90</sup> Case 010, trial on 19.05.22 in Kalamata.

<sup>91</sup> Case 09, trial on 06.3.23 on Crete.

<sup>92</sup> Interview with criminalised person no. 3, conducted on 25.02.23 and no. 5, conducted on 12.03.23.

to wait until the first hearing does not have legal limitations. In cases where people are in pre-trial detention, they must either be sentenced or released within a maximum of 18 months. Instead, individuals arrested on Samos have had to wait up to three years for their first instance proceedings to happen.<sup>93</sup> In the case of one of the people we interviewed, his family moved on to Germany and he had to wait for three years until he was able to reunite with them.<sup>94</sup> The case of A. B. on Lesbos was exceptional in that he was not put in pre-trial detention.<sup>95</sup> However, 21 months passed between the preliminary hearing and his actual trial, which was then further postponed for an additional five months, resulting in a total waiting period of 26 months for his court proceedings to even begin. The lengthy wait, coupled with the travel restrictions, means that individuals are essentially in legal limbo and unable to move on with their lives for a significant amount of time.

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<sup>93</sup> Case 02, trial on 08.12.22 on Samos; Case 03, trial on 17.10.22 on Samos; Case 05, trial on 17.10.22 on Samos.

<sup>94</sup> Interview with criminalised person no. 3, conducted on 25.02.23.

<sup>95</sup> Case 014, trial on 05.12.22 on Lesbos (postponed).



# 8. TRIALS AND SENTENCES

A total of 81 trials were documented in eight different locations, involving a total of 95 defendants. Monitoring the trials against individuals accused of smuggling, it became evident that defendants are receiving lengthy prison sentences in trials that are fundamentally flawed and disregard their rights. These trials are consistently characterised by issues such as inadequate interpretation, brevity of the hearings (sometimes lasting no more than six minutes), and heavily reliant on a single testimony given by the arresting officer, who is usually not even present. The vast majority of defendants are represented by state-appointed lawyers, who often lack the necessary expertise and resources. Sometimes, these lawyers are only appointed on the day of the trial, further curtailing their ability to prepare a proper defence. These factors combine to paint a picture of a system that is failing to uphold the principles of a fair and just trial for the people criminalised for smuggling.

## 8.1 WEAK EVIDENCE

Our trial documentation reveals that defendants are usually convicted on the basis of very limited evidence, with the prosecution relying either solely on the testimony of one coast guard or police officer given to their colleagues and/or on statements from other passengers. In none of the cases that we documented, additional evidence such as video footage, photographs, recorded conversations, or bank records were presented by the prosecution, making it appear as if the investigation phase carried out by the authorities generally stops with the gathering of one or two testimonies.<sup>96</sup>

*“Because that’s the weird thing, like they have no proof. They have only one witness, who says you are the driver, after they hit him. [...] So the only proof they have it’s a guy who said my name after they hit him and they have no other proof, no picture, no conversation on messenger, nothing.”*

- Hasan

*“On Samos, the Coast Guard officer in court usually just says ‘yes, he drove the boat’, and that is enough to convict the person.”*

- Ioanna Benghazi, criminal defence lawyer on Samos

It is particularly striking that our data shows that prosecution witnesses are usually not even present during the trial and thus cannot be cross-examined by the defence. **The police officers who provided the testimony on which the indictments were based did not appear in 68% of all documented cases** (38 out of 56<sup>97</sup>). The same applies to passengers whose testimonies against

<sup>96</sup> This is particularly concerning as this pattern has already been documented back in 2017, and it seems that no significant improvement has been made since then; see: Georgios Maniatis: “Country report Greece. Exemplary cases”, in: *borderline-europe* (2017): Criminalization of Flight and Escape Aid.

<sup>97</sup> Of the 81 court cases, 25 were settled through “plea deals”. In these cases, there is no substantive hearing or examination of witnesses, but instead, the defence negotiates a deal with the prosecutor (see further information in the chapter “Judgements and sentences”). Accordingly, the statistics were calculated without including these plea deals.

the accused are in the file. They were present in only 10% of the proceedings. The court generally failed to fulfil its obligation to secure the attendance of these witnesses, although all the lawyers we interviewed expressed concerns about the circumstances in which their statements were obtained.<sup>98</sup> Instead, the court simply reads out the written statements and generally considers them sufficient to find the accused guilty.

Mousafir's case, about which we have information both from the interview and from monitoring and documenting his criminal proceedings, illustrates the importance of prosecution witnesses to attend the trial and be subject to cross-examination by the defence.<sup>99</sup> During the appeal trial, the passenger who had allegedly incriminated Mousafir in the investigation phase was present and corrected his testimony. He refuted the accusation that Mousafir was responsible for the journey and smuggling, which had been written down at the police station during his interrogation. Instead, he stated that Mousafir was an asylum seeker like him and that both had paid for the journey. As a result of this testimony, Mousafir, who had been sentenced to 47 years in his trial at first instance for "the unauthorised transportation of 44 third-country nationals into Greek territory" and resisting state authority, was acquitted of the charge of "unauthorised transportation" and his sentence was reduced to eight months.

*"He said that what they wrote down in the police station was wrong; he didn't say that. So [he said that I am] a refugee, same like him, and we [both] paid for the smugglers."*

- Mousafir

The documented trials, together with the interviews with the lawyers and the criminalised individuals indicate that the absence of the police or coast guard officer at court hearings, who is often the main and sometimes even the only prosecution witness, as well as that of the other prosecution witness(es), is the rule rather than the exception.

The fact that defendants are consistently convicted solely on the basis of written statements by witnesses who are not present further undermines the overall fairness of such proceedings.<sup>100</sup>

## 8.2 INTERPRETATION

In the trials we monitored, the trial observers were usually not in a position to assess the quality of the translation because they did not speak the language of the defendant. However, we documented several trials where **people that are not on the court's official register of interpreters were asked to translate.**

On Samos, we documented cases in which there was no interpreter present and consequently **the defendant of the previous trial was asked to translate for the accused.**<sup>101</sup> In Komotini, **other detained persons were specifically brought from prison to the court to provide interpretation.** For example, a private lawyer representing an Afghan national in Komotini proactively reported to the court secretary that interpretation would be needed for the hearing.<sup>102</sup> Later that day, the secretary informed the lawyer that there was no interpreter available from Farsi or Pashto into

98 See also chapter "Arrests and investigations".

99 Interview with criminalised person no. 2, conducted on 19.01.23; case O17, trial on 08.09.20 in Komotini (first instance); case O18, trial on 09.06.22 in Komotini (appeal trial).

100 Bride, Jeremy: "The Case law of the European Court of Human Rights on Evidentiary Standards in Criminal Proceedings.": <https://rm.coe.int/council-of-europe-georgia-european-court-of-human-rights-case-study-ev/16807823c3>

101 Case O6, trial on 17.10.22 on Samos.

102 Case 35, trial on 21.02.23 in Komotini.

Greek. This task had previously been done by another person in prison, who had stated in an official letter that he sent to the court that he was no longer willing to provide these services. After many calls, the lawyer finally managed to find an interpreter – which was again an imprisoned person with good knowledge of Greek.

Although Greek law provides for the appointment of interpreters that are not enlisted in the official register, this is foreseen only for extremely urgent cases.<sup>103</sup> Instead, it seems to be a regular practice. By relying on interpreters without ensuring whether they have the necessary skills and qualities for carrying out this mandate, these courts fail to ensure the right to a fair trial for the accused person. Moreover, the persons brought from prison for interpreting are not paid for their services.<sup>104</sup>

During the trial observation and in the reports of both the lawyers and the criminalised persons, it also became apparent that the interpreter – whether official or unofficial – usually only interpreted small parts of the content of the trial.

*“The quality of the translation cannot be assessed as the court only asked one question, whether the accused admits to committing the offence and the accused answered that he does.”<sup>105</sup>*

*“Usually the interpretation is like: ‘Hello, your name and what do you want to say? Okay, guilty. Your sentence is 20 years.’*

*For example, recently a client told me he didn’t even realise what happened in his first instance trial, and that only afterwards someone else in the police station told him ‘ah you are sent to prison for 50 years.’”*

- Vicky Aggelidou, criminal defence lawyer on Lesbos

Of the five people that we interviewed, only one person reports no problems with the interpretation during his trial. At the same time, he was also the only one acquitted at first instance.<sup>106</sup> All the others did not understand their interpreter or state that the interpretation was insufficient. Three of them report that their interpreter did not actually speak their language, and one interviewee says that he had the impression that his statements were not truthfully rendered, but rather that the interpreter was incriminating him additionally.<sup>107</sup>

## 8.3 LEGAL DEFENCE PROBLEMS

Moreover, the defence of third-country nationals charged with smuggling is characterised by a number of structural difficulties that significantly disadvantage the accused in their right to a fair trial.

<sup>103</sup> See Article 233 (2) of the Code of Criminal Procedure; [https://fra.europa.eu/sites/default/files/fra\\_uploads/rights-suspected-persons-country\\_el.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/rights-suspected-persons-country_el.pdf) (accessed on 09.04.23)

<sup>104</sup> As stated by the secretary of the court in Komotini.

<sup>105</sup> Quoted from trial documentation 58, trial on 22.03.23 in Komotini.

<sup>106</sup> Interview with criminalised person no. 3, conducted on 25.02.23.

<sup>107</sup> Interview with criminalised person no. 4, conducted on 04.03.23.

## WITNESSES FOR THE DEFENCE

One of these disadvantages lies in the challenges in finding new testimonies in the case, to prove that the accused is innocent. For example, other passengers could offer evidence that pertains to the merits of the allegations, the travel arrangements, the role of the accused, and other relevant details. However, locating these witnesses can be difficult as they usually do not have a permanent address in Greece. Additionally, they may have changed their phone numbers after arriving to EUrope or not had one upon arrival, and their names may not be known to the defendant, as passengers on a boat are not necessarily familiar with each other. Being in a legally precarious situation, some are reluctant to testify, fearing that it could have negative implications for their asylum process. Furthermore, by the time the trial takes place, these witnesses may have already left the place of arrival or even Greece, adding to the difficulties in obtaining their testimony. In cases where the clients typically lack financial means, it becomes even more challenging for lawyers to dedicate time and effort to chase down possible witnesses and have them travel to the trials.

*“In Samos, from the defence side, since many [trials] happen three years after arrival, there are no possibilities to find the people who were on the boat. Plus, these witnesses are not called from the court.”*

- Ioanna Benghazi, criminal defence lawyer on the island of Samos

When it proves difficult to locate witnesses who can testify on the specific charges against the accused, defence lawyers may try to find so-called *character witnesses*, typically family members who can speak to the character or reason of the journey of the accused. However, also these witnesses are difficult to get to attend the trial for structural reasons. As already discussed in the chapter on detention conditions, family members of defendants are usually not in Greece or the EU, which makes it difficult for them to travel there. Some are themselves in asylum proceedings in another EU country and therefore not allowed to travel, while others may not have the financial means to cover travel and accommodation costs for a trip to Greece.

Witnesses who testify in favour of the accused can make a difference, as our findings show.<sup>108</sup> They often help in getting the court to accept mitigating circumstances and to lower the sentence accordingly. This is emphasised by three of our interviewees, who had a witness testimony in their favour, though for one this only occurred at his appeal hearing.<sup>109</sup> Similarly, they perceived the role of (international) media attention and external support and presence at the trial as having a positive impact.<sup>110</sup>

*“When the judge realised that there is a lot of people, journalists and organisations that fight for human rights, the judge started to focus on my documents and read them from the first page to the end and reviewed them, reviewed them, and then he announced the result that I am free and that it was their mistake and that I am free.”*

- Jafar

<sup>108</sup> Case 07, trial on 05.05.22 on Syros; case 08, trial on 26.09.23 in Thessaloniki; case 016, trial on 04.20.20 in Komotini.

<sup>109</sup> Interview with criminalised person no. 1, conducted on 18.12.22 and no. 5, conducted on 12.03.23 and the latter no. 4, conducted on 04.03.23.

<sup>110</sup> Interview with criminalised person no. 1, conducted on 18.12.22 and no. 4, conducted on 04.03.23.

However, the lawyers we interviewed express concerns that these testimonies are not always given the weight they deserve. It is important to highlight that, despite the potential mitigating influence of defence witness statements, in our research there was no case where a defence witness prevented a conviction. Regardless of additional testimony or evidence presented in favour of the defendant, the decisive factor in determining guilt for the court is whether it finds it convincing that the accused was steering the vessel, not the underlying motives or individual circumstances of the action – relying heavily on the testimony of the arresting police or coast guard officer (as outlined in the chapter on “weak evidence”).

*“The court takes just 10 minutes. And they were my people from the organisation I’m working with to prove that I’m doing some volunteer job and some of my friends from Europe, they send a message also to the judge and he didn’t care. Actually, he didn’t even look at the people. He just said the [sentence].”*

- Hasan

For example, in the case of Hamza Haddi and M. H. in Komotini,<sup>111</sup> the two were arrested after crossing the Evros river on a small boat with two others, including Haddi’s brother. Despite the fact that they were a group of only four people, Haddi and M. H. were accused and charged of the “transportation of 80 third-country nationals without permission to enter into Greek territory” with the aggravating circumstances of having acted for profit and habitually (Art. 30 par 1b).<sup>112</sup> The sole basis of this accusation was the testimony of a police officer claiming that Haddi and M. H. had intended to go back and bring more people across the border, without any supporting evidence. The trial took place with the defendants and a passenger, Haddi’s brother, testifying that they had all travelled as a group and took turns steering the boat. Additionally, family members who had travelled to Greece from abroad testified as character witnesses in favour of the defendants. Although they were acquitted of the aggravating factors of having acted out of profit or habit, Haddi and M. H. were found guilty on the basis of the testimony of the police officer who stated having seen Haddi and M. H. steering the boat when they reached the shore and the testimony of the fourth person that was on board. This person later revoked his testimony in a signed letter, stating that he was forced to give it. However, neither he nor the police officer were present at the trial and their initial statements were read out.

In the first-instance trial of Mohamad H. on Lesbos,<sup>113</sup> eight people who were in the same boat with Mohamad H. appeared in court to defend him. Mohamad H. was arrested upon arrival for being the driver of a boat in which he and 33 other passengers tried to reach Greece; he was consequently charged with the “transportation of third-country nationals without permission to enter into Greek territory” with the aggravating circumstances of endangering the life of 31 people and causing the death of two (Art. 30 par. 1c + 1d).<sup>114</sup> Two of the passengers were accepted as witnesses for the defence and could testify before the court. They stated that H. was a passenger like them, that the smuggler had abandoned them at sea and that H. had tried to save everyone’s life by somehow steering the boat safely ashore, being a smuggled person himself with no experience in seafaring. However, the judge insisted on the fact that in the preliminary hearing two witnesses pointed to him as the driver, despite the defence stressing that the interpretation was problematic during this hearing, as it was provided in English and not in Somali, as well as the fact that the witnesses did not point to the defendant as the smuggler but as the person who was forced to drive the boat in a situation of distress.

<sup>111</sup> Case 016, trial on 04.02.20 in Komotini.

<sup>112</sup> Law 4251/2014 - Immigration, Social Integration Code and other provisions.

<sup>113</sup> Case 019, trial on 13.05.21 on Lesbos.

<sup>114</sup> Law 4251/2014 - Immigration, Social Integration Code and other provisions.

In another trial that took place on the island of Syros,<sup>115</sup> the testimonies of six other passengers were read out in which they stated that the three accused were not responsible for organising the trip and had not received payment. Furthermore, two family members had travelled to the trial to provide character testimonies and to support the version of events presented by the defendants, e.g. they confirmed the precarious situation of the accused, which led them to take on the task of steering in exchange for a cheaper fare. The prosecution's witness, a police officer, was not present. In his closing statement, the prosecution in fact acknowledged that the three defendants were not the smugglers, that they had not acted for profit, and that they were not to blame for the 18 people who had lost their lives during the journey. He stated that however, according to the law, the three defendants must still be found guilty of "transportation of third-country nationals without permission to enter into Greek territory" with the aggravating circumstance of endangering their lives (Art. 30 par. 1c).<sup>116</sup> Accordingly, although mitigating circumstances were applied and they were acquitted of the aggravating factor of having caused the deaths, they were found guilty.

In Komotini a trial took place where a person was accused of "unauthorised transportation of 9 people" after a fatal car accident.<sup>117</sup> The prosecution relied on the testimony of a police officer who stated that he could not identify the driver when he saw the car from a distance, but that he had "questioned an English-speaking survivor" after having arrived at the site of the accident. During the trial, the defence presented another passenger who testified that the deceased person had been driving the car, along with a written statement from a third passenger supporting this account. Additionally, the defence provided evidence that the accused had transferred 2000 Euros to a smuggler. The lawyer argued that there was insufficient evidence to prove beyond a reasonable doubt that the defendant was the driver of the vehicle, and therefore, he should be given the benefit of the doubt. Despite this, the court found the defendant guilty and sentenced him to 18 years in prison.

However, there were defence witnesses present in court for only ten of the 56 cases.<sup>118</sup> Nine of these ten cases with defence witnesses were represented by private lawyers. There was one trial defended by a state-appointed lawyer where witnesses were present, and for all the remaining trials there was not a single defence witness present.

## *STATE-APPOINTED LAWYERS VS. PRIVATE LAWYERS*

**About 60% of the documented cases (49 out of 81) were handled by state-appointed lawyers** under the free legal aid scheme in Greece, most likely because of the high incidence of pre-trial detention and the limited access to information and contacts this entails, as well as lack of financial means to hire a private lawyer (as outlined in the chapter on pre-trial detention).

The lawyers we interviewed point to the problem that state-appointed lawyers are often not experienced in such cases, as sometimes they are not even criminal lawyers.<sup>119</sup> They add that the issue is further compounded by general structural problems in the Greek legal aid system that affects all cases, including poor compensation for state-appointed lawyers that takes a long time to come through, which impacts both their motivation and their ability to provide adequate defence.<sup>120</sup> In cases involving third-country nationals that have just arrived in the country, this has even more serious consequences as they may entail even more effort, time and costs to prepare and ensure a proper defence.

<sup>115</sup> Case 07, trial on 05.05.22 on Syros.

<sup>116</sup> Law 4251/2014 - Immigration, Social Integration Code and other provisions.

<sup>117</sup> Case 60, trial on 24.03.23 in Komotini.

<sup>118</sup> Of the 81 court cases, 25 were settled through "plea deals". In these cases, there is no substantive hearing or examination of witnesses, but instead, the defence negotiates a deal with the prosecutor (see further information in the chapter "Judgements and sentences").

<sup>119</sup> Expert interview no. 3, conducted on 02.02.23.

<sup>120</sup> Expert interview no. 2, conducted on 19.01.12 and no. 3, conducted on 02.02.23.

These cases typically require interpreters, regular trips to prison (as the majority of people are detained), or documents that can be part of a defence strategy from the defendant's home country, which need to be sent, translated, and certified. Ensuring witnesses are present for these cases is also much more challenging, as discussed above.

Considering that in many cases lawyers are even appointed on the day of the hearing only, it is evident that in such cases in particular, a proper legal defence is impossible to provide.

*“When you don’t have money and don’t have a lawyer, then the government will give you a lawyer. But he will not defend you much, you know. [...] The first time I met the lawyer was at the court. [...] Yeah. Inside the trial. There was no meeting or something to meet each other before the court. [...] He didn’t defend me. He was against me in front of the judge. [...] This lawyer also argued that I was a smuggler.”*

- Jafar

The findings from the documentation of the 56 trials<sup>121</sup> show that trials with private lawyers tend to last longer, they are more likely to present witnesses or other evidence for the defence, and the judge is more likely to accept mitigating circumstances, leading to a better overall outcome. The experiences shared by our interviewees corroborate these findings, particularly those who had both state-appointed and private lawyers at different stages of their proceedings and noted significant differences in their legal representation.<sup>122</sup> Nevertheless, it is crucial to mention that affected individuals report that some private lawyers try to exploit their vulnerable situation by soliciting their services in prison, making false promises of release and charging high fees.<sup>123</sup>

## OBJECTING PROCEDURAL ISSUES

Another problematic finding of this research sheds light on the fact that even if accused persons have engaged defence lawyers who detect rights violations, the structural conditions surrounding smuggling cases in Greece make it difficult for the lawyers and their clients to challenge these rights violations inside court. Doing so often results in a postponement of the trial, which poses a significant challenge for the accused, particularly those in pre-trial detention. Lawyers are thus faced with the dilemma of having to choose between insisting on the fundamental rights of their clients or achieving the best possible outcome for them as quickly as possible within the existing circumstances. This is further exacerbated by the slow pace of the Greek judicial system in general, so a delay could mean not just a few weeks but rather several more months.<sup>124</sup> This situation consequently leads clients and their lawyers to opt for a swift procedure over challenging breaches of rights.

For instance, despite the defence having the right to insist on the possibility of questioning witnesses, especially the main prosecution witness, which is usually a police officer, all the lawyers interviewed express reluctance to exercise this right due to the possibility of significant delays in

<sup>121</sup> Of the 81 court cases, 25 were settled through “plea deals”. In these cases, there is no substantive hearing or examination of witnesses, but instead, the defence negotiates a deal with the prosecutor (see further information in the chapter “Judgements and sentences”).

<sup>122</sup> Interview with criminalised person no. 2, conducted on 19.01.23; no. 4, conducted on 04.03.23 and no. 5, conducted on 12.03.23.

<sup>123</sup> Interview with criminalised person no. 2, conducted on 19.01.23.

<sup>124</sup> Expert interview no. 1, conducted on 20.12.22 and no. 3, conducted on 02.02.23.

the trial. Especially since their insistence does not guarantee that the police officer will actually be present at the next hearing date. Likewise, the defence has the right to object to the interpretation if they consider it inadequate and demand a replacement, but the lawyers interviewed state that, just as with the absence of the prosecution witness, they usually refrain from doing so in order not to risk a postponement.

*“It is an obligation of the court to find a translator for the defendant. If I would not have done all this effort to find a translator either the defendant would sign a deal that he would not understand completely or the court would order the postponement of the trial to another court session in order to find a translator and the defendant would still be in prison.”*

- Criminal lawyer in Komotini<sup>125</sup>

Additionally, in cases where lawyers were successful in arranging for the presence of defence witnesses, there is an added hesitancy to risk a postponement.<sup>126</sup> This is because adjourning the hearing could mean that the witness(es) may not be able to attend the next scheduled hearing. Given the attendance of defence witnesses is faced with several challenges, as discussed earlier, it is crucial to carefully weigh the potential harm and benefits to the accused when deciding whether to pursue this avenue. For instance, in the case of Haddi and M. H. that was mentioned before, neither the police officer nor the passenger, on whose incriminating statements the prosecution relied solely, appeared in court for the trial.<sup>127</sup> However, Haddi’s sister from Italy, another friend from Morocco, and a representative of a human rights organisation from Germany had travelled to Greece to testify as witnesses for the defence. This led the lawyer and the defendants to consider it more convenient to refrain from objecting to the absence of the prosecution witnesses and the reading of their statements, and proceed with the trial.

This means not only that the majority of these violations of rights go unchallenged within the domestic courts. Also that taking them further to the European Court of Human Rights is a difficult endeavour from the outset, as one of the key prerequisites for the European court to take action is that the defence must have raised objections to the violations and exhausted all national remedies. Moreover, the specific situation of their clients, who have to start over in a new country and are often in a difficult psychological and financial position, is mentioned as a general circumstance that leads to people being neither interested nor financially able to take further steps after their release, or, in case they are still inside of prison, that do not have an immediate and timely impact on their time in prison.<sup>128</sup>

This total absence of consequences for these violations of due process risks instilling a sense of immunity in those involved and making these breaches a chronic and persistent problem. Unfortunately, as shown in this study this is precisely what is already happening.

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<sup>125</sup> The lawyer does not want to be quoted with his name.

<sup>126</sup> Case 07, trial on 05.05.22 on Syros; case 016, trial on 04.02.20 in Komotini.

<sup>127</sup> Case 016, trial on 04.02.20 in Komotini.

<sup>128</sup> Expert interview no. 3, conducted on 02.02.23.

## 8.4 SHORT DURATION OF TRIALS

From all the trials we documented that were not plea deals (56),<sup>129</sup> we found that the average length of the entire trial was 37 minutes. However, this figure is heavily influenced by a few trials that involved private lawyers and garnered international attention, one of which lasted six hours and was the longest trial that we documented.<sup>130</sup> This case was exceptional insofar as it had garnered international media coverage,<sup>131</sup> the defendant had two lawyers representing him, and there were several witnesses present, including a passenger, a family member, and an expert witness. Notably, a Member of the European Parliament was also present during the proceedings.<sup>132</sup> Trials with private lawyers had an average length of 66 minutes.

The majority of cases (60%) however involved state-appointed lawyers, who were often only assigned to the defendant on the day of the trial. **The average length of trials with state-appointed lawyers was found to be only 17 minutes.** The shortest trial that we documented, which resulted in a sentence of 16 years and a fine of 60.000 Euros, lasted only six minutes, with neither the defendant nor a lawyer present. In this case, the judge simply read out the written testimony of the arresting police officer, as well as the confession of the accused admitting to having driven the car, and subsequently found him guilty.<sup>133</sup>

The duration of these trials is particularly striking considering the high penalties people receive.

*“The court took around 5 or 6 minutes, something like this. You know, it’s like it’s not something serious.”*

- Khaleq

## 8.5 JUDGEMENTS AND SENTENCES

Of the 95 individuals accused in the 81 trials documented for this report, the majority were sentenced under Art. 30, with only a few exceptions sentenced under Art. 29 par. 5 (13 out of 95). People were **sentenced to an average of 46 years imprisonment and an average monetary fine of 332.209 Euros.** There were also two people that received 45 life sentences each,<sup>134</sup> which is not included in this average calculation. In most cases, the defendants were not only convicted with the charge of unauthorised transportation of third-country nationals into Greek territory / human smuggling and the respective aggravating circumstances, but they were also convicted for additional offences such as their own unauthorised entry (Art. 83 par 1. Law 3386/2005),<sup>135</sup> disobedience (Art. 167 par. 1 Greek Penal Code) and driving without a licence.

The maximum duration of a custodial sentence in Greece cannot exceed 20 years and 25 years for individuals sentenced to multiple life sentences.<sup>136</sup> This also applies to individuals who have been sentenced to several decades or even centuries. As outlined above in the chapter “legal framework”, the actual time people have to serve in prison can be a complicated process due to the

<sup>129</sup> In the case of a plea deal, there is no substantive hearing or examination of witnesses, but instead, the defence pleads guilty and negotiates a deal with the prosecutor (see further information in the chapter “Judgements and sentences”).

<sup>130</sup> Case 011, trial on 09.01.23 on Lesbos.

<sup>131</sup> The Guardian (2022): Refugees convicted of steering boats to Greece to appeal against life sentences; <https://www.theguardian.com/global-development/2022/mar/18/greek-court-to-hear-appeals-on-life-sentences-for-refugees-accused-of-steering-dinghies> (accessed on 08.04.23).

<sup>132</sup> Case 011, trial on 01.01.23 on Lesbos.

<sup>133</sup> Case 34, trial on 22.02.23 in Komotini.

<sup>134</sup> Case 33, trial on 10.02.23 on Rhodes.

<sup>135</sup> Law 3386/2005 - Codification of legislation on the entry, residence and social integration of third-country nationals on Greek territory, abolished by: Law 4251/2014 except for Articles 76, 77, 78, 80, 81, 82, 83, 89(1)-(3), <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/EN%20-%20Law%203386%20%202005.pdf> (accessed on 09.04.23).

<sup>136</sup> Law 4619/2019, Article 94 par. 1

cumulative imposition of several sentences for a single offence. It is defined and calculated along different criteria such as the type of sentence (filakisi / katherixi). Due to this complexity, which is further compounded by the overall lack of proper translation and information, people that have been sentenced are often struggling to understand what their sentence actually means. Facing the uncertainty of serving “anything between 3 and 20 years” constitutes another significant psychological burden. Hasan describes not understanding the sentence read out by the judge at his appeal trial and being puzzled and stressed trying to read his fate from the reactions of the attending supporters in the audience.

*“[The judge] just said the [sentence]. I didn’t understand, and I looked behind me and I saw my people were crying. [...] [T]wo policemen pulled me up by my shoulders and took me out of the court to the second floor. And I was looking at my people and I said ‘why, why, why are you crying?’ They said: ‘We are happy, Hasan, for you.’ [...] I said ‘what? Like when people are happy, they laugh, they don’t cry!’ You know, because I was really scared. I didn’t understand. Then the lawyer told me: ‘They charged you with five years. But not inside of prison, out of the prison. And if you don’t cause any problems, they will remove it and you will be free.. Like not innocent, but you will be free.’”*

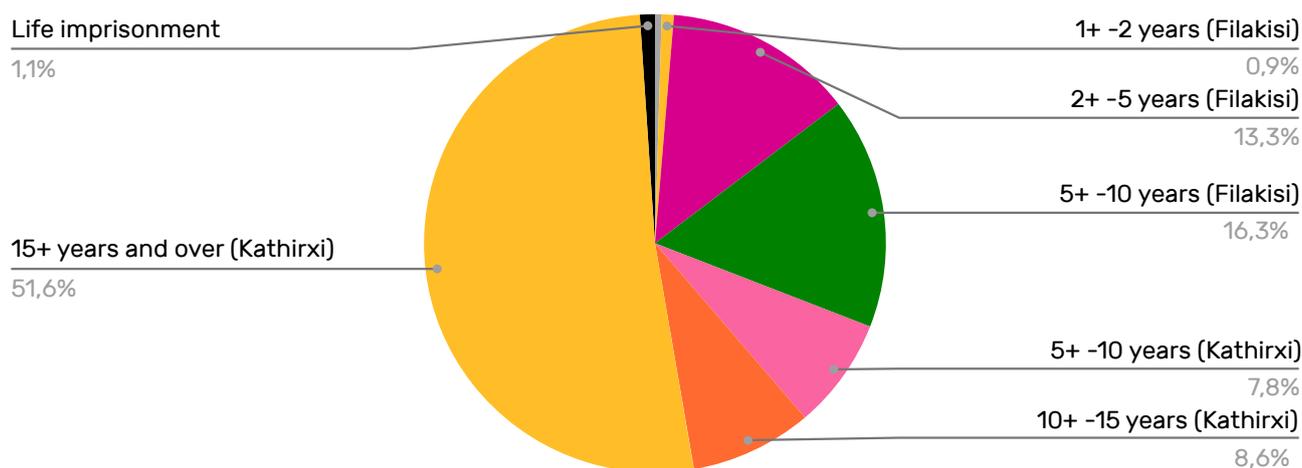
- Hasan

According to the response to an inquiry submitted to the Greek Ministry of Citizen Protection about the average actual length of imprisonment of people detained for human smuggling, it was revealed that **52% of all people convicted are serving a prison sentence of 15 years to life.**

Length of imprisonment <sup>137</sup>	Total number
10 days - 12 months (filakisi)	7
1+ - 2 years (filakisi)	13
2+ - 5 years (filakisi)	202
5+ - 10 years (filakisi)	248
5+ - 10 years (Kathirxi)	119
10+ - 15 years (Kathirxi)	130
15+ years and over (Kathirxi)	785
Life imprisonment (Kathirxi)	16
<b>Total</b>	<b>1520</b>

Source: Greek Ministry of Citizen protection, numbers as of 28.02.2023

<sup>137</sup> see chapter on “legal framework” for the difference between filakisi and kathirxi.



Total Number of inmates

Source: Greek Ministry of Citizen protection, numbers as of 28.02.2023

## ACQUITTALS

Only eight people were acquitted, six of them in their first-instance, and two in their appeal trial. Of all the locations monitored throughout the research, Samos stood out as the only place where three defendants were acquitted despite evidence that they had steered the boat.<sup>138</sup> The judges accepted the defence's argument that the accused were clearly part of the group of smuggled migrants. In contrast, in the other five cases (1 Samos, 1 Komotini, 1 Lesvos, 2 Kalamata) it was because the court was not convinced of their involvement in steering the boat.<sup>139</sup> Samos further stood out because many of the cases documented there were sentenced under Art. 29 par. 5 instead of Art. 30, resulting in significantly lighter sentences. Lawyers working on Samos attribute this to a greater willingness on the part of the courts there to consider the wider circumstances and the actual role of the accused. The fact that individuals can be acquitted in one location and receive a harsh prison sentence in another location for the same act, depending on the personnel in the courts, however raises questions about the fundamental principles of fair trial and equal treatment under the law.

## PLEA DEALS

Our trial documentation shows that a significant number of plea bargains are regularly reached in the Komotini court. From the 81 criminal proceedings documented, 25 were settled through a plea-deal, 24 of them in Komotini and one on the island of Rhodes. In such cases, no substantive hearing or assessment of evidence takes place. Instead, the defendant's lawyer negotiates a deal with the prosecutor, which takes place behind closed doors, wherein the defendant agrees to plead guilty in exchange for a lighter sentence. This agreement is then presented to the court for approval, which happens in a public hearing. While plea bargaining can expedite the judicial process, they always carry the risk of coerced guilty pleas, particularly in cases like those observed for this study, where people face pre-trial detention with harsh detention conditions, a defence riddled with structural difficulties and a 90% conviction rate, and might be able to reach a suspended sentence through a plea-deal.<sup>140</sup>

<sup>138</sup> Case 02, trial on 08.12.22 on Samos; case 05, trial on 17.10.22 on Samos; case 06, trial on 17.10.22 on Samos.

<sup>139</sup> Case 010, trial on 19.05.22 in Kalamata; case 018, trial on 09.06.22 in Komotini.

<sup>140</sup> If a prison sentence does not exceed three years, it can be suspended (Greek penal code, law 4619/2019, Art. 99 par. 1). Against this backdrop, the fact that such agreements are prevalent mainly in Komotini is a noteworthy observation. In Komotini, many of the charges are related to crossing the border by car rather than by boat, as is the case in other locations. As a result, the number of passengers is typically smaller, leading to a lower accumulated sentence and greater potential for sentence suspension.

## 9. RIGHT TO APPLY FOR ASYLUM

It is likely that a considerable number of the arrested persons are asylum seekers in addition to being part of the smuggled group. In 46% of the 95 individuals whose criminal proceedings we documented for this study, it was explicitly mentioned by the defendants or their lawyers during the trial that they had arrived in Greece to seek asylum. Consequently, by criminalising individuals simply for having crossed the border by boat or car, Greece is not only failing to meet its obligations under the “Protocol Against the Smuggling of Migrants by Land, Sea and Air” of the United Nations<sup>141</sup> to not criminalise people for having been the object of smuggling. It is also contravening the Geneva Refugee Convention, which prohibits the criminalization of asylum seekers for their unauthorised entry, thus undermining their right to seek asylum.

*“By doing this, we criminalise asylum seekers that have no alternative. There is a part during the journey where the only thing they can do is to drive the boat.”*

- Dimitris Choulis, criminal defence lawyer on Samos

Moreover, our research suggests that criminalisation has negative implications on their ability to apply for asylum, both in terms of the length of time it takes for the application to be processed and of the outcome of the application. People who are placed in pre-trial detention must conduct their asylum interviews inside the prison, which impacts their ability to prepare and receive legal support.<sup>142</sup> Additionally, the lawyers we spoke with note that asylum procedures are typically put on hold while the case against the individuals is ongoing, with no decision issued until there is a final decision.<sup>143</sup> Of the criminalised individuals we spoke with, one of them did apply for asylum while detained and had his first interview inside of prison, and the procedure was then suspended until his acquittal.<sup>144</sup> However, one of our interviewees could not even apply for asylum at all during his entire time in prison. He reports that despite his repeatedly expressed wish to apply for asylum, no proceedings were initiated.<sup>145</sup>

*“They [the prison staff] said to me that I am a criminal and I have no chance of asylum until I complete my trial.”*

- Jafar

In contrast, those who were arrested on Samos and were not placed in pre-trial detention were able to begin their asylum procedure in the camp where they were residing, and they were granted asylum by the time their court hearing took place.<sup>146</sup> The sentence they receive can have a negative impact on the decision of their application. Even if individuals have been granted refugee status while waiting for trial, their renewal may be impacted by the verdict, as having a criminal record can affect their eligibility. For example, individuals may be ineligible for subsidiary protection if they have been convicted of a crime that carries a minimum sentence of three years imprisonment.<sup>147</sup>

<sup>141</sup> For more info, see the chapter “legal framework”.

<sup>142</sup> Expert interview no. 2, conducted on 19.01.23.

<sup>143</sup> Expert interview no 2, conducted on 19.01.23 and no. 3, conducted on 02.02.23.

<sup>144</sup> Interview with criminalised person no. 2, conducted on 19.01.23.

<sup>145</sup> Interview with criminalised person no. 4, conducted on 04.03.23.

<sup>146</sup> Interview with criminalised person no. 3, conducted on 25.02.23 and no. 5, conducted on 12.03.23.

<sup>147</sup> Art. 17 Law 4636/2019, specifying Art. 12 EU Guideline 2011/95



# 10. CONCLUSION

This study examined the impact of Greek anti-smuggling policies and the way they are enforced, bringing to light a disturbing reality. While the fight against migrant smuggling is supposedly intended to crack down on “criminal networks” and protect smuggled migrants whose “fundamental rights should be safeguarded under all circumstances”,<sup>148</sup> in this study we reveal that it is in fact the people on the move who become the target of these policies and experience systematic and grave violations of their fundamental rights by the state authorities, starting from the moment they are ‘identified’ for having conducted the boat or the car across the border.

The Greek legal framework, as it currently stands, not only fails to protect smuggled individuals, including those who are seeking asylum, but also allows, facilitates and legitimises their criminalization. In the absence of safe and legal alternatives, people seeking protection are forced to embark on perilous journeys by boat or car to reach EUrope. Someone has to take responsibility for driving the boat or car or carrying out other necessary tasks during this journey; some undertake them voluntarily, others because they cannot afford to cross as passengers (or to take their families with them) and can lower the price by doing so; still others pilot the boat because they are forced to do so by coercion. Still, Greek police or coast guard detain at least one individual per car or boat that arrives with migrants on board for having steered it and accuses the drivers of smuggling.

Moreover, pervasive violations of rights against the concerned persons completely undermine the credibility and legitimacy of the entire process. In this study, we show that the prosecution of third-country nationals charged with smuggling in Greece is characterised by gross human rights violations, including arbitrary arrests, torture, mistreatment and coercion, as well as the systematic denial of access to legal assistance and translation and interpretation services. Affected individuals are not informed of their rights, and often do not even know the reason for their arrest or their charges. Upon arrival, the accused are routinely placed in pre-trial detention, which further restricts their ability to obtain adequate legal aid and other forms of support. This situation is particularly dire for people who have just arrived to Greece. They are entirely isolated and highly vulnerable to maltreatment and abuse by state authorities. This is further exacerbated by the fact that pre-trial detention in Greece is especially lengthy – in the cases for this study it lasted eight months on average – and is notorious for its degrading conditions.

When the trial finally takes place, people accused of human smuggling are sentenced to lengthy prison terms in hearings that usually do not exceed thirty minutes, and sometimes last only six minutes, are based on questionable evidence and flout basic standards of fairness. Individuals are routinely convicted on the basis of the single testimony of a police officer or coast guard, who often sometimes do not even show up to the hearing to be cross-examined, as well as written testimonies of other passengers whose statements have been obtained in questionable circumstances and that are likewise usually not cross-examined. Defendants do not receive adequate interpretation prior and during trial. The majority of people rely on state-appointed lawyers, who, due to chronic problems in Greece’s free legal aid system and the additional challenges that come along with a foreign defendant (language, organising witnesses, etc.) do not have the means or resources to provide a proper defence. The only factor taken into account when determining “the culpability” of the accused is whether or not the court is convinced that they were involved in steering the boat or driving the car, independent of the extent of their participation or of the circumstances that led them to do so. This is compounded by the fact that the law provides for particularly harsh sentences, with the offence of unauthorised transportation being considered a felony, for which the punishment is multiplied per each person carried. Often, convicted people are not even properly informed about their final sentence.

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<sup>148</sup> European Commission (2021): A renewed EU action plan against migrant smuggling (2021-2025), p. 16.

The structural conditions in which these cases are embedded generally lead to an absence of consequences for the rights violations that defendants experience during their criminalisation process, making these breaches a chronic and persistent problem. **The results of this study give strong reason to believe that these violations are in fact both systemic and systematic.**

In addition to being abused and deprived of years of their lives, individuals who are released from prison face the added burden of starting a life in Europe with a criminal record and the associated stigma of being a convicted felon. This can be particularly challenging, as having a criminal record can limit opportunities for employment, education, and social integration. Furthermore, the criminal proceedings can have negative effects on their asylum application process, including delays in processing time and negative outcomes in the decision-making process.

**This research fundamentally challenges the official narrative presented by Greek and European authorities regarding their anti-smuggling policies and the statistics they publish to justify them.** While these measures are officially promoted as a means of combating criminal networks and protecting migrants, and the published statistics supposedly demonstrate the necessity and effectiveness of these measures, our research reveals that the majority of these arrests, and therefore the people detained in prisons in Greece, are in fact migrants themselves who were simply trying to enter the EU together with others. In this report we show how these measures are harming the very people they supposedly purport to safeguard. On the contrary: rather than 'fighting crimes', this criminalisation practice involves state authorities perpetrating crimes on a large and systematic scale against individuals who are often particularly vulnerable and in need of protection. The fundamental rights of thousands of people are being grossly violated, and they are reduced to nothing more than numbers used by authorities to untruthfully support their claims. The top priority is placed on stopping arrivals to the EU, even at the cost of human lives, a guiding principle that can also be observed in many other aspects and dimensions of EU member states' border policies. Accordingly, the practice of arresting boat drivers for smuggling is also common at other European maritime borders, as research has shown.<sup>149</sup>

Each of the cases that form the basis of this study would be worth a separate report. The gravity of each individual's account is such that it deserves to be highlighted and acted upon in its own right. These individuals' lives have been forever altered by these policies, often leading to long-term consequences that continue to impact them long after their release. No one will give them back these years of life or take away the trauma that this experience has caused them. They should receive compensation, and their experiences and subsequent claims must be heard and acted upon. Thousands of people are currently trapped in Greek prisons, stripped of their rights, and without any support network. Every week, more arrests are made, and more court files are opened. If there are no drastic changes, many of these individuals will not see freedom for years, or even the next decade. They require immediate change.

Moreover, it is crucial to recognise that as long as there are no safe and legal ways for people to enter the EU, they will continue to rely on smuggling. Smuggling is not an imposition forced upon migrants against their will that they have to be 'saved' from, it is rather a necessary service, in absence of any other options. This reality has also been acknowledged by the EU Commission, who, in their 'renewed action plan against migrant smuggling (2021-2025)', stated that in fact 90% of all people that manage to reach the EU have turned to the assistance of a smuggler during parts or all of their journey.<sup>150</sup> **Combating smuggling and trying to eradicate smugglers is therefore first and foremost a measure to close borders and stop arrivals, and not a service done for the sake of people on the move, as it takes away a service they heavily rely on. What protects migrants more than anything from exploitation and physical harm are safe and legal entry routes.** If people could travel to the EU safely and legally, there would no longer be a need for smuggling. Until this is acknowledged, the "fight against smuggling" is essentially a fight against migration, and as this research has extensively shown, against migrants themselves.

149 Arci Porco Rosso et al. (2021): From Sea to Prison. The Criminalization of Boat Drivers in Italy.

150 EU Commission (2021): A renewed EU action plan against migrant smuggling (2021-2025), page 2.

## **Legend of the pictures**

Cover: *Three refugees from Syria on trial for driving the boat*

Page 5: *Courthouse of Syros*

Page 11: *Ship of Greek coast guard*

Page 24: *Trial in Komotini*

Page 32: *Three refugees from Syria on trial for driving the boat (2)*

Page 45: *List of trials scheduled for the day displayed in the hallway*

Page 49: *Courthouse of Samos*

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