This report is based on a public debate held at the European Parliament in Brussels, Belgium, on 20 March 2014, entitled: “EU Migration Policy: A Push Back for Migrants’ Rights in Greece?”.

The event was co-organised by the following EU and Greek organisations: Platform for International Cooperation on Undocumented Migrants (PICUM), Médecins du Monde, Amnesty International, the European Anti-Poverty Network (EAPN), the European Network Against Racism (ENAR), the European Council on Refugees and Exiles (ECRE), the European Network of Migrant Women (ENoMW), Aitima, Médecins du Monde Greece, Amnesty International Greece, Greek Forum of Migrants, Asante, Greek Forum of Refugees, ARSIS, Generation 2.0 RED, and Syn-eirmos. The hearing was hosted by Nikos Chrysogelos MEP (Greens/EFA), Maria Eleni Koppa MEP (S&D), and Kriton Arsenis MEP (S&D).

This report provides input at the event from migrants’ rights advocates from Greece, EU policymakers and other organisations and actors on how to address the shortcomings of current policies on migration management and border control developed at EU level which negatively impact human rights of migrants in Greece.

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1. Introduction

Simon Cox of the Open Society Foundations (OSF) who funded PICUM’s focus on migrants’ rights in Greece opened the discussion by stressing the importance of this issue at the EU policy level.

Outlining how certain groups were playing on the fears of the electorate in order to maintain the use of strict border control as a tool of migration management, Simon Cox highlighted the need to reorient EU migration policies away from border control towards ensuring migrants’ fundamental rights and access to justice which was in the interests of all residents.

OSF supports the work of various organisations in Greece mainly through strategic litigation and carrying out projects addressing racism and the health crisis with the aim of improving the protection of rights and civil liberties of all people in Greece.

Acknowledging the crucial work of Greek civil society organisations, PICUM Director, Michele LeVoy, noted that migrants were not a problem for the EU, but part of the solution to future challenge.

For instance, migrants were needed to if the EU was to reach the Europe 2020 targets for smart, sustainable and inclusive growth. She emphasised that migration was not a crime and should never be treated as such.

Highlighting the role of criminalising terminology in contributing to populist discourse, Ms LeVoy stated that terms such as ‘illegal migrant’ should be replaced by accurate terms such as ‘undocumented’ or ‘irregular migrant’.

Nikos Chrysogelos MEP (Greens/EFA), who hosted the event underlined the importance of this issue for the European Parliament.

He criticised the idea of building walls to deter migrants from entering the European Union and highlighted migrants’ contributions to EU societies in the past and today. He added that Greece and other EU member states should allow migrants and refugees to integrate, work and sustain themselves.

For instance, despite living in Greece for many years, many migrants were not entitled to Greek citizenship and therefore had no right to vote. Something should be done at EU level to end such discrimination and ensure migrants effective participation in society.
The Context

Since the early 2000s, Greece has become one of the major gateways to the European Union for migrants and asylum seekers, mainly from Asia and Africa. The lack of coherent migration policies, chronic mismanagement of the asylum system, and the deep economic crisis and resulting austerity measures promoted by the European Union, have exacerbated what the United Nations High Commissioner for Refugees (UNHCR), António Guterres, described in late 2010 as a “humanitarian crisis”.

Reducing irregular migration is one of the priorities set out within the Stockholm Programme for the EU area of freedom, security and justice which has framed the EU Commission’s Home Affairs policies in the years 2010 to 2014.

In response to pressure from the EU to prevent irregular migration into the EU, Greek authorities have put in place measures to reduce irregular migration both within the country and at the external border, including large scale sweep operations, increased surveillance of the border, the construction of a fence in the Evros region and additional detention centres.

The adoption of these measures indirectly linking irregular migration with internal security concerns and the increased use of racist and discriminatory language underpinned a steady advance of criminalisation within migration laws and policies. In this context, scapegoating rhetoric is allowed to reach not only the public debate, but also the tables where policies are negotiated.

Moawia Ahmed, Director of the Greek Forum of Migrants, emphasised that migrants have become excluded from accessing public services, pushing them into destitution, exclusion and isolation. Despite recent positive developments in Greece, including initiatives of local solidarity that are now common in Athens, the country still lacks a coherent legal framework to address migrants’ social inclusion and integration.

Agendas at national and European level have paid little attention to the widespread human rights violations being experienced by Greek citizens, migrants and in particular those with irregular migration status. Greek civil society organisations supporting migrants do so under aggravated conditions due to budget cuts but also threats which sometimes require them to put their own lives in danger.

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1 See: UNHCR, 21 September 2010.
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2. Borders

How to Ensure Fundamental Rights?

Pressure from the European Union to secure the EU’s external borders and prevent irregular migration is placing a disproportionate responsibility on Greece as one of the EU’s main entry points for migrants.

Spyros Rizakos of the Greek NGO Aitima emphasised that the control and security-oriented approach, including increased surveillance and border controls, long term detention of migrants, and readmission agreements, is reflecting the priorities of European policies in the field of migration. The situation of criminalisation and violence against migrants in Greece illustrates the implications of policies and legislative measures adopted at EU level not only in relation to border and migration management, but also in relation to the adoption of extreme austerity measures and policy responses to the rise of racism and xenophobia.

Highlighting the key protections enshrined within the Charter of Fundamental Rights of the European Union and particularly its Article 2 on the right to life, Article 18 on the right to asylum and Article 19 ensuring protection in the event of removal, expulsion or extradition, Mr Rizakos stressed that current EU border control policies, seeking to prevent irregular entry without ensuring the protection of the right to life, are clearly in breach of the Charter.

The European Union must ensure full compliance with fundamental rights as part of its migration and border management policies. Practices which endanger the lives of undocumented migrants, such as “push-backs” and the violation of the principle of non-refoulement, shall be clearly prohibited; alleged violations of fundamental rights at the EU external borders must be investigated, and the protection needs of all migrants should be assessed and addressed.

He added that the Greek government, EU institutions and member states must take responsibility for addressing daily violations of human rights and other provisions of EU law in Greece. The EU and its member states should focus their support to the Greek government on upholding human rights of all migrants and beneficiaries of international protection, regardless of their administrative status, as well as to support well-functioning migration and asylum systems, rather than increasing border control and detention capacities.

“When we talk about Greece we talk about Europe. What happens in Greece defines Europe.”
- Spyros Rizakos, AITIMA
Matthieu Birker, Adviser at the Office of the Council of Europe Commissioner for Human Rights, noted that current European migration policy depicts migration primarily as a security concern. He added that collective expulsions of foreign nationals are prohibited by Article 4 of Protocol No 4 to the European Convention on Human Rights (ECHR), which dates back to 1963 and Greece has not yet acceded to it. Collective expulsions also raise serious concerns of compatibility with the fundamental principle of non-refoulement, enshrined in Article 33 of the UN Refugee Convention, of which Greece is a signatory.

He added that current EU border control policies are clearly in breach of migrants’ fundamental rights as established within the Charter of Fundamental Rights of the European Union.


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EU Migration Policy: A Push Back for Migrants’ Rights in Greece?

Competence for the management of the EU’s borders is shared between EU institutions and member states. The EU establishes a common policy framework and sets up tools for financial solidarity and mechanisms for technical cooperation (as, for example, Frontex and Eurosur). Human rights always have to be respected at the borders and as part of migration management.

Charmaine Hill, European Commission, DG Home, stressed that EU member states need to ensure that the individual protection needs of migrants seeking to enter the European Union are duly considered and addressed through a systematised procedure. Several measures have been taken towards ensuring fundamental rights of migrants at the external borders of the European Union, including Frontex’ adoption of a fundamental rights strategy, the appointment of a Fundamental Rights Officer and the establishment of a Consultative Forum in 2011. The effectiveness of these measures have yet to be assessed and fundamental rights safeguards should be further strengthened as, for example, through the establishment of an effective monitoring mechanism within the competence of the Fundamental Rights Officer.

Concerning procedures of returning migrants to their countries of origin, Fabian Lutz, European Commission, DG Home, noted that the European Commission supports the EU Fundamental Rights Agency’s (FRA) guidelines on “Apprehension of Migrants in an Irregular Situation – Fundamental Rights Considerations”. According to the guidelines, migrants should not be apprehended in health care centers, education facilities or when reporting crimes to the police. The EU Commission also favours alternatives to detention with the aim to use detention as a measure of last resort in line with the Returns Directive. These issues as well as the possibility for “non-removable” migrants to be granted residence status, are addressed as part of the European Commission Communication on EU Return Policy adopted on 28 March 2014.
Spyridon Voulgaris of the Hellenic Presidency of the European Union outlined the current situation of irregular migrants in Greece, the Greek experience in relation to the wider EU perspective, and the Hellenic Presidency’s focus on the issue of migration and mobility.

Greece has been a major entry point for irregular migrants to Europe, the majority of whom transited through Turkey. Greece has made progress with regards to its asylum system, implementing measures for reception and appeal. With regards to pushbacks, the Greek authorities are currently investigating allegations in order to challenge this issue in court. Clear political instructions have been issued by the authorities on how to conduct operations at borders and training is also provided. There have been cases in which agents involved in violations of migrants’ rights at the border were brought to justice and penalties were imposed.

However, irregular entry has not solely been an issue for Greece and should appeal to the principle of solidarity in the EU as a whole. This needs a comprehensive approach involving all EU institutions and agencies. Practical guidance for the application of the principle of solidarity is needed. This requires more than early warning mechanisms. Furthermore, migration should be embedded in EU foreign policy as there is a link between the internal and the external dimensions of migration and cooperation with third countries.

Mr Voulgaris added that migration and mobility has been a key focus of the Hellenic Presidency of the Council of the European Union which will end on 30 June 2014. This has included promoting the implementation of the common asylum system and the Global Approach to Migration and Mobility, including cooperation with third countries. The presidency has been working closely with the European Commission and other actors to adopt the strategic guidelines on the future of the EU’s Justice and Home Affairs policy.

Please note that the Greek Presidency representative used the term ‘illegal migrant’ when referring to irregular migrants but in accordance with the values of PICUM and internationally recognised standards related to human dignity and rights, this term has been changed to ‘irregular’ in the final text.
Several MEPs highlighted the shortcomings of current EU policies aimed at preventing irregular migration through increased securitisation of border controls.

Maria Eleni Koppa (S&D), argued that the European Union and its member states are currently deliberately avoiding to address the underlying problems and the root causes of blatant shortcomings in migration policies:

"We speak of the freedom of goods and capital, whilst we are hesitant about people. Not because life is priceless, but because it is low cost is often convenient and migrants don’t vote. Even in the context of liberal democracy and demographic stagnation, we essentially accept the possibility of slave workers and second class citizens. [...] We keep talking about our open, democratic and pluralistic European societies, but we accept the possibility of coexisting slave labour and second class citizens. Then we all “regret” the rise of the xenophobic, anti-European far right."

Ska Keller MEP (Greens/EFA), pointed out several EU policy areas where the trend of securisation together with the increasing criminalisation of irregular migration are most visible. According to Ska Keller, child detention is one of the key issues to be addressed as part of a fundamental rights compliant review of the Returns Directive. She also referred to the urgent need of reforming the Dublin regulations and to promote safe and regular routes for migrants to enter Europe.
3. Racist and Xenophobic Violence

Migrants who enter Greece face limited access to asylum procedures, few work opportunities and almost no recourse to public services or protection coupled with increasing discrimination, destitution and exclusion. This context has paved way for rising xenophobia and racist violence in the country to the extent of systematic, daily occurring, physical attacks against migrants. An alarming increase in xenophobic violence in Greece in the past years has been documented by various actors and civil society organisations, including the Racist Violence Recording Network.5

The economic crisis is seriously impacting the everyday lives of all residents and has increased the perception amongst the general population that migration intensifies competition for resources. This is exacerbated by the criminalising public and populist discourses in Greece. In this context, in early August 2012, the Greek government launched Police Operation Xenios Zeus aimed at cracking down on irregular migration and crime in Athens.

Between August 2012 and June 2013 - the most recent period for which government statistics are available - police stopped and detained in police stations a total of 123,567 third-country nationals for verification of their documents. Yet only 6,910 persons, or 5.6% of the total of those detained, were actually found to be residing irregularly in Greece, raising concerns about the use of discriminatory ethnic and racial profiling.

“Greece is a test case for the entire human rights structure of the EU”
- Eva Cossé, Human Rights Watch

Eva Cossé of Human Rights Watch highlighted frequent reports and testimonies about the police failing to intervene when perpetrators have attacked migrants, discouraging migrants from filing complaints or showing inaction in investigating the incidents.

Perpetrators are rarely arrested or prosecuted: to date there has been only one conviction of racially-aggravated crime under the 2008 statute on hate crimes. Numerous practical and administrative barriers prevented victims of racist attacks from effectively reporting a crime to the police and accessing justice. For example, the police discourage victims to file a complaint as the assailants cannot be recognised, invite victims to fight back or, in the case of undocumented migrants, inform them that they could be detained and deported. Victims who insist to officially report an attack to the police, are often told they must pay a 100 euro fee introduced in 2010 to discourage frivolous complaints.

5 See: Against Racism, UNHCR.
Noting the surge of racial violence against migrants in Greece, Christina Psarra, of Médecins du Monde Greece outlined how the organisation informs victims of violence and attacks on how to get help and ensures reporting through their programme “Enough!”.

Through the programme, they provided assistance to 75 victims of racist and xenophobic violence between January 2013 and February 2014 and recorded the following findings:

- 52.7% of the identified victims were undocumented and could not proceed with their claim;
- 4 victims were children;
- 4 of the recorded attacks took place inside police departments;
- The use of clubs, crowbars, chains, brass knuckles, knives, broken bottles, pepper sprays and dogs was frequently reported;
- All cases, except one, included more than one perpetrator.

Panelists discuss strategies to address xenophobic violence, racist attacks and hate crimes against migrants in Greece in the European Parliament in Brussels on 20 March 2014.
The European Commission's Framework Decision (2008/913/JHA) on combating certain forms and expressions of racism and xenophobia by means of criminal law was adopted by the Council in 2008. Article 4 of the Framework Decision states that member states must "ensure that racist and xenophobic motivation is considered an aggravating circumstance, or, alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties". However, the transposition of this article in domestic legislation has not always resulted in the thorough investigation of alleged hate motivated crime. In 2013, the European Commission analysed the legislation concerning racist and xenophobic speech and hate crime in all member states and subsequently published a comprehensive implementation report on 27 January 2014.¹

David Friggieri, DG Justice, European Commission underlined that, pursuant to the Lisbon Treaty, the Commission will have the power to launch infringement proceedings in relation to the incorrect or incomplete transposition of the Framework Decision, as of 1 December 2014. However, it is – and will remain - the competence of member states to investigate individual cases of racism and xenophobia on the ground. In relation to Greece, the absence of an institutional recording system for cases of racist and xenophobic crime represents a serious challenge to the correct implementation of the existing Greek legal framework, which is currently under review.

The EU Directive establishing minimum standards on the rights, support and protection of victims of crime 2012/29/EU (Victims’ Directive), provides a significant opportunity to advance access to rights and justice in Europe, including for undocumented migrants.

Denisa Fikarova, DG Justice (Seconded national expert), European Commission, commented on various provisions of the Victims’ Directive, notably on the scope of the Directive, including residence status of victims. All member states, except Denmark which opted out of the Directive, are required to transpose these rules into national law and practice by 16 November 2015. The authorities tasked with transposition of the Directive will need to introduce variety of measures into their national legal systems.
Miltos Pavlou, of the EU Agency for Fundamental Rights (FRA), noted that frontline practitioners are well aware of the challenges in combating hate crime but that legislation needs to provide tools to address them. Criminalisation of migrants in an irregular situation, for whom we need to ensure access to justice and protection from victimisation, is such a challenge.

The recognition of hate crime as a multi-faceted phenomenon threatening social cohesion and democracy is not always present – both in society and in the political sphere and leadership. By focusing on the case studies of Greece and Hungary, and through its work on hate crime, the FRA has provided a wide range of tools and policy proposals that may support member states to articulate much needed efficient responses. In the process of combating xenophobia, migrant integration is a key policy that may ensure equal participation in an inclusive society and foster sense of belonging based on shared values.

Kriton Arsenis MEP (S&D) warned about the environment of impunity which exists for perpetrators of crimes against migrants. The systematic failure of the police, judiciary and government to condemn and prosecute attacks further fuels acts of violence, racism and xenophobia enabled abuses to increase. These acts did not just go against migrants but also against peacefully protesting citizens.

Greek authorities had a duty to address impunity to end acts of violence effectively. However, the degree of violations of human rights of migrants in Greece is also due to other EU member states’ support of practices which allegedly deter irregular migration and leave the problem to the member states at the borders. This gap must be addressed at EU level to ensure lasting decrease of violations against migrants, particularly irregular migrants.
4. The Way Forward

Migrants’ rights advocates, migrants themselves and policymakers have stressed the urgent need for action to better ensure human rights of migrants in Greece. Solutions should be holistic and include EU policies as well as strengthening of Greek authorities and support of civil society organisations working on the ground.

At EU level this should involve an assessment of migration and asylum policies, justice policy and employment and social inclusion policy.

The European Union is currently developing strategic guidelines in the area of Justice and Home Affairs, which will largely define the future of EU policies on migration and asylum in the coming five years and will replace the current Stockholm Programme. This process provides a crucial opportunity to address the need to ensure the promotion of human rights as an integral part of EU migration policies. In this context, a thorough implementation of labour rights provided in the Employers’ Sanctions Directive (Directive 2009/52/EC) \(^6\) and transposition of the Victims’ Directive (Directive 2012/29/EU) are key.

The European Parliament could develop own initiative reports, using its budgetary oversight on agencies such as Frontex and the EU Agency for Fundamental Rights (FRA), and utilising its monitoring role to improve implementation of legislation.

Finally, the EU should encourage member states including Greece to explore alternatives to detention to end unlawful detention. The allowed limit of 18 month in migration detention should only be used in exceptional cases and that children and other vulnerable groups should never be detained.

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**Fundamental Rights and Apprehension Practices**

The EU Fundamental Rights Agency (FRA) - in cooperation with EU member states, the European Commission and PICUM - has developed operational guidance to assist member states in ensuring a clear separation or ‘firewall’ between undocumented migrants access to services and immigration enforcement.

The guidelines mark an important recognition of the other legitimate interests -such as fundamental rights, public health, reducing crime, and ensuring social policy coherence – that should be taken into account when enforcing immigration law.

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**Recommendations to the EU to Address Criminalisation and Racist Violence in Greece**

Organisations representing and working with migrants, asylum seekers and beneficiaries of international protection at EU level and in Greece have developed targeted recommendations towards European Union policymakers and other representatives of the EU institutions in March 2014.

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