Evidencing Pushbacks in Light of a Systematic Practice

ARE v Greece (App. No.15783/21) and GRJ v Greece (App. No.15067/21)

European Court of Human Rights (Third Section): Judgment of 7 January 2025 and Decision of 3 December 2024

Asylum seekers; Greece; Illegal entrants; Inhuman or degrading treatment or punishment; Refoulement; Right to effective remedy; Sufficiency of evidence

Introduction

In the jointly published landmark rulings *ARE v Greece* and *GRJ v Greece*, the European Court of Human Rights (ECtHR) has acknowledged Greece's long-standing practice of systematically pushing people back at its land and sea borders. Greece is only one of many states reported to routinely conduct pushbacks at its borders.[1] During pushbacks, people on the move are summarily forced back across or at a border and such border enforcement measures generally violate the principle of non-refoulement (art.3 of the European Convention of Human Rights (ECHR)) and/or the prohibition of collective expulsion (art.4 Protocol 4 ECHR).[2]

Both *ARE* and *GRJ* advance the Court's case law on evidentiary principles, beyond the context of pushback cases. This already became apparent during the joint Chamber hearing, which almost exclusively focused on evidence.[3] The fact that a hearing was held in itself indicates the importance of the cases, as Chamber proceedings are only conducted if required.[4] The joint hearing was not only the first Chamber hearing in a pushback case but also one of only 13 hearings held before a Chamber in the last decade.[5] The two rulings thoroughly engage with evidentiary questions in light of a systematic practice, specifying the standard of prima facie evidence in pushback cases, and promise to be significant in how pushbacks are adjudicated in the future.[6]

In pushback cases, evidentiary issues are of particular salience given their secretive nature and their immediate enforcement. Pushbacks, which happen covertly and on the spot, regularly prevent individuals from accessing domestic proceedings before the act of pushback. Subsequent domestic proceedings also frequently yield no result.[7] In the absence of (effective) domestic proceedings, the ECtHR has to establish the facts of a case by itself. Therefore, pushback cases before the ECtHR inevitably focus on facts, which

[1] See, for instance, the joint report of several NGOs, collecting numbers of incidents from various sources, *11.11.11. et al.*, "Pushed, Beaten, Left to Die, European Pushback Report 2024" (February 2025), *https://11.be/sites/default/files/2025-02/Pushbacks%20Report%202024.pdf* [Accessed 30 June 2025].

[2] The term "pushback" is not legally defined and is open to including differing practices. The ECtHR does not engage with the notion besides occasionally mentioning the term pushbacks, with the first such reference in *Hirsi Jamaa v Italy* (App. No.27765/09), judgment of 23 February 2012 (2012) 55 E.H.R.R. 21. In *ARE v Greece* (App. No.15783/21), judgment of 7 January 2025 (2025) 80 E.H.R.R. 18 and *GRJ v Greece* (App. No.15067/21), decision of 3 December 2024, the original French versions of the rulings refer to "refoulement (push-back)".

[3] The webcast of the Chamber hearing on 4 June 2024 is available here: *https://www.echr.coe.int/w/g.r.j.-v.-greece-and-a.e.-v.-greece?page_number_dda813fa-266b-87d3-e455-98da4d059f2c=1* [Accessed 30 June 2025].

[4] The Chamber may only summon a hearing "if it considers that the discharge of its functions under the Convention so requires": Rule 54(5) and Rule 59(3) of the Rules of Court. Generally see H. Keller and C. Heri, "Deliberation and Drafting: European Court of Human Rights (ECtHR)" (2018) *Max Planck Encyclopedia of International Procedural Law* [41].

[5] See for the list of hearings: *https://www.echr.coe.int/all-webcasts?page_number_53c584a0-e5ef-5350-0fb0-23f65902b087=8* [Accessed 30 June 2025].

[6] See for an examination on which this analysis builds, I. Kienzle and M. Riemer, "Feeble Recognition of a Systematic Pushback Practice: The latest ECtHR rulings on Greek pushback cases" (30 January 2025), *Verfassungsblog*, *https://verfassungsblog.de/pushbacks-echr-greece-turkiye/* [Accessed 30 June 2025].

[7] They are often discontinued due to an alleged lack of evidence, see for example *ARE* (App. No.15783/21), judgment of 7 January 2025 at [198].

is visible from the earliest cases.[8] In more recent case law, however, the Court has shifted towards very detailed assessments of evidence as well.[9]

Factual Background

The two cases address two different pushback practices prevalent in Greece.[10] While *ARE v Greece* deals with a pushback at Greece's land border to Türkiye along the Evros/Meriç river, *GRJ v Greece* concerns a pushback of a minor at sea from Samos, a Greek island in the Aegean Sea, to Türkiye. In the latter case, the applicant reports having been placed on a small inflatable raft on open sea, corresponding to a practice known as "drift-backs", reportedly adopted by Greece since 2020.[11] In the proceedings before the Court, Greece denied both applicants' accounts altogether and refuted the existence of a systematic pushback practice from Greece to Türkiye.

The applicant in *ARE v Greece* is a Turkish woman who had faced political persecution and a prison sentence of more than six years in Türkiye and complained about a pushback at the Evros/Meriç river in 2019. When she sought international protection in Greece, she was aware of the risk of being pushed back. As a precautionary measure, the applicant took numerous pictures and videos upon her arrival, established contact with a Greek lawyer, and shared her live location with her brother living in Greece.[12] Notwithstanding her efforts, the applicant was apprehended, detained and transported to the riverbank, during which the police took all her belongings, including her phone. At the river, the applicant, together with a group of other people on the move, was sent back to Türkiye on a small inflatable raft. Upon her arrival, the applicant was immediately arrested.[13]

In *GRJ v Greece*, the applicant, an Afghan minor, complained of a pushback in the Aegean Sea in 2020. The applicant reportedly arrived on the island of Samos by boat with a group of people. According to his statement, in Samos he went in the company of one other minor to a refugee camp, where he expressed his wish to apply for international protection and disclosed his age to Greek officers. In spite of this attempt, the Greek officers did not register the applicant. Instead, they took him on a coastguard vessel to Turkish territorial waters, where they confiscated the applicant's money and phone. Then they abandoned him and his companion at sea in an inflatable engine-less raft.[14]

The ECtHR's findings

In the judgment in *ARE v Greece*, the Court upheld most of the applicant's claims and concluded that there was a systematic practice of pushbacks from the Evros region to Türkiye. The ECtHR found that the applicant was pushed back to Türkiye after having been arrested and detained by the border police in Greece.[15] The applicant had lodged a domestic criminal complaint, which satisfied the requirement to exhaust domestic remedies, according to the Court. But, "in any case", as the Court held obiter dictum,[16]

[8] See *Khlaifia v Italy* (App. No.16483/12), judgment of 15 December 2016, one of the first pushback cases, where the Court blurred decisive factual questions with questions of law.

[9] See e.g. *MA v Cyprus* (App. No.39090/20), judgment of 8 October 2024; (2025) 80 E.H.R.R. 6, and the analysis in I. Kienzle and J. Kiessling, "Evidently unlawful, yet difficult to evidence: M.A. and Z.R. v. Cyprus advances Straßbourg's case law on pushbacks" (22 October 2024), *Strasbourg Observers*, *https://strasbourgobservers.com/2024/10/22/evidently-unlawful-yet-difficult-to-evidence-m-a-and-z-r-v-cyprus-advances-strasbourgs-case-law-on-pushbacks/* [Accessed 30 June 2025].

[10] See for reports on Greece's widespread pushback practices the material submitted to the ECtHR in *ARE* (App. No.15783/21), judgment of 7 January 2025 at [138]–[168] and *GRJ* (App. No.15067/21), decision of 3 December 2024 at [123]–[168].

[11] Forensic Architecture, "Drift-backs in the Agean Sea" (20 January 2024), *https://forensic-architecture.org/investigation/drift-backs-in-the-aegean-sea* [Accessed 30 June 2025].

[12] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [14]–[29]. See also the investigation by Forensic Architecture, "Pushbacks Across the Evros/Meriç River: The Case of Ayşe Erdoğan" (8 February 2020), *https://forensic-architecture.org/investigation/pushbacks-across-the-evros-meric-river-the-case-of-ayse-erdogan* [Accessed 30 June 2025].

[13] See *ARE* (App. No.15783/21), judgment of 7 January 2025 at [11]–[39].

[14] See *GRJ* (App. No.15067/21), decision of 3 December 2024 at [11]–[24].

[15] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [267].

[16] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [190].

no effective domestic remedy was available to the applicant prior to the pushback.[17] The ECtHR found that the pushback violated the principle of non-refoulement enshrined in art.3 ECHR and that the applicant was deprived of an effective remedy against the pushback, contrary to art.13 ECHR taken in conjunction with art.3 ECHR. According to the Court, the applicant's detention prior to the pushback constituted a violation of art.5 §§ 1, 2 and 4 ECHR, and the lack of an effective domestic remedy against arguable risks to life and of ill-treatment during the pushback amounted to a violation of art.13 ECHR in conjunction with arts 2 and 3 ECHR. In this regard, the majority did not find sufficient evidence for concluding a violation of art.2 and art.3 ECHR alone.[18]

Contrastingly, in the decision in *GRJ v Greece*, the Court rejected the application as inadmissible *ratione personae*.[19] In a preliminary establishment of facts, the Court acknowledged a systematic practice of pushbacks from Greek islands to Türkiye but found that the applicant had failed to provide prima facie evidence for his allegation of having been involved in the pushback incident at stake.[20]

The ECtHR's reasoning

The Court began its assessment in *GRJ v Greece* and *ARE v Greece* by stating that both cases arose in a very specific context and were distinct from other pushback cases as the respondent state entirely rejected the applicants' version of events—including the applicants' very presence on Greek territory—and firmly denied any involvement.[21] The state's complete denial of the applicants' version, according to the ECtHR, put the applicants in an intrinsically difficult evidentiary position, in which they may be "unable to establish the veracity of their account".[22]

The Court highlighted the "extremely delicate questions" concerning the establishment of facts that both cases raise.[23] Therefore, before assessing the evidentiary material provided to establish the facts, the ECtHR engaged with the existence of a systematic pushback practice, noting that for individual cases determining whether a systematic practice existed—albeit not required for proving a specific incident—may "help the Court to take account, where appropriate, of the general context".[24] For the first time, the Court explicitly concluded that at the time of the events in question such a practice existed. To support this finding, it directly referred to "the large number, diversity, and concordance of the relevant sources", including reports from independent national institutions.[25]

At the same time, the ECtHR stressed that the systematic practice alone did not suffice to prove a specific pushback case and that applicants bear the burden to provide prima facie evidence in support of their allegations.[26] The Court has previously explained the application of this lower standard of proof in cases of secret detention and enforced disappearances as well as in many pushback cases by citing (in the latter case) the "lack of identification and personalised treatment" which poses evidentiary challenges for applicants.[27] According to both rulings, this generally means that the applicant needs to provide a "detailed, specific and coherent account" following which the burden of proof would shift to the respondent state.[28] In the context of a systematic practice, both rulings now refine this standard by requiring that the applicants

[17] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [191]–[193].
[18] Six out of seven judges voted for this finding. As made transparent in his partial dissenting opinion, Judge Serghides dissented on this point.
[19] *GRJ* (App. No.15067/21), decision of 3 December 2024 at [226].
[20] *GRJ* (App. No.15067/21), decision of 3 December 2024 at [190] (systematic practice) and [225] (prima facie evidence).
[21] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [204]–[207]; *GRJ* (App. No.15067/21), decision of 3 December 2024 at [169]–[172].
[22] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [218]; *GRJ* (App. No.15067/21), decision of 3 December 2024 at [183].
[23] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [204]; *GRJ* (App. No.15067/21), decision of 3 December 2024 at [169].
[24] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [217]; *GRJ* (App. No.15067/21), decision of 3 December 2024 at [182].
[25] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [226]–[229]; *GRJ* (App. No.15067/21), decision of 3 December 2024 at [187]–[190].
[26] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [217]; *GRJ* (App. No.15067/21), decision of 3 December 2024 at [182].
[27] See *ARE* (App. No.15783/21), judgment of 7 January 2025 at [214]; *GRJ* (App. No.15067/21), decision of 3 December 2024 at [179].
[28] *ARE* (App. No. 15783/21), judgment of 7 January 2025 at [214]; *GRJ* (App. No.15067/21), decision of 3 December 2024 at [179].

> "must establish that the alleged refoulement is linked to this practice *by supporting their account*—which must also be detailed, specific and coherent, i.e. free of contradictions—*with concrete, comprehensive and concordant evidence*."[29]

In both cases, the ECtHR found a link between the recognised systematic practice and the applicants' version of facts, since the modus operandi of the practice as described in various reports corresponded to the course of the events described by the applicants.[30] The Court then specified which elements of the alleged incident the applicants had to substantiate, namely: (1) their entry into the territory of Greece; (2) their subsequent presence in Türkiye; and (3) the link between these two facts.[31] In this context, the Court explicitly recognised the evidentiary difficulties in proving pushbacks:

> "even when it is established that a person entered Greece on a given date and found [themselves] in Turkey the following day, it is *extremely difficult to prove* what happened in the meantime, and in particular that the person concerned was returned to Turkey by agents of the respondent State, given the *by definition secret and unofficial nature* of the actions in question."[32]

However, only in *ARE v Greece* did the Court conclude that the applicant's submission met the threshold of prima facie evidence, and accordingly shift the burden of proof to the respondent state, which in response failed to refute the applicant's arguments.[33] To reach this conclusion, the ECtHR assessed extensive material evidence,[34] including documentary evidence, such as a ruling by the Izmir Criminal Court issued upon the applicant's arrest in Türkiye after the pushback, testimonies of a Greek lawyer and a Greek journalist, as well as audiovisual material submitted by the applicant.[35] The latter encompassed, inter alia, screenshots of messages that the applicant had sent to her brother while entering Greece, photographs of the applicant in Greece, and messages exchanged with the Greek lawyer who also took a photo of the applicant.[36]

The Court noted that no "direct evidence" of the pushback existed but acknowledged that

> "such evidence would have been impossible to adduce in the particular circumstances of the case, particularly in view of the fact that the applicant was no longer in possession of her cell phone at the time of her [pushback]".[37]

The ECtHR attached particular weight to the fact that the applicant was last seen in custody in Greece by the Greek lawyer and that the ruling of the Izmir Criminal Court confirmed her reappearance in Türkiye the following day. Thus, the Court could infer that she was pushed back in the meantime, especially since Greece did not provide a convincing alternative explanation as to what else might have happened during that period.[38]

In *GRJ v Greece*, the Court found that the applicant had not adduced prima facie evidence of his presence in Greece and of his pushback to Türkiye, considering that the applicant's statements and allegations appeared at times contradictory and inconsistent.[39] The ECtHR again assessed extensive material evidence,[40]

[29] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [217]; *GRJ* (App. No.15067/21), decision of 3 December 2024 at [182] (emphasis added).
[30] *ARE* (App. No. 15783/21), judgment of 7 January 2025 at [230]; *GRJ* (App. No.15067/21), decision of 3 December 2024 at [191].
[31] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [230]; *GRJ* (App. No.15067/21), decision of 3 December 2024 at [191].
[32] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [230]; *GRJ* (App. No.15067/21), decision of 3 December 2024 at [191] (emphasis added).
[33] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [265].
[34] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [232]–[264].
[35] See *ARE* (App. No.15783/21), judgment of 7 January 2025 at [232]–[264].
[36] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [244].
[37] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [266].
[38] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [266].
[39] *GRJ* (App. No.15067/21), decision of 3 December 2024 at [255].
[40] *GRJ* (App. No.15067/21), decision of 3 December 2024 at [193]–[224]. For a detailed analysis of the Court's assessment of the pieces of evidence submitted, see V. Azarova and N. Maguglianisee, "EU border violence at the European Court of Human Rights: Reflections on G.R.J. v Greece" (10 February 2025), *de:border // migration justice collective*, *https://debordercollective.org/updates/border-violence-ecthr-reflections-grj-greece/* [Accessed 30 June 2025].

including documentary evidence, such as the Turkish and Greek coastguards' register of events, audiovisual material such as photographs and videos taken upon arrival on Samos and photographs of another minor who had travelled with the applicant and was also pushed back with him, testimonies of people whom the applicant had met on Samos, and a report by the National Transparency Authority.[41]

Despite the variety of evidence, the Court concluded in *GRJ v Greece* that the material submitted by the applicant did not corroborate his account.[42] The ECtHR emphasised "that it does not rule out the possibility that, on the dates alleged, a group of people, including minors, arrived in Samos, and that two of the minors were deported to Türkiye" but held that the evidence did not allow it to establish "beyond reasonable doubt" that the applicant was among them.[43]

While Greece had questioned the probative value of the applicant's audiovisual material and the parties' submissions placed significant emphasis on the possible assessment of digital evidence—with or without metadata—the Court refrained from deciding on this matter. In *GRJ v Greece*, it considered that the material did not corroborate the applicant's account in any case, and in *ARE v Greece*, it found abundant supporting evidence.[44]

Joint Analysis

For people seeking legal remedies against pushbacks from Greece, the ECtHR paves the way by recognising a systematic practice of pushbacks in Greece—though without articulating the evidentiary consequences of such recognition (1.). The Court further refines evidentiary standards, but confuses certain aspects, leaving scope for misunderstandings (2.).

1. Evidence assessment without consideration of the systematic practice

The ECtHR addressed Greece's systematic pushback practice at the beginning of the factual assessment before examining any evidence. However, the Court's reasoning missed factoring in the established systematic practice when analysing the evidence provided. In other words, the Court only paid lip service to the finding of a systematic practice of pushbacks. For establishing the facts of the individual incidents the systematic practice did not make any noticeable difference in the Court's reasoning.

For the applicants, this development may be detrimental compared to prior case law. In previous rulings the Court did not explicitly recognise a systematic practice but nevertheless took it into account when assessing the evidence in a concrete case. In *MA and ZR v Cyprus*, for instance, a recent pushback case where the parties agreed that the pushback had happened but disagreed on whether or not the applicants had sought international protection, the Court found prima facie evidence that the applicants had expressed their wish to apply for asylum, considering inter alia various reports on similar incidents.[45] In *MK v Poland* and subsequent case law concerning pushbacks at official border crossing points, the state disputed that the applicants had expressed their wish to apply for asylum. The Court attached more weight to the applicants' account because it considered their version of facts to be corroborated by reports that "indicate[d] the existence of a systemic practice of misrepresenting the statements given by asylum-seekers in the official notes".[46]

[41] *GRJ* (App. No.15067/21), decision of 3 December 2024 at [193]–[244]. The National Transparency Agency is an authority in Greece mandated to investigate allegations of incidents involving human rights violations at the borders, whose independence was called into question by the applicants in both cases. For establishing a systematic practice, the Court noted this critique and concluded that the Agency's contrasting report did not refute the other sources indicating a systematic practice, at [189].

[42] See *GRJ* (App. No.15067/21), decision of 3 December 2024 at [193]–[225].

[43] *GRJ* (App. No.15067/21), decision of 3 December 2024 at [223].

[44] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [255]; *GRJ* (App. No.15067/21), decision of 3 December 2024 at [217].

[45] *MA* (App. No.39090/20), judgment of 8 October 2024 at [85]–[86].

[46] *MK v Poland* (App. Nos 40503/17 and others) judgment of 23 July 2020 at [174]; *DA v Poland* (App. No.51246/17), judgment of 8 July 2021 at [60]; *AB v Poland* (App. No.42907/17), judgment of 30 June 2022 at [35]; *AI v Poland* (App. No.39028/17), judgment of 30 June 2022 at [38].

In contrast, in *ARE v Greece* and *GRJ v Greece*, the Court examined the material submitted against the threshold of prima facie evidence, regardless of the established systematic practice. By way of reminder, the ECtHR identified three factual elements for substantiating a pushback: (i) the entry into the territory; (ii) the subsequent presence in the third country; and (iii) a link between these two facts.[47] However, the Court could have invoked the systematic nature of the practice in at least two ways when assessing the individual incidents that correspond to this practice in light of the evidentiary challenges that it had previously highlighted.

First, where an applicant succeeds in substantiating their presence in both countries between which the pushback allegedly took place, the systematic practice of pushbacks should serve as the link between both events instead of requiring additional evidence from the applicants for the pushback action itself. As the Court itself recognised in both rulings, the applicant may otherwise be unable to prove this link given the "by definition secret and unofficial nature" of pushbacks[48] and the state's denial of the practice.[49]

Second, the systematic nature of the practice should be of use in proving the first element, that is the entry into and presence on a state's territory. The context of a systematic practice that includes non-registration of arrivals and measures to prevent evidence collection, particularly by confiscating phones, supports the applicants' corresponding account. Therefore, a detailed, specific, and coherent account in line with a proven systematic practice should satisfy the threshold of prima facie evidence.

Additionally, Greece misleadingly denied its systematic pushback practice, which conflicts with the state's obligation to cooperate with the Court (art.38 ECHR). However, the Court did not consider this fact when addressing Greece's denial of the individual pushback. Instead, it should have drawn adverse inferences from this conduct which can arguably be considered a failure to participate effectively (Rule 44C(1) of the Rules of Court).[50] The Court could have, for instance, attached even more credibility to the applicants' account in this manner.

2. Evidentiary standards refined yet inconsistently applied

With both rulings, the ECtHR refines evidentiary standards regarding pushback cases. However, the Court's approach to establishing the facts of the cases remains inconsistent and imprecise. In *GRJ v Greece*, for example, when assessing whether the applicants had submitted prima facie evidence, the Court did not begin with the applicant's description of the event to assess this account in light of corroborating or contradicting evidence, but instead started with asking if the applicant was involved in one particular incident recorded by Greece.[51] Additionally, before finding prima facie evidence and shifting the burden of proof to the state, the Court already took into account evidence submitted by the state to contest the evidence adduced by the applicant.[52] This is inconsistent with the fact that in assessing whether the applicant has provided prima facie evidence, only the applicant's submission should be taken into account. The burden of proof shifts to the state only once the ECtHR has found prima facie evidence supporting the applicant's allegations. It is only at this stage that the allegations and evidence submitted by the state become relevant for refuting the applicant's version of the facts.

[47] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [230]; *GRJ* (App. No.15067/21), decision of 3 December 2024 at [191].
[48] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [230]; *GRJ* (App. No.15067/21), decision of 3 December 2024 at [191].
[49] *See ARE* (App. No.15783/21), judgment of 7 January 2025 at [218]; *GRJ* (App. No.15067/21), decision of 3 December 2024 at [183].
[50] Rule 44A and Rule 44C of the Rules of Court apply not only where states refuse to cooperate entirely but also where states fail to participate "effectively". Providing the Court with incorrect statements can arguably be categorised as a failure to participate effectively. In *ARE v Greece* and *GRJ v Greece*, the respondent state disputed the factual allegations on the incident as well as the general practice and argued against the plausibility of the alleged incident. It asserted that there was no such practice, despite abundant evidence to the contrary. See *ARE* (App. No.15783/21), judgment of 7 January 2025 at [57], [63]; *GRJ* (App. No.15067/21), decision of 3 December 2024 at [42]–[43].
[51] *GRJ* (App. No.15067/21), decision of 3 December 2024 at [194].
[52] The evidentiary assessment is titled "On the evidence provided by the applicant and the other documents in the file", *GJR* (App. No.15067/21), decision of 3 December 2024 at [191]–[224].

Another example of judicial inconsistency is how the ECtHR specifies the relevant standard of proof. The Court first claimed that the applicant's "detailed, specific and coherent account" sufficed for prima facie evidence.[53] Only a few paragraphs later and without further explanation, the Court deviated from this guideline when requiring that the applicants supported their account with "concrete, comprehensive and concordant evidence".[54] In prior pushback case law regarding Greece, for prima facie evidence the Court has considered sufficient a "detailed, specific and coherent" account, "particularly" where there was concordant evidence.[55] In most other pushback cases, the Court did not specify what was needed for a prima facie case to be established, but routinely assessed supporting evidence alongside the applicants' statements.[56] What is novel in *ARE v Greece* and *GRJ v Greece* is that the Court not only assessed supporting evidence that was submitted but declared such evidence necessary for a prima facie case to "establish that the alleged refoulement is linked to this practice".[57]

However, this requirement, if taken verbatim, asks for supporting evidence only for the link to a systematic practice, albeit it clearly aims at refining the threshold of prima facie evidence more generally. As the ECtHR has explained elsewhere, the link of an incident to a systematic practice exists once the incident fits into the modus operandi.[58] While the Court has previously assessed supporting evidence in prima facie cases, it now considers this evidence mandatory and requires it to be concrete, comprehensive, and concordant. Instead of invoking the systematic practice for finding a prima facie case, the Court seems to raise the standard in light of such practice. These additional requirements blur the distinction between the lower standard of adducing prima facie evidence and the regular standard of proof "beyond reasonable doubt".

With this refinement of prima facie requirements, the ECtHR follows a straw man argument introduced by the state: Greece claimed that due to the (purportedly false) abundant reports on pushbacks, anyone could simply repeat the modus operandi described in the reports. The Court seems to have felt compelled to highlight that "in the absence of any detailed evidence, any third-country national could claim to be victim of a breach of the Convention by basing their account on the practice described in reports",[59] revealing a general distrust in people on the move. However, the fact that an individual incident corresponds to a proven practice increases the likelihood that the events took place and makes the corresponding submission more credible. Certainly, stating an incident that fits into the modus operandi of a systematic practice alone does not constitute full evidence but this may satisfy the prima facie threshold upon which the burden of proof shifts to the state.

Further, in *ARE v Greece*, the ECtHR conflates different standards of proof. At first, the Court explains that in light of particular evidentiary difficulties, prima facie evidence is the standard of proof that the applicant has to meet before the burden of proof shifts to the state. The Court begins to examine whether the evidence would meet this threshold.[60] However, in this meticulously documented pushback, the applicant succeeded in submitting "a number of elements which, *even taken separately*, could constitute prima facie evidence in favour of her version of the events".[61] Thus, considering the totality of evidence submitted, albeit without direct evidence for the pushback incident itself, the Court concluded that the events were established "beyond reasonable doubt".[62]

[53] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [214]; *GRJ* (App. No.15067/21), decision of 3 December 2024 at [179].
[54] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [217]; *GRJ* (App. No.15067/21), decision of 3 December 2024 at [182].
[55] *BY v Greece* (App. No.60990/14), judgment of 26 January 2023 at [79], citing, inter alia, *El Masri v the former Yugoslav Republic of Macedonia* [GC] (App. No.39630/09), judgment of 13 December 2012 at [156].
[56] For example, *ND and NT v Spain* (App. Nos 8675/15 and 8697/15), judgment of 13 February 2020 at [85]–[86]; *AA v North Macedonia* (App. Nos 55798/16 and others), judgment of 5 April 2022 at [55].
[57] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [217]; *GRJ* (App. No.15067/21), decision of 3 December 2024 at [182].
[58] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [230]; *GRJ* (App. No.15067/21), decision of 3 December 2024 at [191].
[59] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [218]; *GRJ* (App. No.15067/21), decision of 3 December 2024 at [183].
[60] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [231].
[61] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [265] (emphasis added).
[62] *ARE* (App. No.15783/21), judgment of 7 January 2025 at [267].

Both steps are in themselves coherent: *first*, to lower the required standard to prima facie evidence and *second*, to conclude the evidentiary assessment with finding evidence "beyond reasonable doubt". The exceptionally abundant evidence submitted in *ARE v Greece* must in fact be considered full evidence for proving the pushback beyond reasonable doubt. Unfortunately, the judgment lacks clarity on this point and its ambiguous statements require a close reading. It risks an interpretation that all the evidence submitted was necessary for satisfying the threshold of prima facie evidence, thereby unintentionally setting a high standard for the prima facie threshold. The Court should have made very explicit that the applicant provided not only prima facie evidence but also evidence beyond reasonable doubt.

In *GRJ v Greece*, this ambiguity leads the ECtHR to conclude that "the evidence in the file does not enable it to establish beyond reasonable doubt that the applicant was part of [a pushback]".[63] This is despite the fact that the Court in the decision initially referenced prima facie evidence as the relevant standard of proof at the beginning of the evidence assessment.[64] While the evidence submitted by the applicant may indeed have fallen short of meeting the beyond reasonable doubt threshold, it should have been considered sufficient to satisfy the prima facie standard. At the very least, the Court should have referred to the correct standard when reaching its conclusion.

Relevance for upcoming ECtHR and CJEU rulings on pushbacks

While *BY v Greece*[65] is the only classic pushback case against Greece that the ECtHR had decided prior to *ARE v Greece* and *GRJ v Greece*, numerous cases on alleged pushbacks both on land and at sea against Greece are pending before the Court. The degree of evidentiary scrutiny applied in both cases under analysis will further shape future rulings, including the momentous cases against Poland,[66] Lithuania,[67] and Latvia[68] pending before the Grand Chamber. All three concern pushbacks to Belarus in the debated political context of Belarus facilitating arrivals to the borders and hindering people from re-accessing Belarus after having been pushed back (so-called "instrumentalised" migration). The oral hearings in these cases showed a willingness of the Court to rule on substantive legal questions instead of only engaging with questions on facts.[69] While the EU Commission joined in the states' attempt to normalise pushbacks and search for legal justifications for severe human rights violations,[70] the CJEU's Grand Chamber is also concerned with pushback allegations against Frontex that raise complex evidentiary questions.[71]

In sum, in *ARE v Greece* and *GRJ v Greece* the ECtHR finally recognised Greece's systematic pushback practice and identified considerable evidentiary difficulties for the applicants to prove a pushback for two

[63] *GRJ* (App. No.15067/21), decision of 3 December 2024 at [223].
[64] *GRJ* (App. No.15067/21), decision of 3 December 2024 at [192].
[65] *BY* (App. No.60990/14), judgment of 26 January 2023.
[66] *RA v Poland* (App. No.42120/21), pending.
[67] *COCG v Lithuania* (App. No.17764/22), pending.
[68] *HMM v Latvia* (App. No.42165/21), pending.
[69] For a closer examination of the hearings see A.J. Beuscher et al, "The Claim of Hybrid Attacks: Balancing State Sovereignty and Migrants' Rights at the European Court of Human Rights" (21 February 2025), *Verfassungsblog*, *https://verfassungsblog.de/hybrid-attacks/* [Accessed 30 June 2025]; G. Baranowska, "What—if any—are the consequences of the 'instrumentalization of migration' for human rights protection under the ECHR? A look at the arguments raised at the ECtHR Grand Chamber hearing on pushbacks to Belarus" (4 March 2025), *Strasbourg Observers*, *https://strasbourgobservers.com/2025/03/04/what-if-any-are-the-consequences-of-the-instrumentalization-of-migration-for-human-rights-protection-under-the-echr-a-look-at-the-arguments-raised-at-the-ecthr-g/* [Accessed 30 June 2025]; A. Ancite-Jepifánova, "From the EU-Belarus Border to Strasbourg, The Cases on 'Migrant Instrumentalisation' Before the ECtHR" (3 March 2025), *Verfassungsblog*, *https://verfassungsblog.de/eu-belarus-border-migrant-instrumentalisation/* [Accessed 30 June 2025]; J. Klüger, "What is the Future of the Prohibition Against Collective Expulsion in the European Human Rights Legal Framework?" (12 March 2025), *EJIL: Talk!*, *https://www.ejiltalk.org/24558-2/* [Accessed 30 June 2025].
[70] See in particular EU Commission, Communication on countering hybrid threats from the weaponisation of migration and strengthening security at the EU's external borders, COM(2024) 570 (11 December 2024), *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2024:570:FIN* [Accessed 30 June 2025]. For a critical analysis, see M. Stiller, "How the EU Commission Backs up Pushbacks at the EU-Belarussian Border" (7 January 2025), *Verfassungsblog*, *https://verfassungsblog.de/how-the-eu-commission-backs-up-pushbacks-at-the-eu-belarussian-border/* [Accessed 30 June 2025].
[71] See for a comparative analysis of pending ECtHR and CJEU pushback cases focusing on evidence, J. De Coninck, "The Binoculars at the Borders of Europe: On Evidentiary Rules and Human Rights Protection" (19 February 2025), *Verfassungsblog*, *https://verfassungsblog.de/binoculars-at-europes-borders/* [Accessed 30 June 2025].

reasons: (i) the "by definition secret and unofficial nature" of pushbacks, which implies that states omit to document pushback practices and prevent the collection of evidence of such practices by others; and (ii) the state's conduct during the proceedings, of denying the alleged facts in their entirety.

Nonetheless, the ECtHR did not properly take into account the systematic practice for finding prima facie evidence and did not draw adverse inferences from the state's obstructive conduct during the proceedings. Instead, the Court outlined onerous requirements for prima facie evidence and blurred the distinction between prima facie evidence and evidence "beyond reasonable doubt". One can only hope that the ECtHR will correct this in future cases. Otherwise, it will become even more challenging for applicants to evidence pushbacks and to hold states accountable for such severe human rights violations.

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