Annual Trial Monitoring Report 2025

The Application of Fair Trial Standards in "Smuggling" Cases at the Greek Frontier

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Border Violence Monitoring Network

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The Application of Fair Trial Standards in "Smuggling" Cases at the Greek Frontier

Border Violence Monitoring Network and CPT - Aegean Migrant Solidarity

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Monitoring Network

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Contents

Abbreviations

BVMN: Border Violence Monitoring Network

CCP: Greek Code of Criminal Procedure

CESEDA: Code de l'entrée et du séjour des étrangers et du droit d'asile (French Code on the Entry and Residence of Foreign Nationals and the Right of Asylum)

CJEU: Court of Justice of the European Union

CPT - AMS: Community Peacemaker Teams - Aegean Migrant Solidarity

ECHR: European Convention on Human Rights

EPRS: European Parliamentary Research Service

ECtHR: European Court of Human Rights

EU: European Union

HRLP: Human Rights Legal Project

ICCPR: International Covenant on Civil and Political Rights

LCL: Legal Centre Lesvos

NGO: Non-Governmental Organisation

ODHIR: Office for Democratic Institutions and Human Rights

PC: Greek Penal Code

SAR: Search and Rescue

UN: United Nations

Glossary

Conversion of imprisonment into community service (Metatropi Pinis): Prison sentences up to 2 years may be converted into community service, provided the convicted person consents. Each day of imprisonment corresponds to a maximum of 2 hours of service, up to 1,200 hours (or 3,600 for cumulative sentences) with a maximum duration of 3 years.

Conversion of imprisonment into fine (Exagora Pinis): Custodial sentences up to 2 years may be converted into a monetary penalty (10–100 € per day) unless the court decides that actual imprisonment is necessary to prevent reoffending. Payment can be made in installments (up to 3 years, or exceptionally 5) or partly replaced with community service.

Criminal Conviction (Ametakliti Poiniki Katadiki): The defendant is deemed irrevocably guilty of the acts for which they were convicted and cannot appeal either at the first or second instance. Such a conviction is particularly significant for asylum and residency matters, as applicants must not have a criminal record. Furthermore, deportation measures may follow after the sentence has been served.

Felony (Kakourgima): A crime punishable by longer sentences than misdemeanors

'Filakisi': A custodial sentence ranging from 10 days to 5 years, imposed primarily for misdemeanors (Plimmelimata).

Interruption (Diakopi): The court temporarily suspends the ongoing trial and sets a new, close date for continuation keeping the same court composition. It may indicate that the trial has already started or is awaiting the conclusion of another case or cases. The new date is usually within a month or even within a few days.

Judicial Charter (Dikastikos Chartis): The geographical distribution and jurisdiction of courts within a country or region. It helps illustrate where different types of courts are located and their territorial competence.

'Kathirksi': A severe custodial sentence in criminal law, imposed for felonies. It is divided into temporary (usually 5–15 years, but can reach the maximum prison sentence) and life imprisonment.

Misapprehension of Law (Nomiki Plani): An incorrect understanding or interpretation of the law by a defendant or court. In criminal law, it may affect liability if the person genuinely did not know that their conduct was prohibited, though its legal significance depends on whether the mistake is excusable under applicable law.

Misdemeanor (Plimmelima): A minor offence punishable by imprisonment.

Mitigating circumstances (Elafrintika): Grounds that allow a court to reduce the penalty, such as prior honest life, non-base motives, remorse, good behavior, experiencing an excessively long trial that was not the defendant 's fault or for young adults under the age of 21.

Plea Deal (Poinikí Diapragmatefsi): A form of criminal negotiation whereby the defendant, for most prosecutable crimes, admits guilt and agrees with the prosecutor on the penalty. The court then confirms the agreement, ensuring the sentence does not exceed the negotiated limits. A plea deal results in a final (non-appealable) criminal conviction (ametakliti poiniki katadiki), meaning the defendant is considered guilty as charged and cannot appeal in any degree.

Postponement (Anavoli): The court delays a trial to a later date for valid reasons (force majeure, serious health issues, etc). The new date is usually within 8 months, and the court composition may change, with absent parties formally summoned.

Substantive Claims (Aytotelis Ischirismi): Defence legal arguments raised independently of the refusal of guilt which, if upheld, lead on their own to the lifting of criminal liability, mitigation of punishment, or acquittal. They must be raised expressly and in due time, and courts are required to address them with specific reasoning.

Suspension of sentence (Anastoli Ektelesis Pinis): After imposing a custodial sentence (usually up to 3 years) the court may suspend its execution for 1–3 years if it finds that serving the sentence is not necessary to prevent reoffending. The suspension can be conditional, with obligations such as compensation, program participation or reporting duties.

Suspensive effect of appeal (Anastaltiko Apotelesma Efesis): An appeal may suspend the execution of a conviction. For imprisonment sentences it usually has automatic effect, while for felonies the trial court decides. Suspension may be subject to conditions (e.g. bail, electronic monitoring) and can be denied if there is flight risk or danger of reoffending.

Relevant Legislation

International Covenant on Civil and Political Rights (ICCPR): A UN treaty that protects fundamental rights such as liberty, fair trial, freedom from torture, and equality before the law.

European Convention on Human Rights (ECHR): A Council of Europe treaty that guarantees human rights in Europe and allows individuals to bring cases before the European Court of Human Rights.

Greek Penal Code (PC): The collection of provisions of Greek law that defines criminal offences and sets out the penalties for committing them.

Greek Code of Criminal Procedure (CCP): The law that regulates how criminal cases are investigated, prosecuted, and tried in Greece, including the rights of suspects and defendants.

Entry, residence, and social integration of third-country nationals in the Greek Territory (Law 3386/2005): The law that governs the entry, stay, and social integration of third-country nationals (i.e. non-EU citizens) in Greece.

Greek Asylum Code Law (4939/2022): The law regulating asylum procedures in Greece, including how applications are examined and the rights and obligations of asylum seekers.

Greek Migration and Social Integration Code (Law 5038/2023): Greek legislation governing entry, residence, return, and integration of third-country nationals in Greece.

Refugee Convention 1951: The 1951 Convention provides the internationally recognized definition of a refugee and outlines the legal protection, rights and assistance a refugee is entitled to receive.

Procedural Stages in Greek Criminal Justice

The criminal proceedings followed after the arrest and during the trial of alleged "smugglers": the pre-trial procedure, the trial (hearing) procedure, the remedies, and the execution of judgments.

Stage 1: Arrest

Arrest (Silipsi): The detention of a person suspected of committing a crime, either immediately (in immediate offences) or via a judicial warrant, to present them before the authorities.

In flagrante delicto / Immediate offense (Aftoforo): A crime where the perpetrator is caught in the act, pursued immediately afterward, or apprehended within 48 hours with evidence linking them to the crime. In the case of immediate offences, felonies and misdemeanors, the respective authorities apprehend the perpetrator to ensure the immediate presentation before the Public Prosecutor (within 24 hours from the arrest).

Stage 2: Pre-trial proceedings

Main Investigation (Anakrisi): The main investigation is the stage of criminal proceedings where **the investigating judge (Anakritis)** conducts an in-depth inquiry into the case (collecting evidence, questioning witnesses, and hearing the accused) based on a written order from the prosecutor, mainly for felonies or serious misdemeanors.

Immediately after the accused's statement, the investigating judge together with the prosecutor decide whether to release the person(s) or sent on **Pre-Trial Detention (Prosorini Kratisi)**, taking into account the written opinion of the prosecutor. Any disagreement between the investigating judge and the prosecutor is resolved by the **judicial council (Dikastiko Symvoulio).**

The confinement of the accused before trial, usually ordered due to risk of flight or reoffending. In Greece, it can last up to 18 months.

Stage 3: Court hearing / Trial procedure

Court hearing procedure (Akroatirio): The hearing begins with the reading of the names of the parties, witnesses, and, if applicable, other persons such as experts or technical advisers. Objections and preliminary claims are then raised, followed by the examination of witnesses, submission of documents by the parties, the defendant's statement, the prosecutor's submission, and the parties' lawyers' arguments. Finally, the court issues its decision. The procedure is public (except in exceptional cases) and oral. The court panel consists of one or three judges (depending on the court) and the prosecutor, who does not participate in the decision but gives an opinion based on their judgment before the ruling.

Decision/judgment (Apofasi): A criminal court's ruling on the defendant's guilt, the offense's characterisation, the sentence, and any penalties or security measures. May include preparatory (interim) decisions to resolve incidental matters (e.g. requests for trial postponement).

Stage 4: Legal Remedies

Appeal (Efesi): A legal procedure by which a party requests a higher court to review and change the decision of a lower court. The higher court cannot impose higher charges nor penalties than the first instance court, if the appeal is submitted by the defendant or his counsel (non reformatio in peius).

Cassation appeal (Anairesi): A legal remedy limited to final judgments, submitted to the Supreme Court (Areios Pagos). It aims to review legal or procedural errors rather than re-examine the facts. It may result in the annulment and remittal of the case or the confirmation of the judgment.

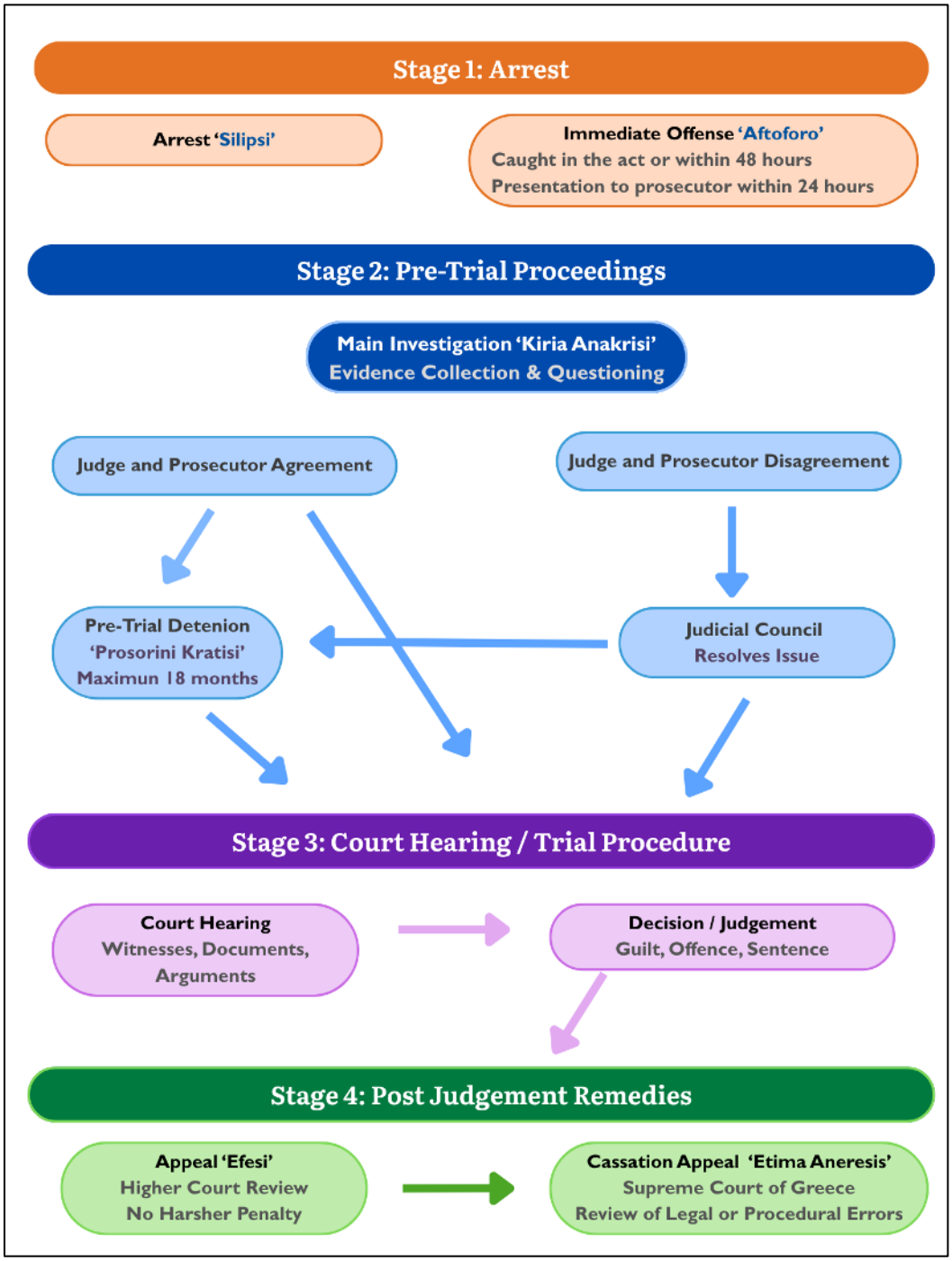

Figure 1. Procedural Stages of "Smuggling Cases" in the Greek Criminal Justice

Executive Summary

The Annual Trial Monitoring Report by Border Violence Monitoring Network (BVMN) and Community Peacemaker Teams - Aegean Migrant Solidarity (AMS) compiles findings from the monitoring of criminal trials against migrants charged with illegally transporting third-country nationals who did not have the right to enter the country (smuggling) during the period January-October 2025. The report examines the compliance of the monitored trials with fair trial standards and guarantees, places the findings in the broader national and EU context of the criminalization of migration, and examines the impact of these prosecutions. Based on quantitative data and broader observation within courtrooms and **123 cases involving 190 defendants,** it highlights systemic patterns that raise serious concerns about compliance with international and national fair trial standards.

The first pillar of the report outlines the applicable international and domestic legal framework governing the right to a fair trial, including Article 6 European Convention on Human Rights, Article 14 International Covenant on Civil and Political Rights and the substantive and procedural provisions of the Greek criminal law embedded in the Migration Code in conjunction with the Penal Code and Code of Criminal Procedure. It further situates these safeguards within the broader EU context through a comparative review of "smuggling-related" offences in different national legislations.

The second pillar of the report analyses the findings from trial monitoring, beginning with an overview of charges. The core charge **'illegal transport of third-country nationals', was brought 178 times, representing 94% of all charges**.

Findings around t**he use of plea deals** reveal their near-uniform use in Chania, especially among young defendants. **Reliance on state-appointed lawyers (96%), inadequate interpretation (94%), brevity of hearings, uniform sentences (36 identical 10-year terms, 84%), and high cumulative sentences averaging 99.56 years**, demonstrate a system prioritising speed and administrative efficiency over legality and fairness, with plea deal practices lacking voluntariness and individual assessment.

Pre-trial detention was applied in nearly all cases, with 159 of 173 defendants detained prior to their first degree hearing, raising concerns regarding the presumption of innocence, proportionality, and the overall fairness of proceedings. **Legal representation** findings show a clear **predominance of state-appointed lawyers (108 of 190 defendants)**, with frequent violations including the failure of the state-appointed defence system to provide defendants with an effective defence, constituting violations of the right to practical and effective legal assistance. Further, **interpretation services were frequently uneven**, undermining the defendant's ability to exercise their fair-trial rights. The **duration** of the hearings was extremely brief, with **almost half of trials lasting less than 30 minutes**, indicating violations of the right to a fair and public hearing within a reasonable time and the right to adequate time and facilities to prepare a defence.

Prosecutorial proposals were often minimal, repetitive, or detached from individual circumstances, raising concerns about the independence and fairness of the sentencing

process. **Prosecutorial submissions and court decisions aligned in 94 of 114 cases** (82,4%) that went on a hearing.

Turning to the presentation of **claims and objection**s by defence lawyers, findings revealed that **out of the 114 cases monitored, a total of 13 procedural objections were raised**, addressing translation, interpretation, and absent witnesses, **while substantive claim**s varied, with **the 'asylum exemption claim' being raised 43 times**.

With regard to **evidentiary proceedings**, **defence witnesses were present in just 15 hearings concerning 24 individuals**. **Prosecution witnesses,** when they were called, **were overwhelmingly often Coast Guard officers (25 out of 29 in total).** These patterns indicate that the right to examine witnesses and the principle of adversarial proceedings were significantly undermined.

Convictions constituted the predominant outcome across monitored cases, with "guilty as charged" as the standard outcome, indicating a structural tendency toward mass conviction rather than genuinely individualised assessment. T**he average cumulative sentence for people with main charge being that of illegal transport was approximately 62,5 years. The average time to be served under the Greek framework was 17,31 years, with the highest possible limit being 25 years.**

Financial penalties were also extremely high in convictions for illegal transport, with **the highest fine imposed in Mytilene, reaching €840.500**, reflecting the application of per-person multiplication to large numbers of passengers. Sentencing showed a lack of individualised assessment, predetermined outcomes, and disregard for the presumption of innocence. **Fixed penalties across cases with substantially differing factual characteristics suggest decisions were influenced more by defendants' migration profiles and the nature of the charge than by the evidence presented.**

Out of 114 cases, mitigating circumstances were raised in 51, of which 30 were denied, undermining fair-trial guarantees which require courts to engage with defence arguments and provide reasoned decisions.

Taken together, these findings indicate that the criminalisation of people on the move for smuggling charges in Greece reflects a broader **EU-wide approach that prioritises punitive measures over rights-based protection.** From a fair-trial perspective, such practices raise serious concerns regarding rule-of-law compliance, equality before the law, and proportionality, while normalising procedural shortcuts, differential treatment, and eroding public confidence in the judiciary.

The report concludes with a final chapter setting out **concrete recommendations designed to address structural procedural shortcomings identified throughout the analysis and to align practice with fair-trial guarantees.** The recommendations aim to ensure that participation in criminal proceedings is real and effective, not merely formal, and that the rights of the defendants are ensured and actively enabled by the Courts.

First, courts should strengthen **access to effective legal assistance** through early and continuous defence representation, **ensuring appointment of counsel from the earliest**

procedural stage, adequate preparation time, and postponement of hearings where effective defence preparation is not possible. Courts and court secretariats must also ensure **meaningful and high-quality interpretation** through the systematic appointment of professional interpreters at all procedural stages, translation of essential documents, verification that defendants understand the proceedings, and adequate remuneration safeguarding interpreter independence and quality. During the evidentiary phase, recommendations focus on safeguarding the **right to examine witnesses.** Regarding **plea agreements, trial observers recommend guaranteeing informed and voluntary plea deals based on demonstrable understanding and free consent.**

Observers further recommend **individualised judicial assessment** and **the protection of effective access to asylum procedures**, so that protection claims are not overlooked within criminal proceedings. **The use of pre-trial detention should be reassessed as a measure of last resort,** requiring concrete reasoning and consideration of alternatives. Courts should also guarantee the **timely delivery of reasoned judgments** enabling effective appeal and strengthen the transparency and publicity of hearings so proceedings remain subject to public scrutiny. **Together, these measures aim to secure meaningful defendant participation and enhance the reliability and legitimacy of criminal adjudication.**

1. Introduction

Across Greece, individuals accused of charges related to “smuggling” continue to face some of the harshest penalties in the Greek criminal justice system. These prosecutions, often arising from circumstances of survival, coercion, or necessity, take place within an increasingly punitive European framework that treats migration not as a consequence of a colonial past and a human reality, but as a threat to be deterred. At the same time, concerns regarding the fairness of criminal proceedings in such cases have intensified. Reports from civil society, legal practitioners, and international bodies have highlighted systemic deficiencies, including limited access to interpretation, accelerated procedures, the near-automatic imposition of pre-trial detention, and sentencing practices that fail to reflect individual circumstances.

In this context, the **Border Violence Monitoring Network (BVMN)** and **Community Peacemaker Teams - Aegean Migrant Solidarity (AMS)**, with the collaboration of **50 Out of Many**, **Thalassa of Solidarity** and the **Legal Centre Lesvos (LCL)** undertook systematic ‘thematic monitoring’ of migration-related trials across Greece between January and October 2025. This report presents the findings of that monitoring initiative.

The purpose of this report is threefold. First, it seeks to provide an evidence-based assessment of whether defendants, most of them young asylum seekers, receive a fair and impartial hearing. Second, it situates these findings within broader national and EU trends towards the criminalisation of migration, including the use of expansive facilitation offences and accelerated procedures that intensify existing procedural risks. Third, it aims to highlight the structural impact of these prosecutions on the right to seek asylum and the ability of individuals to access protection mechanisms in Greece.

By combining quantitative data with detailed qualitative observations from 5 different courtrooms across the maritime borders of the country, this report offers a comprehensive analysis of how migration-related trials are conducted in practice. It identifies recurring and problematic patterns, including the widespread use of plea deals, inconsistent interpretation, reliance on untested pre-trial statements, and systematic pre-trial detention, that collectively raise profound concerns about compliance with international and domestic standards of justice. The findings presented here underscore the urgent need for legal and policy reforms to ensure that criminal proceedings do not undermine fundamental rights of the defendants, due process, or the principles of fairness.

2. Methodology

2.1 Data collection and processing

Following previous trial monitoring audits[1] and concerns raised by human rights organisations and institutions, the scope of the research team was to conduct a thematic trial monitoring project on the so-called "smuggling cases" in the maritime borders between Greece and Turkey or Libya. The purpose of this monitoring was to assess compliance with fair trial standards, document procedural irregularities, and observe the treatment of defendants accused of smuggling-related charges in Greek courts.

Observers focused on fair trial standards enshrined in Article 6 of the European Convention on Human Rights (ECHR), Article 14 of the International Covenant on Civil and Political Rights (ICCPR), and relevant provisions of Greek criminal procedural law. The provisions of decisions by the European Court on Human Rights and the legal precedence of Greek Courts were also thoroughly examined, to understand the application of the legislative framework and also existing implications. Guidance was provided by legal experts and practitioners.

Trial observers from **CPT - Aegean Migrant Solidarity** and the **Border Violence Monitoring Network**, with the support from and the L**egal Centre Lesvos, 50 Out of Many and Thalassa of Solidarity**, monitored 123 cases involving 190 defendants. All cases examined in this report were conducted between January and October 2025, before the Appeal Courts of Felonies of the North Aegean, Aegean, the Dodecanese, Chania and Eastern Crete. Selection was based on the charges: only cases involving the offence of "illegal transfer of third-country nationals" were included, with the exception of seven cases involving the charge of "causing a shipwreck."

From the cases that were monitored for this reportτ concerning 190 individuals, 26 cases were postponed to a different date, 4 cases were referred to different courts, 47 cases were resolved through plea deals, while 106 cases of defendants charged with "Illegal Transport of Third-Country Nationals" went on to hearings and 7 cases of defendants charged exclusively with "Causing a Shipwreck" went on to hearings.

The insular character of the area under examination meant that the seats of the courts that were observed were spread across four different islands and in the five cities of Mytilene, Vathy, Rhodes, Chania, and Heraklion.

Trial monitoring was conducted in person by a mixed team of expert professionals and trained volunteers from the participating organisations. To support consistent and structured data collection, the research team developed a template monitoring form, based on the trial monitoring study by Borderline Europe[2] and informed by ODIHR guidance.[3] The form was

[1] Winkler J and Mayr L, *A Legal Vacuum: The Systematic Criminalisation of Migrant People for Driving a Boat or Car in Greece* (Borderline-Europe, July 2023) https://www.borderline-europe.de.
[2] Ibid.
[3] OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Legal Digest of International Fair Trial Rights (OSCE 2012)* https://www.osce.org.pdf.

designed to collect both qualitative and quantitative data. In addition to recording procedural details, observers documented:

- Courtroom layout
- Interactions between judges, prosecution, and defence
- Police behaviour in the courtroom

These observations complemented the structured questions included in the monitoring form.

All collected data was stored in a joint database, which included both quantitative and qualitative indexes. These indexes were developed according to previous examples but also to the international bibliography. After a short time of application, they were reviewed and adjusted by the research team. The qualitative data collected were later quantified and coded to enable systematic analysis and comparison across cases.

To ensure accuracy and consistency, trial observers worked in pairs. After completing data entry, trial observers cross-checked each other's records. This verification process aimed to ensure that all information included in the report is as accurate, complete, and representative as possible. All observers followed the courtroom code of conduct developed by the team. No sensitive data was stored during or after the procedure.

2.2 Limitations

For the planning and the conduction of the research, many limitations, both structural and practical, had to be bypassed. Limitations that were limiting the access of the research team to the courts, but also the monitoring of the court hearings.

Some of the limitations faced were:

I. Access to information

One of the things also noticed in the report A Legal Vacuum (2023),[4] has been the absence of official data by the Hellenic Police on the arrests for illegal transportation of third country nationals since 2019, when we could see the last update[5]. Information like this is critical for the wider understanding of such a common practice, but also for the promotion of transparency, accountability and civic control. According to a more recent report, the 'so-called' smugglers constitute the second-biggest population of the Greek prisons, with 2437 people being detained, as of September 2025.[6]

The absence of official data like this, make it also harder for human rights organisations to follow these cases, while imprisoned, but also while proceeding to trial, since there is not an efficient system of recording and announcement for the upcoming trials. Over the last years, the Hellenic Ministry of Justice, introduced the platform Solon (solon.gov.gr) where

[4] Winkler and Mayr, *A Legal Vacuum* (n 1) 10.
[5] Greek Police, *Statistical Data on Irregular Migration [Στατιστικά στοιχεία παράνομης μετανάστευσης]* (2023) https://www.astynomia.gr.
[6] Human Rights Legal Project & Legal Centre Lesvos, *The Exemption from Criminalisation: A Real Safeguard or an Illusion?* (2025) https://legalcentrelesvos.org.

information for the dates, the charges and the number of defendants would be available, however it is still considered very insufficient and inefficient. Part of this is due to the fact that many Courts seem to not be using it yet, but also due to limitations that the same ministry has set, like the posting of the trials' docket only 5 days before the trial dates.

Slow issuance of written judgments in Greece also meant that the research teams were unable to access any trial decisions during the reporting period.

II. Court room conditions

Another challenge the research teams had to face were the inappropriate conditions under which the trials take place. Most of the courtrooms where the hearings are conducted, are in old buildings, initially designed for other uses, that make the courtrooms inappropriate for such purposes.

Most of the time, they consist of small rooms that cannot hold the presence of public, as the defendants with the police escort would take most of the seats.

Also the acoustics of the rooms are very poor, making it very difficult not only for the public, but also for the jurists to follow the hearings. In addition to this, although there is strict control of the public attending the trials not to talk, the access to the room is open during the whole hearing, something that can cause high disturbance during the proceedings, again both for the jurists and the public.

The heating or the conditioning of the courtrooms is insufficient, with high temperatures during the summer, and low during the winter proceedings. The temperature of the room usually has to be adjusted, after the intervention of the police officers of the courtroom, while opening or closing the room windows, adding however to the noise disturbance during the hearlings.

III. Heavy trials' dockets

Another aggravating factor that our observer teams had to face is the heavy load of trials that have to be examined during the same day. In most of the examined areas' courts, the single and three member felony courts which are the relevant courts for these cases meet only once a month in the best case (Lesvos, Crete), to once every 4 months in other (Samos). In one case our teams attended a Single Member Felony Appeal Court in the Samos, where 30 out of 33 cases were examined. This heavy load, has serious implications both for the efficient proceedings of the trials, but also for the in time completion of all the cases. This could also lead to postponements, which add to the increased logistical and budgetary costs involved in this project, especially due to the remote geography of the areas examined.

IV. Recording and transmission of the proceedings

Since July 2024, and according to Article 31 of Law 5119/2024,[7] the transmission of court proceedings and the use of special software for their recording is prohibited. This provision, which amended previous legislation (Par. 1, Art.8 Law 3090/2002), followed the broadcasting

[7] Hellenic Republic, *Law 5119/2024: Amendment of Presidential Decree 18/1989 'Codification of legislative provisions for the Council of State' – Transfer of disputes to the Regular Administrative Courts – Rules on pilot or preliminary-reference proceedings before the Council of State – Other provisions* (FEK A 103/05.07.2024) https://ministryofjustice.gr.pdf.

of certain high-profile trials in Greece and was considered targeted by journalistic associations and independent media outlets. Although the provision only refers to ‘special software’ for the transcription of the hearings, the inability to control the software of electronic devices has led to its wide application with the prohibition of any electronic device. Its first-ever application concerned members of the research team, who were prohibited from using electronic devices and were also threatened with criminal sanctions. Trial observers therefore had to record information by hand, increasing the burden of data collection and processing and the ability to cross-examine the accuracy of the data collected.

3. International fair trial standards

3.1 Article 6 - European Convention on Human Rights (ECHR)

The right to a fair trial is at the heart of the protection of human rights, as without it, other rights are jeopardized. This right is enshrined in Article 6 of the ECHR, guaranteeing a fair and public hearing by an independent and impartial tribunal established by law. These provisions aim to safeguard the integrity of legal proceedings, ensuring procedural and substantive fairness in both civil and criminal matters. The **European Court of Human Rights (ECtHR)** has interpreted this provision broadly, on the grounds that it is of fundamental importance to the operation of democracy.[8]

Article 6, ECHR

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:
   a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
   b. to have adequate time and facilities for the preparation of his defence;
   c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
   d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
   e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

The right to a fair trial comprises several core guarantees. Foremost among them is the right of access to a court, which requires that individuals can bring claims or defend themselves before an independent and impartial tribunal, free from external interference. As the Court has stressed, the fair, public, and expeditious nature of judicial proceedings is meaningless if such

[8] ECtHR, *Delcourt v Belgium* (17 January 1970) App No 2689/65, par. 25.

proceedings are not accessible in the first place.[9] This expression encompasses numerous elements of due process, including the right of access to a court, the right to be present at one's hearing, the privilege against self-incrimination, equality of arms, the right to adversarial proceedings, and the right to a reasoned judgment. The requirement that trials and judgments be public further ensures transparency and accountability within the judicial system.

Judicial proceedings must also ensure a reasonable timeframe to avoid undue delays that may compromise access to justice. The fair trial guarantees extend to specific rights of the accused in criminal proceedings, including the right to information about charges, freedom from self-incrimination, access to legal representation, and the right to interpretation. These rights are critical to enable the accused to understand and participate effectively in the proceedings. The Court has stated[10] that the reasonable time guarantee starts running from when a charge comes into being, and that other requirements of Article 6, particularly those in paragraph 3, may apply at the pre-trial stage, if and insofar as failure to comply with them is likely to seriously prejudice the fairness of the eventual trial.

Assessing whether a trial has met the requirements of Article 6 demands a comprehensive examination of procedural compliance, the effectiveness of the safeguards in place, and the overall fairness of the proceedings when viewed as a whole.

Impartiality

Article 6, par. 1 of the Convention requires that any "tribunal" within its scope be impartial. Impartiality generally signifies the absence of prejudice or bias. According to the ECtHR, this guarantee entails a twofold requirement: the subjective aspect, which demands that the judge must not exhibit personal bias and the objective aspect, which requires that the circumstances surrounding the proceedings be such as to exclude any legitimate doubts as to the judge's impartiality.[11]

Adequate time for the preparation of defence

Article 6, par. 3(b) of the Convention addresses two elements of a proper defence, namely facilities and time for the preparation of the defence. This provision entails that all substantive activities necessary for the preparation of the accused's defence should be permitted. The accused must have the opportunity to organise their defence in an appropriate way and without restriction so as to present all relevant arguments before the trial court and thereby influence the outcome of the proceedings.[12]

Although it is important to conduct proceedings efficiently, this should not be done at the expense of the procedural rights of any party.[13]

In certain circumstances a court may be required to adjourn a hearing of its own motion in order to give the defence sufficient time.[14]

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[9] ECtHR, *Golder v The United Kingdom* (21 February 1975) App No 4451/70, par. 35.
[10] ECtHR, *Imbroscia v Switzerland* (24 November 1993) App No 13972/88, par. 36.
[11] ECtHR, *Hauschildt v Denmark* (16 July 1987) App No 10486/83, par. 48.
[12] ECtHR, *Can v Austria* (14 December 1983) App No 9300/81, par. 53.
[13] ECtHR, *OAO Neftyanaya Kompaniya Yukos v Russia* (20 September 2011) App No 14902/04, par. 540.
[14] ECtHR, *Sakhnovskiy v Russia [GC]* (2 November 2010) App No 21272/03, pars. 103, 106.

Practical and effective legal assistance

Article 6, par. 3(c) protects not just the right to legal aid, which must be provided free if the accused does not have sufficient means to pay and when the interests of justice so require. It also guarantees the practical and effective exercise of that right, ensuring the accused can communicate with their lawyer, receive confidential advice, and obtain meaningful assistance in preparing a defence.

The Court has expressed concern in situations where legal-aid or state-appointed lawyers were designated at very short notice, indicating that such late appointment, without sufficient time for preparation, may compromise the effectiveness of the legal assistance and the fairness of the proceedings.[15]

Access to interpretation

The right to interpretation is a fundamental prerequisite of a fair trial and is linked to two key aspects of the rule of law: access to courts and the fairness of the proceedings, which are closely interrelated. Access to courts is ineffective if the accused cannot fully understand or participate in the proceedings. The ECtHR has emphasised that restrictions on the right to interpretation weaken access to justice, and effective access requires that accused to understand the proceedings well enough to communicate effectively with counsel and actively participate in their defence. Notably, the Court has acknowledged that "Court interpreters play a major role in guaranteeing access to justice for court users",[16] and any violation of the right to interpretation directly affects the overall fairness of proceedings.

The ECtHR has further established that the right to interpretation extends beyond oral statements made during a trial hearing, and the right to understand the proceedings also applies to "documentary material and pre-trial proceedings".[17]

According to Article 6, par. 3(e) of the ECHR:
"*To uphold this right, the defendant must be capable of understanding the proceedings and effectively communicating pertinent information to their lawyer in order to adequately mount their defence.*[18] *In cases where interpretation is lacking, the ECtHR has found a violation of Article 6, par. 1 in conjunction with Article 6, par. 3(e), particularly where an interpreter is absent during police questioning or where domestic authorities fail to remedy this deficiency*."[19]

The above provisions are also included in the Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings.

[15] ECtHR, *Tsonyo Tsonev v Bulgaria (No 2)* (14 January 2010) App No 2376/03, par. 40; *Czekalla v Portugal* (10 October 2002) App No 38830/97, par. 60; *Daud v Portugal* (21 April 1998) App No 22600/93, par. 42.
[16] European Commission for the Efficiency of Justice (CEPEJ), *Report on European Judicial Systems*, edition 2014: *Efficiency and Quality of Justice* (2014) 452.
[17] ECtHR, *Kamasinski v Austria* (19 December 1989) App No 9783/82, par. 74.
[18] ECtHR, *Cuscani v The United Kingdom* (24 September 2002) App No 32771/96, par. 38.
[19] ECtHR, *Amer v Turkey* (13 January 2009) App No 25720/02, pars. 83–84.

Public nature and accessibility of proceedings

The public character of proceedings safeguards litigants against secret justice and ensures public scrutiny; it is also one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice visible, publicity contributes to the achieving the objective of Article 6, par. 1, namely ensuring a fair trial, the guarantee of which is a fundamental principle of any democratic society.[20]

Presumption of innocence

According to Article 6 par. 2 ECHR the principle of the presumption of innocence requires, inter alia, that members of a court, in the exercise of their duties, must not start with any preconception that the accused is guilty of the charged offence. The burden of proof lies with the prosecution, which must establish the individual criminal responsibility of the accused beyond reasonable doubt, while any remaining doubt should benefit the accused. It is for the prosecution to inform the accused of the case against them, so that they may adequately prepare and present their defence, and to adduce sufficient evidence to secure a conviction.[21] A violation of the presumption of innocence arises where this burden of proof is improperly shifted from the prosecution to the defence.[22]

Right to cross examination

According to Articles 6, par. 3(d) ECHR, the right to cross-examination establishes the right of the accused to review all evidence against them in their presence at a public hearing, allowing adversarial argument, before conviction can be secured..

Exceptions to this principle are possible but must not infringe the rights of the defendant, which, as a rule, require that the accused should be given an adequate and proper opportunity to challenge and question a witness who is testifying against them, either at the time of the witness's statement or at a later stage of the proceedings. As mentioned above, the ECtHR has established in its case law the so-called Al-Khawaja and Tahery test, containing three steps: first, whether there is a "good reason" for the non-attendance of a witness at the trial; second, whether the evidence of the absent witness was the sole or decisive basis for the defendant's conviction; third, whether there were sufficient counterbalancing factors to compensate for the weaknesses under which the defence laboured.[23]

The ECtHR in its case law does not consider "that the absence of good reason for the non-attendance of a witness [can] of itself be conclusive of the unfairness of a trial". Rather, "the lack of a good reason for a prosecution witness's absence is a very important factor to be weighed in the balance when assessing the overall fairness of a trial, and one which may tip the balance in favour of finding a breach of Article 6, paras18 and 3(d)".[24]

While the ECtHR doesn't categorically prohibit the admission of incriminating testimony provided by a witness whom the defendant never had the opportunity to examine or to have it examined, the ECtHR has held that where a "conviction is based solely or to a decisive degree"

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[20] ECtHR, *Sutter v Switzerland* (22 February 1984) App No 8209/78, par. 26; *Riepan v Austria* (14 November 2000) App No 35115/97, par. 27.
[21] ECtHR, *Barberà, Messegué and Jabardo v Spain* (6 December 1988) App No 10590/83, par. 77.
[22] ECtHR, *Telfner v Austria* (13 January 2005) App No 42914/98, par. 15.
[23] ECtHR, *Al-Khawala and Tahery v United Kingdom* (15 December 2011) Apps No 26766/05 and 22228/06.
[24] ECtHR, *Schatschaschwili v Germany* (15 December 2015) App No 9154/10, par. 113.

on such a witness testimony, "the rights of the defence may be restricted to an extent that is incompatible with the guarantees provided by Article 6".

Right to a decision in due time
The right to a fair trial (Article 6 ECHR) guarantees the right to be tried without undue delay. The speed of a trial is a key element in determining the overall fairness of the proceedings. The Court has established in its case-law that when assessing whether a length of time can be considered reasonable, the following factors should be taken into account: the complexity of the case, the conduct of the applicant, the conduct of the judicial and administrative authorities of the State, and what is at stake for the applicant.[25]

3.2 Fair trial standards in greek national law

3.2.1 Constitutional guarantees

Legality
Article 7, par. 1 of the Constitution requires criminal offences to be clearly and precisely defined. The elastic judicial construction of "facilitation" and the very broad drafting of "transport" test the boundaries of foreseeability, especially where the same provision can capture conduct of starkly different moral gravity- from organised, profit-driven networks to incidental assistance like purchasing tickets or providing short-term shelter.[26]

Proportionality
Article 25 par. 1 of the Constitution embeds proportionality as a binding principle on all state action, including criminalisation. The severe penalties in Articles 24 and 25 -up to life imprisonment- are comparable to sanctions for gravest crimes, while the basic underlying immigration offence (irregular entry) remains a misdemeanor. Punishing a putative "participant" (the transporter) more heavily than the principal offence of irregular entry raises acute proportionality concerns.[27]

Equality before the law
Article 4 of the Constitution guarantees equality. The practical application of the transport/facilitation offences overwhelmingly to foreign nationals and asylum seekers raises indirect-discrimination concerns and reflects a punitive framing of migrants as "threats," critiqued in the literature as approximating a form of "enemy criminal law" (Feindstrafrecht).[28]

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[25] ECtHR, *Buchholz v the Federal Republic of Germany* (6 May 1981) App No 7759/77, par. 49.
[26] N Chatzinikolaou, *The Criminal Suppression of Irregular Migration: A Dogmatic Approach and Fundamental Interpretative Problems* [*Η ποινική καταστολή της παράνομης μετανάστευσης: Δογματική προσέγγιση και βασικά ερμηνευτικά προβλήματα*] (Nomiki Vivliothiki 2009) 134; L Margaritis and Ch Satlanis, Special Criminal Laws [Ειδικοί Ποινικοί Νόμοι] (Nomiki Vivliothiki 2015)
[27] N Chatzinikolaou (n26) 42, 51; M Kaiáfa-Gkbánti, *Greek Criminal Law – Special Part* [*Ελληνικό Ποινικό Δίκαιο – Ειδικό Μέρος*] (2015) 88.
[28] K Vathiotis, *'Historical Development of the Law on Foreigners: An Evolution without Evolution?' [Ιστορική εξέλιξη του νόμου περί αλλοδαπών: Μία εξέλιξη χωρίς εξέλιξη;]* in A Sykiotou (ed), *Foreigners in Greece: Integration or Marginalisation?* Conference Proceedings, Komotini 28–29 November 2006 *[Αλλοδαποί στην Ελλάδα: ένταξη ή περιθωριοποίηση;* Πρακτικά Συνεδρίου, Κομοτηνή 28–29 Νοεμβρίου 2006] (Ant. N.

Publicity and reasoning
Article 93 pars. 2-3 of the Constitution requires public hearings and reasoned judgments. Any conviction that turns decisively on untested, read-in written statements of absent witnesses strains both the publicity of adversarial proof and the obligation to offer specific reasoning that meets defence objections on fairness and immediacy.

3.2.2 Code of Criminal Procedure (Law 4620/2019)

The Greek Code of Criminal Procedure (CCP) establishes general guarantees applicable to all defendants, including those prosecuted for migration-related offences. These rights align in principle with Article 6 ECHR and Article 14 ICCPR.

Public hearing and adversarial orality
The CCP establishes publicity, orality and immediacy at trial. Article 329 expresses the principle of publicity. The hearing is conducted with live presentation of evidence, and parties must be able to test that evidence in an adversarial manner.

Right to examine witnesses
The right to examine or have examined witnesses against the accused is protected domestically through the conduct of the hearing and through party rights to question witnesses and comment on their evidence This is in accordance with Article 6, par. 3(d) ECHR and Article 14 ICCPR.[29] Greek case-law treats reliance on untested pre-trial statements in lieu of live testimony, without a genuine opportunity for confrontation, as a violation that can amount to absolute nullity where defence rights are curtailed (Article 171, par. 1(d) CCP). Following the provisions of Law 5090/2024, Amendments to the Penal Code and the Code of Criminal Procedure for the Acceleration and Qualitative Improvement of Criminal Proceedings and more particularly of the Article 78, that adds par. 5 to Art. 215 of the CCP, "Police officers and other preliminary investigation officials who have testified during the pre-trial phase are not summoned to the courtroom; instead, their testimonies are read aloud". An exemption is only provided in case of felony crimes, and only if the defendant applies for it, within 10 days from the service of the summons or the court appearance notice. The above provisions have been strongly criticized by bar associations and prominent judicial officers.[30]

Reading pre-trial statements
The reading of pre-trial statements at trial is exceptional and must not displace the adversarial, oral production of evidence. Any resort to reading a witness's pre-trial deposition must be strictly necessary and compatible with the defence's examination rights; where the prosecution

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Sakkoulas 2008) 202–205; P Spyrakos, *'Criminal Treatment of Illegal Immigration in Law 1975/1991 – An Example of Unreasonable Crime Policy' [Ποινική αντιμετώπιση της λαθρομετανάστευσης στον Ν. 1975/1991 – Ένα παράδειγμα αλόγιστης εγκληματοπολιτικής]* in N Kourakis (ed), Criminal Policy [Αντεγκληματική Πολιτική] (1994) 363, 367–368..

[29] Supreme Court, *Case 416/2007* [Άρειος Πάγος 416/2007]; Supreme Court, *Case 165/2013* [Άρειος Πάγος 165/2013]; Supreme Court, *Case 190/2006* [Άρειος Πάγος 190/2006]

[30] Charalambos Sevastidis, *Interventions of Law 5090/2024 in the Evidentiary Procedure in Court (Examination of Witnesses and Commentary on Means of Evidence) [Παρεμβάσεις του Ν. 5090/2024 στην αποδεικτική διαδικασία στο ακροατήριο (εξέταση μαρτύρων και σχολιασμός αποδεικτικών μέσω)]* (2024) https://www.esdi.gr.pdf.

seeks to rely on such a deposition, it must show diligent, documented efforts to secure the witness's attendance, rather than merely asserting the inability to locate the witness shortly before the hearing.

Interpretation rights

According to Article 233 CCP, appointment of interpreters from official lists, oath and neutrality are the norm; appointment outside the list is permissible only where it is impossible to appoint from the list and there is extreme urgency, both conditions to be recorded on the file. Using a police officer of the arresting unit as an interpreter without evidence of impossibility and urgency undermines neutrality and can trigger absolute nullity under Article 171, par. 1(d) CCP. The Supreme Court has treated "extreme urgency" narrowly[31] and has set aside depositions taken without proper interpretation, holding that later reading at trial cannot cure the original flaw.[32] These guarantees sit alongside the general right to interpretation and translation of essential documents for suspects/accused who do not understand Greek.[33] Following the cassation appeal on a decision by the Three Members Appeals Court of Felonies of the North Aegean, the Supreme Court decided that the proceedings of the examined hearing should be declared inadmissible, since the writ of summons was not submitted translated to the non-greek speaker defendants.[34] With a later decision though[35], the Supreme Court rejected the cassation appeal by a defendant on the grounds that he had received interpretation of the indictment during his preliminary interrogation, but also to the urgency of the case. Due to the contradicting character of these two decisions by the Criminal Chambers of the Supreme Court, a clarifying decision of its plenary should be published.

Right to counsel and preparation

One central safeguard is the right to legal counsel enshrined in Article 96 CCP, which guarantees representation at all stages of proceedings and sufficient time for defence preparation. Defence assistance and adequate time and facilities to prepare the case are integral to fair trial, including at the pre-trial stage and during accelerated proceedings.

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[31] Supreme Court of Greece [Άρειος Πάγος], *Decision No 371/1999 [Απόφαση υπ' αριθμ. 371/1999]*.

[32] Supreme Court of Greece [Άρειος Πάγος], *Decision No 242/2006*[Απόφαση υπ' αριθμ. 242/2006] (2006) https://www.areiospagos.gr.

[33] Greek Code of Criminal Procedure (CPP) [*Κώδικας Ποινικής Δικονομίας*], arts 237 and 101; European Convention on Human Rights, art 6; Greece, Presidential Decree 76]/2022, Translation into the vernacular of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its First (Additional) Protocol. (FEK A' 205/2022). https://www.nomotelia.gr.pdf.

[34] Supreme Court of Greece [Άρειος Πάγος], *Decision No 1109/2023* [Απόφαση υπ' αριθμ. 1109/2023] (2023). https://www.areiospagos.gr.

[35] Supreme Court of Greece [Άρειος Πάγος], *Decision No 12/2024* [Απόφαση υπ' αριθμ. 12/2024] (2024). https://www.areiospagos.gr

4. Legislative review: migration and criminalization

4.1 EUropean legislative framework

Across the European Union, the criminalization of migration has emerged as a central pillar of deterrence-based migration governance. Rather than addressing the structural causes driving people to seek safety or mobility, EU policy continues to rely on punitive frameworks that treat movement itself, and those who facilitate or accompany it, as a threat to be suppressed. This political positioning shaped the EU's Facilitation Directive,[36] whose 2002 version enabled the widespread prosecution of people on the move and solidarity actors, and whose proposed 2023 recast, under negotiation at the time of writing, further entrenches criminalisation under the guise of combating migrant smuggling. While presented as a harmonised set of minimum standards, the proposal expands Member States' powers to penalise "facilitation" through vague definitions, weak humanitarian safeguards, and broad discretionary exemptions, enabling prosecutions even in the absence of financial gain. Complementary to Directive 2002/90/EC, comes the Council framework Decision of 28 November 2002 2002/946/JHA,[37] which obliges Member States to adopt effective, proportionate, and dissuasive penalties. These developments are not abstract: across Europe, individuals have been arrested, tried, and imprisoned for driving a boat, offering transport, providing food or shelter, or even saving lives at sea. Such cases, increasingly documented at the EU's external borders, illustrate how the criminalisation of migration functions not as an incidental outcome, but as a deliberate EU-wide deterrence strategy that is both shaping and shaped by national legal frameworks. The following section situates the Commission's proposal within this broader trend, examining the interplay between EU law, national legislation, and the political climate that fuels the expansion of criminal liability for movement and solidarity.

In 2023, the European Commission proposed a recast of the 2002 Facilitation Directive through a new legislative proposal establishing minimum standards for European Union Member States regarding the 'crime of facilitation'. The 2002 framework had been heavily criticised for its role in contributing to the excessive criminalisation of people on the move and those acting in solidarity. The proposed 2023 'Facilitation Directive' is presented as a framework "laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the EU," but in effect it operates as a tool that enables further criminalisation of people seeking safety and of those providing assistance, under the guise of 'fighting migrant smuggling'. Issued initially without an impact assessment, the proposal reflects a continuation of the EU's reliance on criminalisation as a central migration-management tool.

Apart from including a few limited and inadequate humanitarian safeguards, its objectives and core provisions underscore the absence of sufficient protections, and provide member states with the legal tools needed to further criminalise movement and solidarity actors. Despite the

[36] Council of the European Union, *Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence* [2002] OJ L 328, 17–18.
[37] Council of the European Union, *Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence* [2002] OJ L 328, 1–3.

European Parliament's draft report clearly exempting humanitarian assistance from criminalisation, the Directive itself still leaves the exact definition of the 'crime' and its potential exemptions upon member states to decide. In the "targeted substitute impact assessment", issued in March 2025, the EPRS (European Parliamentary Research Service) critically reviewed the existing legal framework. According to the main findings of the EPRS, the proposed directive is not consistent with either international (United Nations Smuggling Protocol) or EU standards, is marked by significant legal uncertainties and sets out overly harsh penalties. The study underscores the insufficiency of protection for the human rights of people on the move, who risk being criminalised for merely seeking safety. The very broad scope of application of the directive can also lead to criminalisation of assistance and service provision.

These shortcomings in the proposal reflect a broader dynamic: the convergence between EU policies and national political trends towards the criminalisation of migration. This convergence is therefore not confined to the realm of EU legislation alone. Member states are legally required to align their national legislation with EU law, either through directly binding instruments such as regulations or through directives, which allow more flexibility in how objectives are implemented in order to achieve the set goal. However, EU legislation itself does not develop in a vacuum; it increasingly follows the political trends of the member states, such as the rise of far-right politics and the growing disregard for the rule of law, which further entrenches restrictive and punitive approaches. Hence, member states' legislation increasingly mirrors this atmosphere, particularly concerning the so-called 'migration management'. The deliberate use of vague and broad terminology to describe the 'offence' of facilitation in the directive proposal highlights these nuanced differences in different legal frameworks and conceptualisations, examples illustrating this trend exist across EU jurisdictions.

Across EU Member States, national laws increasingly reflect punitive approaches to so-called irregular migration, criminalising both people on the move and those who facilitate their travel.

In Italy, Article 12 of the Consolidated Immigration Act (Legislative Decree 286/1998) criminalises promoting, organising, financing, or carrying out acts to facilitate unauthorised entry or exit, as well as unlawful stay[38]. The 2023 Cutro Decree,[39] building on the earlier Salvini Decrees, introduced aggravated penalties of up to 30 years imprisonment where smuggling results in grievous bodily harm or death, representing a marked escalation compared to previous maxima of fifteen years.[40] Like Greece, imprisonment and fines are calculated per transported person making sentencing exposure exceptionally high in large-scale cases. While the criminalisation of migration facilitation in recent years has mostly focused on solidarity at

[38] Italian Republic, Legislative Decree No 286 of 25 July 1998: *Consolidated Act of Provisions Concerning the Regulation of Immigration and Rules on the Condition of Foreigners* [Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero] (Gazzetta Ufficiale della Repubblica Italiana, 1998).

[39] Italian Republic, Decree Law No 20 of 10 March 2023 (so-called "Cutro Decree"), converted with amendments into Law No 50 of 5 May 2023: *Urgent provisions on legal entry flows of foreign workers and prevention and contrast of irregular immigration* [Decreto-Legge 10 marzo 2023, n. 20, cosiddetto "Decreto Cutro", convertito con modificazioni nella Legge 5 maggio 2023, n. 50: Disposizioni urgenti in materia di flussi di ingresso regolari di lavoratori stranieri e di prevenzione e contrasto dell'immigrazione irregolare] (Gazzetta Ufficiale della Repubblica Italiana, 2023).

[40] Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero (Decreto Legislativo 25 luglio 1998, n 286) Title II: *Provisions on Entry, Stay and Removal from the Territory of the State* [Titolo II: *Disposizioni sull'ingresso, il soggiorno e l'allontanamento dal territorio dello Stato*] (Italy) https://www.lpo.it.pdf.

sea and on land with a number of measures against SAR Non-Governmental Organisations (NGOs), after the deadly shipwreck near Cutro on the east coast of Calabria on 26 February 2023, the government passed a Decree Law making the punishment harsher (from 2 to 6 years imprisonment instead of 1 to 5), for anyone who 'promotes, directs, organises, finances or carries out the transport of foreigners in the territory of the State'.[41] Between 2015 and 2021, more than 2,000 migrants were detained on smuggling-related charges in Italy,[42] and in 2024 alone, organisations documented over 120 cases of criminalisation[43] linked to boat arrivals.

In Spain, facilitation is addressed under Article 318 bis of the Penal Code, which penalises anyone who directly or indirectly promotes, favours, or facilitates irregular entry, transit, or immigration.[44] Profit is treated as an aggravating factor rather than a constitutive element, and endangerment of life increases penalties. Unlike Greece and Italy, Spain does not apply per-person transported multipliers in its statute. Penalties are aggravated by circumstances rather than by arithmetic calculations per migrant. Sentences can still consider the number of people involved, but not in a strictly mathematical way. However, under Spanish Legislation conduct is not punishable when the sole purpose is to provide humanitarian assistance. This clause has been important in cases involving NGOs, volunteers, or family members. People on the move who navigate boats to the Spanish coast are routinely targeted, with approximately 150 boat drivers investigated for smuggling offences on Gran Canaria in 2021 alone.

In France, facilitation is addressed under Article L622-1 of the Code de l'entrée et du séjour des étrangers et du droit d'asile (CESEDA), which criminalises the direct or indirect facilitation of irregular entry, circulation, or stay.[45] The provision establishes the possibility of significant penal and financial sanctions for such acts. Profit is not a constitutive element of the offence but can aggravate penalties, for example when the act endangers life or health. However, Article L622-4 provides a clear humanitarian exemption for assistance offered without profit and for humanitarian motives. The Constitutional Council has reinforced this clause, grounding it in the constitutional principle of fraternity.

Collectively, these national frameworks illustrate a broader EU-wide trend: the progressive criminalisation of "irregular migration", marked by increasingly severe penalties and flexible legal frameworks that facilitate the prosecution of people on the move.

Laws and policies fail to distinguish 'smugglers' from 'boat drivers' resulting in punishing people on the move and those who assist them, with harsher penalties and wide prosecutorial discretion. The proposed 2023 recast of the EU Facilitation Directive risks reinforcing this

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[41] M E Papadouka, N Montagna & G Serrantino, '*Human Smugglers or Criminalised Migrant People? Securitarian Bordering and the Criminalisation of "Captains" in the Mediterranean*' (2024) *Trends in Organized Crime* 1–21 https://doi.org.

[42] Platform for International Cooperation on Undocumented Migrants (PICUM), *Between Administrative and Criminal Law: An Overview of Criminalisation of Migration Across the EU* (Briefing, April 2024) https://picum.org.pdf

[43] Platform for International Cooperation on Undocumented Migrants (PICUM), *Criminalisation of Migration and Solidarity in the EU: 2024 Report* (April 2025) https://picum.org.pdf

[44] Spain, Criminal Code, Article 318 bis [Código Penal, Artículo 318 bis] (Boletín Oficial del Estado, 1995) https://www.boe.es

[45] France, *Code on the Entry and Stay of Foreigners and the Right of Asylum*, Art L622-1 [*Code de l'entrée et du séjour des étrangers et du droit d'asile* (CESEDA), Art. L622-1] (Légifrance, n.d.) https://www.legifrance.gouv.fr

trend, with vague definitions that give Member States even more power to criminalise movement. Together, EU-level proposals and national laws create a system where migration is managed primarily through punishment and deterrence, rather than protection, leaving people on the move at constant risk of arrest and prosecution.

The EU legislator, in Article 1, par. 2 of Council Directive 2002/90/EC, allows Member States to exempt from sanctions conduct aimed at providing humanitarian assistance.[46] The European Commission has underlined that such humanitarian assistance "cannot and should not be criminalised," urging full transposition at national level.[47]

4.2 Greek legislative framework

Greek criminal policy on migration-related conduct has evolved from a light-touch, police-supervision model to a highly punitive framework. Law 4310/1929 introduced police control over entry/exit and only mild criminal sanctions.[48] A decisive shift occurred with Law 1975/1991, which criminalised irregular entry, stay and assistance, and targeted facilitators, especially transporters, with severe penalties, reflecting a deterrence-oriented approach.[49] Subsequent legislation (Law 2910/2001; Law 3386/2005) retained and intensified this model,[50] and Law 4251/2014 codified two autonomous offences: facilitation (Article 29, par. 5) and transport (Article 30). The current Migration and Social Integration Code (Law 5038/2023, as amended by Law 5226/2025), largely reproduces that structure: facilitation is now Article 24 and transport is Article 25, with similarly heavy sanctions, up to life imprisonment in aggravated outcomes and heavy fines up to 700.000€ per person if death occurs.[51] The Code also criminalises related conduct such as the employment of irregularly staying third-country nationals (Article 23; formerly Article 28 of Law 4251/2014).

4.2.1 Migration Code (Law 5038/2023)

Article 24, par. 4 criminalises 'facilitation' of entry/exit without undergoing border control. The legislature did not define 'smuggling'; instead, liability is framed around private individuals who assist unauthorized crossings. Greek courts construe 'facilitation' broadly, covering any assistance during the border crossing or subsequent irregular movement inland.[52] A substantial body of scholarship advocates a restrictive reading to preserve legality and proportionality: only conduct that effectively neutralises the border-control mechanism should

[46] Council of the European Union, *Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence* [2002] OJ L 328, 2.
[47] Commission Guidelines, *OJ 2020/C 323/01, pars. 4–5.*
[48] K Vathiotis, (n 28) 210–211
[49] Z Papasiopi-Pasia, *Law on Foreigners* [*Δίκαιο αλλοδαπών*] (Sakkoulas 2008); P Dimitratos, '*Criminal and Criminological Dimensions of the Issue of Foreigners*' Criminality and Illegal Immigration' [*Ποινικές και εγκληματολογικές διαστάσεις στο ζήτημα της εγκληματικότητας αλλοδαπών και της λαθρομετανάστευσης*] (PoinChr NR/685).
[50] K Vathiotis, (n28) 218; P Spyrakos, '*Criminal Treatment of Illegal Immigration'* [Ποινική αντιμετώπιση της λαθρομετανάστευσης] (n 28) 363.
[51] Explanatory Report of Law 4251/2014 [*Αιτιολογική Έκθεση Ν. 4251/2014*] (FEK A 80/01.04.2014); M Kaiáfa-Gkbánti, *Greek Criminal Law – Special Part* [*Ελληνικό Ποινικό Δίκαιο – Ειδικό Μέρος*] 88.
[52] Supreme Court of Greece [Άρειος Πάγος], *Decision No 859/2016*[Απόφαση υπ' αριθμ. 859/2016] (2016) https://www.areiospagos.gr

fall within Article 24, par. 4.[53] Typical facilitation might include providing tickets, arranging boarding passes, or enabling evasion of checks at airports, whereas a blanket inclusion of all forms of assistance risks contravening the principle of legality (Article 7, par. 1 Constitution; Article 1 Penal Code) and violating proportionality, given the severe penalties.[54]

Article 24 of the Greek Migration Code (Law 5038/2023) - Criminal offences Obligations of Private Individuals and Employees - Sanctions

4. Any person who facilitates the entry into or exit from Greek territory of a third-country national, without undergoing the control provided for in Article 5, shall be punished by imprisonment of up to ten (10) years and a fine of at least twenty thousand (20,000) euros. If the aforementioned act was committed for profit, professionally, habitually, or if the crime is committed by two (2) or more persons acting jointly, a minimum imprisonment of ten (10) years and a fine of at least fifty thousand (50,000) euros shall be imposed.

Article 25 sets an autonomous offence for transporting third-country nationals who lack a right of entry, as well as "receiving" them at entry points or borders for onward movement, "facilitating" their transport, or providing accommodation for concealment. Penalties are among the harshest in the Greek legal order,[55] ranging from up to ten years' imprisonment per person transported, to minimum fifteen-year terms where danger to life may result, and life imprisonment if death occurs. Although the text enumerates professional roles (shipmasters, pilots, drivers), doctrine and case law emphasise that this is a common offence: what matters is who effectively controls the vessel or vehicle, not formally in a professional role.[56] Courts have treated indicators of intent such as planning and organisation of the journey as evidencing the requisite dolus.[57] Criticism focuses on the paradox that a "participant" (the transporter) is punished more severely than the principal of the underlying immigration offence (irregular entry), raising constitutional proportionality concerns.[58] Notably, "profit" aggravates punishment (Article 25, para 1(b)) but is not an element of the basic offence; thus liability attaches even in the absence of financial or material benefit, which is at odds with international standards that emphasise exploitation as a key element.

[53] Chatzinikolaou N (n 28) 134.
[54] Margaritis and Satlanis, (n 28) 6; see also Art 7(1) Constitution [άρθρο 7 παρ. 1 Συντ.] and Art 1 Penal Code [άρθρο 1 ΠΚ].
[55] M Kaiáfa-Gkbánti, *Greek Criminal Law – Special Part [Ελληνικό Ποινικό Δίκαιο – Ειδικό Μέρος]* (2015) 88.
[56] Thessaloniki Judicial Council of the Court of Misdemeanours, *Decision 809/2013 [Απόφαση 809/2013 του* Πλημμελειοδικείου Θεσσαλονίκης*];* N Chatzinikolaou, *The Criminal Suppression of Irregular Migration: A Dogmatic Approach and Fundamental Interpretative Problems [Η ποινική καταστολή της παράνομης μετανάστευσης: Δογματική προσέγγιση και βασικά ερμηνευτικά προβλήματα]* (Nomiki Vivliothiki 2009) 151–152; G Bekas, *'Criminal Liability of the Transporter of Undocumented Migrants' [Η ποινική ευθύνη του μεταφορέα λαθρομεταναστών] in* A Sykiotou *(ed), Foreigners in Greece: Integration or Marginalisation? [Αλλοδαποί στην Ελλάδα: Ένταξη ή περιθωριοποίηση]* (Ant. N. Sakkoulas 2008) 268.
[57] M Kaiáfa-Gkbánti, *Greek Criminal Law – Special Part [Ελληνικό Ποινικό Δίκαιο – Ειδικό Μέρος]* (2015) 88.
[58] N Chatzinikolaou, *The Criminal Suppression of Illegal Migration: A Dogmatic Approach and Fundamental Interpretative Problems [Η ποινική καταστολή της παράνομης μετανάστευσης: Δογματική προσέγγιση και βασικά ερμηνευτικά προβλήματα] (Nomiki Vivliothiki 2009) 42, 51.*

Article 25 of the Greek Migration Code (Law 5038/2023)
Obligations of Carriers - Sanctions

Captains or masters of a ship, vessel, or airplane, and drivers of any type of transport vehicle who transport from abroad into Greece third-country nationals who do not have the right to enter Greek territory or whose entry has been prohibited for any reason, as well as those who receive them from points of entry, external or internal borders, in order to move them into the interior of the country or into the territory of another European Union Member State or a third country, or who facilitate their transport or provide them with accommodation for concealment, shall be punished:

(a) by imprisonment of up to ten (10) years and a fine of thirty thousand (30,000) to sixty thousand (60,000) euros for each transported person,

(**b)** by a minimum imprisonment of ten (10) years and a fine of sixty thousand (60,000) to one hundred thousand (100,000) euros for each transported person, if the perpetrator acts for profit, professionally, or habitually, or is a repeat offender, or holds the capacity of a public servant, tourist agent, shipping agent, or travel agent, or if two (2) or more persons act jointly,

(c) by a minimum imprisonment of fifteen (15) years and a fine of at least two hundred thousand (200,000) euros for each transported person, if the act could result in danger to a person,

(d) by life imprisonment and a fine of at least seven hundred thousand (700,000) euros for each transported person, if a death occurred in the case of paragraph (c).

International standards[59] centre criminalisation on financial or material benefit. Greek law treats "profit" as an aggravating factor, not a constituent element of the basic offences in Articles 24 and 25. This design penalises survival, or humanitarian-driven conduct, such as a passenger compelled to steer a boat, on the same axis as "exploitative smuggling", and has been criticised by academics and legal professionals.[60]

Throughout this trajectory, the protected legal interest has been framed as the State's sovereign power to control entry and stay, with criminal law instrumentalised symbolically to deter irregular movement.[61] The resulting framework prioritises "incapacitation" of 'transporters' and creates systemic risks of over-criminalisation, particularly in cases where neither profit nor organised exploitation is involved.

[59] *Protocol against the Smuggling of Migrants by Land, Sea and Air* (UNGA Res 55/25, 15 November 2000) art 3(a); *Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence* [2002] OJ L 328, 17–18.
[60] N Chatzinikolaou*, The Criminal Suppression of Illegal Migration: A Dogmatic Approach and Fundamental Interpretative Problems [Η ποινική καταστολή της παράνομης μετανάστευσης: Δογματική προσέγγιση και βασικά ερμηνευτικά προβλήματα]* (Nomiki Vivliothiki 2009) 42, 51.
[61] N Chatzinikolaou*, (n 26) 30;* P Spyrakos*, (n 18);* K Vathiotis*,* (n 18) 210–211.

4.2.2 Procedural and legal interaction with the broader criminal legal framework

The articles invoking criminal liability in the migration code cannot be understood in a vacuum, as they are framed within, and expand on, the body of Greek Criminal Law such as the Penal Code (PC) and the Code of Criminal Procedure (CCP). This section outlines relevant provisions that are relevant to understanding the greater landscape of Criminal Law in Greece and its interaction with the criminal liability provisions of the Migration Code.

4.2.2.1 Procedural regimes applicable to Migration Code offences

Accelerated procedures

Aforementioned Article 25, par. 9 of the Migration Code sets jurisdiction for the felonies under Article 25, par. 1[62] and Article 24 to the Single-Member Court of Appeal. Furthermore, it applies the accelerated procedure of Article 309 CCP. Accelerated procedures, while designed to expedite adjudication, limit time for investigation, witness securing and translation, and can impair the defence's ability to test contested evidence (notably witness availability and credibility).

Suspended sentence on appeal

Furthermore, Article 25, par. 8 of the Migration Code establishes a special procedural rule according to which neither the time limit for filing an appeal nor the appeal itself suspends the execution of the first-instance conviction for offences under Article 25, as well as for the aggravated forms of Article 24, pars. 4, 5 and 7. The provision operates as a legislative exclusion of the general regime of Articles 471 and 497 CCP, where suspension is not automatic but may be granted upon request. In the framework of Articles 24 and 25, however, the possibility of suspensive effect is removed ex lege, leaving no procedural space for the first-instance court to examine a request and significantly limiting the practical reach of appellate review.

The structure of Article 25, par. 8 resembles other recent legislative exclusions of suspension, notably the rule introduced in Article 187, par. 6 PC, which provides that when someone is convicted for the offences covered by Article 187 (i.e., participation in or organisation of a criminal group, and related offences tried in the same case), the sentence cannot be suspended or converted in any way and, importantly, an appeal does not have suspensive effect. That means the convicted person must begin serving the sentence immediately, even if they appeal. In both cases, the legislature departs from the general procedural model and imposes immediate execution of custodial sentences on the basis of an assumed heightened criminal gravity and the need for deterrence. Unlike the general system of the Code of Criminal Procedure, which allows for an individualised judicial assessment based on the circumstances of the case, the risk of flight, the defendant's personal situation, and the proportionality of detention pending appeal, Article 25, par. 8 establishes a special rule that applies automatically and without reference to these criteria.

[62] Excluding section (d)

In practice, the immediate enforceability of convictions under Articles 24 and 25 is particularly consequential given the elevated statutory minima and the frequent use of the accelerated trial procedure of Article 309 CCP. Defendants who have undergone a rapid first-instance hearing, often with limited time for preparation and interpretation difficulties, begin serving lengthy sentences before the appellate court can reassess the evidence, including contested witness statements or procedural irregularities. Where appeals ultimately lead to acquittal or substantial reductions, the absence of suspensive effect limits the remedial value of second-instance review.

From a procedural rights perspective, the rule raises concerns regarding the effective exercise of the right to appeal. Although the Greek Constitution does not guarantee a second degree of jurisdiction, Greece is bound by Article 2 of Protocol No. 7 ECHR and Article 14, par. 5 ICCPR, both of which require a real possibility of review by a higher court. The automatic enforcement of the sentence before the examination of the appeal affects the practical utility of this right, particularly when the conviction rests on accelerated proceedings or on decisive pre-trial statements read in court. The exclusion of suspension also restricts the judicial assessment of proportionality, normally carried out under Article 497 CCP, regarding whether immediate custody is necessary and appropriate in the circumstances of the case.

Overall, Article 25, par. 8 introduces a procedural regime that diverges from the general principles of criminal procedure, narrows judicial discretion, and significantly affects defendants prosecuted under Articles 24 and 25 of the Migration Code, who typically begin serving substantial custodial sentences long before their case is reviewed on appeal.

4.2.2.2 Sentencing tools and procedures under the CCP and Penal Code

Plea bargaining (Articles 303–308 CCP)

The institution of plea bargaining was introduced into Greek criminal procedure with the 2019 amendments to the Code of Criminal Procedure and is regulated in Articles 303–308 CCP. It establishes a structured process through which the accused may admit the act and agree with the prosecutor on the sentence to be imposed. The model corresponds to what comparative theory describes as sentence bargaining, in the sense that only the penalty may be negotiated while the legal characterisation of the offence remains unaffected.

Under Article 303, par. 1 CCP, plea bargaining is available for all ex officio prosecuted offences except felonies punishable also with life imprisonment and offences under Article 187A PC and Chapter 19 PC. The accused may submit a written request until the formal completion of the main investigation or the preliminary inquiry. After the request is filed, the case file is transmitted to the competent prosecutor, who must assess whether the case is suitable for negotiation, taking into account the circumstances of the act and the personal situation of the accused. The prosecutor summons the accused, who must be represented by counsel; if they have none, counsel is appointed ex officio. If an agreement is reached, a written protocol is drawn up under Article 303, par. 4 CCP and signed by the prosecutor, the accused and defence counsel. It contains the admission of the act, the agreed sentence and the manner of its execution. The Code provides specific sentencing limits for negotiated outcomes. The case is then introduced directly before the competent Single Member Court, which convicts on the basis of the protocol and may not exceed the agreed penalty. If no agreement is reached, the request is deemed never to have been submitted.

Law 5090/2024, which constituted major legislative reform relating to Greece's criminal justice system, amended the framework by enabling prosecutors to invite the accused to negotiate at the stage of serving the summons to trial. Supreme Court's Prosecutorial Circular 3/2025 further emphasises the consistent consideration of plea bargaining and the criminal order procedure across prosecutorial offices.

In proceedings under Articles 24 and 25 of the Migration Code, plea bargaining operates within a procedural context marked by high statutory minimum penalties, compressed timelines due to the accelerated procedure of Article 309 CCP, frequent interpretation deficits and limited time for defence preparation. These conditions may affect the ability of defendants to adequately evaluate the legal implications of a negotiated admission of guilt, particularly where they have had limited access to counsel during earlier stages.

4.2.2.3 Mitigating circumstances

Article 84 of the Penal Code sets out the general framework for mitigating circumstances. Under paragraph 1, recognition of any mitigating factor permits sentencing within the reduced range of Article 84 PC, paragraph 2 lists the principal categories:

(a) prior lawful conduct in the personal, family, professional and social sphere,
(b) the commission of the act under non-base motives, material hardship or coercive influence,
(c) emotional disturbance arising from improper conduct of the victim,
(d) sincere remorse accompanied by concrete efforts to repair or limit the consequences of the act),
(e) and stable good behaviour for a considerable period after the offence.

Paragraph 3 also adds the unreasonable duration of proceedings, where not attributable to the accused, as an additional mitigating factor. These circumstances must be raised by the defence as substantive claims and addressed with specific and reasoned judicial findings.

Following the 2019 reform and later amendments, both the content and the practical operation of Article 84 have become more structured. The shift in sub-paragraph (a) from a broader assessment of "honest" prior life to a more objective concept of "lawful" living limits the evaluative dimension: a clean criminal record is no longer sufficient by itself, and courts focus instead on concrete indications of sustained compliance with legal and social norms. Likewise, recognition of remorse under sub-paragraph (d) requires demonstrable and targeted actions aimed at mitigating harm; neither a procedural admission nor an apology during trial is considered adequate. In addition the older model of cumulative, "double" reduction of penalties, has been abolished.

Article 133 of Penal Code provides a distinct mechanism for reduced sentencing for offenders who committed the act before reaching the age of twenty-one. Where the court finds that diminished maturity at the time of the offence justifies it, the defendant may be sentenced under the special framework for young adults. This provision may apply independently of Article 84 and can operate cumulatively where the statutory conditions for both are met. These provisions have particular significance in prosecutions under Articles 24 and 25 of Law 5038/2023.

Within this framework, mitigation has a decisive practical role. Given the elevated statutory minima in both Articles 24 and 25, meaningful sentencing differentiation is effectively possible only where Article 84 PC is successfully invoked, or, where applicable, Article 133 PC. Recognition of mitigation allows the court to move from the baseline penalties of the Migration Code to the reduced ranges of Article 83 PC, which can substantially alter the sentencing outcome, particularly in cases involving incidental, non-profit-driven conduct or young adult defendants. The extent of the reduction ultimately depends on the court's evaluation of the specific circumstances submitted and the statutory criteria set out in Articles 84 and 133 PC.

4.2.2.4 Legal exceptions to Migration Code liability

Article 3, par. 3(e) of the Migration Code excludes recognised refugees and applicants for international protection from the Criminal Liability enshrined in its scope, reflecting Article 31 of the 1951 Refugee Convention. Building on the declaratory nature of refugee status (recognition confirms, it does not create status), part of the scholars argues that refugees/asylum seekers should be ex lege excluded from liability under Articles 24 and 25 (similarly to exception from illegal entry).[63] This is commonly referred to as the "refugee exception".

Case-law has been divided: the Supreme Court has held that refugee status removes criminality for the refugee's own irregular entry but does not per se affect the transporter's liability unless the humanitarian-aid exception is met.[64] More recent decisions by two different Single Member Appeal Court for Felonies have acquitted asylum-seekers charged as "drivers," recognising that persons within Article 3, par. 3(e) cannot be convicted of illegal transfer in these circumstances.[65] This approach aligns with the 'self-transfer' argument, i.e., that acts integral to one's own irregular entry -protected by access to asylum- should not give rise to smuggling-type liability where no material benefit is pursued.

Furthermore, Article 25, par. 6, exempts the following from criminal liability: rescue at sea, the transport of persons in need of international protection, and facilitation aimed at bringing people under reception/asylum procedures, subject to prior notification of authorities. Commentators note this carve-out is narrow: it omits other forms of assistance (e.g., food, water, medical care)[66] and the ex ante notification requirement is often impracticable in emergencies; volunteers and asylum seekers have therefore both been prosecuted despite the

[63] E Symeonidou-Kastanidou, '*Refugee Status and Its Significance for the Criminal Law of Irregular Migration'* [*Το καθεστώς πρόσφυγα και η σημασία του για το ποινικό δίκαιο της παράνομης μετανάστευσης*] (2018) Ποινικά Χρονικά 259–263.
[64] Supreme Court of Greece [Άρειος Πάγος], *Case 719/2022* [Άρειος Πάγος 719/2022]; Supreme Court, *Case 530/2023* [Άρειος Πάγος 530/2023].
[65] Single Member Appeals Court of Felonies of the Aegean, *Decisions 36/2024, 47/2024; 30/2025; 48/2025; 51–57/2025* [Μονομελές Εφετείο Κακουργημάτων Αιγαίου, *Αποφάσεις 36/2024, 47/2024; 30/2025; 48/2025; 51–57/2025*]; Single Member Appeals Court of Felonies of Eastern Crete, *Decision 405/2025* [Μονομελές Εφετείο Κακουργημάτων Ανατολικής Κρήτης, *Απόφαση 405/2025*].
[66] Avgi Newsroom, *'Chios: Refugee Acquitted for Giving Water and Food to Fellow Humans'* [*Χίος: Αθωώθηκε ο πρόσφυγας που έδωσε νερό και τροφή σε συνανθρώπους του*] (Avgi, 16 June 2022) https://www.avgi.gr.

humanitarian exception.[67] The Court of Justice of the European Union (CJEU)has also clarified that private individuals cannot be expected to pre-assess protection needs themselves.[68]

In Greece, Article 25, par. 6 of Law 5038/2023 maintains a limited exemption from criminal liability for cases of sea rescue, transfer of persons in need of international protection, and facilitation of transfer for the purpose of initiating asylum procedures under Law 3386/2005 or Law 4939/2022, provided prior notification of the authorities. However, this formulation has proven overly restrictive and ineffective in preventing the unjust criminalisation of humanitarian assistance. Prosecutions have been brought not only against Search and Rescue (SAR) operation professionals and NGO volunteers but also against refugees themselves, treated as "smugglers" and sentenced to lengthy prison terms.[69] Furthermore, the requirement that beneficiaries "be in need of international protection" contradicts the CJEUs finding that individuals cannot be expected to assess asylum eligibility, as this lies exclusively within the competence of national authorities.[70] Finally, the reference to Law 3386/2005 is outdated, given that reception and identification procedures are now governed by Articles 38 et seq. of the Asylum Code (Law 4939/2022).

4.2.2.5 Consequences of criminalisation for asylum access

The initiation of criminal charges under Articles 24 and 25 of the Migration Code creates significant barriers to international protection. As shown in practice, individuals facing smuggling or facilitation charges are often excluded, either formally or logistically, from accessing the asylum procedure or from continuing any steps towards obtaining status and/or a residence permit. In Greece, asylum applications of people accused of smuggling typically remain frozen while the criminal case is ongoing, as a conviction can lead to exclusion under Article 11, par. 2(b) of the Asylum Code, which implements Article 12, par. 2(b) of Directive 2011/95/EU.[71] Even where charges are later dropped, or the individual is acquitted, the prolonged delay may already have deprived them of essential legal protections and opportunities for integration.[72]

The result is a state of legal limbo in which individuals are unable to pursue protection-related procedures because of the criminal accusations against them. This reflects a broader pattern observed across Europe, in which the simple act of steering a vehicle or boat, often undertaken in circumstances of necessity, becomes grounds not only for criminal prosecution but also for disqualification from international protection.

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[67] Human Rights Watch, *Solidarity on Trial in Greece* (Human Rights Watch, 3 December 2025) https://www.hrw.org.

[68] CJEU, *Commission v Hungary* (C-821/19, Grand Chamber, EU:C:2022:996) paras 129–130.

[69] Winkler and Mayr, *A Legal Vacuum* (n 1).

[70] CJEU, *Commission v Hungary (C-821/19, Grand Chamber, EU:C:2022:996) paras 129–130.*

[71] Human Rights Legal Project & Legal Centre Lesvos, *The Exemption from Criminalisation: A Real Safeguard or an Illusion? (2025)* https://legalcentrelesvos.org.

[72] Border Violence Monitoring Network (BVMN), *The Undermining of Fair Trial Safeguards in the Trial of Homayoun Sabetara (2025);* Legal Centre Lesvos, *After Five Years of Waiting, A.B. Has Been Acquitted of All Criminal Charges (11 March 2025)* https://legalcentrelesvos.org.

5. Analysis of trial monitoring findings

5.1 Overview of charges and structure of findings

The monitored proceedings concerned a wide range of recurring offences, with a clear predominance of charges on illegal transport of third country nationals. The findings in this chapter are structured per charge, in order to reflect both the frequency with which each provision was applied and the procedural and substantive outcomes that followed. For each offence, the analysis presents: (a) how often the charge was brought, (b) the proportion of guilty and merely guilty verdicts, (c) the use of plea deals to resolve cases with said charges, and (d) outcomes such as postponements or findings of inadmissibility.

Legal Article	Charge	Cases	Percentage
A. 25 of L.5038/2023	Illegal transport of third country nationals who didn't have the right to enter the country	178	94%
	For profit	135	71%
	Endangering lives	125	66%
	Causing deaths	8	4%
A. 277 of P.C.	Causing a shipwreck	19	10%
	With danger of foreign property	0	0%
	Endangering lives	15	8%
	Causing deaths	1	1%
A. 83 par. 1 of L.3386/2005	Illegal entry	157	82%
A. 24 par. 6 of L.5038/2023	Unlawful possession or use of travel documents (genuine passports or other travel docs)	3	2%
A. 24 par. 5 of L.5038/2023	Facilitation of illegal stay of third country nationals	1	1%
A. 291 of P.C.	Dangerous interference with marine traffic (transport of vehicles, ships, or aircraft)	3	2%
	Endangering lives	2	1%
	Causing deaths	0	0%
A. 169 of P.C.	Disobedience	30	16%
A. 167 of P.C.	Resistance and violence against officials.	9	5%
A. 187 of P.C.	Forming, joining, or directing a criminal organisation,	4	2%
A. 7 of L. 2168/1993	Illegal gun possession	6	3%
A. 406 of P.C.	Exposing someone in danger	2	1%

Table 1: Charges imposed on monitored cases

Article 25 Law 5038/2023 - Illegal transport of third-country nationals

Article 25 of Law 5038/2023 constituted the core charge across the monitored proceedings and was brought a total of 178 times, representing 94% of the monitored cases. In the vast majority of instances examined, proceedings resulted in convictions: 134 cases ended with a guilty or guilty of some charges verdict, 47 of which were resolved through plea deals. Aggravating circumstances under Article 25 were invoked with high frequency. The aggravating element of acting for profit was charged 135 times (71%), endangering life was alleged in 125 cases (66%), and causing death in 8 cases (4%). These aggravating forms largely mirrored the outcomes of the base offence, with convictions or plea deals prevailing and only a limited number of postponements or inadmissibility rulings recorded. Overall, the data indicate that Article 25, particularly in its aggravated forms, functioned as the principal legal vehicle through which criminal responsibility was attributed in migration-related prosecutions.

Article 83, par. 1. Law 3386/2005 - Illegal entry

The offence of illegal entry was brought 157 times, accounting for 83% of the monitored cases, often cumulatively with Article 25. In procedural terms, illegal entry rarely constituted the sole basis of prosecution and was typically treated as an ancillary charge. Outcomes show that 119 cases involving illegal entry largely resulted in guilty or merely guilty decisions, usually combined with convictions for illegal transport. A notable number of illegal entry charges were addressed through plea deals (47), while a smaller proportion resulted in postponements (19) or findings of inadmissibility (3). Where courts acquitted defendants of illegal transport but convicted them of illegal entry alone, the legal consequences were significantly reduced, given the substantially lower sentencing requirements attached to this offence as a misdemeanor.

Article 277 Penal Code - Causing a shipwreck

Charges under Article 277 of the Penal Code (causing a shipwreck) were brought in 19 cases, representing 10% of the monitored proceedings. Within this category, aggravating forms were frequently invoked: endangering lives appeared in 15 cases, while causing death was charged once. Article 277 charges in 3 cases led to full convictions, 12 defendants were acquitted and in 4 cases were postponed.

The aggravating circumstance of endangering lives (Article 277(b)) was invoked in 15 cases (8%). In all three cases where a conviction was handed down for the primary charge of causing a shipwreck, the aggravating circumstance of 'endangering lives' was also recognised. In the remaining cases, four proceedings were postponed and the remaining cases resulted in a non-conviction for this aggravating circumstance, as the basic charge of 'causing a shipwreck' was also dropped. The most severe aggravation, causing death (Article 277(c)), was charged once (1%) and did not result in a conviction. These findings suggest that, possibly given the gravity of the offence, courts appeared comparatively more cautious in affirming the aggravated forms of the shipwreck offence. The limited number of convictions and the presence of postponements and acquittals indicate a higher threshold or greater judicial restraint when assessing aggravating circumstances involving danger to life or deadly outcomes.

Article 24, par.5. Law 5038/2023 - Facilitation of illegal entry
This specific charge was imposed only in one single case, mainly due its nature which is contradictory to the main charge used, the one of "illegal transport". The case was postponed to a later date.

Article 24, par. 6. Law 5038/2023 - Unlawful possession or use of travel documents
Charges relating to the unlawful possession or use of travel documents were comparatively rare, appearing in 3 cases (2%), and were largely supplementary to the principal illegal transport accusations. All three cases resulted in convictions or partial convictions, with no plea deals, postponements, or inadmissibility decisions recorded.

Article 291 Criminal Code - Dangerous interference with marine traffic
This offence appeared in 3 cases (2%). Only 1 case was examined leading to the acquittal of the defendant from this particular charge, while 2 cases were either referred or declared inadmissible and did not proceed to hearing. The aggravated form involving endangerment of life was invoked twice, yet neither instance resulted in a conviction, with both cases found inadmissible. No cases involved the aggravation of causing death.

Article 169 Criminal Code - Disobedience
The offence of disobedience was brought in 30 cases (15%). Of these, 24 resulted in convictions and 2 in acquittals, while 2 cases were postponed and 2 were referred to a different court. In one of the two cases in which the defendant was acquitted of that specific charge, this was done following a recommendation by the prosecutor, who argued that the act of "resistance" for which the defendant was already being prosecuted already encompassed disobedience, and that the legal provisions overlapped. This charge was frequently used in conjunction with illegal transport and illegal entry charges, functioning as a supporting accusation rather than as an independent basis for punishment.

Article 167 Criminal Code - Violence or resistance against officials
Charges under Article 167 appeared in 8 cases (4%), only half of which resulted in convictions. All of the acquittals involved defendants who, although convicted on other charges for which they were being prosecuted, were acquitted of this specific charge. No plea deals, postponements, or other findings were recorded.

Article 187 Criminal Code - Criminal organisation
The charge of forming, joining, or leading a criminal organization was brought in 2 cases involving 4 defendants (2%). Three of the four instances, which were part of a joint case, involving this charge resulted in a conviction, while in the other case, the defendant was convicted on the other charges but acquitted of this specific one. Although not frequently applied, the inclusion of Article 187 significantly elevated the severity of the proceedings and sentencing exposure in those cases.

Article 7, Law 2168/1993 - Illegal gun possession
The charge of illegal possession of a weapon was brought against six different defendants. In all cases, it involved the possession of a knife carried by the driver or a passenger. In five cases, a guilty verdict was handed down, while in one case the trial was postponed. However, the charge of possession is a misdemeanor and resulted in only a minor increase in the total sentence.

Article 406 Criminal Code - Exposing a person to danger

Charges under Article 406 were invoked only in one case involving two defendants (1%). Of these, while the defendants were found guilty for the main charge of 'illegal transport' they were both acquitted from the Article 406 charge of 'exposing a person to danger', as the court suggested that the 'illegal transport' contains the element of danger, so the crime of 'exposure' is absorbed through it. This charge was applied as a complementary offence, reinforcing allegations of risk to life already embedded within the aggravating circumstances of the mainly used charge.

The distribution and handling of these charges provide the substantive framework within which the monitored trials unfolded. The following sections move beyond the legal characterisation of offences and focus on how proceedings were conducted in practice. The findings are therefore organised around procedural patterns, the treatment of defence claims and objections, evidentiary practices, sentencing outcomes, and mitigation, followed by an assessment of these practices in light of the guarantees of Article 6 ECHR and related fair-trial standards.

5.2 Plea Deals

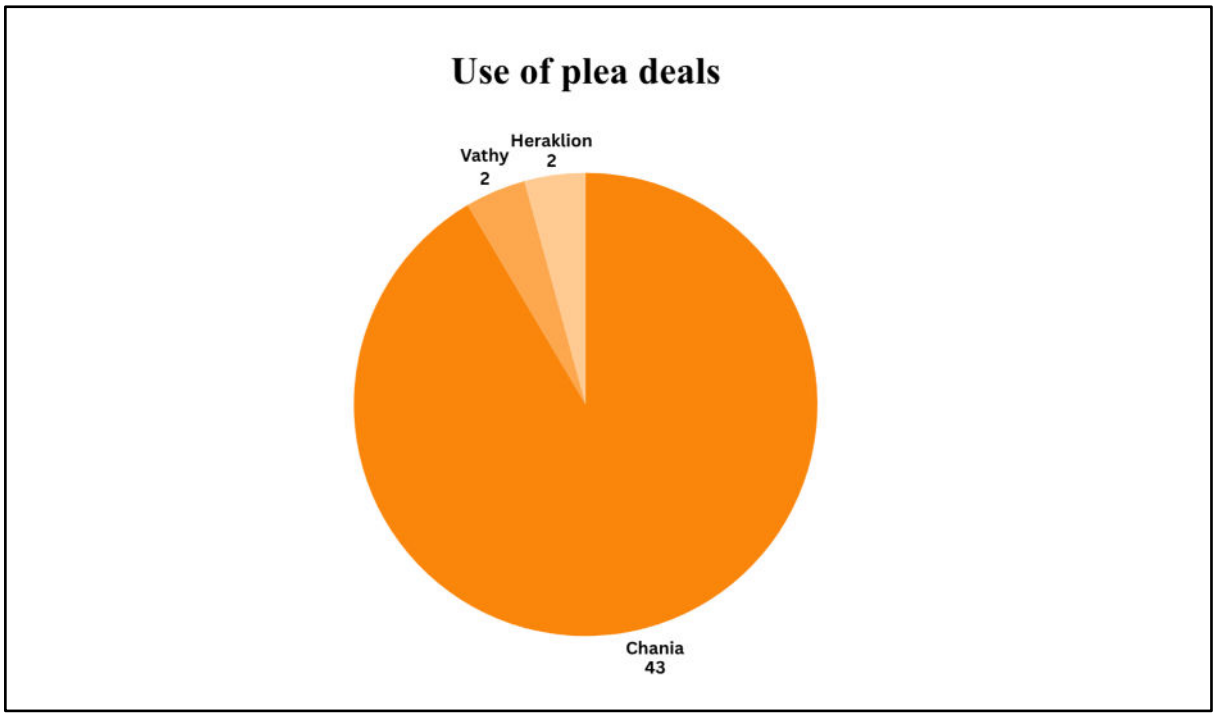

Figure 2: Use of Plea Deals on monitored cases

Out of the 190 defendants' cases monitored, 47 defendants entered a plea deal. The data collected across the examining area reveal a significant difference in the use of plea deals, between the court in Chania, with the ones in Vathy, Heraklion, Rhodos and Mytilene. Although the use appears to be very consistent in Chania with a total of 43 deals occurring, the research team recorded only 2 in Heraklion and 2 in Vathy, while none in Mytilene and Rhodos. Another thing that stood out was its use mainly among young defendants, with 42 individuals under the age of 25 (89%) while their age group represents only 50% of the total people that had been prosecuted.

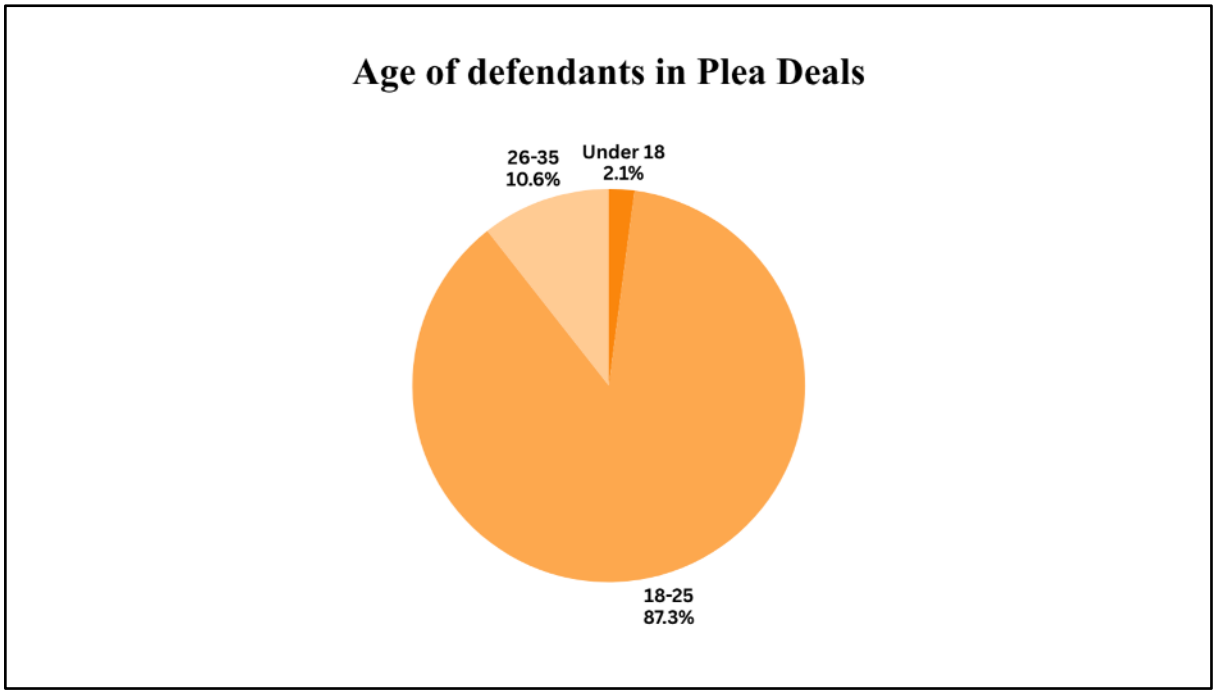

Figure 3: Age of defendants in Plea Deals

Right to a fair and public hearing (Article 6, par. 1. ECHR)

A hearing must be genuinely fair, public, and conducted with adequate judicial scrutiny. A procedure lasting only a few minutes cannot satisfy the requirement of a fair examination of the case or ensure that a guilty plea is voluntary, informed, and supported by the facts. Plea-deals are not concluded in a public hearing, but are rather signed outside the courtroom between the lawyer(s), defendant(s) and Prosecutor. The announcement of the outcome and the verification of the sentence happen in a public hearing, which in the case of the trials monitored had an average duration of less than 5 minutes, with some concluding in as little as two minutes. Combined with the near-uniform imposition of sentences, this brevity strongly suggests a pre-determined and purely administrative approach rather than an individualised judicial examination. The consistency of outcomes across 47 plea deals signals that plea bargaining operates as the default procedural path, not a choice exercised following fair consideration.

Right to a fair hearing by an independent and impartial tribunal (Article 6, par. 1. ECHR) and the presumption of innocence (Article 6, par. 2. ECHR)

The sentencing patterns observed in plea-deal cases reveal practices that are difficult to reconcile with the guarantees of Article 6, par. 1 and Article 6, par. 2 of the ECHR. Both provisions require that courts approach each case with an open, neutral, and genuinely inquisitorial approach, assessing the defendant's responsibility individually, impartially, and free from assumptions of guilt.

Plea-deal hearings consistently resulted in uniform sentences, with 36 out of the 43 cases in which data for the penalties was recorded, receiving exactly 10 years of imprisonment (84%), regardless of the defendant's level of involvement, personal background, coercion or the presence of mitigating circumstances. This remarkable uniformity indicates a pre-structured sentencing model, where the outcome appears detached from the specific facts of each case.

Such practices undermine the core requirement of Article 6, par. 1: that a tribunal should engage seriously with the evidence, evaluate the defendant's intent, consider all factors and determine a sentence proportionate to the individual's role and circumstances. Instead, the mass and repeated nature of sentencing suggests that decisions are made according to a pre-determined template, not based on a judicial assessment tailored to each defendant.

Furthermore, the presumption of innocence requires that individuals are treated as innocent until proven guilty, and that courts refrain from approaches implying that guilt is assumed or the outcome is foreordained. However, the pre-determined character of pleading guilty in plea-deal cases effectively collapses the space in which innocence could be meaningfully asserted through a hearing. When sentencing outcomes are nearly identical across cases, regardless of contested facts or differing levels of alleged responsibility, the preference of plea deals becomes a procedural formality, confirming guilt rather than assessing it. This dynamic devalues the defendant's right to contest charges and plea deals serve as an administrative mechanism to validate that presumption.

The combination of uniform sentencing and the lack of individual inquiry therefore reflects a deeper structural issue: courts appear to approach migration-related cases with preconceptions about guilt, bypassing the safeguards intended to ensure fairness.

The merging of these concerns shows that the plea-deal mechanism, as currently practiced, does not align with the principles of:

a) Impartial adjudication because outcomes appear fixed regardless of evidence/testimony;
b) Individualised assessment because mitigating circumstances and personal factors are systematically ignored;
c) Presumption of innocence because guilt appears assumed prior to any substantive judicial examination.

Right to have the free assistance of an interpreter if the defendant cannot understand or speak the language used in court and Right to be informed of the nature and cause of the accusation (Article 6, par. 3(a) and (e) ECHR)

Defendants must understand the charges and their implications in order to plead guilty knowingly and voluntarily. The reliance on interpretation services of uneven quality in 44 cases, without interpretation in 1 case, and only 2 cases with private interpretation, raises substantial concerns about the ability of defendants to comprehend the charges and the consequences of resolving the case through plea deal. In the Single Member Appeals Court of Felonies of Crete in Chania, a prisoner in handcuffs, was arbitrarily selected to interpret for all the rest of the defendants. In cases when the Court decided to appoint an interpreter registered in the Court catalogue, the quality of the interpretation remained poor, as said interpreter was personally interfering with witnesses statements through personal remarks and comments. When interpretation is reduced to basic prompting ("sign this; accept this"), the defendant's ability to understand the nature and consequences of a plea is fundamentally compromised.

Right to have adequate time and facilities for the preparation of defence (Article 6, par. 3(b) ECHR) and Right to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require (Article 6, par. 3(c) ECHR)

Effective defence requires sufficient time, meaningful access to counsel, and an opportunity to prepare. In 45 out of 47 cases, defendants were represented by state-appointed lawyers, frequently assigned on the day of the hearing and having minimal time to understand the specificities of each case and develop a strategy with the defendant. The extremely short preparation time, combined with a very high volume of standardised handling of cases with the same charges in Chania (43 out of 47 plea deals), indicates that defendants could not realistically prepare a defence, review evidence, or consider alternatives to a plea deal. The rapid and mass processing of cases and uniform sentencing structure shows a lack of individualised file assessment and an absence of genuine legal preparation. State-appointed lawyers frequently guided defendants toward plea bargaining, indicating a structural pattern rather than isolated instances. Plea bargains were often presented as the default course of action, without adequate discussion with defendants about the possibility of a full hearing. Many defendants were not informed about the alternatives to plea bargaining, the consequences of pleading guilty to the charges, the loss of the right to appeal, or that a full hearing could result in the same penalty with proper defence. Observers noted that some state-appointed lawyers addressed clients as if they were already guilty. On 22 September, for example, a state-appointed lawyer told a defendant he faced "200 years in prison" if he did not sign a plea bargain, undermining the voluntariness of the defendant's choice.

Right to defend oneself through legal assistance of one's own choosing (Article 6, par. 3(c). ECHR)

Defendants must receive effective legal assistance capable of protecting their interests, ensuring that any plea is voluntary and informed. With 45 defendants dependent on state-appointed legal aid and only 2 represented privately, the state-appointed lawyer system is directly connected to the standardisation of plea deals. Monitors observed systematic patterns in which state-appointed lawyers advised defendants to accept plea deals without meaningful consultation, including instances of pressure, misinformation, and exaggerated statements about potential sentencing. Given the very young age of defendants and the lack of proper interpretation, this dynamic raises serious concerns about the voluntariness of decision, adequate information about one's rights and the lack of effective legal assistance.

Overall assessment

Across all monitored locations, the plea-deal framework functions in practice as a summary conviction mechanism that systematically infringes multiple procedural rights guaranteed under Article 6 ECHR. The combination of:

- extremely young defendants (majority 18–25 years old, including one minor, 89%),
- overwhelming reliance on state-appointed lawyers (96%),
- near-total dependence on arbitrary and inadequate interpretation (94%),
- hearings conducted in under five minutes (76%),
- uniform sentencing (36 identical 10-year terms, 84%),
- high cumulative sentences averaging 99.56 years

demonstrates a structural practice in which pleas are neither voluntary nor informed and sentencing is not individualised. The system prioritizes speed and administrative efficiency over legality and fairness, resulting in consistent violations of Article 6, pars. 1 and 3(a–e).

5.3 Pre-trial detention

Across the 173 monitored individual first degree hearings, pre-trial detention was ordered in nearly all proceedings (159) and for durations that fall within the limits set by Greek law. Notably, in the cases monitored in Crete (Chania and Heraklion), only one defendant was not in pre-trial detention at the time of the hearing, indicating that pre-trial deprivation of liberty was the prevailing procedural measure in these locations. From 59 cases that the time was able to be recorded, The average period of pre-trial detention recorded, was approximately 8 months, with the shortest lasting 3 months and the longest reaching 18 months, aligning with the maximum duration permitted under the Greek Code of Criminal Procedure.These figures outline the length and prevalence of pre-trial detention across the cases observed.

Although lawfulness of pre-trial detention primarily raises concerns under Article 5 ECHR, the ECtHR assesses criminal proceedings as a whole.[73] For this reason, several core guarantees of Article 6, such as the right to have one's case examined within a reasonable time and the rights to defence, may already be engaged during the pre-trial phase where failures at this stage are likely to seriously prejudice the overall fairness of the trial. Monitoring pre-trial detention is therefore essential to understanding whether early procedural shortcomings, including the duration and manner of ordering detention, create structural disadvantages that ultimately affect the fairness of the criminal proceedings as a whole.

Right to a fair hearing by an independent and impartial tribunal (Article 6, par. 1. ECHR)
The near-universal imposition of pre-trial detention (applied in 159 out of 173 cases), raises serious concerns regarding the impartiality of judicial decision-making. Article 6, par. 1. requires that courts approach each defendant free from preconceived assumptions. However, the consistent resort to pre-trial detention suggests that courts may treat individuals charged with facilitation or migration-related offences as inherently dangerous or presumptively likely to abscond, irrespective of their personal circumstances, age, asylum application, background, or the factual complexities of the case. When detention becomes the de facto starting point shaped by the nature of the offence, rather than the result of a neutral and individualised judicial evaluation, the appearance of impartiality is compromised.

Presumption of innocence (Article 6, par. 2. ECHR)
The presumption of innocence prohibits treating defendants as their guilt or criminal intent is assumed prior to conviction. The findings indicate how pre-trial detention was used, suggesting underlying assumptions about flight risk or criminality based primarily on defendants' migration status. The fact that the average detention duration was 8 months, with defendants held close to or up to the legal maximum of 18 months, reinforces the perception that detention operated as a punitive or precautionary measure linked to the offence category rather than to individual conduct. When defendants are detained systematically and for long periods, the

[73] ECtHR, *Imbrioscia v Switzerland* (24 November 1993) App No 13972/88, § 36.

distinction between preventive measures and assumptions regarding guilt or culpability becomes less clear, creating conditions that may hinder the presumption of innocence under Article 6, par. 2.

Fairness in light of personal circumstances/vulnerability of defendants (Article 6, par. 1. ECHR)

If we correlate the findings on defendants' ages with the detention data, we see that the near-universal use of pre-trial detention was applied irrespective of the defendants' age profile. Many defendants in the monitored cases were between 18 and 25 years old, with some being even younger. The ECtHR consistently holds that fair trial rights must be interpreted in light of the defendant's vulnerability.[74] Extended pre-trial detention for young defendants significantly heightens the risk of unequal participation in proceedings. The combination of prolonged deprivation of liberty sets defendants at an inherent disadvantage, deepening the fairness concerns already reflected in the structure of migration-related prosecutions.

Reasonableness of the duration of proceedings (Article 6, par. 1. ECHR)

The fact that the average period of pre-trial detention reached eight months, with the maximum reaching 18 months, raises concerns regarding the timeliness of the proceedings. The ECtHR assesses the "reasonable time" requirement under Article 6, par. 1, in light of the overall duration of the criminal process, including delays attributable to the authorities.[75] Prolonged pre-trial detention may signal structural or procedural delays affecting the fairness of the proceedings as a whole.[76] In the monitored cases, the length and standardisation practice of detention appears to reflect routine scheduling patterns and systemic constraints rather than case-specific needs. Where defendants remain in detention for extended periods before their case is heard, especially in cases following repetitive procedural patterns, the requirement of a prompt examination of the charges is placed at risk. However, it appears that the reform of the Judicial Charter that took place in 2024,[77] will allow for shorter periods until the trials take place, and also between first and second degree. This could have a direct effect on the prolonged pre-trial detentions.

Proportionality and lack of individualised assessment (Article 6, par. 1. ECHR)

Although the periods of pre-trial detention monitored fall within the limits set by Greek procedural law, the fairness requirement under Article 6, par. 1. also presupposes that procedural measures applied during the criminal process are proportionate to the aims pursued and tailored to the circumstances of the individual case.[78] ECtHR jurisprudence requires that courts engage in a genuine, case-specific judicial assessment, rather than rely on automatic or standardised reasoning, when procedural decisions have a substantial impact on the conduct of

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[74] ECtHR, *Panovits v Cyprus (11 December 2008)* App No 4268/04.

[75] ECtHR, Abdoella v The Netherlands (no 12728/87) § 24; *Tomasi v France* (no 12850/87) §§ 83–86; *Zimmermann and Steiner v Switzerland* (no 8737/79) § 24; and *Idalov v Russia* [GC] (no 5826/03) § 154.

[76] ECtHR, *Kalashnikov v Russia* (no 47095/99) §§ 125–132; *Idalov v Russia* [GC] (no 5826/03) §§ 128–140; *Labita v Italy* [GC] (no 26772/95) § 152; *Tomasi v France* (no 12850/87) §§ 102–115.

[77] Hellenic Republic, Law No 5108/2024: Unification of the First Instance Jurisdiction, Spatial Restructuring of Civil and Criminal Courts and Other Provisions [Νόμος υπ' αριθμ. 5108/2024: Ενοποίηση του πρώτου βαθμού δικαιοδοσίας, χωροταξική αναδιάρθρωση των δικαστηρίων της πολιτικής και ποινικής δικαιοσύνης και άλλες διατάξεις] (FEK A 65/2.5.2024) Ministry of Justice https://ministryofjustice.gr.pdf.

[78] ECtHR, *Rowe and Davis v The United Kingdom* [GC] (2000) App No 28901/95, § 61 (procedural restrictions must not be disproportionate and must not undermine the fairness of the proceedings); *Mirilashvili v Russia* (2008) App No 6293/04, § 159 (proportionality of procedural measures is integral to Article 6 fairness).

the defence or on the overall fairness of the proceedings.[79] As noted above, the ECtHR views criminal proceedings as a whole, and this approach extends to pre-trial decisions as well. Accordingly, shortcomings in pre-trial procedures, including decisions on pre-trial detention, may have implications for the overall fairness of the proceedings. In the monitored cases, pre-trial detention appeared to be imposed in an almost routine manner, with limited variation in reasoning or outcome despite significant differences in defendants' personal situations and the repetitive factual structure of many cases. Where detention is applied uniformly, including instances in which it reaches the statutory maximum of 18 months, this raises concerns as to whether the proportionality of the measure and the defendant's individual circumstances were meaningfully considered. The absence of visible case-specific reasoning contributes to doubts as to whether the broader fairness guarantees of Article 6, par. 1. were respected.

Equality of arms and impact on the right to defence (Article 6, pars. 1 and 3(b) ECHR)
While not directly measured in the course of our monitoring, prolonged pre-trial detention can limit a defendant's practical ability to prepare a defence, maintain contact with defence lawyers, apply for asylum and gather evidence. In the context of migration-related cases, many defendants have limited access to support networks which can further restrict access to information and legal assistance. These factors, combined with other procedural challenges documented in these proceedings, such as language barriers to communicate with authorities, limited interpretation services and minimal preparation time with state-appointed lawyers, represent structural conditions that can affect the fairness of the proceedings and the effective exercise of defence rights.

5.4 Legal representation

Across the 87 monitored cases involving 114 individuals that went on a hearing, legal representation varied significantly in both form and quality, with a clear predominance of state-appointed defence lawyers. Specifically, 59 defendants were represented by state-appointed lawyers, 29 by privately hired lawyers, and 20 by NGO-appointed lawyers. Four defendants did not appear in court and had not appointed any representative. For two more defendants, it was not possible to determine whether they had been appointed by the state or privately.

The timing, manner, and substance of legal assistance differed considerably depending on the type of representation. State-appointed lawyers were typically assigned on the day of the hearing, often shortly before proceedings began, and were frequently responsible for several defendants facing identical charges.

[79] ECtHR, *De Cubber v Belgium* (1984) App No 9186/80, § 33 (fairness requires a genuine judicial examination, not a merely formal process); *Kremzow v Austria* (1993) App No 12350/86, § 67 (courts must conduct a meaningful review of the defendant's individual situation); *Ilijkov v Bulgaria* (2001) App No 33977/96, § 103 (automatic or routine reliance on standard formulae is incompatible with Convention standards).

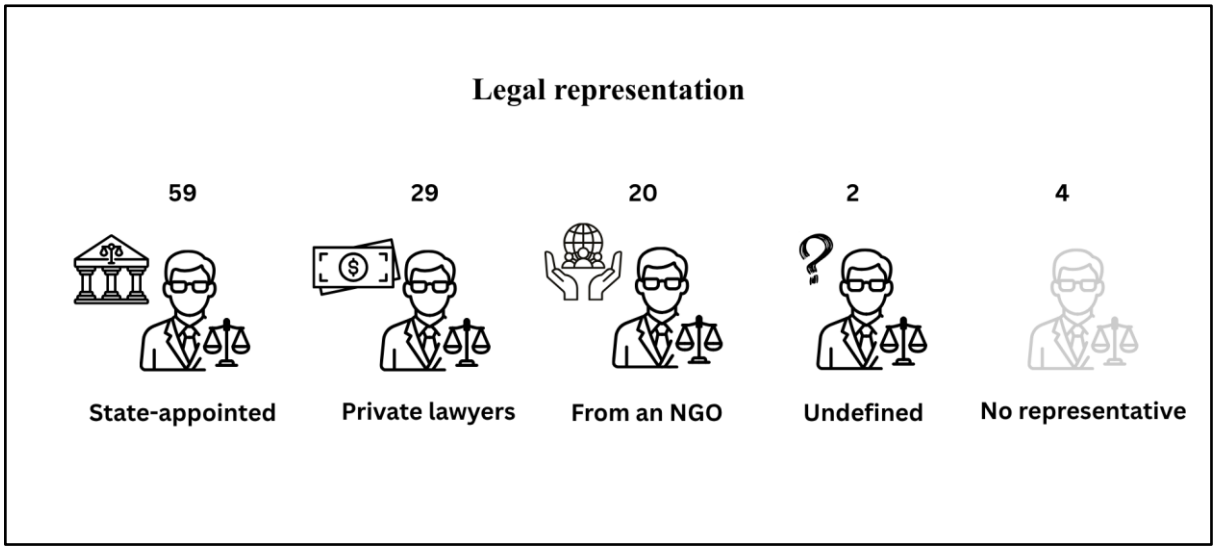


Figure 4: Legal representation of defendants in hearings

Right to adequate time and facilities to prepare a defence (Article 6, par. 3(b) ECHR)

Article 6, par. 3(b) concerns two elements of a proper defence, namely the question of facilities and that of time. For our assessment regarding the appointment of legal counsel, the aspect of both 'facilities' and 'time are in question. This provision implies that the substantive defence activity on the accused's behalf may comprise everything which is "necessary" to prepare the trial. The accused must have the opportunity to organise his defence in an appropriate way and without restriction as to the ability to put all relevant defence arguments before the trial court and thus to influence the outcome of the proceedings.[80] The assessment of whether the standards regarding time and facilities were met is done on a case by case basis.[81] Specifically, the adequate "facilities" to prepare a defence are defined by the European Court of Human Rights jurisprudence as: access to evidence[82] and consultation with a lawyer.[83] The findings show that these guarantees were not met for the majority of defendants who relied on state-appointed lawyers. The assignment frequently happened immediately before hearings, in some cases only minutes beforehand, leaving no time for preparation, casefile review, or thorough discussion with the defendant. Conversely, in most of the cases handled by NGO and private lawyers there was adequate time to prepare a defence strategy. This explains also why in these cases a variety of evidence was brought during the evidentiary procedures, as there was actually the time from the defence lawyers to locate and bring to court evidence such as: asylum applications, birth certificates, photo evidence, caselaw, reports etc. Taken together, these findings reveal a systematic failure to comply with Article 6, par. 3(b), as defendants were not provided with the minimum conditions necessary for an effective defence.

Right to defend oneself through legal assistance (Article 6, par. 3(c) ECHR)

Under Article 6, par. 3(c), the right to legal assistance extends beyond the mere formal appointment of a lawyer. While Article 6, par. 3(b) is tied to considerations relating to the preparation of the trial, Article 6, par. 3(c) establishes a more general right to receive assistance and support by a lawyer throughout the whole proceedings.[84] The right to "practical and

[80] ECtHR, *Can v Austria* (Report, App No 9300/81) (HUDOC, 001-73476).
[81] ECtHR, *Iglin v Ukraine* (12 January 2012) App No 39908/05 https://hudoc.echr.coe.int.
[82] ECtHR/Council of Europe, *Guide on Article 6: Right to a Fair Trial (Criminal Limb)* (2014) 42 https://rm.coe.int.
[83] ECtHR, *Bonzi v Switzerland* (judgment) App No 7854/77 https://hudoc.echr.coe.int.
[84] ECtHR, *Can v Austria* (Report, App No 9300/81) para 54 https://hudoc.echr.coe.int.

effective" legal assistance is not met with the mere appointment of a legal-aid lawyer, but it does require, inter alia, the accused's right to communicate with the lawyer in private.[85] The monitoring findings show that state-appointed legal assistance frequently is in violation of this standard. The late appointment of state appointed lawyers and lack of private consultations between lawyer and defendant led to a compromise of 'practical and effective' legal assistance. Observers noted that defendants were not fully informed of the charges against them, the implications of pleading guilty, or the potential benefits of contesting the case. In some instances, defendants reported feeling pressured by their state-appointed lawyers to accept a plea deal, without a clear understanding of the legal consequences. In one particularly illustrative case, the state-appointed lawyer made no submissions (claims, statements or objections) in court on behalf of the defendant: he did not raise mitigating circumstances, did not argue for the defendant's guilt or innocence, and in general did not address the court. This case exemplifies the structural deficiencies observed across hearings and demonstrates that formal appointment alone is insufficient to satisfy Article 6, par. 3(c).

In contrast, privately appointed and NGO lawyers were generally able to provide more thorough assistance, advising defendants on substantive options, demonstrating that the deficiencies of state-appointed counsel were not unavoidable but stemmed from structural constraints. The presence of unrepresented defendants further demonstrates failures in guaranteeing the right to legal assistance. These patterns collectively indicate that the Court did not fulfil its obligation to ensure effective legal representation under Article 6, par. 3(c).

5.5 Interpretation

In the 114 cases monitored, interpretation was provided by state-appointed interpreters in 99 cases, NGO-appointed interpreters in 6 cases, privately appointed interpreters in 5 cases. No interpretation was needed in 5 cases due to the absence of the defendants in 4 cases or because the defendant was greek in one case. The quality of interpretation was also uneven. The trial observers described the interpretation as adequate in 60 cases and inadequate in 50cases. Inadequate interpretation was labelled in cases where interpretation happened in a language that the defendant did not dominate, interpretation happened by non-neutral interpreters, two tier interpretation happened (from the language of the defendant to English and then from English to Greek, or vice-versa) or the proceedings were not translated in full to the defendant.

Observations highlighted repeated structural issues that resulted in frequent procedural irregularities across multiple cases. These violations were particularly pronounced in specific jurisdictions, such as the Single-Member Appeals Court of Felonies of Chania, which consistently failed to provide adequate access to interpretation. By contrast, other courts, including the Single, and Three Member Appeals Courts of Felonies of the Dodekanese, demonstrated more consistent compliance with interpretation and translation requirements.

[85] ECtHR/Council of Europe, *Guide on Article 6: Right to a Fair Trial (Criminal Limb)* (2014) 42 https://rm.coe.int.

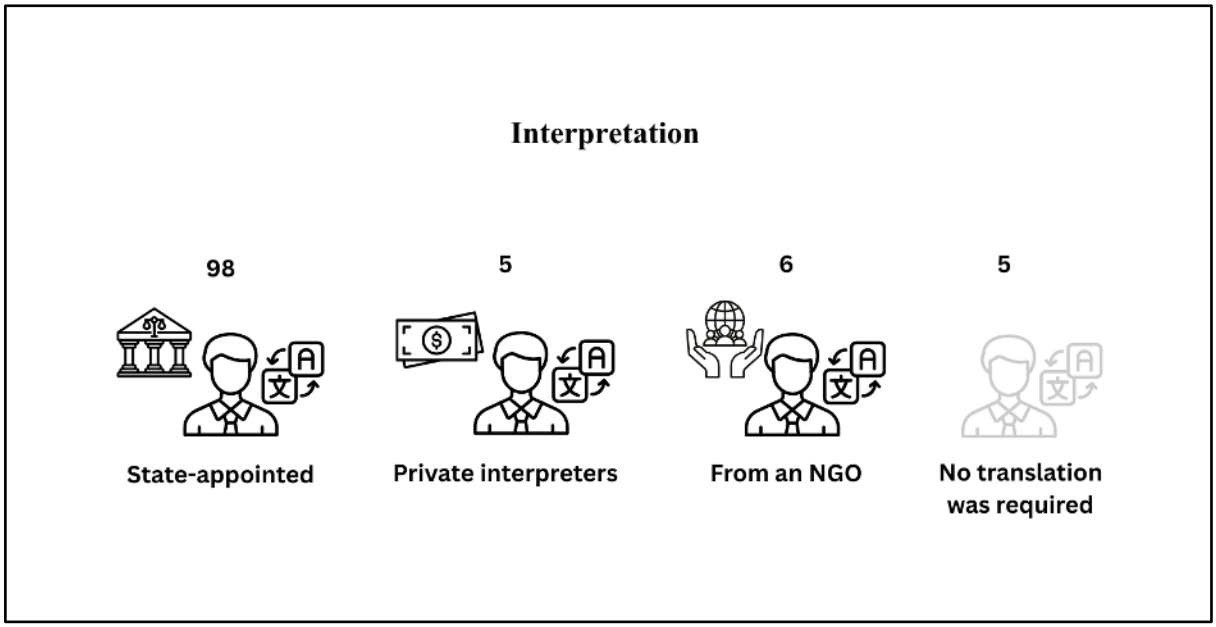


Figure 5: Provision of interpretation services at hearings

Right to be informed promptly, in a language which the defendant understands and in detail, of the nature and cause of the accusation (Article 6, par. 3(a) ECHR)

The ECtHR has consistently emphasized the right of defendants to be informed promptly, in a language they understand, of the nature and cause of the accusation is essential for effective participation in proceedings.[86] Findings indicate that there were many instances where defendants could not understand the proceedings fully. For example, in Chania, a defendant faced a significant communication barrier with the interpreter provided. No Arabic interpreter (the language requested by the defendant) was available, and the judges suggested that the trial proceed in English. It was, however, evident that the defendant could not communicate effectively in English. Despite this, the judges decided to continue the proceedings, and informal translation was provided by the state-appointed lawyer. This situation prevented the defendant from understanding the questions posed and from participating meaningfully in his defence. Even when interpreters were formally appointed according to procedure, interpretation was often of poor quality: questions and answers were not accurately conveyed, and in some cases interpreters intervened personally, commenting on witness credibility or attempting to influence the defendant's testimony. These deficiencies significantly limited defendants' ability to understand and participate in the proceedings.

Right to assistance of an interpreter (Article 6, par. 3(e) ECHR)

Article 6, par. 3(e) guarantees free assistance of an interpreter if a defendant cannot understand or speak the language of the proceedings, allowing for effective and adequate, meaningful participation.[87] The findings point to recurrent and systemic shortcomings both in the provision of interpretation and in the ability of defendants to follow and participate in their hearings. In a hearing of the Single-Member Appeals Court of Felonies of Chania, a handcuffed prisoner transferred between hearings was for many consecutive hearings assigned as an Arabic-Greek interpreter for all defendants. Additionally, court documents, such as summons, were not

[86] ECtHR, *Salduz v Turkey [GC]* (27 November 2008) App No 36391/02, § 59; *Kamasinski v Austria* (19 December 1989) App No 9783/82, § 78.
[87] ECtHR, *Salduz v Turkey [GC]* (27 November 2008) App No 36391/02, § 59; *Murtazaliyeva v Russia* (7 October 2010) App No 36658/05, § 88.

translated into a language understood by the defendants but were instead issued in Greek. In one example, rather than remedying this deficiency, the Court rejected defence objections and instructed that the documents be translated orally in order to expedite the proceedings. More particularly, the translation of the summons has repeatedly been brought before the country's supreme court, but with two partially contradictory rulings that require clarification.

These practices reflect a structural failure to ensure effective interpretation and translation, thereby undermining defendants' ability to exercise their fair-trial rights and falling short of the guarantees required under Article 6, par. 3(e).

The deficit of proper interpretation, and also the effect that this has on the rights of the defendants and the prolongement of the cases until they reach the courts has been also recognised by the relevant Ministry of Justice. A programme for the integration of digital tools, with the use of AI technology for the automatic translation of judicial documents but also the real time capture and translation of foreign witness testimonies, has been announced aiming to "...accelerate justice delivery, reduce costs, and strengthen both procedural efficiency and protection of fundamental rights".[88] However, court interpreters[89] but also judicial officers have expressed their fear that the use of technology could undermine legal guarantees.

5.6 Hearing duration

Across the monitored hearings, the duration of proceedings varied substantially, ranging from 5 to 185 minutes, with an average hearing length of approximately 46 minutes. Court dockets frequently listed multiple cases in a single day, which limited the time available for each hearing. Although this average provides a numerical overview, it does not accurately reflect the typical experience of the hearings observed. The overall figure was significantly influenced by a small number of lengthy trials involving multiple co-defendants and NGO or privately appointed lawyers, where the defence seemed actively to pursue a more detailed examination of the evidence, prolonging significantly the duration of these hearings. In cases, particularly those involving state appointed lawyers, the duration of hearings was on average 31 minutes long, while in the cases of NGO appointed the average duration was 50 minutes and of those with privately appointed rising to 66 minutes! Hearing length also varied across jurisdictions; for example, in Crete (Chania and Heraklion), hearings lasted on average only 13 and 16 minutes respectively, whereas other courts exhibited a different pace and level of engagement with the case file, ranging from an average of 29 minutes in Vathy to 64 minutes in Mytilene.

From the 102 cases where hearing length was recorded, 50 (49%) lasted under 30 minutes, 24 (23,5%) between 30 and 60 minutes and only 28 (27,5%) exceeded the hour, of which 19 (68%) were the cases of joint trials with more than one defendant.

Furthermore, only the duration of hearings was counted; plea-deal proceedings were excluded, as decisions approving a plea deal were typically announced within approximately one minute

[88] Η Καθημερινή, Newsroom '*AI in the Courts: Automatic Translations and Recording of Testimonies'* [AI στα δικαστήρια: Αυτόματες μεταφράσεις και καταγραφή καταθέσεων] (2025) https://www.kathimerini.gr.
[89] To Vima, Newsroom '*Greek Court Interpreters Protest AI Rollout in Justice System*' (2025) https://www.tovima.com.

and did not involve an evidentiary or procedural examination comparable to a full hearing. Overall, the recorded data illustrates broad structural patterns but does not, in itself, fully capture the qualitative differences in how hearings were conducted across courts and types of legal representation.

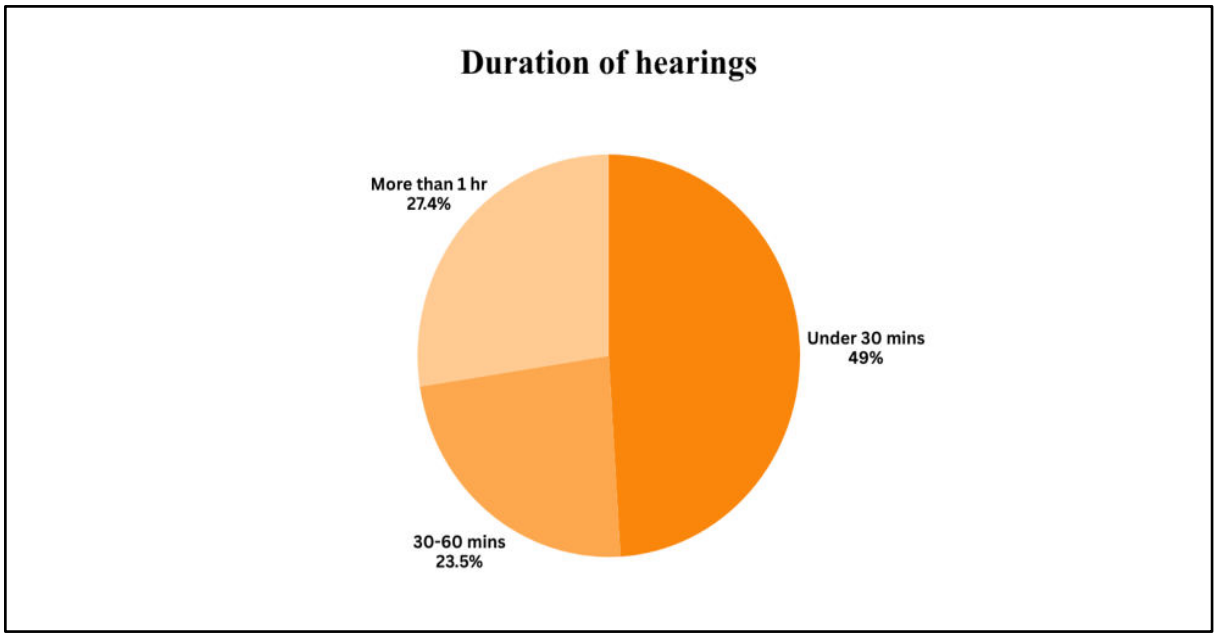


Figure 6: Total duration of monitored hearing

Right to a fair and public hearing within a reasonable time (Article 6, par. 1 ECHR)
Article 6, par. 1 requires that courts conduct proceedings within a reasonable time while ensuring that the hearing remains fair, public, and capable of providing meaningful judicial scrutiny.[90] Brief hearings do not serve the purpose of efficiency, instead limited hearing time was often a consequence of heavy court dockets. Such practices reduce the hearing to a procedural formality and limit the transparency of judicial decision-making, as neither defendants nor defence counsel have the opportunity to verify, contest, or contextualise the evidence in open court. This raises concerns about whether the court has engaged fully with the substance of the case. Taken together, the brevity of hearings, combined with systemic scheduling pressures, places the requirement of a fair and public hearing within a reasonable time at risk.

Right to adequate time and facilities to prepare a defence (Article 6, par. 3(b) ECHR)
Article 6, par. 3(b) guarantees that defendants must have adequate time and facilities to prepare their defence and effectively participate in the hearing. When hearings are conducted rapidly, sometimes lasting only a few minutes, there are limited opportunities to submit and present evidence, develop argumentation, file and examine procedural objections. The shrinking time devoted to the evidentiary stage in certain jurisdictions further restricts the defence's ability to challenge case-file material or raise objections on the basis of the evidence. In several jurisdictions, most notably before the Single and Three-Member Appeals Courts of Felonies in Rhodes, observers recorded that essential procedural steps were omitted. For example, in multiple hearings, the entire evidentiary phase was bypassed: the reading and discussion of the

[90] ECtHR, *Humen v Poland* [GC] (2000) App No 26614/95, § 60 (efficiency cannot justify restrictions that impair fairness).

case file did not take place, and the Judges stated they were already familiar with the documents. These patterns indicate that hearings were often conducted at an accelerated pace, with limited time allocated to the examination of evidence or engagement with defence submissions.

In practice, accelerated hearings disproportionately affect defendants who already face barriers, including language constraints or limited preparation time with state-appointed lawyers. When procedural steps that form the basis of defence participation are compressed or bypassed, the guarantees of Article 6, par. 3(b) cannot be meaningfully fulfilled.

5.7 Prosecutors- Judges reasonings

Across the monitored cases, prosecutors adopted largely uniform positions when delivering their final statements. Out of 114 cases, prosecutors recommended acquittal in 21 cases, fully conviction in 61 cases, and guilty of some charges (guilt for a reduced set of charges or aggravating factors) in 29 cases. In 3 cases the prosecution proposal was not recorded. Following the Prosecutorial proposal, the presiding judge(s) decided to acquit defendants in 24 cases, three more than the prosecutorial recommendations, while convictions were imposed in 59 cases and "merely guilty" findings in 31 cases. Overall, prosecutorial submissions and court decisions aligned in 94 out of 111 cases, representing an 85% concurrence rate. There were 17 instances of disagreement, in which courts imposed harsher sentences in 5 cases and more lenient outcomes in 12 cases. Generally, findings indicate that prosecutors adopted a more stringent stance than the courts, yet the high rate of alignment demonstrates that prosecutorial proposals exercised a determinative influence on outcomes. Prosecutorial reasoning displayed high levels of standardisation, with cumulative sentencing calculations often reaching extremely high totals and with limited variation across cases.

General observations on prosecutorial reasonings found them frequently minimal, repetitive, or abstracted from the individual situation of each defendant. The strong judicial adherence to these proposals raises concerns regarding the quality of judicial scrutiny and the overall fairness of the sentencing process. The uniformity of sentencing outcomes, combined with the repetitiveness of prosecutorial framing, points to a sentencing practice that risks operating in a predetermined manner rather than through a genuinely independent judicial evaluation.

Right to a fair hearing by an independent and impartial tribunal (Article 6, par. 1.) - Equality of arms and adversarial proceedings (Article 6, pars. 1 and 3)

The strong statistical alignment between prosecutorial proposals and court outcomes raises concerns about the independence and autonomy of judicial sentencing. Article 6 requires Criminal courts to exercise genuine, autonomous judgment and genuinely independent assessments.[91] The equality of arms principle requires that both sides of the criminal process be able to influence the outcome on a genuinely equal procedure. This demands a "fair balance" in the procedural opportunities available to each party.[92]

[91] ECtHR, *Baka v Hungary* [GC] (23 June 2016) App No 20261/12.
[92] ECtHR, *Dombo Beheer B.V. v The Netherlands* (6 December 1993) App No 14448/88.

The 85% alignment rate between prosecutorial proposals and court outcomes, combined with consistently minimal or formulaic judicial reasoning, raises structural concerns. Although alignment is not inherently problematic, the absence of substantive judicial engagement with defence submissions, produces an appearance that courts operate in de facto dependence on the prosecution's position. Under the ECtHR's objective test, such appearance alone may undermine the trust required of an "independent and impartial tribunal" under Article 6, par. 1. Yet in many monitored proceedings, the defence's submissions, the lack of a demonstrated individualised assessment, the frequent adoption of prosecutorial proposals including central claims under Article 3, par. 3(e) of Law 5038/2023, arguments on mitigating circumstances, and evidence of vulnerability, were not meaningfully addressed, whereas prosecutorial proposals were adopted with limited scrutiny.

Monitoring revealed further that prosecutors frequently applied pre-structured and repetitive questioning patterns during defendants' statements, such as: "Why did you come to Greece?", "Why did you come with smugglers and did not try to come with legal means?", "Why didn't you stay to work in Libya?" These questions framed defendants' motives in a manner that pre-emptively aligned with guilt and appeared detached from the specifics of the case. There were also cases in Mytilene, when the prosecutor referred to the defendants with a racist characterisation (i.e. "lathrometanastes")[93] creating questions about how unbiased he could be, from his personal beliefs. Where the prosecution's approach is formulaic, and its recommendations overwhelmingly upheld by courts, the appearance of independence required under Article 6, par. 1 is weakened. The findings show several systemic imbalances. This imbalance undermines the adversarial character of proceedings and impedes the defence's ability to influence the sentencing outcome, contrary to Article 6, pars. 1 and 3.

Furthermore, in States with stronger garantista traditions, equality of arms is also reflected in the physical and symbolic arrangement of the courtroom. Defence and prosecution are positioned in ways that emphasize their adversarial parity. For instance, in many Western European jurisdictions the prosecutor sits opposite the defence, both below and facing the bench, signaling to the court and the public that they are procedural equals before an impartial judge.

In Greece, however, the prosecutorial role is structurally different. Public prosecutors are part of the judiciary, not the executive branch, and they sit next to the judges, usually at the same elevation. Defence lawyers, by contrast, sit at the bar, physically lower and in a position that does not mirror the prosecutor's. The symbolism is stark: the prosecution appears to the public and to the defendant as an extension of the court itself, not as an adversarial party. This arrangement is not simply ceremonial. It has implications for how proceedings are perceived and conducted.

[93] "Lathrometanastes" is a constructed term derived from Greek roots—lathro- (secretly), meta- (change or beyond), and -nastes (one who settles or moves). In contemporary extremist and xenophobic discourse, the term has been deliberately repurposed to function as a racialized and dehumanizing label, primarily targeting migrants and ethnic minorities. Regarding the use of the term, there is also a Circular from the Prosecutor of the Supreme Court to the Directors of the Public Prosecutor's Offices of Appeal and, through them, to the Public Prosecutors of the First Instance of the Region, with the aim of discontinuing the use of the term as derogatory to the personality of individuals, see for example: aplotaria.gr, 'Stop to the Use of the Term "Illegal Immigrant" by the Prosecutor of the Supreme Court' [*Στοπ στη χρήση του όρου «λαθρομετανάστης» από την Εισαγγελία Αρείου Πάγου*] (12 September 2018) https://www.aplotaria.gr.

Presumption of innocence (Article 6, par. 2)

The presumption of innocence is undermined when sentencing outcomes appear predetermined by prosecutorial proposals rather than grounded in an objective assessment of the evidence and the specific circumstances of each defendant. The presumption of innocence is undermined when sentencing outcomes appear predetermined.[94] Several patterns indicate that prosecutors treated defendants as presumptively culpable due to their migration status or the nature of the offence:

Substantive defence claims, particularly the claim under the Article 3, par. 3(e). Law 5038/2023 which excludes recognised refugees and applicants for international protection from the Migration Code's criminal liability scope, were routinely dismissed without meaningful analysis. In cases in Chania, the Prosecutor's reasoning to reject this claim was that an asylum application has "no legal standing" in relation to the felony, because the filing of an application and the result thereof are not the same thing, arguing that applicants could otherwise "get away" with incarceration simply by submitting a claim.

Such reasoning reflects pre-assumed criminal intent or inherent culpability, incompatible with the protective function of Article 6, par. 2.

Right to an individualised assessment in sentencing (Article 6(1))

Article 6, par. 1. requires that judicial decisions affecting the accused be based on individualised, reasoned, proportionate and tailored to the specific circumstances of the case. The ECtHR has repeatedly held that sentencing is an integral part of the "determination of a criminal charge" and therefore must comply with the guarantees of fairness, reasoning, and individualised evaluation. The Court held that a judgment must address the "essential issues" raised by the parties, and a mere formulaic reproduction of the prosecution's submissions is incompatible with Article 6.[95]

The findings, however, indicate highly standardised sentencing practices, with most sentences converging around fixed terms, which stems from the frequent prosecutorial proposals of guilt "as charged," without mitigation and without supporting reasoning.

Rejection of mitigating circumstances also often lacked proper grounding. For example in Crete, a prosecutor proposed the dismissal of a claim of state of emergency on the basis that the defendant's "whole family stayed in Sudan," without examining the individual risks faced by the defendant. A prosecutor 'mocked' the defendant's wife who came to the hearing to testify as a witness, stating that a woman who is "allegedly troubled" would not have "painted nails," using this personal remark to reject the argument of hardship and emergency. Such dismissals demonstrate a lack of seriousness and respect for evidentiary proceedings, contradicting the Article 6 requirement that sentencing reflect individual circumstances and objective assessment, not personal impressions.

[94] ECtHR, *Parol v Turkey* (19 June 2012) App No 4370/02.
[95] ECtHR, *Boldea v Romania* (12 June 2007) App No 19997/02.

Requirement of reasoned judgments (Article 6, par. 1)
Article 6, par. 1. obliges courts to provide reasoned judgments that clearly articulate the basis of the conviction and sentence, enabling the accused to understand the reasoning and allowing meaningful appellate review.[96] However, Court decisions mirrored prosecutorial proposals in nearly all cases, and the accompanying reasoning was often equally concise or formulaic. Observers noted a high occurrence of lack of reasoning when delivering prosecutorial reasonings. Where judicial reasoning largely reproduces prosecutorial reasoning, and where prosecutorial reasoning is itself limited, the requirement of a reasoned decision is weakened, affecting the perceived fairness and transparency of the sentencing process as required by Article 6, par. 1.

The same also applies for the procedure of the examination of the mitigating circumstances. The procedure is considered as a stand-alone process of the hearing. After the application for mitigation circumstances which constitute an Independent Claim by the defence, both the judicials and the prosecutor should justify their decision to grant or deny the requested mitigating circumstances. Insufficient justification constitutes grounds for overturning decisions from the Supreme Court, as it has done before (Decision 1391/2022[97], Decision 956/2023[98]).

5.8 Claims and objections

In criminal proceedings, the defence may first raise procedural objections prior to the commencement of the evidentiary phase. If no objections are submitted, or if they are rejected, the evidentiary procedures commence, and the defence may then present substantive claims intended to challenge the charges.

5.8.1 Procedural objections

According to our observations, and out of all 114 cases monitored, there were a total of 13 procedural objections projected. These concerned issues are essential to the provision of a fair trial.

Translation of court documents
Objections regarding the translation of essential court documents were raised 4 times. The objection invoked that the non-translation of the indictment and the summons, essential documents for the proceedings, creates absolute nullity of the procedure under Article 237 CCP. The failure to translate the summons renders the entire procedure invalid. In all instances, the prosecutor and the court rejected the objection, ordering instead the simultaneous, temporary translation of the summons by interpreters present in the courtroom. Article 6, par. 3(a and e) requires timely and adequate translation of all essential documents. Retroactive, ad-

[96] ECtHR, *Tatishvili v Russia* (6 December 2007) App No 19982/06.
[97] Supreme Court of Greece [Άρειος Πάγος], *Decision No 1391/2022* [Απόφαση υπ' αριθμ. 1391/2022] (2022) https://www.areiospagos.gr.
[98] Supreme Court of Greece [Άρειος Πάγος], *Decision No 956/2023* [Απόφαση υπ' αριθμ. 956/2023] (2023) https://www.areiospagos.gr.

hoc translation during the hearing does not satisfy this standard because translation must be provided in time for the accused to understand the case against them and to prepare their defence effectively, not merely to follow proceedings in real time. An oral translation of core procedural acts does not fulfil these requirements.[99]

Call for trial communicated to the wrong lawyer

In one case, the notice of the hearing was sent to the wrong lawyer, resulting in the defence being unaware of the scheduled trial date. The objection was raised to preserve the defendant's right to effective representation at the hearing. Miscommunication of summons to the wrong defence lawyer jeopardises the right to legal assistance of one's choosing and may violate Article 6, pars. 1 and 3(c) by depriving the defendant of meaningful preparation time.

Absence of witnesses

Even though it is a strikingly common observation, that witnesses who testified in the pre-trial stage are not searched and located to come to the Court to testify as witnesses. The findings show that prosecution witnesses were present only in 21 out of the 87 (24%) hearings procedures that were monitored, concerning 35 individuals. Objections concerning the absence of prosecution witnesses were raised four times. In two cases, where Coast Guard officers were not present to be cross-examined, the court rejected the objection and proceeded without postponing the hearing to call and summon the witnesses. In the other two cases, the objection concerned the failure to call passengers as witnesses prior to conviction, with defence lawyers emphasising that written statements from said passengers cannot be treated as decisive evidence for conviction without calling the witnesses to testify in Court and giving the defendant the ability to cross-examine. These objections were also rejected. In another case, the defence argued that the court should not convict without first calling the passengers. The prosecutor argued that the passengers' addresses were unknown so locating and calling them is not possible, and the court rejected the objection.

Proceeding without crucial witnesses and relying on uncontested written statements raises serious concerns under Article 6, pars. 1 and 3(d), which guarantee the right to examine witnesses and prohibit reliance on untested evidence. The provisions of the ECHR, of the ICCPR, and of Law 2462/1997 Article 14, par. 3(e). recognise the right of the accused to cross-examine prosecution witnesses in court and in person as a fundamental right of defence and a constituent element of a fair trial. In that sense, the court must create conditions for the exercise of this right, meaning that it must make witnesses available to the defendant for examination. It follows that the reading of witness statements from persons not present in court is permissible over the defendant's objection only if the opportunity to examine them was previously available (Articles 328, 354 CPC). Otherwise, the admission of such statements infringes the defendant's fundamental defence rights, particularly where those statements constitute essential evidence supporting the accusation.

In conclusion, the decision of the court to reject the defence objections and to rely on the testimony of absent witnesses deprived defendants of the procedural guarantees necessary to effectively contest the evidence against them and falls short of Article 6, pars. 1 and 3(d) fair trial standards.

[99] ECtHR, *Kamasinski v Austria* (19 December 1989) App No 9783/82; Cuscani v United Kingdom (24 September 2002) App No 32771/96.

On a more coherent application of the law, on two occasions, defence lawyers objected to the reading of Coast Guard officers' written statements on the grounds that the officers were involved in the interrogation of the defendants. In both cases, the court accepted the objection and did not read the statements.

In dubio pro reo objection

The minority-related objections appeared twice. In one instance, the defence argued that the case should fall under juvenile court jurisdiction, invoking the in dubio pro reo principle with respect to the defendant's age and emphasising that any uncertainty regarding minority status must be resolved in favour of the accused. In the other case, the defence lawyer requested a postponement specifically for a formal age assessment, arguing that existing indications raised reasonable doubt as to whether the defendant should be tried as an adult or not. In both cases, the objections were accepted.

Failure to resolve doubts about minority status through proper age assessment may violate Article 6, par. 1 and child-specific fair-trial guarantees, particularly when jurisdiction and sentencing severity depend on age. Age is one such decisive factual element, as it determines both the competent court and the applicable sentencing framework. Moreover, international standards (including the CRC and ECtHR jurisprudence)[100] affirm that children are entitled to heightened procedural protection, and the authorities must adopt measures that secure an assessment process adapted to their vulnerability. Proceeding without verifying age despite reasonable indications to the contrary therefore undermines legal certainty, equality of arms, and the enhanced protection owed to minors.

5.8.2 Substantive claims

5.8.2.1 Article 3, par. 3(e) Law 5038/2023

Article 3, par. 3(e) of Law 5038/2023, which has been further analysed in the legal analysis chapter of the present report and in a recent report by the Legal Centre Lesvos (LCL) and the Human Rights Legal Project (HRLP), clearly foresees that both asylum seekers and recognised refugees should not be criminally prosecuted for smuggling themselves across borders or within Greece.[101] This exemption was raised as an individual claim by defence lawyers to justify the denial of charges, 41 times in a total of 114 hearings. However, as revealed by the recent LCL–HRLP report and confirmed by our trial observations, the implementation of the exemption clause by Greek Courts has been sporadic and inconsistent.[102]

Most courts throughout Greece have rejected objections raised by the defence to the prosecution of asylum seekers and refugees under the exemption clause.[103] However, there were also cases where the same court, even on the same day, issued conflicting decisions on the application of this specific exception.

[100] ECtHR, *T v The United Kingdom* (10 May 2000) App No 24724/94; *V v The United Kingdom* (10 May 2000) App No 24888/94.
[101] Human Rights Legal Project & Legal Centre Lesvos*, The Exemption from Criminalisation* (n 6)
[102] Ibid, 14.
[103] Ibid, 15.

A characteristic example of this inconsistent application was observed in the two regional Courts in Chania and Heraklion in Crete which had diametrically opposing approaches to the same claim when hearing almost identical cases. It was also observed in Samos, even involving inconsistencies in verdicts delivered by the same judge.

In July 2025, trial observers noted a complete mass rejection of this claim by both the Prosecutor and the Judge in Chania, dismissing references to acquitting decisions of the Appeals Court of the Aegean and opting for an interpretation of the law that should not allow, according to the Prosecutor, a defendant to "get away with" a serious felony, such as illegal transport, simply by filing an asylum claim. In their view, the jurisprudence of the Appeals Court of the Aegean (the Samos Court) should not shape the standard legal handling of these cases, as it risks leading to the dismissal of charges for everyone and a failure to establish criminal liability.[104] However, only a few months later, in September 2025, the Court of Heraklion held trials for eight defendants facing charges of illegal transfer of third-country nationals. Among them, four Sudanese nationals were acquitted on the basis of the exemption clause. The Court referred to the current situation in Sudan and the high recognition rate for Sudanese nationals, concluding that they fell within the exemption.

These examples showcase how the exemption clause is thus applied at the discretion of each court, which at times assumes the role of asylum authorities by assessing the credibility or merits of the defendants' international protection claims. This practice contradicts core fair trial protections and also disregards the fundamental principle that the assessment of asylum claims lies within the competent administrative bodies, not criminal courts.

Legal certainty and foreseeability (Article 6, par. 1)

The inconsistent and discretionary application of Article 3, par. 3(e) across courts, and even within the same hearing, undermines the requirement of legal certainty inherent in Article 6, par. 1. The ECtHR has consistently held that legal certainty forms a fundamental element of the right to a fair trial, requiring predictable, coherent, and non-arbitrary judicial outcomes.[105] Defendants cannot reasonably foresee whether the exemption will be applied or understand the legal criteria guiding its interpretation. Such unpredictability is incompatible with fair-trial standards requiring that the law be applied consistently, and that defendants be able to anticipate the legal consequences of their actions. This creates criminal proceedings which lack foreseeability and consistency and arbitrary divergences in judicial practice, which can lead to violations of Article 6, par. 1.

Impartial tribunal and proper allocation of judicial roles (Article 6, par. 1)

When criminal courts conduct de facto assessments of the credibility or merits of an asylum claim, an issue clearly reserved by law for administrative authorities, they exceed their institutional competence. A Court risks losing the objective appearance of impartiality when it steps outside its role or adopts functions incompatible with its judicial mandate. Structural impartiality is compromised where judges engage in functions or assessments extraneous to

[104] Border Violence Monitoring Network, *Crete Trials Monitoring – 16 July 2025* (17 July 2025) https://borderviolence.eu.

[105] ECtHR, *Brumărescu v Romania* (1999) App No 28342/95, § 61; *Beian v Romania* (No 1) (2000) App No 30658/96, §§ 39–40; *Nejdet Şahin and Perihan Şahin v Turkey* (2005) App No 13279/05, §§ 56–58.

the case's legal elements. [106] This blurring of roles risks compromising impartiality, as courts introduce subjective evaluations unrelated to the elements of the offence. Article 6, par. 1 requires not only the absence of actual bias but also the absence of any structural or functional appearance of bias. By stepping into the role of asylum authorities, courts compromise the neutrality expected of a criminal tribunal and erode the separation of functions required for a fair trial.

Equality of arms (Article 6, pars. 1 and 3(b)) & Requirement of reasoned decisions (Article 6, par. 1)

The near-uniform rejection of Article 3, par. 3(e) claims, often accompanied by minimal or conclusory reasoning, creates a structural imbalance between prosecution and defence. In many decisions, courts dismissed the exemption clause without engaging with the actual letter of the law in Article 3(e), its stated purpose, the jurisprudence of other courts (e.g., the Aegean and Herakleion Appeals Court), or country-of-origin information relevant to the defendants' protection needs.

Such dismissals place the defence at a procedural disadvantage, as central legal arguments are effectively excluded from the judicial assessment. This undermines equality of arms, which requires that parties have a fair and effective opportunity to influence the proceedings.

Moreover, where courts rejected the exemption, the reasoning was often limited to assertions that the asylum claim was "ineffective" or "irrelevant." Article 6, par. 1 requires courts to address the essential issues raised by the defence.[107] Insufficient reasoning prevents defendants from understanding the basis of the decision and inhibits their ability to appeal effectively.

Both the ECtHR and the Greek legislation require that courts give adequate reasoning in their decisions showing that central issues raised by the defence have been genuinely considered.[108] The patterns observed in the monitored cases are inconsistent with this requirement.

The almost universal rejection of Article 3, par. 3(e) claims without substantive analysis reflects a structural lack of individualised assessment. The specific circumstances of each defendant were rarely examined, before dismissing the exemption, indicating a mass approach of convictions to this specific typology of cases, more related to the migration profile of the defendants. This selective application indicates that decisions were often made on broad assumptions about nationality or presumed intent, rather than an evaluation of the individual's situation. Procedural fairness entails a case-specific approach, particularly when the accused is vulnerable or when the decision involves weighing non-criminal elements, such as asylum status, that may mitigate culpability.[109]

This lack of individualised assessment contributes to broader systemic concerns, including the reinforcement of standardised sentencing patterns and mass handling of similar cases. In sum, the failure to assess claims on an individualised basis not only compromises legal certainty and

[106] ECtHR, *Kyprianou v Cyprus* (15 December 2005) App No 73797/01; *Micallef v Malta* (15 December 2005) App No 17056/06.
[107] ECtHR, *Krčmář and Others v. Czech Republic* (03 June 2006) App No. 35376/97.
[108] ECtHR, *Kudla v Poland* (26 October 2000) App No 30210/96, § 157.
[109] ECtHR, *Kudla v Poland* (26 October 2000) App No 30210/96, § 157; *Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi v Ireland* (30 June 2005) App No 45036/98, § 155.

impartiality but also perpetuates structural barriers to an effective defence, contrary to the guarantees of Articles 6, pars. 1 and 3(b) ECHR.

5.8.2.2 Other claims raised during hearings

Beyond Article 3, par. 3(e) exemption, a range of additional substantive claims were raised either as primary grounds for acquittal or as secondary/supportive claims in case the main claim is rejected.

State of emergency (Article 32 CC)

The state of emergency claim (under Article 32 of the Greek Criminal Code) was among the most frequently invoked arguments besides Article 3, par. 3(e), raised 25 times in total. Defence lawyers relied on this claim to deny the charges and argue that defendants acted under circumstances of extreme necessity, often due to violence or coercion. Although not often accepted, the claim was central in several hearings. For example, in one case that ultimately led to an acquittal (on the basis of reasonable doubt, rather than emergency), all witnesses consistently testified that the captain abandoned the vessel after a several hour journey, threatening the defendant at gunpoint and forcing him to take control of the boat. One witness stated that the defendant did not know how to steer and all passengers assisted him.

Absence of criminal intent and lack of profit

In 8 cases, defence lawyers argued that the defendants lacked criminal intent and did not act for profit, seeking to demonstrate that core elements of the offence of illegal transport were not fulfilled. These arguments were used to support the broader position that defendants may have steered the boat but did not intend to commit the offence as defined by the law, nor did they receive any benefit. A closely related argument, that the subjective and objective elements of the crime were not met, was raised in 3 additional cases.

In 7 cases, the defence presented the situation as self-transport, noting that defendants' actions were directed at reaching safety and transporting themselves, but without intent to commit illegal transport of the other passengers.

Defendant was not the driver

In 9 cases, the defence contested the accusation that the defendant was the driver of the boat. Among these: In 7 cases, the lawyers argued that the defendant was merely a passenger and had never steered the vessel, and in 2 cases, defendants admitted to holding a GPS device under threat but maintained that this did not constitute “transporting” within the meaning of the law.

Other occasional claims

The misapprehension of law was raised once as an individual claim, with the defence arguing that the defendant, due to his circumstances and lack of legal knowledge, misunderstood the unlawfulness of his actions. In another case, the defence advanced a family-related necessity claim, asserting that the defendant’s actions were directed solely at helping and protecting his minor relative, rather than transporting others, thereby challenging the applicability of the criminal provision. A further claim, also raised once, concerned the application of a more lenient legal framework, with the defence arguing that the defendant should have been tried under a provision limiting the served sentence to eight years instead of ten. In five cases, defence lawyers focused on the defendant’s personal profile and background, emphasising

elements such as vulnerability and personal circumstances. These submissions sought to contextualise the defendants' conduct within the broader realities of migration and to mitigate or negate the formation of criminal intent.

Absence of claims

In 8 cases, defence lawyers raised no objections or substantive claims. Of these, 7 were represented by state-appointed lawyers, and 1 by a privately appointed lawyer. This pattern aligns with earlier findings on limited preparation time and the structural constraints surrounding state-appointed defence, raising broader concerns examined in previous chapters regarding equality of arms.

5.9 Evidentiary proceedings- Witnesses

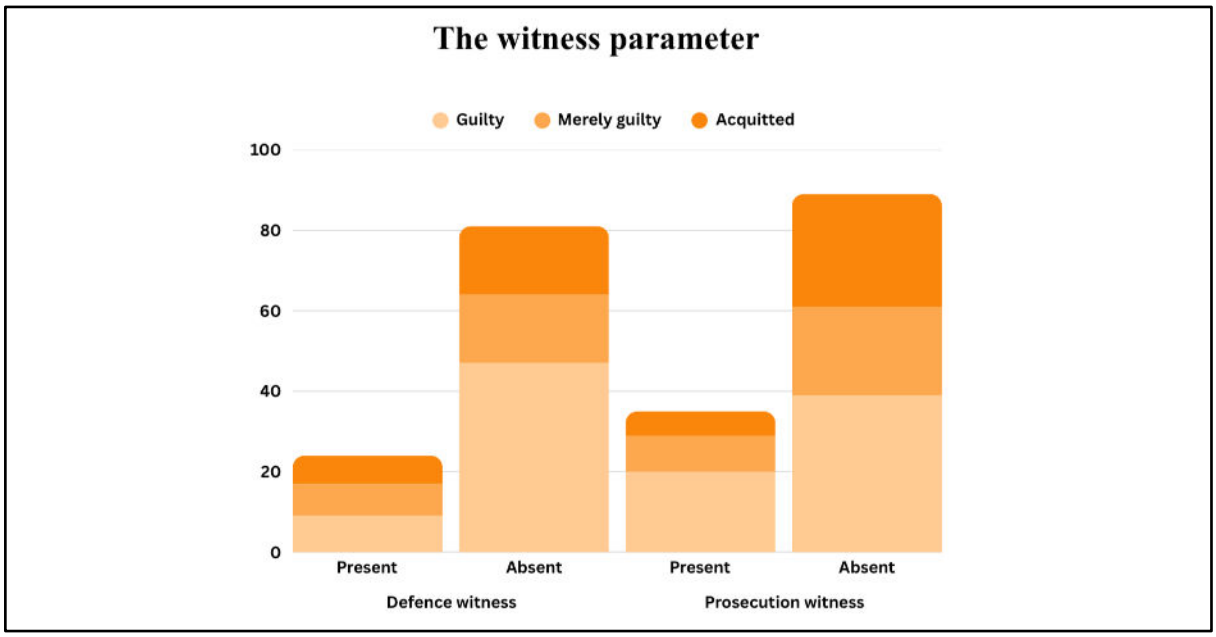


Figure 7: The witness parameter in hearings' outcomes

5.9.1 Defence witness

In the monitored cases, defence witnesses were present in 15 out of 78 hearings concerning 24 individuals, while for 9 hearings, their presence wasn't specified. Among the cases with defence witnesses present, 7 resulted in acquittals (29%), 8 in partial convictions ("guilty of some") (33%), and 9 in full convictions (38%). In contrast, in the 81 cases without defence witnesses, 17 resulted in acquittals (21%), 17 in partial convictions (21%), and 47 in full convictions (58%). These figures indicate that the presence of defence witnesses can have some substantive impact on the outcome of the cases. This finding should be also read in conjunction with the very low number of cases in which defence witnesses were called and the broader shortcomings in the examination of witnesses.

5.9.2 Prosecution witnesses

As earlier presented, 33 prosecution witnesses were present in 21 hearings concerning 35 defendants. When prosecution witnesses were present, 5 defendants were acquitted (15%), 9

received partial convictions (26%), and 20 were fully convicted (59%). In their absence, 19 cases ended in acquittal (24%), 22 in partial convictions (27%), and 39 in full convictions (49%).

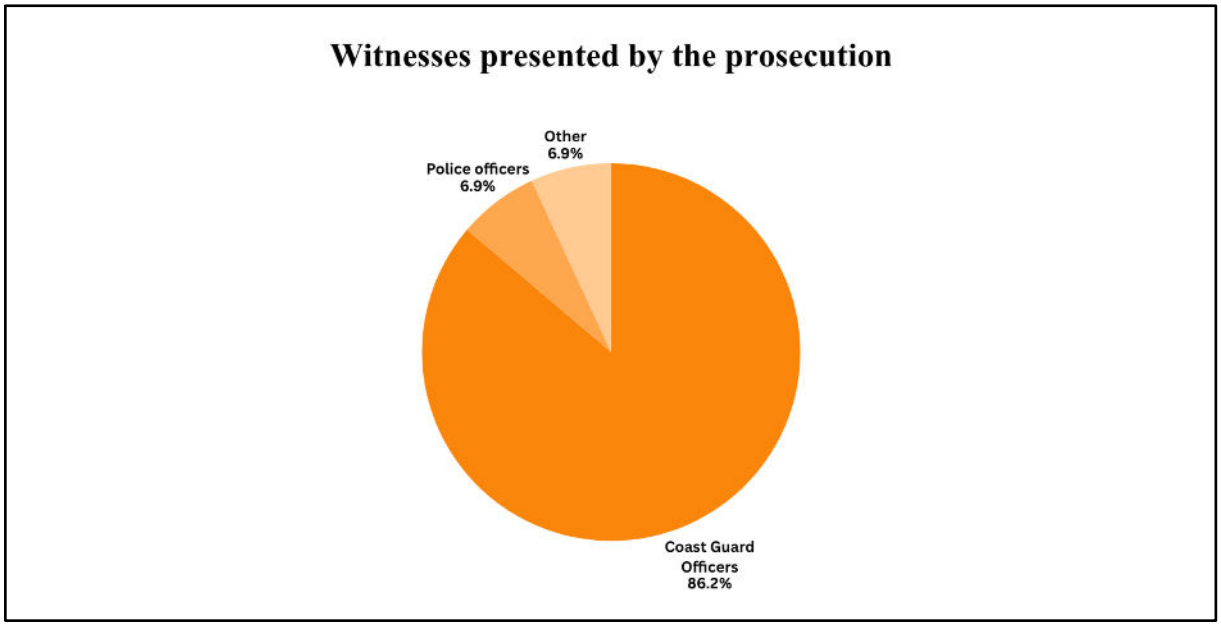


Figure 8: The type of prosecution witnesses presented at the hearings

In the monitored cases, there was very little diversity among prosecution witnesses. Trials were overwhelmingly reliant on Coast Guard officers, who were called as witnesses in 20 out of 21 cases that a prosecution witness was present. The testimony of the prosecution witnesses, particularly the Coast Guard officers who conducted the arrests or monitored the transfers, 25 out of the 29 witnesses called, was heavily relied upon to establish the charges and determine convictions. The 4 other witnesses called were two police officers, one fisherman who witnessed the apprehension of the boat, and for the last witness, his role wasn't managed to be defined. Remarkably, transported passengers' in person testimonies, which could provide context or narrate the events, were never used. This pattern highlights a structural reliance on a narrow set of witnesses, which can shape the outcome of trials in a way that may not reflect the circumstances.

Overall, convictions were the predominant outcome regardless of the presence of either defence or prosecution witnesses, though the presence of defence witnesses corresponded with a slightly higher proportion of acquittals or partial convictions.

Right to examine or have examined witnesses (Article 6 (3) (d))

Article 6, par. 3(d) ECHR guarantees the accused the right to examine, or have examined, witnesses against them. According to settled ECtHR jurisprudence, this provision requires that the defence be afforded an adequate and proper opportunity to challenge and question prosecution witnesses, either at the trial or pre-trial stage. While the use of statements from absent witnesses are not entirely prohibited by the ECHR, the Court has consistently held that a conviction may not be based solely or decisively on evidence that the defence has not had the opportunity to test through cross-examination, unless sufficiently strong procedural safeguards are in place to counterbalance this.[110] Reliance on untested witness statements without demonstrating active and genuine efforts to secure the witness's presence or without providing alternative measures, heavily compromises the fairness of the proceedings under Article 6, par.1.

This right was structurally restricted in the monitored trials, as confirmed by the findings. Prosecution evidence relied overwhelmingly on the testimony of Coast Guard officers involved in the arrest, while passengers who were present during the events and whose written statements were frequently relied upon for conviction were almost never called to testify in court. In the effort of the defence to overcome this shortcoming through requests for postponement in order to locate and summon passenger witnesses, the usual answer was rejection. Courts consistently repeated the argument, which has become the patent answer, that passengers could not be summoned because their addresses were allegedly unknown. Courts did not exhaust reasonable measures to secure witness presence before relying on their written statements. The pattern identified shows that convictions were largely based on these written statements in combination with the testimony of arresting Coast Guard officers, whose testimony were afforded decisive weight.

This practice undermines the adversarial nature of the proceedings and deprives the defence of a genuine opportunity to challenge key incriminating evidence. By accepting the reading and evidentiary use of absent passenger statements while deliberately omitting to secure their appearance, courts failed to ensure that the defence had a genuine opportunity to challenge the prosecution's case. Where courts proceed to convict without securing the attendance of available witnesses or without ensuring that the defence has had an effective opportunity to cross-examine them, the guarantees of Article 6(3)(d), read in conjunction with Article 6(1), are not satisfied.

Adversarial proceedings (Article 6, par. 1 ECHR)

In order for criminal proceedings to be adversarial, the defence must have knowledge of and a genuine opportunity to comment on and challenge all evidence relied upon by the prosecution. The latter entails that both parties must be able to participate effectively in the proceedings and that no evidence should the court rely its judgement on without the defence having had a real opportunity to contest it.[111] The introduction of evidence as decisive, depriving the defence from the opportunity to contest it, heavily compromises the overall fairness of the proceedings.

[110] ECtHR, *Al-Khawaja and Tahery v United Kingdom* [GC] (15 December 2011) Apps No 26766/05 and 22228/06; *Schatschaschwili v Germany* [GC] (15 December 2015) App No 9154/10.

[111] ECtHR, inter alia, *Brandstetter v Austria* (28 August 1991) App No 11170/84; *Krčmář and Others v The Czech Republic* (21 December 2017) Apps No 25365/06, 25952/06, 29787/06.

This guarantee was structurally undermined in the monitored trials. The passenger statements were admitted and relied upon without the defence being able to question the witnesses themselves. This would be crucial for the process, bearing in mind other structural barriers which have been identified in the pre-trial phase, such as no access to interpretation or no translation of essential documents. Courts, without taking the specificities of the cases into consideration, routinely proceeded with the hearing and delivered judgments, invoking the alleged unknown addresses of the passengers. As a result, the defence was deprived of any meaningful opportunity to challenge the credibility, consistency, or context of evidence that frequently carried decisive weight for the conviction. The defence's participation became more of a formal exercise without adversarial character, in violation of Article 6, par. 1 ECHR.

5.10 Verdicts - Sentencing

5.10.1 Verdicts

Convictions were the predominant outcome across all monitored courts, with the most common judicial response to the charges being the '*guilty as charged*' verdict. Before presenting the statistical distribution of outcomes, it is important to clarify the meaning of guilty of some charges in criminal proceedings: this designation applies when the court acquits the defendant of one or more charges but foresees a conviction on the remaining ones. This constitutes a partial conviction, distinct from a full acquittal and from a full conviction, and may carry significant implications for sentencing, depending on which charges are upheld. From a substantive perspective, the distinction between full and partial guilt is often muted in practice, as the most severe penalties stem from the aggravated illegal transport charge. Thus, in many cases, partial acquittals had minimal impact on the final sentence. By contrast, in the less frequent instances where defendants were acquitted of the transportation charge but convicted only of illegal entry, the sentencing outcome shifted dramatically, often resulting in release due to time already served. Overall, the data reflect a sentencing landscape where conviction on the principal charge drives the outcome, and partial acquittals rarely mitigate the severity of the penalty.

Our statistics exclude plea deal cases, which have been separately assessed in another chapter of this report, as the legal architecture of plea bargaining precludes acquittals or mixed verdicts: by design, plea deals presuppose the defendant's admission of guilt on all charges and therefore allow only for the imposition of a sentence following conviction, without the possibility of full or partial exoneration on any count.

In Mytilene, courts delivered 23 guilty verdicts (61%), 8 merely guilty verdicts (21%), and 7 acquittals (18%). In Vathy, Samos the pattern was different, with 23 guilty (51%), 8 merely guilty (18%), and 14 acquittals (31%) . Chania and Heraklion showed lower case volumes but comparable trends (Chania: 7 guilty (78%), 2 merely guilty (22%), and no acquittals (10%); Heraklion: 4 guilty (45%), 2 merely guilty (22%), 3 acquitted (33%)). Rhodes recorded 2 guilty verdicts (15%) and 11 merely guilty verdicts (85%), with no acquittals.

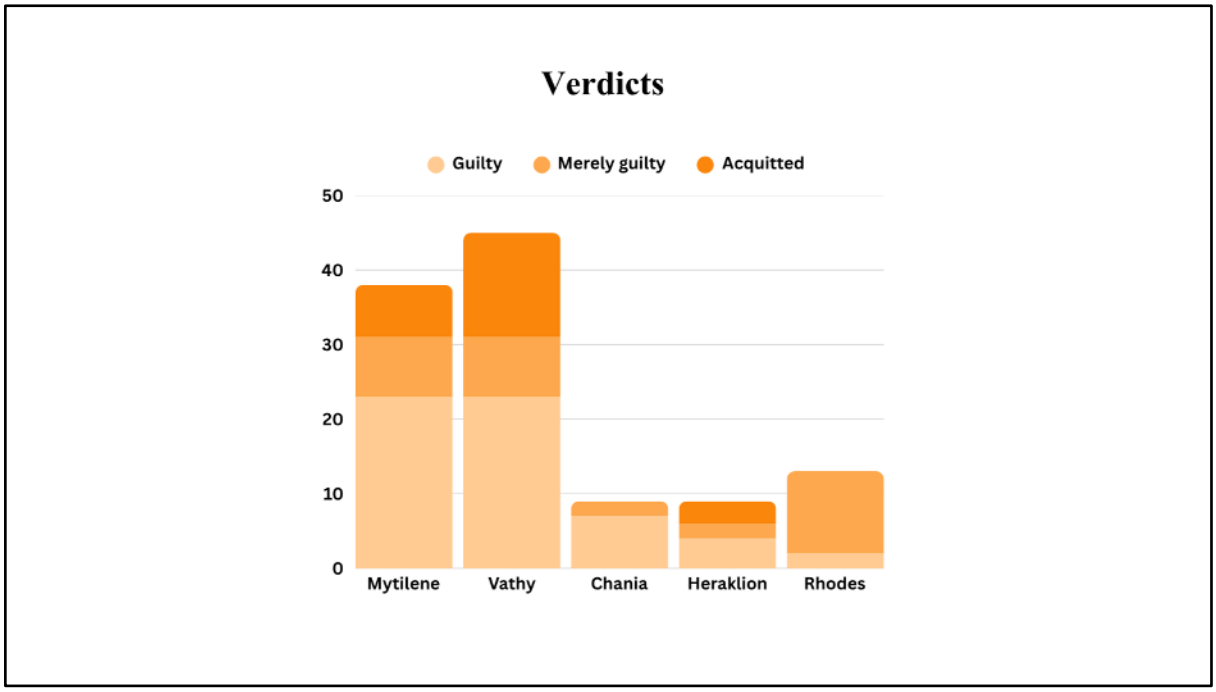


Figure 9: Verdict occurrence in monitored cases

In general, sentencing in 52% of the cases ended up in convictions for all charges and 27% for some of the initial charges. Acquittals appeared sporadically in Mytilene, Vathy, Chania and Heraklion. The predominance of guilty verdicts across all jurisdictions indicates that the standard judicial outcome in smuggling-related prosecutions is conviction, with acquittals or mixed decisions appearing only exceptionally. Taken together with the frequency of rejected objections and substantive claims, this pattern points toward a pattern in which convictions are reached notwithstanding significant procedural or factual issues raised by the defence. The consistent affirmation of the prosecution's narrative, regardless of individual circumstances, vulnerabilities, or case-specific evidence, suggests a structural tendency toward mass conviction rather than a genuinely individualised assessment of criminal responsibility. This is further reinforced by the high proportion of defendants represented by state-appointed lawyers, who face structural and practical barriers to preparing an effective defence, including extremely limited time with clients and difficulties in timely examination of casefile evidence. These constraints, when combined with the observed judicial patterns, provide strong indications that case outcomes are driven more by the defendants' migration profile and the categorisation of the offence than by a detailed evaluation of the facts or legal arguments presented in each case.

5.10.2 Cumulative sentencing statistics

5.10.2.1 Imprisonment

The sentencing outcomes observed across the monitored cases reveal a consistent pattern of extremely high cumulative penalties for the offence of illegal transport, with sentencing ranges clustering around fixed, severe baselines. The average cumulative sentence for 82 defendants convicted for illegal transport as the main charge, reached approximately 62,5 years. Despite the theoretical accumulation of sentences that frequently exceeded several hundred years, the average time to be served, calculated under the Greek sentencing execution framework, was

17,31 years with the highest possible limit being 25 years, still representing a substantial and alerting deprivation of liberty.

In terms of distribution of sentences imposed for illegal transport, the upper-end standard for the aggravated forms of the offence, 25 years of imprisonment constituted the most common single penalty, imposed on 37 defendants (45%). The next prominent punitive threshold was the 10-year sentence, applied in 26 cases (32%). 20 year sentences were imposed in 4 cases (5%), while an additional 5 defendants received penalties ranging between 10 and 20 years (6%). Strikingly but also very characteristically, sentences below 10 years were imposed in only 10 cases (12%), demonstrating that the baseline sentencing norm overwhelmingly gravitates toward the harsher penalties.

The data also reveal instances in which the cumulative statutory sentence, prior to conversion into the time-to-serve calculation, reached extreme totals, the total maximum observed being **570 years**. In some hearings defendants confronted cumulative exposure of up to hundreds years, a result of the multiplication of per-person transport penalties (base penalty x number of transported people). While these numbers do not reflect actual time served, their symbolic and procedural impact is determinative.

The combination of systematically high baseline penalties and extreme cumulative calculations points toward a sentencing framework that operates with minimal differentiation between defendants. The uniformity of outcomes mirrors the broader pattern observed in the conviction statistics: defendants are sentenced not on the basis of their personal circumstances, their degree of involvement, coercion, vulnerability or intent, but primarily based on the formal categorisation of the offence and their migration-related profile. This raises concerns that the sentencing practice prioritises categorical punishment over case-specific assessment.

Figure 10: Imprisonment sentences imposed in monitored cases

5.10.2.2 Fines

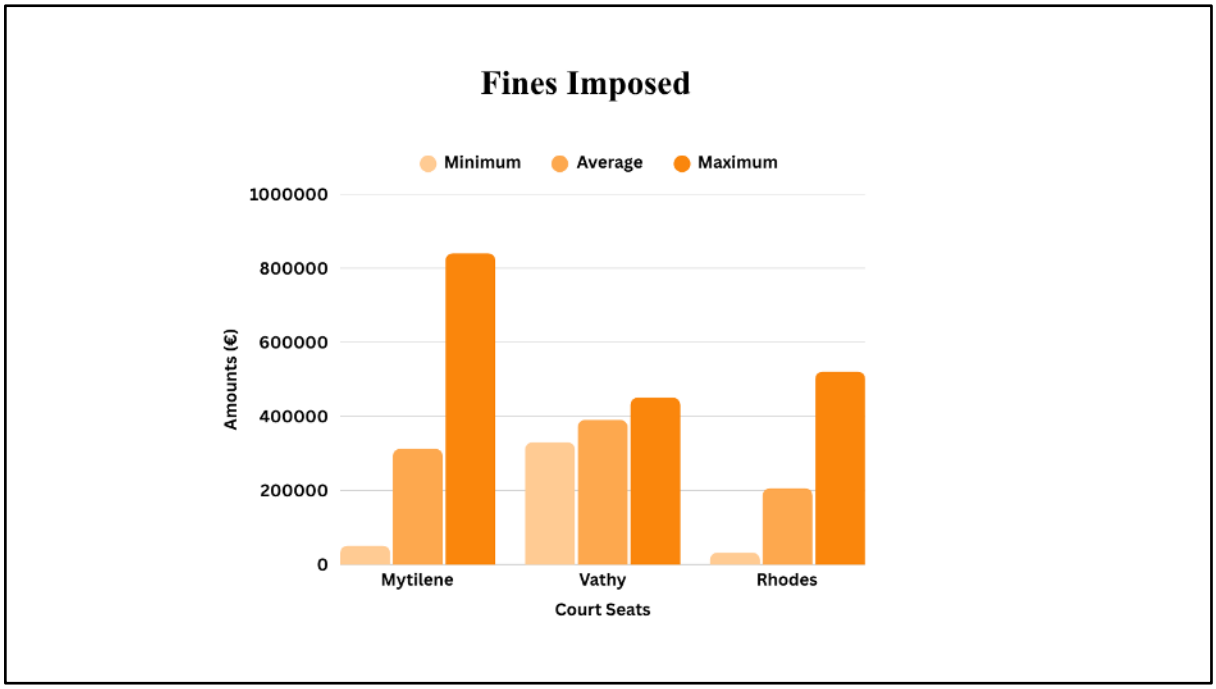


Figure 11: Fines imposed in monitored cases

In addition to custodial sentences, we also monitored the imposition of monetary penalties in 28 cases. The available data on fines is more limited than for imprisonment, largely due to poor audibility in courtrooms and the frequent practice of judges delivering sentencing decisions rapidly, often without clearly articulating the full breakdown of financial sanctions. Our findings indicate extremely high **financial penalties** in convictions for illegal transport. Overall, the findings indicate that financial penalties are not merely ancillary to imprisonment but constitute an independent and highly punitive component of sentencing, with **cumulative fines escalating sharply** depending on the number of passengers and, to some extent, the court location, and the aggravating factors imposed during the stage of the main investigation.

Our findings reveal significant variation in the imposition of fines among different courts. In the cases monitored in the courts of **Chania and Heraklion, no fines were imposed**. In the other courts (Mytilene, Vathy and Rhodes), the final judicial fines frequently ranged from approximately **€200.000** to **€800.000**, with most fines clustering around **€500.000**. Rhodes court imposed fines on 11 out of 13 convicted defendants (85%), but had the lowest average fine of the three courts imposing them (**€206.000**). Vathy, on the other hand, imposed fines at the lowest rate out of the three courts (11%), but imposed the highest average fines (**€390.000**). In Mytilene, fines were imposed on 12 out of 38 convicted defendants (32%). However, the highest documented fine came from this court, reaching **€840.500** (comprising a base penalty of €200.000, €40.000 for each of the 15 transported persons and an additional ancillary fine of €500). In general, from the 28 cases that people were convicted for the charge of 'illegal transportation of third country nationals' and that the imposition of a fine was recorded, an average of €285,000 was imposed in addition to the custodial sentences.

These amounts did not arise as exceptional judicial departures but rather as the outcome of applying statutory per-person penalties to boats carrying twenty or more individuals. In practice, this resulted in defendants receiving cumulative financial sentences amounting to several hundred thousand euros in addition to lengthy custodial terms, irrespective of their

personal circumstances or actual financial capacity. These fines that are being imposed, apart from being unrealistic for the individuals on whom they were imposed, may also have further legal implications, since, according to the penal code, if not paid, they constitute an additional offense. While some variation was observed between jurisdictions in the calibration of the final sums imposed, the underlying pattern remained uniform: financial penalties for illegal transport were particularly high and mechanically cumulative, reflecting the structure of the offence rather than an individualised assessment of proportionality.

These sentencing practices fall within the statutory framework of Article 25 of Law 5038/2023. In its aggravated forms, particularly where profit-making and endangerment of human life are established, which, according to the monitoring findings, constituted the most frequently brought charges, the offence carries a fixed base financial penalty, typically set at €200.000, supplemented by an additional amount calculated per transported person. As a result, the exceptionally high cumulative fines observed in the monitored cases stem directly from the multiplication of the per-person penalty by the number of passengers on board. Smaller additional fines were also imposed for ancillary offences, such as illegal entry. Overall, the data demonstrate how the combination of a high fixed base amount and per-passenger multiplication structurally produces extreme cumulative financial penalties, with notable differences in how courts across jurisdictions apply the per-person component and ancillary fines.

Lack of individualised assessment in sentencing (Article 6, par. 1)

The prevailing sentencing pattern combined with extremely high cumulative sentence calculations, reflect a practice that does not appear tailored to the personal circumstances, degree of responsibility, or individual conduct of defendants and raises serious concerns regarding individualised assessment and proportionality, core elements of Article 6, par. 1 ECHR. The ECtHR has repeatedly emphasised that courts must take into account the specific circumstances of each defendant, including personal background, motives, and the precise factual context of the alleged offence, when determining guilt and punishment.[112] Uniformly harsh sentences, applied regardless of such circumstances, risk treating defendants as a homogeneous category rather than as individuals whose culpability must be assessed on the merits. Fairness under Article 6 is compromised where courts fail to engage with the substance of the defence or rely on predetermined assumptions about defendants or offences rather than the evidence and context of the particular case. The standardised sentencing outcomes observed across cases, indicate a systemic departure from the requirement of individualised consideration.

Predetermined sentencing patterns and the presumption of innocence (Article 6, par. 2)

These patterns also implicate the presumption of innocence under Article 6, par. 2, as the consistent imposition of maximum or near-maximum penalties conveys an implicit assumption of aggravated guilt, irrespective of case-specific evidence. The ECtHR has underlined that sentencing must not be based on preconceptions about the defendant's character or status, but on a careful evaluation of the facts.[113]

[112] ECtHR, *Airey v Ireland* (9 October 1979) App No 6289/73, § 24; *Moulin v France* (23 March 2017) App No 37104/06, § 78.
[113] ECtHR, *Bendenoun v France* (24 February 1994) App No 12547/86, § 45.

The prevailing sentencing pattern, where nearly all defendants convicted of illegal transport receive either 10 or 25 years, raises concerns about a de facto presumption that defendants fall within the most aggravated form of the offence. When penalties remain fixed across cases with substantially different factual characteristics, this suggests that sentencing outcomes may be influenced more by the defendants' migration profile and the nature of the charge than by the evidence. This undermines the presumption of innocence, which requires a genuine evaluation of each individual's culpability.

Requirement of reasoned judgments (Article 6, par. 1)
Sentencing judgments often were issued either repeating prosecutorial proposals or without providing detailed reasoning or explanation of why specific sentence lengths were chosen or why mitigating claims were rejected. Article 6, par. 1 ECHR obliges courts to provide reasoned judgments that demonstrate meaningful engagement with the substantive arguments and evidence presented by the defence.[114] Such an approach undermines the transparency, accountability, and fairness of the proceedings, as it prevents the defendant from understanding the rationale for the conviction and the penalty imposed. [115]

5.11 Mitigating circumstances

Across the monitored proceedings, mitigation claims were raised in a significant proportion of cases by the defence lawyers. Out of 90 full or partial convictions, mitigation was granted in 51 cases (57%). In 30 cases mitigating applications were denied (33%) and in 9 cases observers could not identify whether they were raised or not (10%), mostly when the proceedings were not audible from the public seating area.

As described in the legal analysis chapter above, Article 84 PC provides the substantive framework for mitigation, while Article 133 PC offers reduced sentencing for young adult defendants. Across both young age (Article 133) and Article 84 PC were invoked in mitigation. Although the findings are relatively scarce, they indicate a general tendency of the courts to recognise mitigating circumstances, which represents a step forward given the very high statutory sentences foreseen for these offences. However, this trend was not uniform, as jurisdictional differences were apparent, and in some locations, mitigation was frequently disregarded, highlighting persistent inconsistencies in judicial practice.

A notable example occurred in Rhodes, where across 13 cases, both prosecutor and the judges recognised almost no mitigating circumstances, despite submissions by defence lawyers. This demonstrates a consistent pattern of disregard for claims that could substantially alter the sentence. The rejection of mitigation did not appear to correlate consistently with the nature or seriousness of the facts, nor with the individual circumstances put forward by the defence. Instead, mitigation claims were frequently treated as ancillary or formal submissions, rather than as decisive elements requiring autonomous judicial assessment. As a result, sentencing

[114] ECtHR, *Dombo Beheer B.V. v The Netherlands* (6 December 1993) App No 14448/88, § 33; *Bendenoun v France* (24 February 1994) App No 12547/86, § 45.
[115] ECtHR, *Kudla v Poland* (26 October 2000) App No 30210/96, § 157.

outcomes remained clustered around the same high thresholds, regardless of whether mitigation was raised.

Individualised sentencing and reasoned decisions (Article 6(1) ECHR)

Mitigating circumstances form an integral part of sentencing and therefore fall within the scope of the fair-trial guarantees of Article 6, par. 1 ECHR. Where domestic law provides for mitigation mechanisms capable of substantially affecting the severity of punishment, Article 6, par. 1 ECHR requires courts to examine such claims in a genuine, individualised, and reasoned manner. The right to a fair trial entails an obligation on domestic courts to engage with the essential arguments raised by the defence and to provide reasons demonstrating that those arguments were effectively examined.

This obligation extends to defence submissions concerning factors that may decisively influence the level of sentence imposed, as sentencing forms an integral part of the "determination of a criminal charge" within the central meaning of Article 6. National courts might enjoy discretion in sentencing matters, however decisions affecting punishment must reflect an assessment of the individual circumstances of the accused and the offence, rather than the automatic application of statutory ranges or abstract considerations.

Where mitigation is provided for by law, but typically rejected through formulaic reasoning or without explicit engagement, the resulting sentence risks appearing predetermined and incompatible with the requirement of procedural fairness. This also undermines the fairness and transparency of the sentencing process and weakens the guarantees of Article 6(1). The obligation to give reasoning requires consideration of the relevant personal, factual, and contextual elements submitted by the defence before determining the penalty.

Indeed, the handling of mitigating circumstances in some jurisdictions, raises such concerns. In the context of offences carrying extremely high minimum sentences, such an approach significantly limits the practical effectiveness of mitigation mechanisms provided by law and undermines the requirement that punishment be tailored to individual culpability.

6 Analysis: Fair-Trial considerations in the greek criminal justice system

Public trust in the Greek justice system has been consistently low, as documented in multiple studies.[116] Repeated controversies in high-profile cases, combined with the day-to-day challenges faced by individuals interacting with the courts, have contributed to a perception that the judiciary may not always deliver fair and impartial justice. This perception is further reinforced by a widespread view that justice in Greece operates as a two-tier system, influenced by the economic, political, and social standing of those appearing before the courts.

The findings examined in this analysis suggest that these concerns are not solely perceptual but reflect structural and procedural deficiencies embedded within the judicial system. Addressing these issues would require systemic reforms to strengthen the consistent application of law. Central to any justice system is the principle of equality before the law, which must be particularly applied to vulnerable populations, including migrants and asylum seekers, who already face significant barriers to protection, survival, and access to fundamental rights.

6.1 Criminalisation as migration governance

Over the past decade, the European Union has increasingly governed migration through criminal law, detention, and punitive measures rather than protection or mobility frameworks. While framed as a response to "migrant smuggling" or "trafficking," this shift has actually resulted in the routine criminalisation of individuals on the move. In Greece, asylum seekers and migrants are frequently arrested, prosecuted, and detained for alleged facilitation or "smuggling" after steering or assisting a journey across the Aegean and Libyan Seas. According to reports, more than 2437 people are currently either serving sentences or awaiting trial for smuggling-related charges, representing one of the largest population groups in Greek prisons.[117]

Based on a year-long research project conducted across five courtrooms on four Greek islands, the findings come to confirm previous trial-monitoring audits[118] and human rights reports.[119] Greek criminal courts often operate in ways that materialise European migration policy through punishment, procedural shortcomings, and symbolic outcomes. The violations observed accelerated trials, systematic pre-trial detention, limited interpretation, disproportionate sentencing, and reliance on untested statements, form a pattern rather than exceptions. In this context, criminal law functions as a mechanism of migration governance, shifting

[116] I Mandrou, *'Why Citizens Question the Justice System'* [Γιατί οι πολίτες αμφισβητούν τη Δικαιοσύνη] *(To Vima*, 4 November 2025) https://www.tovima.gr.
[117] Human Rights Legal Project & Legal Centre Lesvos, *The Exemption from Criminalisation* (n 6)
[118] Valeria Hänsel, Rob Moloney, Dariusz Firla and Rûnbîr Serkepkanî, *Incarcerating the Marginalized: The Fight Against Alleged 'Smugglers' on the Greek Hotspot Islands* (CPT-Aegean Migrant Solidarity, Borderline Europe, Bordermonitoring.eu e.V., November 2020) https://cpt.org.pdf
[119] Border Violence Monitoring Network, *Criminalisation Report: 2022–2023* (Report, 28 May 2024) https://borderviolence.eu

responsibility for the unsafe journeys that people on the move are forced to and the state and european policy failures onto individual migrants.

6.2 From border control to penal governance

The findings from trial monitoring and related reports converge on a central point˙ the criminalisation of alleged smugglers is a core component of migration governance rather than an incidental outcome.

Greek courts routinely prosecute individuals with no financial gain, no organisational role, and minimal agency over the journey, applying legal provisions originally designed to target organised crime. BVMN and CPT–AMS monitored 123 cases involving 190 defendants, predominantly young asylum seekers, whose alleged "criminal conduct" mainly consisted of steering a boat or being identified as in control at the moment of interception.

This pattern reflects broader EU trends. Reports from PICUM highlight that European migration governance increasingly relies on penal measures rather than protective approaches.[120] Proposed amendments to the EU Facilitation Directive maintain broad definitions, limited humanitarian exemptions, and substantial prosecutorial discretion. In Greece, the offence is operationalised in ways that do not distinguish between organisers and boat operators, apply extreme penalties, and progressively weaken procedural safeguards.

From a human rights perspective, these practices have several implications:

1. They externalise accountability, attributing responsibility for deaths at sea and dangerous crossings to "smugglers" rather than systemic policy failures.
2. They serve a deterrent function through exemplary sentencing to vulnerable populations, rather than protectively
3. They contribute to a performative narrative in which migration is framed primarily as a security issue rather than a humanitarian or social one.

6.3 The courtroom as a site of procedural concerns

The findings from CPT–AMS and BVMN indicate that Greek criminal courtrooms, particularly in cases involving alleged "smuggling," and despite the gravity of the offences and the extremely high penalties imposed, the proceedings observed frequently departed from the standards required under Article 6 ECHR, Article 14 ICCPR, and the safeguards embedded in Greek constitutional and procedural law. Article 6 encompasses multiple protections, including the right to a public hearing, the presumption of innocence, adequate time and facilities to prepare a defence, access to legal assistance, and the right to examine witnesses and evidence.

[120] Platform for International Cooperation on Undocumented Migrants (PICUM), *Cases of Criminalisation of Migration and Solidarity in the EU in 2023* (Brussels, 2024) https://picum.org.pdf.

6.3.1 Right to a fair and public hearing

Trials in the monitored cases are frequently conducted under accelerated procedures, sometimes lasting less than an hour, even where potential life sentences are at stake. Courtroom procedures are largely regulated in a fragmented manner by the police or by other customary practices of the courtroom authorities.. While hearings technically occur, the combination of speed, restricted access, and limited procedural transparency undermines the substantive right to a fair and public hearing. Article 6, par. 1 ECHR requires not only formal openness but also sufficient procedural transparency to allow effective scrutiny of the proceedings.

6.3.2 Presumption of innocence

Reliance on untested coast guard or police officers statements in a majority of monitored cases raises, which was recently also incorporated into the Greek penal code, questions about the presumption of innocence. Defendants frequently face the burden of disproving allegations they may not fully understand, particularly when they are non-Greek speakers and legal representation is provided shortly before trial. Under Article 6, par. 2, everyone charged with a criminal offence must be presumed innocent until proven guilty according to law. The practical reversal of this presumption—where defendants must actively prove their non-culpability under significant procedural constraints—constitutes a substantive fair-trial concern.

6.3.3 Adequate time and facilities for defence & legal assistance

Many defendants have minimal opportunity to consult with their lawyers prior to trial. Appointed counsel often have insufficient time to review case files or gather evidence. Article 6, par. 3(b) guarantees adequate time and facilities to prepare a defence, while Article 6, par. 3(c) ensures the right to defend oneself through legal assistance of one's own choosing or, if necessary, through legal aid. The conditions observed in Greek courtrooms˙ unsuitable rooms, compressed timelines, restricted access to interpreters, and limited preparatory time, undermine these rights, reducing the capacity for an effective defence.

6.3.4 Examination of evidence and witnesses

Defendants frequently lack meaningful opportunity to examine witnesses or challenge evidence. Statements by law enforcement or coast guard personnel are often accepted without cross-examination. Article 6, par. 3(d) specifically protects the right to examine or have examined witnesses against the accused and to obtain the attendance of witnesses on the defendant's behalf. The monitored procedural practices indicate a significant gap between this standard and the actual courtroom experience of defendants.

6.3.5. Language and interpretation

Article 6, par. 3(e) requires the translation of all core documents of the trial and the provision of interpretation if a defendant cannot understand or speak the language used in court. Observations from monitored trials reveal that the majority of defendants had little understanding of the charges against them, and persistent interpretation gaps, with interpreters either unavailable or insufficiently qualified. Defendants' inability to understand proceedings undermines not only procedural fairness but also substantive comprehension, affecting all aspects of their participation in the trial.

When assessed against the fair-trial guarantees of Article 6 ECHR, the courtroom practices observed in Greece reflect a spectrum of procedural concerns: from technical compliance with formal requirements to substantive impediments that significantly limit defendants' ability to exercise their rights. Accelerated hearings, limited legal preparation, reliance on untested statements, and inadequate interpretation collectively compromise multiple dimensions of the right to a fair trial.

Framing these practices in terms of Article 6 highlights that observed violations are not merely operational shortcomings but touch on the core guarantees of criminal justice, particularly for vulnerable, non-citizen defendants. Evaluating Greek courtroom procedures through this lens provides a structured basis for identifying reforms and strengthening compliance with international human rights standards.

6.4 Sentencing, deterrence, and proportionality

Sentencing practices observed in the monitored cases reveal additional areas of concern. Multi-decade sentences, often calculated per transported person, exceed what would typically be proportionate to the alleged conduct. First-instance sentences of 100 years or more are documented in multiple cases. Such penalties cannot be explained by individual culpability. Instead, they must be understood as political signals, messages directed not only at the defendant, but at broader migrant populations and domestic audiences. The "smuggler" figure operates as a moral scapegoat, absorbing blame for structural violence produced by EU border policies.

Such sentencing raises both substantive and symbolic questions. While intended as a deterrent, these sentences can prolong legal uncertainty and significantly disrupt asylum processes. Even where convictions are overturned on appeal, the human and social costs of pre-trial and post-trial incarceration remain. The findings highlight the need for a proportionality assessment aligned with fair-trial standards.

6.5 Political and legal implications

Taken together, the evidence from trial monitoring and human rights reports suggests that the criminalisation of alleged smugglers in Greece represents a policy approach embedded in EU

migration governance. This model shifts focus from rights-based protection to punitive containment, incorporating criminal law into mechanisms traditionally associated with asylum systems.

From a fair-trial standpoint, these practices raise concerns about rule-of-law compliance, equality before the law, and proportionality. While intended as a policy instrument, they carry the risk of normalising procedural shortcuts, entrenching differential treatment based on nationality or migration status, but also undermining public confidence in the judiciary system.

7. Recommendations

Ensuring compliance with fair-trial standards in cases where people on the move are prosecuted for so-called "smuggling" offences is not only a legal obligation but a prerequisite for maintaining the integrity of the criminal justice system and upholding the rule of law. The findings of this report indicate that existing practices expose defendants to heightened procedural risks and systematically undermine core safeguards.

The following recommendations are addressed to judicial authorities, legislative bodies, and relevant administrative actors. They aim both to strengthen institutional compliance with fair-trial guarantees and to safeguard the fundamental rights of individuals who are already in situations of heightened vulnerability.

I. Strengthen access to effective legal assistance (Article 6, par. 3(b) and (c) ECHR)

Courts should ensure that defence counsel is appointed at the earliest possible stage and that lawyers are afforded adequate time and facilities to prepare an effective defence. In practice, limited information regarding the right to legal assistance, combined with the geographical distance between detention facilities and court locations, frequently prevents meaningful communication between defendants and their lawyers. Many defendants rely on the appointment of counsel on the day of the hearing itself, severely undermining preparation and the effectiveness of legal representation.

Judicial authorities should ensure that access to legal counsel is actively facilitated immediately upon arrest and throughout pre-trial detention, including through practical arrangements enabling communication between lawyers and detained defendants, irrespective of distance or logistical constraints. Judicial authorities should take active measures to ensure that persons arrested and held in pre-trial detention are fully informed of their rights and have effective and timely access to legal assistance throughout the proceedings.

Courts should ensure the timely appointment of defence counsel, sufficiently in advance of the hearing, so as to allow lawyers adequate time to consult with the defendant and review the case file. Where a state-appointed lawyer has not had sufficient time to prepare an effective defence due to late appointment or practical constraints, proceedings should be postponed as necessary to safeguard the defendant's rights under Article 6 ECHR.

The system of state-appointed defence should be reviewed, ensuring that it operates effectively in practice. This includes providing **adequate resources, manageable caseloads, and appropriate remuneration** for legal aid lawyers, so that appointments can be made in a timely manner and effective defence preparation is realistically possible.

II. Ensure meaningful and high-quality interpretation (Article 6, par. 3(e) ECHR; Articles 233 and 237 CCP)

Courts should systematically appoint professional interpreters from the official registry and refrain from relying on police officers, co-detainees, or other non-neutral individuals.

Summons, indictments, and other essential procedural documents should be provided in translation, except in cases of genuine urgency as strictly defined by the Code of Criminal Procedure.

Courts and court secretariats should ensure that professional interpreters are appointed at all stages of the criminal process, including police questioning, pre-trial detention, evidentiary proceedings, sentencing, and the delivery of judgments. Interpretation should not be limited to the formal hearing itself but must cover all procedural moments where the defendant's rights or obligations are explained or exercised.

Judicial authorities should ensure adequate and timely remuneration of registered court interpreters, in order to guarantee availability, independence, and professional quality. Insufficient fees risk undermining the sustainability of the official interpreter registry and incentivising reliance on unqualified or non-neutral individuals.

The contradictory jurisprudence of the Supreme Court (Areios Pagos) concerning the translation of core procedural documents has resulted in inconsistent judicial practice. This issue should be examined by the **Plenary of the Supreme Court**, with a view to **issuing a clear and binding interpretation.**

Courts should **actively verify that interpretation is provided in a language that the defendant can understand and communicate in effectively**, rather than relying on temporary or intermediary solutions adopted in the absence of a specific interpreter. Judges should not presume linguistic comprehension based solely on nationality or prior procedural interactions, but should confirm on the record that the defendant understands the language used for interpretation. **Where doubt exists, proceedings should be held** until interpretation in an appropriate language or dialect is secured, to ensure that the defendant can participate meaningfully in the proceedings.

While the introduction of technological tools to support translation and interpretation may contribute to efficiency, such measures must be implemented in line with safeguards and recommendations issued by judicial authorities and professional bodies. **Courts should actively verify the quality and accuracy of interpretation and ensure that defendants fully understand the charges against them**, **their procedural rights, and the consequences of procedural choices, including plea agreements.**

III. Safeguard the right to examine witnesses (Article 6, par. 3(d) ECHR; Article 171, par. 1(d) CCP)

Courts should refrain from relying on untested pre-trial statements unless strict compliance with European Court of Human Rights safeguards is ensured. The right to examine witnesses is a cornerstone of the right to a fair trial and must not be restricted in the absence of compelling justification.

Non-attendance of witnesses should be justified by a "good reason," and convictions should not be based solely or decisively on written statements. **The recent amendment to the Code of Criminal Procedure (Article 215, par.5 Law 5090/2024)**, which allows for the absence of

key witnesses when they are members of the Hellenic Police or the Hellenic Coast Guard, **should be reconsidered** in light of Article 6 ECHR and the relevant constitutional guarantees.

IV. Guarantee individualised judicial assessment (Article 6, par. 1 ECHR; Article 93 Greek Constitution)

Courts should ensure that each defendant's specific role, level of involvement, and personal circumstances are assessed on an individual basis. Mitigating circumstances should be examined with due regard to vulnerability, coercion, age, and humanitarian motives.

The observed tendency towards standardised or "horizontal" decision-making, particularly in sentencing, mitigation, and conditional release, raises serious concerns. **Judicial decisions at all stages of the proceedings should be clearly reasoned,** both during the hearing and in the written judgment, demonstrating an individualised assessment of the case.

V. Protect effective access to asylum procedures (Article 31 Refugee Convention; Article 3, par. 3(e) Law 5038/2023)

Article 31 of the 1951 Refugee Convention, as reflected in Article 3, par. 3(e) of the Greek Migration Code (Law 5038/2023), establishes a clear humanitarian exception to criminal liability under Articles 24 and 25. **However, administrative practices instructing asylum services not to examine applications from individuals with pending "smuggling" charges effectively deprive applicants of this protection.**

Although courts have recognised the applicability of this exception in some cases, it is frequently denied on the ground that refugee status has not yet been formally granted. The continued suspension of asylum procedures in such circumstances may fall within the scope of Articles 259 and 263 of the Code of Criminal Procedure and could entail liability for the administrative authorities involved.

Relevant authorities, including asylum services, should immediately review this practice and ensure compliance with international and domestic legal obligations. They should also guarantee that individuals in pre-trial detention have practical and effective access to the asylum procedure on an equal basis.

VI. Scrutinise the use of plea deals (Article 6, pars. 1 and 3 ECHR; Articles 303–308 CCP)

Courts should ensure that plea deals are genuinely voluntary, informed, and supported by effective interpretation. Plea agreements must not operate as substitutes for judicial scrutiny and should only be accepted where the defendant fully understands the legal consequences, including the waiver of further procedural (i.e. appeal) and administrative rights (i.e. asylum application).

VII. Re-evaluate pre-trial detention as a default measure (Article 5 ECHR; Articles 282–296 CCP)

Courts should avoid treating migration status as an automatic indicator of flight risk. **Decisions on pre-trial detention should be based on an individualised assessment supported by concrete reasoning.** The non-violent nature of the charges and the minimal risk of reoffending in many migration-related cases should be duly considered by investigative authorities. An **explicit examination and reasoning** o**n each statutory criterion for detention,** including flight risk, risk of reoffending, and proportionality, has to be undertaken to order pre-trial detention, or extend the existing order, rather than relying on abstract or formulaic references. Factors such as lack of 'permanent residence address' or prior irregular entry should not, in themselves, suffice to justify detention.

Greater **reliance on alternative, less restrictive measures** where appropriate would enhance compliance with fair-trial guarantees, reduce unnecessary deprivation of liberty, and alleviate pressure on the already overcrowded prison system. If such measures are deemed insufficient, authorities should provide **reasoned justification** for the ordering of pre-trial detention instead.

Judicial authorities should ensure that continued detention is subject to regular and substantive review, taking into account the progression of proceedings, delays not attributable to the defence, and the cumulative impact of detention on the defendant.

VIII. Timely publication of written decisions

Courts should ensure that **all judgments in criminal proceedings, including sentencing decisions, are issued in written, reasoned form and published within a short and clearly defined timeframe** following the oral delivery of the verdict in court. Thus to ensure transparency, legal certainty, and the ability of parties to exercise their rights of appeal effectively. Written decisions should contain the full reasoning of both the prosecutor's proposal and Judges' decision, mitigating circumstances, sentencing and the condition of probation.

Delays in issuing or communicating written decisions undermine fair-trial guarantees, hinder defendants' access to remedies, and reduce confidence in the criminal justice system. Judicial authorities should implement procedural safeguards, monitor compliance with deadlines, and establish clear internal protocols to prevent excessive delays, particularly in cases involving persons in pre-trial detention or other vulnerable groups.

Court registries should be instructed to systematically publish written judgments in an accessible and searchable format through standardised publication procedures, ensuring that they are available not only to the parties but also to legal professionals and the wider public. This is essential to guarantee transparency, support legal certainty, and enable defence lawyers to rely on existing, recent caselaw in comparable cases.

The absence or delayed publication of reasoned decisions undermines the public nature of proceedings, obstructs the development of consistent case-law, and weakens confidence in the justice system. Ensuring timely and public access to written judicial reasoning is therefore a necessary component of compliance with Article 6(1) ECHR.

IX. Effective public access and publicity of criminal proceedings

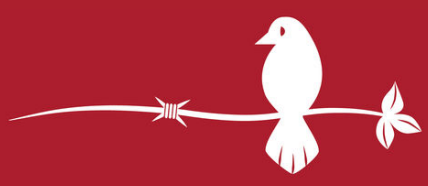
Judicial authorities should ensure that the **public character of criminal proceedings is guaranteed in practice and not merely in principle**, in line with the requirement of direct and indirect publicity under Article 6(1) ECHR. This includes ensuring that court hearings are physically accessible, audible, and comprehensible to members of the public, trial monitors, and other observers.

Courts should conduct hearings in courtrooms of adequate size to accommodate interested members of the public, particularly in cases attracting heightened public interest. Judges and prosecutors should speak clearly, audibly, and at a measured pace, and to refrain from omitting or abbreviating essential parts of the proceedings for reasons of expediency, where such omissions undermine transparency or understanding.

Court administrations should take practical measures to ensure audibility and clear visibility of the proceedings, including appropriate seating arrangements for observers, functioning sound systems where necessary,. **Trial monitors, civil society observers, and other accredited observers should be allowed unobstructed access to courtrooms,** permitted to sit in proximity sufficient to follow the proceedings, and enabled to observe hearings without interference or restriction, subject only to lawful and proportionate limitations.

Finally, judicial authorities should recognise that effective public access serves not only transparency but also accountability and public confidence in the administration of justice. Ensuring that proceedings are genuinely observable in practice is an essential safeguard against arbitrariness and a core component of the right to a fair and public hearing under Article 6(1) ECHR.

Border Violence
Monitoring Network



community peacemaker teams
aegeanmigrantsolidaritry.org

2026