

ADVANCE UNEDITED VERSION

Distr.: General
12 April 2022

Original: English

Committee on Enforced Disappearances**Concluding observations on the report submitted by Greece under article 29, paragraph 1, of the Convention*****

1. The Committee on Enforced Disappearances considered the report submitted by Greece under article 29 (1) of the Convention¹ at its 383rd and 384th meetings,² held on 28 and 29 March 2022, in a hybrid format owing to the coronavirus disease (COVID-19) pandemic. At its 398th meeting, held on 7 April 2022, the Committee adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by Greece under article 29 (1) of the Convention. The Committee also thanks the State party for its written replies³ to the list of issues,⁴ which were supplemented by the oral statements by the delegation during the dialogue.

3. The Committee welcomes the opportunity for a constructive dialogue with the delegation of the State party on the measures taken to implement the Convention.

B. Positive aspects

4. The Committee commends the State party for having ratified or acceded to almost all the United Nations core human rights instruments and their optional protocols,⁵ as well as the Rome Statute of the International Criminal Court.

5. The Committee welcomes the measures taken by the State party in areas related to the Convention, including:

(a) The establishment of the National Emergency Response Mechanism for Unaccompanied Minors in precarious living conditions (NERM) in 2021;

(b) The establishment of the Special Secretariat for the Protection of Unaccompanied Minors, in 2020;

(c) The enactment of Law 4554/2018, regulating the institution of guardianship of unaccompanied and separated minors;

* The present document is being issued without formal editing.

** Adopted by the Committee at its twenty-second session (28 March – 8 April 2022).

¹ CED/C/GRC/1.

² CED/C/SR.383 and CED/C/SR.384.

³ CED/C/GRC/RQ/1

⁴ CED/C/GRC/Q/1

⁵ The State party has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

(d) The enactment of Law 4228/2014, which provides for the designation of the Greek Ombudsman as the national preventive mechanism under the Optional Protocol to the Convention against Torture; and

(e) The creation, by Law 4443/2016, of the National Mechanism for the Investigation of Arbitrary Incidents (EMIDIPA) within the Office of the Greek Ombudsman.

6. The Committee welcomes that the State party has extended a standing invitation to all special procedures of the Human Rights Council to visit the country.

C. Principal subjects of concern and recommendations

7. The Committee considers that, at the time of the adoption of the present concluding observations, the legislation in force, its implementation and the performance of certain authorities were not in full compliance with the Convention. The Committee encourages the State party to implement its recommendations, made in a constructive spirit of cooperation, with a view to ensuring that the existing legal framework and the manner in which it is implemented by the authorities are fully consistent with the Convention.

1. General information

Individual and inter-State communications

8. The Committee regrets the State party's affirmation that it is not in a position to take steps towards making the declarations to give competence to the Committee to examine individual and inter-state communications (arts. 31 and 32).

9. **The Committee encourages the State party to recognize the Committee's competence to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention respectively, with a view to strengthening the framework for protection from enforced disappearance provided for in the Convention.**

2. Definition and criminalization of enforced disappearance (arts. 1–7)

Statistical information

10. While taking note of the existence of a National Database of Missing persons, the Committee regrets not having received clear information on any other existing databases that could contain information on disappeared persons. It also regrets not having received statistical information on disappeared persons in the State party, including on cases within the meaning of article 2 of the Convention (arts. 1, 2 and 3).

11. **The State party should swiftly generate accurate and up-to-date statistical information on disappeared persons, disaggregated by sex, age, nationality, sexual orientation, gender identity, place of origin and racial or ethnic origin. Such statistical information should include the date and place of disappearance; the number of persons who have been located, whether alive or dead; and the number of cases in which there may have been some form of State involvement within the meaning of article 2 of the Convention. In this connection, the Committee recommends the State party to establish a single nationwide register of disappeared persons, ensuring that it contains, at a minimum, all the information referred to in the present recommendation.**

The offence of enforced disappearance

12. The Committee is concerned that, after the amendment to the Criminal Code in 2019, enforced disappearance is no longer criminalised as an autonomous offence, as it is embedded within the crime of abduction in article 322 of the Criminal Code. While it notes that this article contains a definition of enforced disappearance, the Committee is concerned that this definition establishes the deprivation "from the protection of the State" as an intentional element (*animus*) that would be required for the act to constitute criminal conduct, instead of being considered as a consequence of such conduct. It is further concerned that the penalties foreseen for the crime of enforced disappearance, ranging from 5 to 15 years'

imprisonment, do not reflect its extreme seriousness, and that criminal legislation does not contain the mitigating and aggravating circumstances provided for in article 7 (2) of the Convention (arts. 2, 4 and 7).

13. The Committee recommends that the State party ensure that enforced disappearance is criminalised as a separate offence, with a definition that fully complies with article 2 of the Convention, and that is punished with appropriate penalties that take due account of its extreme seriousness. The Committee encourages the State party to include in its criminal legislation all the mitigating and aggravating circumstances referred to in article 7 (2) of the Convention.

Criminal responsibility for the offence of enforced disappearance

14. The Committee is concerned that criminal legislation does not provide for the criminal responsibility of all persons referred to in article 6 (1) (a) and (b) of the Convention. It is further concerned that, under articles 322 (3) and 44 (1) of the Criminal Code, the persons mentioned in article 6 (1) (a) of the Convention may not be held criminally responsible (art. 6).

15. The Committee recommends that the State party ensure that criminal legislation incorporates the criminal responsibility of all persons mentioned in article 6 (1) (a) and (b) of the Convention, and that no provisions allow for the exemption of their criminal responsibility.

3. Criminal responsibility and judicial cooperation in relation to enforced disappearance (arts. 8–15)

Statute of limitations

16. The Committee notes with concern that the duration of the statute of limitations for the crime of enforced disappearance (15 years) may not be proportionate to the extreme seriousness of the crime. While noting the affirmation of the delegation that, given the continuous nature of the crime, the statute of limitation would commence from the date the disappeared person is located or released, the Committee regrets not having received clear information on how this is guaranteed in national legislation (art. 8).

17. The Committee recommends the State party to expressly establish in its criminal legislation that, given the continuous nature of the crime of enforced disappearance, if a statute of limitations is applied, the statute of limitation for criminal proceedings and for victims to seek an effective remedy should be of long duration and should commence from the moment when the offence of enforced disappearance ceases.

Military jurisdiction

18. The Committee is concerned that, under article 193 of the Military Criminal Code, military personnel is subject to the jurisdiction of military courts, either as perpetrators or as victims of enforced disappearance. The Committee reaffirms its position that, as a matter of principle, all cases of enforced disappearance must be dealt with only by the competent ordinary civil authorities (art. 11).

19. Recalling its statement on enforced disappearance and military jurisdiction,⁶ the Committee recommends that the State party swiftly ensure that the investigation and prosecution of cases of enforced disappearance is expressly excluded from the competence of military courts.

Allegations of enforced disappearances

20. While taking note of the affirmation of the State party that no complaints of enforced disappearance have been received, the Committee is concerned about reports that migrants,

⁶ A/70/56, annex III.

including children, have allegedly been subjected to enforced disappearance before being pushed back to Turkey (arts. 2, 12, 17, 24 and 25)

21. **The Committee urges the State party to ensure that:**

(a) **All allegations of enforced disappearance are investigated promptly, thoroughly and impartially, even if there has been no formal complaint, and that the alleged perpetrators are prosecuted and, if found guilty, punished in accordance with the seriousness of their acts;**

(b) **All victims receive adequate reparation that is sensitive to their specific needs.**

Suspension from duties

22. The Committee regrets the lack of clear information on the existing mechanisms to ensure that a member of law enforcement or security forces or any other public official suspected of involvement in the commission of an enforced disappearance, do not participate in the investigation (art. 12).

23. **The Committee recommends the State party to establish the suspension from duties, from the outset and for the duration of the investigation, of any State agents, civilian or military, who are suspected of having been involved in the commission of an offence of enforced disappearance, without prejudice to the presumption of innocence.**

Human rights defenders

24. The Committee is gravely concerned about the criminalisation of search and rescue activities at sea under national legislation and about cases of prosecution of and threats against human rights defenders and civil society actors involved in such operations and in monitoring, documenting and assisting victims of enforced disappearance and pushbacks (art. 12).

25. **The Committee urges the State party to:**

(a) **Protect the persons mentioned in article 12.1 of the Convention from any acts of intimidation and ill-treatment and prevent and punish such acts;**

(b) **Ensure that human rights defenders and civil society actors are not criminalised or prosecuted for their involvement in search and rescue operations of migrants or in monitoring and documenting cases of disappearances and assisting victims.**

Disappearances of migrants

26. The Committee is concerned about the reportedly high number of migrants who have disappeared in Greek waters of the Mediterranean and the Evros river attempting to reach Greece and regrets not having received official statistical information in this regard. While it notes the existence of several databases containing information about migrants and operated by different authorities, it is concerned that they are not always interconnected. The Committee is also concerned about the significant obstacles that family members of disappeared migrants face in order to search for and locate their loved ones, and it regrets not having received clear information on the existence of a DNA database, and the information contained therein, for the purpose of searching, locating and identifying disappeared migrants. The Committee is further concerned about the high number of unaccompanied migrant children that have disappeared upon their arrival in the State party, and at reports that children have disappeared from migrant reception centres, in particular the so-called “hotspots” (arts. 1, 2, 3, 12, 14, 15, 16, 19, 24 and 25).

27. **The Committee recommends the State party to:**

(a) **Redouble its efforts to prevent and investigate the disappearance of migrants, including in the context of pushbacks and vessels arriving by sea or via the Evros River, and to ensure that those responsible are prosecuted;**

(b) **Redouble its efforts to prevent the disappearance of unaccompanied migrant children upon their arrival in the State party, including from migrant detention centres, ensuring that they are promptly referred to child protection authorities as soon as possible after their arrival at an immigration reception centre, and ensure that such disappearances are investigated;**

(c) **Increase its efforts to search for, locate, and in the case of death, identify and return the remains of disappeared migrants, including unaccompanied minors, ensuring the cooperation with relevant countries and the effective coordination and cooperation between all relevant authorities and data cross-checking between existing databases;**

(d) **Establish a central DNA database ensuring that it contains the necessary genetic data, as well as ante-mortem and post-mortem information, in order to facilitate the search and identification, and promote the establishment of agreements, mechanisms and practices with all relevant countries to multiply the options for DNA data cross-matching for unidentified human remains;**

(e) **Ensure that relatives of disappeared migrants and their representatives, irrespective of where they reside, have the opportunity to obtain information and take part in the investigations and the search for their loved ones.**

4. Measures to prevent enforced disappearance (arts. 16–23)

Non-refoulement

28. The Committee regrets not having received sufficient and clear information on the asylum procedures in place, the timeframes applicable to appeal a negative decision of asylum, and the procedures and criteria applied to evaluate the risk of a person being subjected to enforced disappearance before a decision to expel, return, surrender or extradite is taken. The Committee expresses its concern about information alleging the lack of adequate safeguards and procedural guarantees to ensure the strict compliance with the principle of non-refoulement, in particular:

(a) **Consistent reports of violent “pushbacks” and summary expulsions of migrants to Turkey, including of asylum-seekers and refugees, according to which migrants, after being confiscated their phones, personal belongings and clothes, are forced into life-rafts insufficiently dressed and abandoned adrift by Greek authorities in open waters and the Evros River, without undertaking the necessary prior individual assessment to evaluate and verify their risk of being subjected to enforced disappearance;**

(b) **Reported refusals to receive or examine asylum applications at the border and cases where persons in the State territory were unable to lodge an asylum application;**

(c) **Reports of persons who have been subjected to enforced disappearance in Turkey after being returned under the European Union-Turkey agreement or who have subsequently been transferred to a State where they might be at risk of enforced disappearance (art. 16).**

29. **The Committee urges the State party to ensure that the principle of non-refoulement enshrined in article 16 (1) of the Convention is strictly respected in all cases and recommends that the State party:**

(a) **Refrain from carrying out “pushbacks” and collectively expelling migrants, and ensure that all allegations of such practices are duly investigated and that those responsible are prosecuted and, if found guilty, sanctioned;**

(b) **Ensure that all asylum seekers, without exception, have unhindered access to effective refugee status determination procedures that comply fully with the obligations under article 16 of the Convention, including through the establishment of an independent and effective national border monitoring mechanism;**

(c) **Ensure that a thorough individual assessment of the risk of any person becoming a victim of enforced disappearance is conducted before it proceeds with an expulsion, return, surrender or extradition, and that any decision taken in the context**

of these procedures can be appealed to an impartial authority within a reasonable timeframe, and that such an appeal has suspensive effect;

(d) Ensure that in the expulsion, return, surrender or extradition of a person to a State considered “safe”, including in the context of the European Union-Turkey statement, a systematic assessment is also carried out on the risk that this person be subsequently transferred to a State where he or she might be at risk of enforced disappearance;

(e) Provide training to staff involved in asylum, return, surrender or extradition procedures and, in general, to law enforcement officials, on the concept of “enforced disappearance” and on the assessment of the related risks.

Secret detention and fundamental legal safeguards

30. While taking note of the assertion by the State party that there are no secret detention facilities, the Committee is concerned at allegations that migrants, including children, have routinely been held in secret detention, incommunicado and without being registered before being pushed back to Turkey. In this connection, the Committee recalls the concerns expressed by the Committee against Torture in relation to the inobservance of the rights afforded to persons deprived of liberty under domestic law,⁷ including to migrants and asylum seekers, in particular the right to access a lawyer, to contact a person of their choice and to challenge their detention. The Committee regrets not having received information about the investigations carried out in that regard and about the mechanisms available in places of deprivation of liberty to submit complaints for violations of these rights (arts. 17, 18, 20 and 22).

31. The Committee recommends the State party to guarantee, in law and in practice, that all persons deprived of liberty, without exception and regardless of the place of deprivation of liberty, are afforded, *de jure* and *de facto*, all the fundamental legal safeguards provided under article 17 of the Convention and other human rights treaties to which Greece is a party. In particular, the State party should ensure that:

(a) No one is held in secret detention and that all allegations in this respect are investigated, perpetrators are prosecuted and, if found guilty, sanctioned in accordance with the gravity of their acts, and victims receive adequate reparation;

(b) Persons deprived of their liberty are held solely in officially recognized and supervised places of deprivation of liberty;

(c) All persons deprived of their liberty have access to counsel and can communicate without delay with their relatives or any person of their choice and, in the case of foreigners, with their consular authorities, from the outset of the deprivation of liberty;

(d) The right to take proceedings before a court in order to challenge the lawfulness of a deprivation of liberty is not restricted under any circumstances and that any person with a legitimate interest may initiate the procedure, irrespective of the place of deprivation of liberty;

(e) Any person deprived of liberty has access to appropriate mechanisms to report violations of these rights to the relevant authorities, including the Ombudsman;

(f) All deprivations of liberty, without exception and from the outset, are entered in official registers and/or records, which include, as a minimum, the information required under article 17 (3) of the Convention;

(g) Registers and/or records of persons deprived of liberty are filled out and updated promptly and accurately and are subject to periodic checks and, in the event of irregularities, the officers responsible are adequately sanctioned;

⁷ CAT/C/GRC/CO/7, paras. 14 and 20

(h) **Any person with a legitimate interest can have prompt and easy access to, at least, the information listed in article 18 (1) of the Convention.**

5. Measures to protect and guarantee the rights of victims of enforced disappearance (art. 24)

Definition of victim and right to receive reparation and prompt, fair and adequate compensation

32. The Committee regrets not having received information about the definition of victim in national legislation and is concerned that the type of reparation afforded to victims of enforced disappearance does not include all the forms of reparation listed in article 24 (5) of the Convention (art. 24).

33. **The Committee recommends that the State party ensure that all individuals who have suffered harm as the direct result of enforced disappearance can fully exercise the rights enshrined in the Convention, in particular the rights to justice, truth and reparation. In this respect, the Committee recommends the State party to:**

(a) **Adopt a definition of victims that is in line with that in article 24 (1) of the Convention;**

(b) **Ensure that its domestic legislation provides for a comprehensive system of compensation and reparation that fully complies with article 24 (4) and (5) of the Convention and other relevant international standards, that is under the responsibility of the State, that is applicable even if no criminal proceedings have been initiated, and that is sensitive to the specific needs of the victim, in view of, inter alia, their sex, sexual orientation, gender identity, age, ethnic origin, social status or disability.**

Legal situation of disappeared persons whose fate has not been clarified and that of their relatives

34. While noting that a declaration of absence or death may be issued with regard to a disappeared person, the Committee regrets not to have received clear information on the implications of their issuance for the disappeared person whose fate has not been clarified and their relatives in relation to property and welfare rights (art. 24).

35. **The Committee recommends the State party to review its domestic legislation in order to ensure that it deals appropriately with the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights, without requiring that the disappeared person be declared dead. In this respect, the Committee encourages the State party to set up a procedure to obtain a declaration of absence as a result of enforced disappearance.**

6. Measures to protect children from enforced disappearance (art. 25)

Wrongful removal of children and adoption

36. The Committee is concerned that domestic legislation does not specifically criminalize the conduct described in article 25 (1) (a) of the Convention. It is further concerned at the short time limits (ranging between six months and 3 years) established under national legislation to challenge an adoption or placement of children that originated in an enforced disappearance. While noting the information provided by the delegation that no further requests were received with respect to the investigation into the disappearance of over 500 foreign children from the State-run care home Agia Varvara between 1998 and 2002, the Committee regrets not having received information about the results of this investigation. In relation to the disappearance and alleged illegal adoption of reportedly 3,000 children between 1930 and 1970 who were allegedly taken to the Netherlands and the United States of America, the Committee takes note of the information provided by the delegation that all the efforts of adoptees to discover their roots, “proved that the adoption took place with judicial decisions.” However, it remains concerned at the lack of investigations into publicly

available allegations that some of those children disappeared and have been illegally adopted (arts. 9, 12, 14, 15, 24 and 25).

37. **The Committee recommends that the State party:**

(a) **Incorporate as specific offences the conduct described in article 25 (1) (a) of the Convention, providing for appropriate penalties that take into account the extreme seriousness of the offences, and establish specific procedures for returning these children to their families of origin;**

(b) **In cooperation with the respective countries of origin and destination, ensure that the investigation that is currently underway on the disappearance of foreign children from the State-run care home Agia Varvara between 1998 and 2002, reaches a concrete outcome in order to provide justice to the alleged victims, and conduct a thorough and impartial investigation into the disappearance of children who were allegedly illegally adopted in Greece between 1930 and 1970, in order to determine whether any of these children may have been victims of enforced disappearance and/or wrongful removal and whether other offences, such as falsification, concealment or destruction of identity documents, were committed in these cases, with a view to identifying and punishing the perpetrators of such offences;**

(c) **Ensure that the procedures for reviewing and, where appropriate, annulling any adoption, placement or guardianship of children that originated in an enforced disappearance include appropriate time limits.**

D. Fulfilment of the rights and obligations under the Convention, dissemination and follow-up

38. **The Committee wishes to recall the obligations undertaken by States when becoming parties to the Convention and, in this connection, urges the State party to ensure that all the measures that it adopts are in full accordance with the Convention and other relevant international instruments.**

39. **The Committee also wishes to emphasize the particularly cruel effect of enforced disappearance on women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender-based violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisal as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations. In this context, the Committee places special emphasis on the need for the State party to ensure that gender issues and the specific needs of women and children are systematically taken into account in implementing the recommendations contained in the present concluding observations and all the rights and obligations offset out in the Convention.**

40. **The State party is encouraged to widely disseminate the Convention, its report submitted under article 29 (1) of the Convention, the written replies to the list of issues drawn up by the Committee and the present concluding observations, in order to raise awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the State party and the general public. The Committee also encourages the State party to promote the participation of civil society in the process of implementing the recommendations contained in the present concluding observations.**

41. **Under article 29 (4) of the Convention, and with the view to strengthening its cooperation with the State party, the Committee requests the State party to submit, by 7 April 2025, specific and updated information on the implementation of all its recommendations, as well as any new information on the fulfilment of the obligations contained in the Convention since the adoption of the present concluding observations.**

This document should be prepared in accordance with the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention.⁸ The Committee encourages the State party to involve civil society in the process of preparing this information.
