

Joint submission to the UN Committee Against Torture ahead of the review of the periodic report of **Greece**

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ABOUT THE CONTRIBUTING ORGANISATIONS

Greek Helsinki Monitor (GHM), founded in 1993, monitors, publishes, lobbies, and litigates on human and minority rights and anti-discrimination issues in Greece and, from time to time, in the Balkans. It also monitors Greek media for stereotypes and hate speech. It issues press releases and prepares (usually jointly with other NGOs) parallel reports and communications to **UN Treaty Bodies**; applications and third party interventions to the **ECtHR**; communications on the execution of ECtHR judgments to the **Council of Europe Committee of Ministers**. It also publishes specialized reports on ill-treatment and on ethno-national, ethno-linguistic, religious and immigrant communities, in Greece and in other Balkan countries. It operates a web site (<http://greekhelsinki.worldpress.com>), a specialized website on racist crimes in Greece (<https://racisterimeswatch.wordpress.com>) and a **Facebook** page (<https://www.facebook.com/panayote>) covering human rights issues and comprehensive and comparable presentations of minorities in the Balkan region. GHM is a member of the **European Implementation Network** (EIN); GHM's Spokesperson **Panayote Dimitras** has been a member of EIN's **Board** since 2018; GHM is a member too of the **World Organization Against Torture (OMCT) Network** and GHM's Spokesperson Panayote Dimitras is an **OMCT General Assembly** member. GHM is also member of the **Justicia European Rights Network**, the **International Detention Coalition (IDC)**, the **International Network Against Cyber Hate (INACH)**, **Justice and Environment**, the **Network Against the Extreme Right**, the **Campaign for the access to asylum**, and the **Greek Network for the Right to Housing**. Panayote Dimitras is the correspondent of **Hope not hate** in Greece.

Minority Rights Group – Greece (MRG-G), founded in 1992, focuses on studies of minorities, in Greece and in the Balkans. In 1998, MRG-G co-founded with GHM the **Center of Documentation and Information on Minorities in Europe – Southeast Europe** (CEDIME-SE) which contributes to GHM's web site and two web lists with material on minorities in the region. It has prepared comprehensive reports on ethno-national, ethno-linguistic, and religious communities in Albania, Bulgaria, Greece, Macedonia, and Romania, available [here](#).

Refugee Rights Europe is a human rights advocacy organisation and registered charity. Founded in late 2015, the organisation researches and documents the situation for refugees and displaced people seeking protection in Europe, with a particular focus on human rights violations and inadequate humanitarian conditions experienced. The organisation uses its research findings to advocate for human rights-centred policy development, to ensure the rights of refugees and displaced people are upheld on European soil, in accordance with the Universal Declaration of Human Rights. **Refugee Rights Europe** is independent of any political ideology, economic interest or religion.

The **Coordinated Organizations and Communities for Roma Human Rights in Greece (SOKADRE)** is a network founded in 2001; its members include **30 Roma communities and 5 Greek NGOs that have been working on Roma rights**. It is legally registered in Greece through its managing NGO Communication and Political Research Society (ETEPE), accredited as NGO by the Greek Ministry of Foreign Affairs' Hellenic International Development Cooperation Department – Hellenic Aid (YDAS). SOKADRE advocates for and litigates on the rights of the

destitute Roma of Greece, mainly in the areas of housing and preventing evictions, education, access to social services, proper civil registration, ill-treatment and non-discrimination including fighting racial profiling by law enforcement agencies. It operates through a network of volunteer representatives in the 30 member communities and in several other non-member communities.

Created in 1985, the **World Organisation Against Torture (OMCT)** is today the main coalition of international non-governmental organisations (NGO) fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. The strength of the OMCT lies in its SOS-Torture Network composed of over 200 NGOs around the world. The OMCT coordinates the NGO participation for the Committee against Torture sessions. OMCT's International Secretariat is based in Geneva and it has offices in Brussels and Tunis.

1. INTRODUCTION

This alternative report to the Committee against Torture ahead of the consideration of Greece's Seventh Periodic Report at the 67th session presents information about the implementation of Greece's obligations under articles 1, 2, 3, 4, 5, 7, 11, 13, 14 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). It provides information about the legislative framework pertaining to torture and other forms of ill-treatment and its implementation and highlights concerns about torture and other ill-treatment in detention (in prisons, police stations and border guard stations) and the fundamental legal safeguards associated. The document pays special attention to vulnerable groups, such as women, missing street children, Roma, refugees and asylum seekers and highlights concerns pertaining to investigations into allegations of torture and other ill-treatment, prosecutions of perpetrators, and victims' access to reparation in a general context of excessive use of force against migrants.

Addendum 1 to this report contains a submission by Refugee Rights Europe, the Greek Helsinki Monitor and the World Organisation against Torture (OMCT) with 10 NGOs working on issues related to asylum and refugees, first-hand information is provided on immigration detention, police violence towards refugees, violence against refugee women, unaccompanied children, racial discrimination and xenophobia faced by refugees, access to asylum procedures, push backs, the situation of LGBTIQ asylum seekers, the living conditions of asylum seekers and their access to health care.

The reference document on *M.S.S. & Rahimi v. Greece* asylum cases for the supervision of execution of the European Court of Human Rights (ECtHR)'s judgment by Council of Europe's Committee of Ministers in **Addendum 2** gives further and updated details on the situation of asylum seekers in migrant reception centres.

The thematic chapters contain suggestions of recommendations addressed to the Committee to prepare the interactive dialogue with Greek authorities. The main text and the addenda also contain short summaries of individual cases illustrating specific violations.

2. LEGISLATIVE, ADMINISTRATIVE, JUDICIAL OR OTHER MEASURES TO PREVENT TORTURE AND OTHER ILL-TREATMENT

• Definition of torture

In its Periodic Report, UN Doc. CAT/C/GRC/7, paragraph 3, Greece informed the Committee that the Law-drafting Committee, which has been established for the reform of the Penal Code, had been asked to examine the compatibility of the current definition of torture as laid down in art. 137 A of the Greek Penal Code with art. 1 of the UN Convention against Torture. [The thoroughly revised Criminal Code](#), voted by Parliament on 6 June 2019, does however not incorporate a definition of torture in conformity with article 1 of the Convention and as recommended by the Committee in its 2012 [concluding observations](#) (UN Doc. CAT/C/GRC/CO/5-6.). The Committee had called on Greece to amend the torture definition in the criminal code so that it is "in strict conformity with

and covers all the elements” provided for by Article 1 of the Convention against Torture and meets “the need for clarity and predictability in criminal law”. On the contrary, the protection against torture has been weakened while the definition remains highly problematic.

Torture was defined in Article 137A§2 of the previous Penal Code primarily as the “planned” (μεθοδευμένη) infliction by a state official on a person of severe physical, and other similar forms of, pain. This article appeared in the section on “*offenses against the regime (πολιτεύματος)*”. In the new Penal Code articles on torture were replaced with a new article 239^A in the section on “*abuse of clerical status*” but the definition of torture remained the same. However, the ensuing penalties for torture are reduced, from 5-20 years to 5-10 years in new Penal code.

The condition “planned infliction” in the definition restricts the classification of crimes as torture as in order for the infliction of pain to be considered as “planned”, established Greek case law and doctrine dictate that it must be repeated and have a certain duration.¹ This is particularly alarming as, according to a [letter of concern from the](#) Council of Europe Commissioner of Human Rights, “Due to the requirement for a planned, systematic character of severe ill-treatment, to date Greek courts have only once, in 2014, convicted a police officer for torturing two Greek national detainees by electric shocks during interrogation”². Moreover, the definition does not include that the pain can also be mental to be torture. It further lacks the required purposive element for the act of torture (the aim of the infliction of severe pain or suffering) and it omits the element of the definition in the Convention that the torture be “inflicted at the instigation or with the consent or acquiescence of a public official or a person acting in an official capacity.”

- **National human rights institution, Ombudsman and National Prevention Mechanism**

The National Commission of Human Rights (NCHR) is an advisory body to the government on human rights. The government decides about its composition, that is which authorities, NGOs, universities, bar associations, the Parliament, political parties, and trade unions, will be members of the Commission. Then the selected institutions choose their representatives. In March 2019, the President of the NCHR resigned after the government decided, without any prior consultation and in violation of the Paris Principles, to enlarge the NGO participation ([until now four general NGOs, one disability rights NGO, one woman’s NGO and one Roma NGO](#)) with the inclusion of 5 LGBTQI+ NGOs and two more Roma NGOs. The Committee should take note that none of NGOs in the NCHR represents, or works on the rights of, the Macedonian and the Turkish minorities as well as the religious and humanist minorities.

Moreover, we have observed inadequate reactions by the Ombudsman (which is also the National Preventive Mechanism established in implementation of OPCAT) on several occasions. For example, the Ombudsman made useful comments as National Mechanism for the Investigation of Arbitrary Incidents on the execution of the *Makaratzis* group of cases (see Part 11) but without the involvement of the applicants or their representatives who had to formally request the Ombudsman to provide them with a copy of his recommendations that are summarized below.

¹ The Incompatibility of the Definition of Torture in Greece with International Law, Nikolaos Sitaropoulos, 19 Jan 2017, <https://verfassungsblog.de/the-incompatibility-of-the-definition-of-torture-in-greece-with-international-law/>

² <https://rm.coe.int/168070d55e>

Recommendations:

The Committee is requested to ask Greek authorities to:

- **Incorporate a definition of torture that is in strict conformity with and covers all the elements contained in article 1 of the Convention in its domestic criminal legislation and to associate the crime of torture with penalties reflecting the severity of the crime;**
- **Ensure that the offence of torture is not subject to any statute of limitations for the investigation, the prosecution and the punishment of the perpetrators of these crimes;**
- **Ensure the independence of the National Human Rights Institution in line with the Paris Principles, and add as members NGOs representing minority and/or working on minority rights, while limit membership to one NGO per vulnerable/minority group.**
- **Ensure that the National Prevention Mechanism always involves victims of torture or other forms of ill-treatment and/or their representatives when investigation or reviewing their cases.**

3. FUNDAMENTAL LEGAL SAFEGUARDS

- **Notification of Rights**

In its report published in September 2017, the CPT noted that while a two-page information leaflet detailing the rights of detained persons was available in various languages in most police stations, a number of foreign nationals were not informed of their rights and of the reasons justifying their detention in a language they could understand.

- **Notification of a family member or other third party**

Being detained without the possibility to contact anyone increases the risk of torture and ill-treatment. In its report published in September 2017, the CPT *“once again {called} upon the Greek authorities to take the necessary steps to ensure that every detained person is granted the right to notify a close relative or third party of their choice of their situation and placed in a position to effectively exercise this right as from the very outset of their deprivation of liberty”*³ deploring the number of related complaints the CPT’s delegation received during its visits. The right of the detainee to notify the detention to his/her family should be effective from the beginning of the deprivation of liberty.

³ Report to the Greek Government on the visits to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 18 April and 19 to 25 July 2016, <https://rm.coe.int/pdf/168074f85d>

- **Prompt access to a lawyer**

According to the Committee for the Prevention of Torture, “*the majority of persons interviewed by the CPT’s delegation claimed that they did not benefit from the presence of a lawyer during the initial period of their deprivation of liberty*”⁴. This is mainly due to the fact that legal aid is not available at the stage of police investigation or when criminal suspects are questioned by the police.

⁵ This is particularly concerning as it is then that “*the risk of intimidation and physical ill-treatment is greatest*”. Moreover, in many instances, detained persons only meet their lawyer during the hearing before the investigative judge, when bail or remand in custody was determined. The CPT specified that one of the reasons for the persistence of these practices is the unavailability of legal aid at this stage. Moreover, when detainees have access to a lawyer, they should be guaranteed the assistance of a properly qualified interpreter. In its report from 2017, the CPT also raised concern about the ex officio lawyers themselves, who are alleged to have “*explicitly advised their clients not to complain officially about any alleged ill-treatment*”.

- **Access to a medical examination by an independent doctor**

Detainees in Greece do not have effective access to the necessary medical treatment while in prison or in police custody. Following its visit in 2016, the CPT also raised concern about the management of suicide attempts, observing “*a lack of training in first aid and, in particular, cardiopulmonary resuscitation (CPR) for police officers. There should always be at least one police officer on duty with training in CPR. Further, there was no protocol in place for the management of suicide attempts*”⁶. The CPT is also “*concerned as regards the respect of medical confidentiality for persons detained by the police. Police officers continue to be present during all external examinations in public hospitals and to be provided with medical information on detained persons.*”

- **Access to complaint procedures**

Finally, CPT’s delegation reported a lack of information provided to the detainees regarding their access to complaint procedures and the different existing mechanisms.

Recommendations

The Committee is requested to ask Greek authorities to:

- **Take measures to ensure that all detainees are guaranteed the notification of their rights from the beginning of their deprivation of liberty in a language they can understand and are guaranteed their right to inform a relative or another person of their choice of their arrest;**

⁴ Ibid. §70.

⁵ At Chios Police Station, the CPT delegation met a 15 year old juvenile who was not provided with a lawyer until after 36 hours of detention following the prosecutor’s decision to maintain him in police custody with adult suspects for a further four days over a weekend. Further, the juvenile was provided with the same lawyer as his adult accomplice and the lawyer interviewed the two together in the middle of the corridor of the police station on a bench.

⁶ Ibid §71.

- Ensure that all detainees are afforded the right to access to a lawyer from the very outset of their deprivation of liberty in practice and particularly during the investigation and interrogation stages; This will require the extension of the existing legal aid system to the police investigation stage or when the suspect is questioned by the police, irrespective of whether the person concerned has formally been declared “accused”, and if necessary, the relevant legislation should be amended;
- *Ex officio* lawyers should be reminded, through the Bar Associations, of the importance of their role in preventing and, if necessary, reporting ill-treatment by the police;
- Take measures to ensure that all detained persons, including those held in police facilities, have the right to request and receive a medical examination by an independent doctor from the beginning of the deprivation of liberty, and that the examination is conducted out of hearing and sight of police officers or prison staff;
- Set up a protocol for the management of suicide attempts and provide adequate training to police officers and prison guards.

4. TORTURE AND ILL-TREATMENT IN DETENTION

- **Length of pre-trial detention**

In its Periodic Report, Greece reported to the Committee that “*The need for reduction in the use of pre-trial detention has been forwarded to and is currently examined by both the Committees preparing the drafts for the new Penal Code (PC) and the Code of Penal Procedure (CPP).*”^{footnote} In [the thoroughly revised Code of Penal Procedure](#) voted on 6 June 2019, the length of pre-trial detention was not reduced: it has remained 18 months for adults and 5 months for minors.

- **Conditions of detention**

Following its visit to Greece in April 2018, the CPT underlined the poor conditions of detention in psychiatric establishments and expressed specific concern about immigration detention.

Regarding the psychiatric establishments, the CPT reported in its report published in February 2019 about the systemic overcrowding in psychiatric units in Greece ⁷ and more specifically in three of the five establishments (Evangelismos, Gennimatas and Sotiria). This observation is alarming especially as there is also a lack of staff. Moreover, “*the CPT also received some isolated allegations of ill-treatment (punches, tight restraints, and verbal abuse) by staff at the private*

⁷ CPT/Inf (2019) 4, Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 19 April 2018, <https://rm.coe.int/1680930c9a>

“Athina Vrilissa” Psychiatric Clinic” and “the use of the basement protection cells for the seclusion of patients without supervision and for extended periods” at Korydallos Prison Psychiatric Hospital.

During its visit in April 2018, the CPT also visited police and border guard stations where the conditions of detention were found to be sub-standard, especially because of overcrowding, absence of separation of detainees and lack of medical treatment. At Isaakio Police and Border Guard Station, migrants were detained for extensive periods « in two filthy cells with less than 1.5 m² of living space each”. At the Pre-removal Centre in Fylakio, detainees were held together for weeks with approximately 1 m² of living space for each. The main concerns expressed by the CPT were related to the detention of unaccompanied minors but also “the routine detention of children with their parents in police establishments upon their arrival in country”.

Additionally, in the addendum to this report on torture and ill-treatment of asylum seekers and refugees, there is detailed documented evidence by several NGOs on detention practices and conditions that are in direct violation of the Convention against Torture as well as other international human rights treaties and in most instances the Greek law itself.

- **Separation of detainees**

In the February 2019 report, CPT also stated that in the Evros region, families including children and women were detained together with men in police stations and border guards’ stations. *“This was in contradiction to a 2016 order issued by the Hellenic Police Headquarters, which instructed police officers to separate women and children from unrelated men in closed facilities, and presented an increased risk for their safety and security, exposing them to a risk of sexual and gender-based violence”*⁸.

- **Detention of unaccompanied children**

In November 2018, the Commissioner for Human Rights at the Council of Europe Dunja Mijatović wrote in her report that she *“is also deeply concerned about the reported poor shelter conditions and the lack of social support that most unaccompanied migrant children experience in Greece and is alarmed by the deprivation of liberty of those detained under the “protective custody” regime. Greece’s authorities should tackle this problem with more resolve and in particular immediately stop the detention of unaccompanied migrant children. Migrant children should also have access to inclusive education, so as to increase their chances of integration”*⁹.

In February 2019, in its judgment on *H.A. and others v. Greece*, the ECtHR “was of the view that “protective custody” in police stations could last for long periods during which the minors concerned could not be identified by lawyers working for NGOs in order to bring, within a

⁸ CPT/Inf (2019) 4, Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 19 April 2018, <https://rm.coe.int/1680930c9a>.

⁹ Commissioner for Human Rights, Country visit report, « Greece should safeguard social rights for all and improve the reception and integration of migrants », Strasbourg, 06/11/2018.

reasonable time, an appeal against what they regarded as a detention measure”¹⁰. Soon after, in April 2019, Human Rights Watch reported that “Despite that ruling, as of March 30, 82 unaccompanied children were still detained in so-called “protective custody,” held in police station cells or immigrant detention centers across the country. Human Rights Watch has found that detained children are forced to live in unsanitary conditions, often alongside adults they do not know”¹¹.

On 13 June 2019, the ECtHR held once again that Greece and six other countries had violated article 3 and article 5§1 of the European Convention as a result of the conditions of detentions of unaccompanied migrants in Greece¹². This last judgment concerned five Afghans who entered Greece as unaccompanied minors. The ECtHR highlighted that the States’ authorities’ deficiencies were particularly serious considering unaccompanied minors as “persons who were particularly vulnerable because of their age”¹³. This is the second judgment on this issue in four months, showing that the situation is worsening. According to Human Rights Watch, “as of May 31, 123 unaccompanied children were still detained in police station cells or immigrant detention centers across the country. Thus 43 more children are being detained than at the end of March, just as the court first ruled against the practice”¹⁴

For more information on unaccompanied children, please be referred to the addendum to this report on torture and ill-treatment of asylum seekers and refugees.

Recommendations

The Committee is requested to ask Greek authorities to:

- **Amend the Code of Penal Procedure to reduce the length of pre-trial detention of both adults and minors;**
- **Take measures to improve the living conditions in detention, especially addressing overcrowding and appointing a sufficient number of trained staff in psychiatric establishments and border guards stations;**
- **Ensure the separation between adults and minors detained as well as between pre-trial detainees and prisoners serving sentences and make sure women and children are not detained with unrelated men;**

¹⁰ Press Release ECHR 077 (2019), 28.02.2019, « Unaccompanied alien minors detained in degrading conditions in Greek police stations: a number of violations ».

¹¹ Human Rights Watch, April 11, 2019, Greece in Denial About Police Detention of Lone Kids, Athens Fails to Act on European Court Ruling Against Detaining Migrant Kids, <https://www.hrw.org/news/2019/04/11/european-court-slams-greeces-police-detention-lone-kids>

¹² ECtHR 13/06/2019, Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia (application no. 14165/16)

¹³ Press release, ECHR 218 (2019), 13.06.2019 « Unaccompanied migrant minors stayed in Greece in conditions unsuited to their age and circumstances ».

¹⁴ Human Rights Watch, June 15 2019, European Court Condemns Greece’s Migrant Kid Lockups, Fresh Ruling Calls for End to Harmful Detention of Lone Migrant Children, <https://www.hrw.org/news/2019/06/15/european-court-condemns-greeces-migrant-kid-lockups>

- **Provide adequate protection and social support to unaccompanied minors entering the country;**
- **End the unaccompanied children's detention under protective custody in reception and identification centres, pre-removal centres, police and border guard stations, in accordance with CRC's Recommendation from 2012 and in the framework of execution of the *H.A. and others* and *Sh. and others* recent ECtHR judgments¹⁵.**

5. REFUGEES AND ASYLUM SEEKERS

- **Torture and ill-treatment of asylum seekers and refugees**

Detailed information on immigration detention, police violence towards refugees, violence against refugee women, unaccompanied children, racial discrimination and xenophobia faced by refugees, access to asylum procedures, push backs, the situation of LGBTIQ asylum seekers, the living conditions of asylum seekers and their access to health care is provided in addendum 1 to this Report.

Moreover, on 6 June 2019, the Council of Europe Committee of Ministers (CM) published a Decision on the Supervision of the Execution of the *M.S.S. and Rahimi groups v. Greece* concerning the degrading treatment of asylum seekers or irregular migrants, including unaccompanied minors on account of their conditions of detention; the degrading treatment of asylum-seeking due to their living conditions; the lack of an effective remedy against expulsion, due to deficiencies in the asylum procedure; and the lack of an effective remedy to complain about the conditions of detention. The CM also published a detailed information note of its secretariat. The two documents are also provided in Addendum 2 to this Report.

- **Unprecedented systematic police violence and illegal deportation of asylum seekers in Evros**

Several documents and several media stories with additional documented evidence are available at a [webpage](#) dedicated to the Evros situation on the specialized website on racist crimes in Greece managed by GHM.

On 9 September 2018, Greek Helsinki Monitor published a report on “Unprecedented systematic police violence and illegal deportation of asylum seekers in Evros”¹⁶ with information from the CPT and NGOs who are in direct contact with the victims. The report shows the systematic use of violence by law enforcement forces in the Evros land border area with Turkey usually followed by illegal deportation of persons¹⁷ without allowing them to file for asylum while, at the same time,

¹⁵ CRC/C/GRC/CO/2-3, «65. The Committee recommends that the State party: (a) Ensure that children, either separated or together with their families, who enter the country in an irregular manner, are not detained, or remain in detention only in very exceptional circumstances and for the shortest period of time necessary;»

¹⁶ <https://racistcrimeswatch.wordpress.com/2018/09/09/1-652/>

¹⁷ GHM, 29 September 2019 “New video evidence of police violence and illegal deportation of asylum seekers in Evros”, <https://racistcrimeswatch.wordpress.com/2018/09/29/1-665/>

destroying these persons' personal items and documents. The expulsion and transport are characterised by further ill-treatment such as being crammed into small vans and overcrowded boats, risking their lives once more. Victims of these expulsions include vulnerable migrants such as pregnant women and minors.¹⁸

Numerous CSOs have published reports and press release about the violent pushbacks of migrants at Turkey border, especially following the EU-Turkey agreement of 18 March 2016¹⁹. Such extent of law enforcement violence is unprecedented since 1974 and we are concerned that these cases are just a tip of the iceberg and that the total number of victims may be in the thousands.

The CPT has also expressed concern about the *“credible allegations of informal forcible removals (push-backs) of foreign nationals by boat from Greece to Turkey at the Evros River border by masked Greek police and border guards or (para-)military commandos”* in its Preliminary observations following its visit in April 2018. When CPT's report was published on 19 February 2019, the CPT also informed that *“In their response, the Greek authorities deny that the practice of “push-backs” exists and point out that investigations into alleged unofficial removals and police ill-treatment found no disciplinary liability by the Hellenic Police.”* Greece also informed the CPT that following the Ombudsman's investigation on the illegal deportation of more than 379 foreign nationals, *“no liability of any police officer was found” so “they decided to place them in the archive as regards their disciplinary part.”*²⁰ Needless to say, to the best of the information all NGOs have, these “investigations” were internal and did not involve the alleged victims and/or NGOs that reported them.

Press Release on Filed Illegal Deportation Complaints Advocates Abroad documented the disappointing handling by the Ombudsman of well-documented complaints filed on 17 and 22 August 2018.²¹ The Ombudsman informed Advocates Abroad of the information given by the Hellenic Police in the context of the investigation, which denied the incidents denounced in the different complaints, stating that *“‘no push back has taken place’ and ‘all their operations, included border surveillance, have been conducted according to the provisions of the law and with full respect to human rights of asylum seekers.’ The Ombudsman concluded that it was satisfied with the answer and had filed the case.”* This confirms the impression that the investigation by the Ombudsman of the 379 cases mentioned in Greece's reply to CPT quoted above with the addition that it did not find any violations used a similar method, i.e. seeking information from police authorities and accepting it without any investigation of its own. This is why the Ombudsman has made no reference to these investigations (of hundreds of cases) in his annual report for 2018. The

¹⁸ Greece: Open Letter: Systematic police violence and illegal deportation of asylum seekers in Evros, OPEN LETTER TO MR. ALEXIS TSIPRAS, PRIME MINISTER OF GREECE, Geneva, 20 September 2018, <http://www.omct.org/urgent-campaigns/urgent-interventions/greece/2018/09/d25040/>

¹⁹ See ARSIS-Association for the Social Support of Youth and HumanRights360, 12/12/2018, [“The new normality: continuous push-backs of third country nationals on the Evros river”](#); Human Rights Watch's, 18 December 2018, [“Greece: Violent Pushbacks at Turkey Border – End Summary Returns, Unchecked Violence.”](#); Greek Council for Refugees (GCR) and CEAR (Comision Española de Ayuda al Refugiado-Spanish Commission for Refugees), 20 March 2019, [“A joint video documenting the harsh reality of pushbacks which refugees face in Evros”](#); Asylum Campaign (10 NGOs including GHM), 2 May 2019 [“Push backs at Evros borders are a depreciation of human life and rule of law”](#).

²⁰ Response of the Greek Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Greece from 10 to 19 April 2018, <https://rm.coe.int/1680930c9c>

²¹ See [Press Release on Filed Illegal Deportation Complaints](#)

practice of law enforcement authorities that carry out “investigations” without involving victims and/or NGOs will lead to the denial of the infringements and hence guarantee impunity for the perpetrators and no redress for the victims.

As there were no judicial investigations in all these documented allegations about push-backs and torture of asylum seekers in the Evros area, GHM on 12 June 2019 filed with the Supreme Court Prosecutor a complaint about more than 1,000 victims of illegal push-backs and often violence in the Evros area, attaching recent GHM complaints against police and other authorities concerned related to two specific incidents that had occurred on 31 May and 6 June 2019, as well as a link to all the aforementioned evidence starting with the 9 September 2018 GHM report.²²

On 16 June, GHM filed a supplement to the Supreme Court Prosecutor to inform her that *“The European Commission has contacted Greek authorities concerning reports of alleged illegal pushbacks of migrants to Turkey in the Evros region on Greece’s northeastern border. This news was confirmed by Commission spokesperson for Migration issues, Natasha Bertaud, on Tuesday [11 June]. “The Commission is, of course, always concerned about reports of mistreatment of migrants and refugees and we take these allegations very seriously. Any form of violence or abuse of migrants is unacceptable. We are, on this matter, in contact with the Greek authorities, as regards these allegations of mistreatment of non-EU nationals being denied the opportunity to apply for asylum,” Bertaud said. She noted, however, that it was primarily the responsibility of Greek authorities to ensure that these rights are respected and that access to asylum procedures is provided to everyone who wants to apply, in accordance with EU laws and directives. “The Commission expects that the Greek authorities will follow up on the specific allegations and will continue to monitor the situation closely,” Bertaud added.”*²³

Finally, on 19 June 2019, the Greek Council for Refugees filed a complaint with the Supreme Court Prosecutor including in it all evidence it has collected on unlawful and often violent push-backs in the Evros area. GCR also filed on the same day three complaints before the First Instance Prosecutor of Orestiada (Evros area) on the specific unlawful treatment of 5 Turkish adult refugees and one minor who constituted themselves civil claimants.²⁴

Recommendations

The Committee is requested to ask Greek authorities to:

- **Promptly, impartially and efficiently investigate each one of the more than 1000 individual or group claims of ill-treatment and/or illegal destruction of documents and/or deportation by one (or more) Supreme Court Deputy Prosecutor(s) or Athens Appeals Court Prosecutor(s) for the criminal aspect and the Greek Ombudsman for the administrative aspect, involving in the investigations the victims and their representatives and/or NGOs involved like GHM and GCR rather than limiting the investigations only on police authorities information;**

²² <https://racistcrimeswatch.wordpress.com/2019/06/12/2-192/>

²³ <https://greece.greekreporter.com/2019/06/11/greece-in-the-spotlight-over-alleged-pushbacks-of-migrants-to-turkey/>

²⁴ <https://www.gcr.gr/en/news/press-releases-announcements/item/1200-to-esp-katathetei-minyseis-kai-anafora-meta-apo-kataggelies-prosfygon-gia-epanaproothiseis-ston-evro/>

- **Ensure that no one is expelled, returned or extradited to another State where there are substantial grounds to believe that he/she would be exposed to a personal and foreseeable risk of being subjected to torture;**
- **End the practice of formally or effectively restricting the freedom of movement of asylum seekers to certain geographic areas;**
- **Ensure that all asylum seekers have the opportunity for an individual review of their asylum and have access to an independent medical and psychological evaluation for those having suffered torture and ill-treatment, in accordance with the Istanbul Protocol in order to be provided an adapted status and to be protected from refoulement and collective return;**
- **Improve living conditions to meet the requirements of the 2013/33/EU Directive on reception conditions for asylum seekers, and any subsequent directives, with a specific attention to mental and physical health, education, sexual and reproductive health and rights and gender-appropriate camp design;**
- **Ensure that law enforcement officials receive appropriate training on how to avoid excessive use of force in the identification and fingerprinting of migrants and on the identification of individuals in need of international protection, including the particularly vulnerable persons;**
- **Provide those identified as vulnerable, regardless of nationality, with adequate shelter on the islands and transfer them to the mainland within a period of 7 days where they receive appropriate specialist support;**
- **Take steps to support a long term and sustainable reception and integration plan, ensuring availability of essential services including social housing, healthcare and education.**
- **Promptly implement the recommendations of the Council of Europe's Committee of Ministers (CM) in its Decision on the Supervision of the Execution of the M.S.S. and Rahimi groups v. Greece.**

6. VIOLENCE AGAINST WOMEN

- **Definition of rape**

In its Concluding Observations to Greece after the review in 2012²⁵, the Committee expressed concern about the persistence of sexual violence and at the limited number of prosecutions and convictions of the perpetrators. The Committee also expressed concern that the State party's Penal Code does not explicitly include rape and other forms of sexual violence as forms of torture²⁶, and

²⁵ UN. Doc CAT/C/GRC/CO/5-6, para 23.

²⁶ Ibid.

recommended Greece to explicitly include rape and other forms of sexual violence as a form of torture in the amendment of Article 137A of the Criminal Code instead of “a serious breach of sexual dignity”. The Greek National Commission for Human Rights included the same recommendation in its [observations](#) on the draft government report to CAT.

While the Greek government did not include rape and other forms of sexual violence in the amendment of article 137 A of the Penal Code on torture, it did amend the Penal Code on 6 June 2019 to recognize that sex without consent is rape. It makes clear that for the crime to be considered rape physical violence is not required and that the focus is not on resistance. Yet these changes still fall short of the Committee’s and the NCHR’s recommendations that rape and other forms of sexual violence are treated as forms of torture.

- **Domestic violence**

There is grave concern about the widespread practice of police officers and prosecutors turning away women who seek to report alleged domestic violence. On 14 January 2019, GHM submitted to the Supreme Court Prosecutor a related complaint with evidence from three widely publicized cases in the preceding two months asking to get information about the disciplinary and criminal prosecution of the perpetrators from the police officers and local prosecutor, mentioning that the outcome will be included in the present report. On 28 February 2019, the Supreme Court Prosecutor sent the complaint to the competent regional prosecutors who are not known to have acted on these cases described hereunder.

1. On 28 November 2018, a 21-year old woman was raped and killed in Rhodes. According to reports, a few weeks earlier she had reported to the police that she had been raped and threatened by the perpetrator to refrain from filing a complaint as he would then make a video of the act public. The police officers not only declined to investigate the allegation but even discourage the woman from filing an official complaint.

2. On 2 January 2019, a 28-year old Greek woman was killed in Corfu by her father because he objected to her relationship with an Afghan. It was subsequently reported that she had previously asked the local prosecutor to provide her with protection, as her father had for quite some time threatened to kill her as he did not like her relationship with an Afghan. She was offered no protection.

3. On 1 January 2019, a mother complained that she had to leave her home with her two children after suffering violence at the hands of her husband. It was reported that she did not file a complaint as police officers told her that if she did then her husband could also file a complaint and then both will be referred to court with the in flagrante procedure, a risk she was not willing to take.

Recommendations

The Committee is requested to ask Greek authorities to:

- **Welcome the Penal Code amendment that sex without consent is rape, but reiterate the need to explicitly and promptly include rape and other forms of sexual violence as a form of torture in the amendment of Article 239A of the Penal Code;**
- **Ensure that all complaints of domestic violence are promptly addressed to prevent violent acts, and that domestic violence is investigated, prosecuted, punished and redressed with due diligence;**
- **Take effective measures to ensure that victims of domestic violence have equal access to justice and reparation, including rehabilitation.**

7. RACISM AND XENOPHOBIA

- **Anti-discrimination legal framework**

Concerning the Anti-racism Law 4285/2014, the Committee is requested to take into consideration CERD's 2016 recommendations after a review of the legislative amendments presented in the State report to CERD, a review based to a large extent on a GHM report to CERD. The CERD underlined that Greek anti-racism law *“does not criminalise the dissemination of ideas based on racial superiority and does not provide for a procedure to declare illegal, and prohibit, racist organizations”*²⁷ such as the Golden Dawn political party, *“the most prominent racist organization, inspired directly by neo-Nazi ideas”*. Moreover, the Committee expressed concern about the implementation of the anti-discrimination provisions, noting a low rate of invocation and application of these provisions.

- **Hate speech and hate crimes**

In its Concluding observations, the CERD raised concern about the increase in hate speech between 2009 and 2016 *“coinciding with the rise of the Golden Dawn party, essentially targeting migrants, Roma, Jews and Muslims, including through the media, on the internet and social media platforms.”* However, the reporting rate of hate speech and hate crimes is low resulting in a low rate of prosecutions and sanctions of the perpetrators of such crimes. This observation had already been presented in the Human Rights Committee's Concluding Observations following Greece's review in 2015, in which the Committee expressed concern *“about continued reports of racist attacks and hate speech against migrants, refugees and Roma. The Human Rights Committee note[d] with concern that cases of racism are underreported allegedly due to lack of trust in the authorities and*

²⁷ CERD/C/GRC/CO/20-22, CERD, Concluding observations on the twentieth to twenty-second periodic reports of Greece, 3 October 2016.

the absence of an effective complaints' mechanism. The Committee regrets that sanctions imposed are insufficient to discourage and prevent discrimination.”²⁸

Following the recommendations adopted by the Human Rights Committee, GHM launched in late 2015 the Racist Crimes Watch project to help the Greek prosecutorial authorities implement the recommendations to prosecute and punish racist crimes (racist profiling, racist speech, racist desecrations & vandalisms, racist discrimination and racist violence). More than 400 alleged racist crimes have to date been reported to the Athens Prosecutor for Racist Crimes and/or the Hellenic Police Department to Combat Racist Crimes, which all resulted in the opening of case briefs and launching of criminal investigations.

A considerable number of these alleged racist crimes have involved law enforcement officers. However, to date the sweeping majority of those cases remain at the stage of the investigation, as the Athens Prosecutor for Racist Crimes also deals with the usual prosecutor's work on other cases. Moreover, every year a new Athens Prosecutor for Racist Crimes is appointed. Often several of these cases after the investigations are assigned to other prosecutors who lack the expertise and experience of the specialized prosecutor and hence file most of those cases. As a result, widespread impunity for racist crimes (including, if not in particular, committed by law enforcement officers) continues to prevail.

Recommendations

The Committee is requested to ask Greek authorities to:

- **Amend domestic legislation to declare illegal the organisations promoting racial discrimination such as the Golden Dawn political party;**
- **Combat racial discrimination, xenophobia and related violence by publicly condemning all such intolerance and motivated violence, stating that racist or discriminatory acts, including by police and other public officials, are unacceptable;**
- **Investigate alleged hate crimes and hate speech and prosecute their perpetrators and punish them with appropriate sanctions;**
- **Provide training for police officers and judicial system on the identification, the registration and the prevention of hate crimes and hate speech.**

²⁸ CCPR/C/GRC/CO/2, Human Rights Committee, Concluding observations on the second periodic report of Greece, 3 December 2015.

8. VIOLENCE AGAINST ROMA

- **Cases of Thanasis Panayotopoulos, Yannis Bekos, Vasilis Loukas and similar ones**

On 8 October 2016, three young Roma, Thanasis Panayotopoulos, Yannis Bekos and Vasilis Loukas complained that they were victims of torture by Western Attica Hellenic Police Division officers who had arrested them. The officers wanted to extort confessions that they had committed offenses, which the three men claimed they had not committed; as well as information on their alleged accomplice who had ran away and whom they claimed they did not know. One of the Roma ended up for ten days in the intensive care unit of the cardiology clinic of Thriassio Hospital also having wounds on his genital organs.

The plaintiffs repeatedly asked interrogating police officers and prosecutors for a forensic examination; so did GHM on their behalf, with public appeals and even through a complaint filed on 11 October 2016 with the Athens Special Prosecutor on Racist Violence and with the Greek Ombudsman. All these requests were ignored and they were never examined by a forensic. On the contrary, more than two months after the filing of the complaint, the Roma were asked to testify about their allegations in the framework of an internal police investigation to a local police station subordinated to the police division where they claimed to have been tortured. On GHM's advice, they refused. The criminal investigation was assigned to a judge in January 2019 who, however, did not summon the victims to testify, neither did he ask for a forensic examination: he merely took defense statements. When he closed the investigation in February 2019, in violation of the law he refused access to the complete file to the GHM lawyer representing the victims, giving him only the defense statements. The prosecutor to whom the file was then assigned in March 2019 has also refused access to the file, again in violation of the law. From the defense statements the victims and GHM were informed that there was some police administrative investigation that did not find any wrongdoing.

The Ombudsman to whom, in its quality of NPM, a complaint was filed in late 2016 never took any action and informed GHM in May 2019 that they had archived the complaint as they had lost the documents submitted. It is almost inevitable that this very serious alleged torture case has no chance to be the object of a thorough and prompt investigation and an ensuing appropriate punishment of the perpetrators. This practice is widespread when Roma are (or allege to be) victims of ill-treatment or torture.

The case of **Thanasis Panayotopoulos, Yannis Bekos and Vasilis Loukas** was raised by the Council of Europe Commissioner of Human Rights in an 18 April 2017 [letter of concern](#) to the Greek government, along with a few additional cases –all reported to him by GHM- and, most importantly, a reference to the inadequacy of the definition of torture. There was no substantial reply by the Government.

In its [Report on follow-up to the November 2015 concluding observations of the Human Rights Committee on Greece](#) from November 2018, the UN Human Rights Committee also asked for information on the investigations carried out in the case of these three Roma and also in general regretted *“the lack of information on concrete measures taken after the adoption of the Committee’s*

concluding observations to ensure that all allegations of unauthorized and disproportionate use of force by law enforcement officials are thoroughly and promptly investigated by an independent authority". However, even after the recommendations adopted by the Human Rights Committee, Greek authorities did not make any effort to improve the related investigations.

- **Cases of Katsaris, Kalamiotis and Georgopoulos and others:**

GHM and OMCT have represented before the Human Rights Committee **Nikolaos Katsaris** and **Andreas Kalamiotis**. GHM has represented before the Human Rights Committee **Antonios Georgopoulos** and **Chrysafo Georgopoulos** and their children. They are all Greek Roma.

On 24 July 2008, the Human Rights Committee adopted its "Views" on Communication No. 1486/2006 (*Andreas Kalamiotis v. Greece*) in which it declared that *"in view of the manner in which the author's complaint was investigated and decided, the Committee is of the view that the requisite standard was not met in the present case"*, concluding that the State had violated article 2 para 3 read together with article 7 of the ICCPR.

On 29 July 2010, the Human Rights Committee adopted its "Views" on Communication No. 1799/2008 (*Antonios Georgopoulos and Chrysafo Georgopoulos v. Greece*). The Committee recognized that *"the authors' allegations, also corroborated by photographic evidence, claiming arbitrary and unlawful eviction and demolition of their home with significant impact on the authors' family life and infringement on their rights to enjoy their way of life as a minority, have been sufficiently established"*.

On 18 July 2012, the Human Rights Committee adopted its "Views" on Communication No. 1558/2007 (*Nikolaos Katsaris v. Greece*). The Committee stated that *"in the light of the multiple, unexplained and serious shortcomings of the preliminary investigations, including (a) the fact that the authors complaint of 27 October 1999 was ignored by the Prosecutor of First Instance in her ruling of 10 October 2001 of the second investigation, the same instance which was investigating that very complaint; (b) the absence of any forensic medical examination; (c) the discrepancies with regard to the arresting officers which cast doubts on the thoroughness and impartiality of the investigations; (d) the alleged use of discriminatory language by investigating authorities to refer to the author or his way of life; and (e) the length of the preliminary investigations, the Committee concludes that the State party has failed in its duty to promptly, thoroughly and impartially investigate the author's claims and therefore finds a violation of the State part's obligations under article 2, paragraph 3, read in conjunction with article 7; and articles 2, paragraph 1, and 26 of the Covenant."*

In all three communications, the State was asked to publish the Views, to provide the authors with an effective remedy including adequate compensation, and to prevent similar violations in the future. The last point is directly related to the similar obligation in the *Makarantzis and other cases* dealt with below.

Greece has a Legal Council of State [webpage](#) dedicated to the publication of the ECtHR judgments but none for the UN Treaty Body judgments. GHM requests to the Greek government to publish

these judgments have been turned down. In fact, there is no similar page dedicated to the publication of the state reports to the UN Treaty Bodies and the latter's recommendations. However, in its initial submissions during the follow-up for these cases, the Greek government has been (mis)informing the HRC that these Views are disseminated to the public at large through the Legal Council of State website.

Most importantly, Greece has refused to pay adequate compensation to the victims although obliged to by the Views. This has been reflected in the "Follow-up progress report on individual Communications, adopted by the Committee at its 112th session (7-31 October 2014)" where Greece has been graded "C1" for (absence of) remedies and non-repetition in all three cases with the additional decision on *Georgopoulos* to *"suspend the follow-up dialogue on the case with a finding of unsatisfactory implementation of the Committee's recommendation."* The reason is that GHM *"sought to have the case reopened, which resulted in the acquittal of the defendant Mayor and deputy mayors of Patras. Even though the Court of Cassation ruled that the European Court of Human Rights' findings and, by analogy, the Views constitute res judicata, domestic courts determined that the demolition of the authors' home was lawful."* The State's comment on the acquittal was *"Regarding the decision of acquittal of the Mayor and Deputy Mayors of Patras by the Misdemeanours Court of Patras, the Views of the Committee could not determine the outcome of a penal case pending before domestic courts. The penal responsibility of an individual should be considered independent from the State's international obligations. The authors were provided with an effective remedy, through the conduct of an independent criminal investigation of their allegations of forced eviction and destruction of their home."*

The handling by Greek authorities of the execution of the Views in these three cases is a convincing demonstration that the Greek Government is determined in cases when it is not directly obligated by international court decisions to do nothing to implement them. For example, GHM made a specific request to the General Secretary of Human Rights Maria Yannakaki registered with protocol number 318/24-4-2017 that was never answered or even merely acknowledged as a courtesy.

Recommendations

The Committee is requested to ask Greek authorities to:

- **Promptly and impartially investigate on cases of violence against Roma and guarantee the availability of an effective complaint mechanism for the victims;**
- **Carry out an effective criminal and administrative investigation on the case of Thanasis Panayotopoulos, Yannis Bekos and Vasilis Loukas, involving forensic expertise, and then promptly prosecute the alleged perpetrators of serious acts of torture and punish those found guilty with appropriate sanctions non-commutable to fines.**
- **Provide effective remedy including adequate compensation to Roma people victims of violence and discrimination, according to HRCttee Views on Katsaris, Kalamiotis and Georgopoulos and others cases;**

- **Ensure the publication in Greek of Views, State reports to, and Concluding Observations of UN Treaty Bodies.**

9. MISSING STREET CHILDREN

In its report to the Committee, the only development since 2012 in the Aghia Varvara case involving 502 missing Albanian Roma children reported by the Government is in para 173 is that: *“Additionally, it should be stressed that the Secretary General for Transparency and Human Rights took, in her previous capacity as a Member of the Greek Parliament, numerous actions (articles, interviews, questions under parliamentary monitoring procedure, etc.), demonstrating consistently her strong personal interest in the elucidation of the abovementioned case, as well as in raising awareness of the state to the critical issue of the unaccompanied minors or “street children”.* The information is correct, but should be supplemented that all those activities were carried out by the current Secretary General for Transparency and Human Rights Ms. Maria Yannakaki at the incitement of, and in some cases jointly with, GHM. However, since she became Secretary General, she has been totally ignoring this case (as well as almost every other case she had been active on while a mere MP). The same can be said for the current Minister of Justice of Albania and previously director of the Albanian Helsinki Committee Ms Etilda Salii.

The best proof of that is that both have opted not even to acknowledge, let alone reply to the related letter GHM sent them on 21 July 2018 with a reminder on 11 August 2018. In this letter, GHM urged them to implement the repeated UN Treaty Bodies recommendation and promptly create a joint mechanism with the participation of the two governments, the two Ombudsmen, and the two NGOs involved, GHM and AHC, to fully and fairly investigate the issue and come to a conclusion that would at least acknowledge the facts and the failures of past administrators and will draw the necessary conclusion as to the remedies currently available. The full letter and a comprehensive report on the case are included in the [“Parallel Report on Albania’s compliance with the International Convention on the Elimination of All Forms of Racial Discrimination”](#) submitted to CERD by GHM on 17 September 2018.

Recommendations

The Committee is requested to ask Greek authorities to:

- **Promptly create an effective mechanism to investigate these cases in order to establish the whereabouts of the missing children, in cooperation with the Ombudsmen of both countries and relevant civil society organizations;**
- **Acknowledge the failures that led to impunity and the disappearances of a very large number of at the time children and offer a public apology to the victims’ families.**

10. HUMAN TRAFFICKING

The Greek National Commission for Human Rights, in its observations on the draft government report to CAT, stated that it was an omission from the report not to include in the necessary length the three related cases ruled by the ECtHR to highlight the problems in the implementation of the legislation, and went on to list their summaries from the ECtHR factsheet on Article 4 ECHR (*L.I. and T.I. and others* were filed by GHM).

In the case *L.E. v. Greece*²⁹, the State was found responsible of a violation of article 4 of the European Convention (prohibition of slavery and forced labour) in regard to its failure to protect a Nigerian national victim of human trafficking and sexual exploitation in Greece. There were unjustified delays in the procedure, beginning with the recognition of her status. This is why the ECtHR held that there had also been a violation of article 6 for the excessive length of the procedure, but also of article 13 because of the absence of an appropriate remedy in Greek legislation.

A judgment on whether Greece is also responsible for its failure in prosecuting the perpetrators of human trafficking against three Russian nationals in *T.I. and Others v. Greece*³⁰ is expected from the ECtHR. Finally, in March 2017, the ECtHR stated that Greece had violated article 4 prohibiting forced labour for the recruitment without due work permit of 42 Bangladeshi nationals who were unpaid and forced to work in particularly difficult conditions under the surveillance of armed guards³¹. “*The Court also found that the State had failed in its obligations to prevent the situation of human trafficking, to protect the victims, to conduct an effective investigation into the offences committed and to punish those responsible for the trafficking*”.

Below is a table with statistics updated for 2017 available in the Hellenic Police website. There is a dramatic decline in the number of networks dismantled, of perpetrators charged and of victims involved. The Committee is requested to note that since 2014 there are no statistics for the number of victims assisted and the victims issued prosecutor decrees (which guarantee them with a special residence and work permit as trafficking victims in Greece until the time of the trial). In fact, since 2012 a considerable number of operations reported concerned labor trafficking (as opposed to none through 2011). Without them, for example, the average number of sex trafficking victims identified since 2013 is a mere 35 as opposed and around or above 100 in most previous years. As for the statistics provided by the government for the related trials in 2013-2015, there were 63 convictions for sexual exploitation and 11 for forced labor for almost all of which the sentences imposed were suspended (59 and 11 respectively)!

²⁹ ECtHR, 21 January 2016, *L.E. v. Greece* (no. 71545/12)

³⁰ ECtHR, *T.I. and Others v. Greece* (no. 40311/10 - Application communicated to the Greek Government on 6 September 2016)

³¹ ECtHR, 30 March 2017, *Chowdury and Others v. Greece* (Application no. 21884/15).

Year	Networks dismantled	Perpetrators of trafficking	Victims (of which for labor trafficking)	Victims assisted	Prosecutors' decrees (of which for labor trafficking)
2003	49	284	93	28	28
2004	65	352	181	46	25
2005	60	202	137	57	20
2006	70	206	83	39	34
2007	41	121	100	35	17
2008	40	162	78	36	16
2009	66	303	125	121	69
2010	62	246	92	64	30
2011	41	220	97	51	9
2012	46	171	94 (25)	39	8
2013	37	142	99 (61)	24	43 (35)
2014	36	125	64 (16)	n.a.	7
2015	32	117	50 (20)	n.a.	n.a.
2016	25	97	46 (20)	n.a.	n.a.
2017	21	147	38 (3)	n.a.	n.a.
Total	691	2895	1377	540 (2003-2013)	306 (2003-2014)

Recommendations

The Committee is requested to ask Greek authorities to:

- Provide case by case statistics on convictions –with corresponding sentences and their possible suspension- only on the specific trafficking articles 323A and 351 that in theory carry felony prison sentences (above 5 years), as in many cases traffickers end up being convicted for lighter crimes;
- Account for the prosecution and punishment of the 2,895 persons reported in the police statistics as perpetrators of trafficking since 2003;
- Provide information on the hundreds of victims reported in the police statistics including on how many of them were integrated in Greek society, how many of them did show up at the respective trials for which special residence permits were granted to them and how many of them were provided effective legal aid that the authorities claim is available;
- Provide information on the reasons for the dramatic decline in the number of sex trafficking operations perpetrators charged, and victims identified and granted protection.

11. EXCESSIVE USE OF FORCE

- **Impunity**

It is well known that during the dictatorship (1967-1974), there was a systematic use of torture against opponents of the regime. Unfortunately, since the restoration of democracy, there was no deliberate government policy to minimize, let alone eradicate, the use of torture and ill-treatment, including by promptly and independently investigating allegations, imposing proportional criminal and administrative punishment on the perpetrators, and offering adequate and prompt redress to the victims. On the contrary, despite declarations to the contrary, all governments and most judges to this day have opted for impunity except when faced with irrefutable evidence; even then, sanctions imposed have been disproportionately light while even in those cases no redress was offered to the corresponding victims who had to find the necessary resources to claim pecuniary compensation through expensive and very protracted court procedures. Moreover, following pressure from IGOs including ECtHR judgments and UN HRCtee views, there have been attempts to introduce an independent mechanism to investigate allegations of torture or ill-treatment that have initially failed and then led to the creation of an independent yet quite inadequate mechanism.

It is commendable that during Greece's review by the Human Rights Council for the UPR, on 3 May 2016, the head of the Greek state delegation stated that *"We recognise that there has been a pattern of excessive use of force and non-accountability by State agents."* There is moreover ample evidence on the persistence of widespread torture or ill-treatment by law enforcement officers and related impunity.

The statistical data on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on related investigations, prosecutions, convictions and on the penal or disciplinary sanctions applied without any disaggregation provided by the State for 2015-2016, indicate that out of 140 complaints for violence and abuse there were imposed 11 final unspecified *"lower disciplinary penalties"* (i.e. probably small fines) while no one was convicted by a court, which seems to be a good evidence of impunity.

- **The case of the killing of Alexis Gregoropoulos by police officers**

As for the case of the killing of 15-year old Alexis Gregoropoulos in December 2008, the police officer who shot him was sentence to life and his accomplice to 10 years in prison, on 11 October 2010. The judgment of the trial on appeal was to be delivered on 19 June 2019, more than 10 years after the killing. In the meantime, the prosecutor has recommended the lowering of the charges for the perpetrator from homicide with direct intent to homicide with possible intent and the acquittal of his accomplice. Probably because the court was aware of the CAT's interest in the case, on 19 June 2019 instead of issuing the verdict and imposing sentences, the case was adjourned for ... 29 July 2019, in the middle of the court's summer holiday season but after Greece's review by CAT. In addition, by that time the new Penal Code will be enforced which anyway offers the possibility of more lenient judgments and sentencing. It may not be surprising in view of all those developments that the police officers involved will effectively walk free. The accomplice after serving 30 months

in prison was released in October 2012 with restraining orders.³² Should the perpetrator's life sentence be reduced to up to 15 years (the new maximum sentence), he will be set free with restraining orders too. GHM will in any case immediately inform the Committee on or after 29 July 2019.

- **Execution of Makaratzis and others group of ECtHR cases at the Committee of Ministers:**

In the summary on the dedicated website of the Council of Europe regarding 13 ECtHR cases of torture or ill-treatment leading to judgments against Greece dating from as early as 2004 (GHM was the applicant on behalf of the victims in 9 out of the 13 cases and has dedicated a webpage to all relevant documents), it is mentioned that Greece had been held responsible for *“the use of potentially lethal force by the police in the absence of an adequate legislative and administrative framework governing the use of firearms, torture and ill-treatment by police and coastguards and absence of adequate investigation, prosecution and remedy.”* The Greek authorities then refused to reopen the cases because the offenses were prescribed, except for the *Sidiropoulos and Papakostas* case.

On its side, the Ombudsman proposed one year ago as the only possible individual measure a written apology from the heads of the services concerned to each of the victims of the impugned acts. In this way, moral satisfaction could be provided to these persons; at the same time there would be a commitment on the part of the relevant services that future disciplinary proceedings will be carried out in conformity with the Court's case law. The Government Agent indicated that he agrees with this proposal and that he would pursue it before the services concerned.

- **Critical evaluation of Greek Ombudsman reports**

We have made above references to inadequate reactions by the Ombudsman (who is also the National Preventive Mechanism established in implementation of OPCAT). Here we will present the points the Ombudsman made in the contributions as National Mechanism for the Investigation of Arbitrary Incidents on the execution of the *Makaratzis* group of cases and in the annual report for 2018. All documents are in Greek on file with GHM and available upon request.

On the *Makaratzis* cases, the Ombudsman took action concerning the possibility of reopening the disciplinary procedures regrettably without informing the victims of police violence or their relatives and/or their representatives concerned. Only after a formal request, GHM was provided on 4 April 2019 copies of a letter to the Legal Council of State on the *Makaratzis* cases dated 4 October 2018 and a letter to the Office of the Chief of Hellenic Police on the *Sidiropoulos-Papakostas* case dated 5 March 2019. Therein, there are a number of comments on the inadequacies of the disciplinary investigations that are summarized here:

a. In the *Bekos-Koutropoulos* case, the conclusion of the EDE (Sworn Administrative Investigation) to impose severe sanctions on two police officers should have been accepted by the

³² <https://www.protothema.gr/greece/article/334950/egine-kafetzis-o-vasilis-saraliotis/>

Chief of Police, rather than replace them with a small fine for one of the officers; and the racist motive should have been investigated.

b. In the ***Petropoulou-Tsakiri*** case, an EDE was required and carried out by a senior police officer not involved in the operation with statements by the victim and all possible witnesses instead of the informal investigation carried out by an officer involved in the operation and with statements only by the five police officers involved; a forensic examination should have also been sought, and the racist motive should have been impartially investigated.

c. In the ***Zelilof*** and the ***Galotskin*** cases (involving the same police operation), the EDE should have included an exhaustive and effective investigation and should have avoided the partiality in the appraisal of the credibility of the statements by the victim and the witnesses on the one hand, and those by the police officers involved on the other hand.

In his 2018 annual report, the Ombudsman reported on recent disciplinary investigations that he was asked to review. They included information of the referral back for additional investigation with specific observations in 22 cases. The main reason for the referral was the inadequate and/or contradictory justification of the findings due to either non-use of evidence or incorrect assessment and evaluation of available evidence. On several occasions it was found that investigations were entrusted to persons who did not offer the necessary guarantees of impartiality due to their insufficient distance from the police officers investigated. Also, in some cases, there was a lack of a forensic report or a failure to take a statement from forensic experts who had been involved in examining injured citizens. Lastly, particular attention was paid to cases which had not been investigated, despite the existence of sufficient evidence, and the probability of the existence of racist motives in the police misconduct. A multipage list of details on these cases analysed by the Ombudman followed.

In the documents on the *Makaratzis group* and the *Sidiropoulos-Papakostas* cases, the Ombudsman offered the following additionally suggestions for the amendment of legislative provisions to secure that such amendments will not prevent the adequate punishment of perpetrators of torture or ill-treatment and they will not hamper the efficiency of administrative investigations:

a. Amendment of the torture Article 137A Penal Code so that the crimes described in paragraph 3 become a felony with a prescription of 15 years and also call for imprisonment for more than 5 years (currently it is “*The cases involving physical injury, injury to the health, the use of illegal physical or psychological force and any other serious offence against human dignity, which is committed by persons under the conditions and for the purposes defined, are punishable by three to five years’ imprisonment. Offences against human dignity include in particular a) The use of a lie detector; b) Prolonged isolation; c) Serious attack on sexual dignity of the person.*”). It is to be noted that in the Draft New Penal Code this article was not amended.

b. Amendment of Articles 137A-D PC (or Article 82 PC) so that sentences imposed for crimes described in Article 137A-B cannot be commuted to fines nor can they be suspended. Again, in the Draft New Penal Code there are no such amendments.

c. Presidential Decree (PD) 120/2008 that describes the administrative investigation for police officers must be amended so that officers against whom criminal charges are pressed for Articles 137A-B are suspended for service and if there is an EDE against them before the pressing of charges they are moved to another service where they will not have in their duties that of investigating alleged crimes of others. No such amendments have been introduced.

d. Another amendment to PD120/2008 is necessary so that if officers liable for actions that led to ECtHR judgments for violation of Article 3 ECHR have in the meantime retired, they are removed from the list of reserve officers (εφεδρεία), imposed financial fines are imposed on them and finally the State has the right and the obligation to seek their financial liability for the compensation the State had to pay in the execution of the respective judgments. No such amendments have been introduced.

Finally, written apologies from the heads of the services concerned to each of the victims of the impugned acts, as moral satisfaction of these persons, with a commitment on the part of the relevant services that future disciplinary proceedings will be carried out in conformity with the Court's case law. As stated above, even such simple acts that do not require any legislative amendments and have no financial cost for the State have not been carried out.

GHM representing the applicants in the *Sidiropoulos-Papakostas* case has not been informed to this day about any decision of the competent authorities on the reopening of disciplinary and/or criminal investigations. Moreover, GHM has not received the written apologies recommended by the Ombudsman, supposedly subscribed to by the Government and welcomed by the Council of Europe, even though GHM has expressly agreed with that procedure and asked for those apologies from both the Ombudsman and the Government, and has stated so in [its 9 April 2019 submission](#) to the Council of Europe (CoE). GHM has received no reply from any of those authorities: hence the suggested apologies appear to be window-dressing to placate the CoE Committee of Ministers.

The fact that even simple apologies to the victims who had to go all the way to the ECtHR to be vindicated several years later since domestic disciplinary and criminal investigators had failed to offer them redress have not been issued is very indicative of the Greek authorities' attitude to deny, and offer impunity to perpetrators of, torture or ill-treatment. Only when pressured internationally will they take timid next steps to placate those pressuring them and gain time.

The CoE Committee of Ministers last examined the cases in December 2018 and issued a [decision](#) the most relevant parts of which for CAT are:

7. [The Committee of Ministers] welcomed the authorities' intention to request the heads of the services involved in torture and other forms of ill-treatment to issue written apologies to the applicants; invited the authorities to inform the Committee by 1 September 2019 of any further development;

8. called upon the authorities to intensify their ongoing efforts to eradicate all forms of ill-treatment by law enforcement officials, taking due account of the CPT's recommendations, and invited them to provide the Committee with concrete and detailed information on the measures taken or envisaged in response to the European Court's judgments in these cases;

9. invited, as regards the effectiveness of investigations, the authorities to provide by 1 September 2019 detailed information on the following issues:

- a) the suspension of the limitation period for offences related to violations similar to those in the present cases;
- b) the overall possibility to reopen disciplinary investigations in cases where criminal or disciplinary liability has already been decided, taking into account the *ne bis in idem* principle enshrined in Law 4443/2016;
- c) the effectiveness of the new complaint Mechanism (the Ombudsman), notably in the light of the outcome of the investigations into the complaints submitted since the Mechanism started to function on 9 June 2017;
- d) the impact of the new reinforced legislative protection against racist crime and possible new measures envisaged to ensure the investigation of possible racist motives when ill-treatment occurs in the context of law enforcement;
- e) the extent to which decisions to close criminal investigations on the basis of prescription can be subjected to judicial or other independent review;
- f) the measures taken or envisaged in the context of the ongoing revision of the Criminal Code in order to fully align the conduct of criminal investigations into ill-treatment and the relevant sanctions with the requirements of the Court's case-law, in particular as regards the definition of torture and the possibilities to convert terms of imprisonment imposed for torture and other ill-treatment into non-custodial sentences.

The last CoE recommendation on aligning with the ECtHR case-law “*the possibilities to convert terms of imprisonment imposed for torture and other ill-treatment into non-custodial sentences*” was triggered by the judgment in the Sidiropoulos-Papakostas case. Yannis Papakostas and George Sidiropoulos were tortured with a taser gun in August 2002 and the domestic court considered it a felony case. **This is to this day the one and only final judgment by a Greek domestic court finding felony aggravated torture crime** (as opposed to several misdemeanor ill-treatment crimes). Yet, the ECtHR ruled that, despite the judgment's finding of aggravated torture, there was still an article 3 violation because *the outcome of the proceedings against the police officer had not provided appropriate redress for the breach of the right enshrined in Article 3 of the Convention, as the offender had never suffered from the consequences of his actions as a police officer and the leniency of the criminal sanction (five-year prison sentence commuted to a fine of five euros per day of detention, payable in 36 instalments over three years) had been manifestly disproportionate having regard to the seriousness of the treatment inflicted on the applicants.*”

Finally, the Committee's attention is drawn on the publication “Migrant ill-treatment in Greek law enforcement – Are the Strasbourg Court judgments the tip of the iceberg?” written in 2017 by Nikolaos Sitaropoulos, from the Department for the Execution of Judgments of the ECtHR. Its main points include what is argued above, i.e. that these cases are the tip of the iceberg and that a culture of unlawful violence and impunity still prevails: “*Unlawful violence and impunity in Greek law enforcement are decades-old long and derive from a long, sad tradition of state repression and disregard of human dignity and civil rights. As Pollis observed, despite the post-1974 legal and institutional changes in Greece, the underlying world view of the earlier decades persists. This is why the culture of impunity still constitutes the mind frame of many state institutions and is tolerated. It is indeed high time for the national authorities to cross the Rubicon and act with*

determination to redress this situation where human rights standards and the rule of law cannot but buckle.”

Recommendations

The Committee is urged to ask Greek authorities to:

- **Ensure that all allegations of torture or ill-treatment by law enforcement officials are promptly, thoroughly and impartially investigated by an independent body, and that perpetrators are duly prosecuted, and if found guilty, convicted with penalties that are commensurate with the grave nature of their crimes;**
- **Offer appropriate redress, including rehabilitation, to the victims of violence by State agents;**
- **Execute ECtHR judgments and more specifically, provide information on the reopening of the investigations on the Sidiropoulos-Papakostas case.**
- **Offer written apologies to victims of law enforcement violence vindicated by ECtHR judgments and HRCttee Views when impossible to reopen disciplinary investigations;**
- **Promptly implement the CM CoE December 2018 recommendations, as well as the Ombudsman’s recommendations, including the suspension of limitation period for these offenses.**

12. CASSATION OF JUDGMENTS

We advise the Committee to consider the very positive development in the execution of another ECtHR judgment in *Chowdury and others v. Greece*. The Supreme Court Prosecutor issued a press release on the 30 October 2018³³ (translated in English by Greek Helsinki Monitor - GHM) explaining that after the ECtHR judgment, a Deputy Prosecutor filed an application for the cassation for the benefit of the law of the judgment of the Mixed Jury Court of Patras, No. 75-128/30-7-2014 which declared innocent the accused of trafficking in human beings, in violation of Article 4(2) of the European Convention, “*for wrong interpretation and wrong application of the provision of Article 323A of the Penal Code, and for lack of specific and detailed reasoning*”. On 18 June 2019, the Supreme Court Penal Plenary with its Judgment 2/2019 accepted the application and annulled that domestic judgment.³⁴

Greece should apply consistently the procedure of an application for cassation for the benefit of the law by the Supreme Court Prosecutor as a fundamental remedy to execute ECtHR judgments and Treaty Body Views so as to remove domestic judgments held by the ECtHR or Treaty Bodies to be in violation of the ECHR or the Treaty Bodies from the case-law which will prevent the issuing of

³³ Supreme Court Prosecutor, Press Release 30-10-2018, <https://www.eisap.gr/?q=node/1309>

³⁴ <https://greekhelsinki.wordpress.com/2019/06/18/2-71/>

new judgments with similar reasoning and/or invoking these judgments that must be annulled. If filed by the Supreme Court Prosecutor and if approved by the Supreme Court such cassation judgments would be a very powerful apology to the victims of law enforcement violence that the ECtHR or Treaty Bodies found that they were wronged by the domestic judgments.

Such applications should be filed for ten of the thirteen cases of the *Makaratzis group*, i.e. for the cassation of the domestic judgments in the cases of **Makaratzis, Sidiropoulos and Papakostas, Zontul, Bekos and Koutropoulos, Alsayed Allaham, Celniku, Karagiannopoulos, Galotskin, Stefanou, and Leonidis**, and two of the three cases that led to HRCtee Views: **Kalamiotis and Georgopoulos**. In the other four cases, of **Zelilof, Petropoulou-Tsairis, Andersen, and Katsaris** the complaints had been archived and not referred to trials. So, for those cases, a cassation is not possible but the appeals court prosecutors who authorized their archiving should be asked to review their decisions so as to incorporate the reasoning of the ECtHR judgments of the HRCtee View. Then, they will issue new decisions that will conclude that the suspects should have been referred to trials but add that as their acts had been prescribed this was no longer possible. Such development is in the spirit of the Supreme Court Prosecutor to seek the cassation of the domestic judgment in the *Chowdury* labor trafficking case.

The apology to the applicants suggested by Greek authorities and positively accepted by the CoE Committee of Ministers concerns only the failures in the disciplinary investigation of those cases. The cassation of the domestic judgments on these cases is the necessary complement as a form of “apology” for the failures in the criminal investigation of those cases. The applicants deserve, and have formally asked, to receive both such “apologies” –where relevant.

Recommendations

The Committee is requested to ask Greek authorities to:

- **Apply consistently the procedure of an application for cassation for the benefit of the law by the Supreme Court Prosecutor as a fundamental remedy to execute ECtHR judgments and Treaty Body Views and ensure the right interpretation and application of the law;**
- **Provide statistics on appeals filed with the Hellenic Compensation Authority and the ensuing decisions, as there is no related publicly available information.**



Greek Helsinki Monitor – Ελληνικο Παρατηρητήριο των Συμφωνιών του Ελσινκι

Human rights in Greece and beyond

04 – 06/06/2019: M.S.S. & Rahimi v. Greece asylum cases – Supervision of execution of ECtHR judgments by Council of Europe's Committee of Ministers [with reference to GHM-RRE, GCR and UNHCR submissions]

□ 6 June 2019 □ Vassilis Tsarnas



1348th meeting, 4-6 June 2019 (DH)

H46-9 M.S.S. and Rahimi groups v. Greece (Application No. 30696/09)
(<https://archive.fo/U9ZbO>)

Supervision of the execution of the European Court's judgments

Reference document

CM/Notes/1348/H46-9 (https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Notes/1348/H46-9)

Decisions

The Deputies

1. recalling that these cases concern the degrading treatment of the applicants (asylum seekers or irregular migrants, including unaccompanied minors) on account of their conditions of detention; the degrading treatment of asylum-seeking applicants due to their living conditions; the lack of an effective remedy against expulsion, due to deficiencies in the asylum procedure; and the lack of an effective remedy to complain about the conditions of detention;

As regards individual measures

2. noted that no further individual measures need to be taken as regards the cases *A.F., B.M., Bygylashvili, Chkhartishvili, De los Santos and de la Cruz, Horshill, Kaja, Tatishvili, Al.K., H.H., F.H., Chazaryan and others, A.Y., Tenko, S.G., Barjamaj and Housein*; therefore decided to close their supervision of these cases and to adopt Final Resolution CM/ResDH(2019)154 ([https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/ResDH\(2019\)154](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/ResDH(2019)154));

As regards general measures

Asylum procedure and absence of an effective remedy against expulsion

3. welcomed the ongoing efforts made by the Greek authorities, in concert with the competent EU institutions and the **UNHCR**, to improve the national asylum system, and the notable increase in the overall rate of granting asylum;
4. noting, however, with grave concern the increase of arrivals of third country nationals that could adversely affect the functioning of the asylum system and is the reason for the significant increase in the average time taken to register and process asylum applications, and the deficiencies of the asylum appeal procedure which have been reported by the Greek Ombudsman and expert NGOs; called on the authorities to provide information on the asylum appeal procedure and on further measures envisaged or adopted in order to enhance the efficiency of the overall administrative procedure and the effectiveness of existing administrative remedies;

Living conditions of asylum seekers

5. welcomed the concerted efforts made and the measures taken to ensure decent accommodation, provision of welfare and healthcare services, access to the labour market and to education for asylum seekers;
6. took into account the continuing and increasing arrival of third country nationals, including asylum seekers; noted; furthermore the concerns expressed by the Council of Europe Commissioner for Human Rights and NGOs that the living conditions of asylum seekers have remained critical, despite the commendable efforts and the achievements of the authorities to date; therefore called on the authorities to continue and step up their efforts;
7. also called on the authorities to implement the recommendations of the Council of Europe Commissioner for Human Rights on the need to further enhance the provision of health care services to asylum seekers and irregular migrants in detention;

Reception and protection of unaccompanied minors

8. welcomed the adoption in 2018 of the law on guardianship and invited the authorities to proceed to its prompt implementation in order to put in place a comprehensive and efficient system of reception and protection of all unaccompanied minors;
9. expressed, however, concern about the inadequate number of suitable places available in accommodation facilities for minors and the significant number of minors placed in "protective custody" or in reception centres at the borders, and called on the authorities to intensify their efforts to increase the capacity of accommodation suitable for unaccompanied minors;

Conditions of detention

10. noted with satisfaction that domestic case-law has evolved to allow irregular migrants, including unaccompanied minors, to complain about their conditions of detention; noted also the relevant case-law of the Court and decided to close their supervision of this issue;
11. while noting with satisfaction that certain immigration detention facilities visited by the CPT in 2018 provided decent conditions, expressed serious concern at the fact that a number of other immigration facilities and police stations seem to be below Convention standards, and that the detention of unaccompanied minors persists;
12. recalling the Court's case-law and recommendations of the CPT, called on the authorities to end the practice of detaining unaccompanied minors and transfer them without delay to a (semi-) open establishment specialised for juveniles;
13. invited the authorities to give effect to the recommendations made by the CPT and to improve the conditions in immigration detention facilities, including by providing adequate health-care services;
14. invited the authorities to keep the Committee regularly informed about developments on all of the above-mentioned issues;
15. decided to resume examination of these cases at their September 2020 DH meeting.

1348th meeting, 4-6 June 2019 (DH)

Human rights

H46-9 M.S.S. and Rahimi groups v. Greece (<https://archive.fo/rbLsX>).

Supervision of the execution of the European Court's judgments

Reference documents

DH-DD(2019)372 ([https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD\(2019\)372](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2019)372)), CM/ResDH(2014)272 ([https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/ResDH\(2014\)272](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/ResDH(2014)272)), CM/Del/Dec(2017)1288/H46-15 ([https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Del/Dec\(2017\)1288/H46-15](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Del/Dec(2017)1288/H46-15)).

Application	Case	Judgment of	Final on	Indicator for the classification	
M.S.S. GROUP					
30696/09	M.S.S.	21/01/2011	Grand Chamber	Structural and complex problem	
53709/11	A.F.	13/06/2013	07/10/2013		
53608/11	B.M.	19/12/2013	19/03/2014		
58164/10	BYGYLASHVILI	25/09/2012	25/12/2012		
22910/10	CHKHARTISHVILI	02/05/2013	02/08/2013		
2134/12+	DE LOS SANTOS AND DE LA CRUZ	26/06/2014	26/09/2014		
78456/11	F.H.	31/07/2014	31/10/2014		
70427/11	HORSHILL	01/08/2013	01/11/2013		
32927/03	KAJA	27/07/2006	27/10/2006		
26452/11	TATISHVILI	31/07/2014	31/10/2014		
63542/11	AL.K.	11/12/2014	11/03/2015		
63402/11	TTTT	08/10/2014	08/01/2015		

63493/11	F.H.	09/10/2014	09/01/2015	
76951/12	CHAZARYAN AND OTHERS	16/07/2015	16/07/2015	
58399/11	A.Y.	05/11/2015	05/02/2016	
7811/15	TENKO	21/07/2016	21/07/2016	
46558/12	S.G.	18/05/2017	18/05/2017	
39034/12	A.E.A.	15/03/2018	15/06/2018	
RAHIMI GROUP				
8687/08	RAHIMI	05/04/2011	05/07/2011	Complex problem
36657/11	BARJAMAJ	02/05/2013	02/08/2013	
71825/11	HOUSEIN	24/10/2013	24/01/2014	

Case description

These cases concern the degrading treatment of the applicants (asylum seekers or irregular migrants, including unaccompanied minors) on account of their conditions of detention[1] (https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680946e11#_ftn1) (such as overcrowding, lack of bed/mattress, insufficient ventilation, lack of regular access to toilets or sanitary facilities, lack of outdoor exercise, unsuitable food or inadequate allowances for food, etc.) in various detention facilities (such as police stations, premises of authorities in charge of immigration or foreign nationals, border posts or the special holding facility at the Athens International Airport) (violations of Article 3).

Some of these cases[2] (https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680946e11#_ftn2) also concern the asylum-seeking applicants' degrading treatment due to their living conditions in Greece, resulting from the authorities' inaction in respect of the situation in which they found themselves: living on the street, without access to sanitary facilities and without means of providing for their essential needs (violations of Article 3).

Lastly, some cases in the M.S.S. group concern violations of the applicants' right to an effective remedy on two grounds (violations of Article 13 taken in conjunction with Article 3):

– lack of an effective remedy against expulsion, due to deficiencies in the examination of the applicants' asylum applications, notably lack of thorough and timely examination of the merits of asylum applications, and the risks incurred in case of expulsion to countries of origin[3] (https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680946e11#_ftn3) or

– lack of an effective remedy to complain about the conditions of detention.[4] (https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680946e11#_ftn4).

Similar Article 3 issues arise in other cases but are dealt with in a separate group (S.D. group) which also concerns immigration detention issues under Article 5. Details are footnoted below.[5] (https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168070e978#_ftn2).

Status of executionIndividual measures:

M.S.S.: The applicant obtained refugee status in Belgium. Thus the examination of the individual measures in this case was closed in June 2012. According to information provided by the authorities on 29 March 2019, all applicants (23 applicants in 15 cases) in respect of whom violations were found on account of conditions of detention or of lack of an effective remedy to challenge conditions of detention have been released.

As regards the other applicants in respect of whom violations were found on account of their living conditions (AL.K, F.H, S.G and Rahimi):

AL.K.: The applicant's asylum application was rejected at both instances and on 20 February 2017 he was ordered to leave the country within 90 days.

F.H. and Rahimi: The applicants were granted international protection.

S.G.: The asylum application lodged by the applicant was considered tacitly withdrawn because the applicant did not request the renewal of his asylum-seeker card.

As regards the applicants in respect of whom violations were found due to the lack of an effective remedy to challenge their expulsion, together with the shortcomings of the asylum procedure (A.E.A and A.Y):

A.E.A.: The asylum application lodged by the applicant was considered tacitly withdrawn because the applicant did not request the renewal of his asylum-seeker card.

A.Y.: No application for asylum has been pending in respect of the applicant.

The Committee was informed of the payment of just satisfaction in the case A.E.A on 6 May 2019. Therefore, this payment will be considered final on 6 June 2019. All the applicants in the remaining cases have received the just satisfaction awarded by the Court.

General measures:[6] (https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680946e11#_ftn6).

At its latest examination in June 2017, the Committee invited the authorities in particular: a) to elaborate, in cooperation with other stakeholders a plan for the registration and processing of asylum applications, so that they are processed within a reasonable timeframe, b) to develop a strategy securing the full protection of unaccompanied minors on the basis of an effective guardianship system, c) to improve conditions of detention in all detention facilities including by providing adequate health-care services and d) to ensure, as a matter of priority, that alternatives to the detention of minors are found and that where, exceptionally, minors are detained, they are held separately from adults and in conditions adapted to their vulnerable situation.

In reply to the above-mentioned decisions, on 28 March 2019 (DH-DD(2019)372 ([https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD\(2019\)372](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2019)372))) the Greek authorities provided extensive information that may be summarised as follows:

1. Asylum procedures:

The authorities noted that measures to enhance asylum procedures were taken by Law No. 4375/2016 which was amended by Law No. 4540/2018. 12 Regional Asylum Offices and 11 Autonomous Asylum Units are now staffed with 681 employees and operate throughout Greece. 133 further employees <https://greekhelsinki.wordpress.com/2019/06/06/1-297/>

Furthermore, the authorities noted that third-country nationals and asylum applicants are informed about access to asylum procedures and their rights, and are provided with free interpretation services.

Between 7 June 2013, when the Asylum Service started operating, and 31 December 2018, 204,097 asylum applications were registered, out of which 58,642 were submitted in 2017 and 66,969 in 2018. There was a 14.9% increase of applications lodged in 2017 and a 14.2% increase in 2018.

In 2017, 51,599 decisions were issued at first instance. Of these, 22,450 rejected applications as inadmissible and 6,668 terminated the procedure because of explicit or implicit withdrawal of applications. 46% of the 22,481 decisions on the merits granted international protection.

In 2018, 46,198 decisions were issued at first instance. Of these, 4,834 rejected asylum applications as inadmissible and 10,616 terminated the procedure because of explicit or implicit withdrawal of applications. 49.4% of the 30,748 decisions on the merits granted international protection.

The average time between pre-registration and full registration of asylum applications was 122.46 days in 2017 and 59.72 days in 2018. The average time from full registration to delivery of a decision at first instance was 153.27 days in 2017 and 235.41 days in 2018. As regards the special border zone procedure, the average time between pre-registration and full registration was 23.9 days in 2017 and 27.66 days in 2018.

In 2017, 4,542 asylum applications were lodged by persons in detention while in 2018 the number was 7,009. For this category, the average time from pre-registration to delivery of a decision was 125.25 days in 2017 and 145.41 days in 2018.

As regards asylum applications by unaccompanied minors, 2,640 applications were lodged in 2017 and 2,639 in 2018; the average time from pre-registration to delivery of a decision was 258.14 days in 2017 and 403.36 days in 2018. In 2017, 1,672 decisions concerning applications lodged by minors were issued at first instance, of which 738 rejected applications as inadmissible and 251 terminated the procedure because of explicit or implicit withdrawal of the applications. Out of the 683 decisions on the merits, 188 granted international protection. In 2018, 1,839 decisions concerning applications lodged by minors were issued at first instance, of which 350 rejected applications as inadmissible and 581 terminated the procedure because of explicit or implicit withdrawal of the applications. Out of the 908 decisions on the merits, 345 granted international protection.

At second instance, during 2017-2018, 26,999 appeals were lodged, of which 847 were granted. Interpretation and free legal assistance are also provided at second instance. As regards backlog cases (asylum applications lodged before 7 June 2013 at second instance), 83,002 of the backlog cases have been processed while 430 cases remain to be examined. 42,595 decisions were issued rejecting applications, 27,914 were issued discontinuing the asylum and 12,493 were issued granting international protection.

The Greek authorities stressed that the unprecedented increase in migration flows during 2015-2016 exerted tremendous pressure on the national asylum system, resulting in longer periods for registration and processing of asylum applications.

Lastly, the Greek authorities underlined that, despite the significant progress made in living conditions of asylum seekers, in particular those concerning minors, conditions of detention and the asylum procedure, the country remains under extreme migratory pressure. According to the authorities, the continuing increase of asylum applications which increases the average processing time and therefore prolongs inevitably the provision of accommodation and other services to asylum seekers, are present challenges that are constantly changing randomly and make the magnitude of needs unpredictable. Hence, there is a need for revision of the EU asylum system, to ensure that the responsibilities are shared by all EU member States.

1. Living conditions of asylum seekers:

According to the aforementioned communication from the Greek authorities, the situation concerning asylum seekers has completely changed since January 2011 when the M.S.S. judgment was delivered. Consequently, the examination of the living conditions of asylum seekers should be limited to those asylum seekers whose situation is similar to the situation examined by the Court in the M.S.S. group of cases, while the situation of third country nationals residing in Reception and Identification Centres (RICs – see below) cannot be examined from the point of view of the living conditions of asylum seekers as assessed in the M.S.S. judgment.

Accommodation, food, clothing and healthcare services are provided to asylum seekers under three basic schemes: a) RICs at the entry points, b) hospitality centres managed by non-profit organisations or international organisations, and c) houses, apartments or hotels leased in the framework of housing programmes. Following the influx of one million third-country nationals since 2015, the Greek authorities, in cooperation with the European Commission and UNHCR, managed to set up six RICs on the Eastern Aegean islands and in the Evros region, 26 temporary accommodation facilities on the mainland and to lease a number of apartments and hotels to accommodate a large number of asylum seekers. By the end of 2018, 18,369 persons lived in the above 26 accommodation facilities while 29 4799 persons lived in apartments and hotel rooms.

Lastly the authorities indicated that by the end of 2018, 11,683 persons lived in the RICs on the Eastern Aegean islands while in September 2018 18,107 persons lived there. The decrease in the number of asylum seekers living in RICs was due to the relocation of 29,090 persons belonging to vulnerable groups from the islands to the mainland. On February 2019, the progress achieved in providing accommodation and other services to asylum seekers was pointed out by the UNCHR Representative in Greece who stressed that since 2014 the accommodation capacity increased from 1,000 to 27,000 accommodation places in apartments and 20,000 places in hosting centres. Financial support is provided to asylum seekers subject to whether accommodation or other services are available to them.

As regards health care in particular, it is noted that asylum seekers are considered members of a vulnerable group having access to health care either in accommodation facilities or in public hospitals. All asylum seekers are vaccinated.

The Greek authorities have ensured access to education for refugee and migrant children by launching since the school year 2016-2017 a special educational programme which established "Reception /Preparatory Classes for the Education of Refugees" in certain public schools in areas accessible from the various accommodation facilities where asylum seekers reside. The programme aims at facilitating all refugee and migrant children in joining mainstream classes in Greek schools. At the same time, a number of refugee and migrant children were enrolled in Greek schools offering "reception" preparatory classes or in mainstream Greek schools. During the 2017-2018 school year, 7,316 refugee and migrant children were enrolled in the above educational units.

As regards access to labour market, according to legislation promulgated in 2016 and 2018, asylum seekers have access to labour and vocational training programmes under the same conditions as Greek citizens. By the end of 2018, 6,150 beneficiaries of international protection and asylum seekers were registered in unemployment registers.

III. Reception and protection of unaccompanied minors:

The authorities indicated that providing adequate accommodation and decent living conditions to unaccompanied minors arriving in Greece is one of their priorities. Unaccompanied minors are referred to accommodation centres for minors or to other accommodation centres where there are areas suitably adapted for this purpose, for as long as they stay in the country or until they are placed with a foster family or in supervised lodgings.

In December 2018, the overall capacity of accommodation facilities for minors amounted to 1,959 places, whereas the number of unaccompanied minors amounted to 3,741 (7.2% of whom were under 14). Priority is given to minors under 15 or with health problems. At accommodation centres, minors are provided with food and clothing as well as with healthcare services and the assistance of psychologists and lawyers.

New guardianship system: Under Law No. 4554/2018, a guardian is appointed for every third country or stateless person under the age of 18 who arrives in Greece without being accompanied by a relative or non-relative exercising parental guardianship or custody. The law sets out the terms for the appointment and replacement of a guardian for unaccompanied minors as well as the creation and functions of a Supervisory Guardianship Board.

The guardian has responsibilities which include ensuring decent accommodation, representing and assisting the minor in all judicial and administrative procedures, accompanying the minor to clinics or hospitals and providing access to psychological support, guaranteeing that the minor is safe during his/her stay in the country and taking care of the minor's education. The Supervisory Guardianship Board has the competence to assess and define the interest of the unaccompanied minor, where an important decision for the future of the unaccompanied minor is to be taken in the near future (for example, on a non-urgent medical problem, a possible disability, issues related to religious beliefs). The Council will decide upon a reasoned proposal from the tutor. Additionally, the Department for the Protection of Unaccompanied Minors at the National Centre for Social Solidarity will have the responsibility of guaranteeing safe accommodation for unaccompanied minors and evaluating the quality of services provided in those accommodations. The above guardianship system is planned to be fully operational during 2019.

1. Conditions of detention:

The authorities noted that 68,112 third-country nationals were arrested on Greek territory during 2017 (66.75% less than in 2016) while 93,367 third-country nationals were arrested during 2018. In 2017, 25,810 return/deportation orders were issued while 32,718 such orders were issued in 2018. Furthermore, the number of new arrivals of third-country nationals who entered in Greece through the land borders with Turkey increased by 170.15% in 2018. Third-country nationals subject to deportation, namely those who did not apply for asylum or whose applications have been definitively rejected, can, under the applicable legislation, be detained.

During 2017-2018, eight pre-return detention centres operated (six of them on the mainland (Amygdaleza, Tavros, Xanthi, Drama, Orestida and Korinthos) and two on the Eastern Aegean islands of Lesbos and Kos. The authorities indicated that since 2016 asylum seekers arriving on the Eastern Aegean islands are not detained though they are not allowed to leave the islands. However, in order to detain offenders and migrants subject to deportation on Eastern Aegean islands, the two above-mentioned pre-return centres were created on Lesbos and Kos. The overall capacity of the eight pre-return detention centres amounts to 6,417 places, their operational capacity to 3,477 places while the number of detainees on 31 December 2018 was 2,098. The occupancy of the said detention facilities never exceeded their operational capacity.

Pre-return detention centres are tasked with providing detainees with food, clothing and health-care services; the latter is provided by public medical and nursing personnel, or other organisations or agencies. Cases which cannot be handled in the above centres are referred to state-run hospitals. The personal space available to each detainee corresponds at least to four sq. metres, there is outdoor space for activities, three meals are offered per day and direct access to telephones is ensured; areas are set aside for religious worship. All detainees can submit requests to the centre's director and communicate with lawyers, members of NGOs and other agencies. Information is systematically provided to detainees about their rights and obligations, including their right to communicate with representatives of NGOs or other organisations or agencies. Representatives of NGOs and other agencies have daily access to the centres to communicate with detainees and provide legal assistance, so that detainees have access to the asylum procedure during detention.

Activities related to migrant detention centres are funded by the Asylum, Migration and Integration Fund of the European Union for the period 2014-2020 (National Programme of the area of Home Affairs for the period 2014-2020). In the framework of the implementation of this programme, doctors, nurses, psychologists have been hired and detention facilities have been refurbished.

As regards detention of unaccompanied minors: 571 were detained in 2017 and 608 in 2018 in the above -mentioned pre-return detention centres. They were detained separately from adults in specially designated areas. The detention of minors is decided for as short a period as possible (and not longer than 25 days or in exceptional situations not longer than 45 days) when it is established that alternatives to detention cannot be applied. Unaccompanied minors are kept in detention facilities supervised by the police until they are subsequently transferred to hostel accommodation. While every possible effort is made to trace the minor's family, a guardian is appointed to ensure the protection of the minor and his/her interests.

As regards the lack of an effective remedy for conditions of detention: The authorities indicated that the Court has held that the remedy provided for by Article 76 of Law No. 3386/2005, as amended in 2010, is an effective remedy to complain about conditions of administrative detention.

Analysis by the Secretariat

Individual measures

It follows from the information provided by the authorities that there are no further individual measures that need to be taken. Therefore, since the implementation of the general measures will continue to be monitored in the remaining cases of the M.S.S. and Rahimi groups, it is proposed that the Committee close the monitoring of the following cases: A.F, B.M, Bygylashvili, Chkhartishvili, De los Santos and De la Cruz, F.H, Horshill, Kaja, Tattishvili, Al.K, H.H, Chazaryan and others, A.Y, Tenko, S.G, Barjamiaj and Housein.

General measures

1. Asylum procedures

During 2015-2016 Greece received an unprecedented number of third-country nationals, the majority of whom lodged asylum applications. Action was taken by the Greek authorities to respond to this situation, in cooperation with the European Commission and competent agencies of the EU, UNHCR and NGOs. The national asylum system has developed, the number of regional asylum offices and autonomous asylum units has increased, as did the staff of the Asylum Service. The first-instance asylum-granting rate in 2017 was 46% while in 2018 it rose to 49.4%.

It is noted that at second instance the number of appeals granted has been very limited. Out of the total substantive decisions issued in 2018, 2.8% granted refugee status, 1.5% subsidiary protection, 4.5% referred the case for humanitarian protection, and 91% of the decisions were negative.[Z] (https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680946e11#_ftn7).

Also, the Greek Ombudsman in his 2018 report noted that in 2018, the examination of asylum appeals lodged under the earlier asylum legislation (Presidential Decree 114/2010) and still pending continued to be delayed. This was due to the cessation of the Interior Ministry appeal committees which <https://greekhelsinki.wordpress.com/2019/06/06/1-297/>

did not operate in 2018 even if this was provided for by Law 4540/2018. The Ombudsman expressed his concern at this situation which places asylum seekers in a precarious legal situation.[8].(https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680946e11#_ftn8).

As regards legal aid, it is noted that a state-funded legal aid scheme in the appeal procedure, based on a list managed by the Asylum Service, exists in Greece since September 2017. An expert NGO report indicates that the capacity of the second-instance legal aid scheme remains limited. Out of a total of 15,355 appeals lodged in 2018, only 3,351 (21.8%) asylum seekers benefited from the state-funded legal aid scheme.[9] (https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680946e11#_ftn9). In this respect, however, it should be noted that the Court referred to legal aid for irregular migrants and/or asylum seekers to reject their applications relating to the asylum procedure or their conditions of detention (see *inter alia Moras et al*, No. 20/13, § 34, decision of 20/10/2015; *Josef and Others*, No. 76854/11, §§ 27-28, decision of 24/01/2017).

In its “Recommendations for Greece in 2017” (February 2017)[10] (https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680946e11#_ftn10), UNHCR stated that progress had been made but significant challenges relating to, in particular, registration and asylum processing, still had to be addressed. More specifically, six months after arrival on the Greek islands, many asylum seekers were still waiting for the full registration and processing of their asylum applications. On the mainland, first-instance decisions for those pre-registered during the summer of 2016 would take approximately two years. Therefore, according to UNHCR, the pace of registration and the lack of capacity fully to process asylum claims within a reasonable timeframe needed to be resolved. It follows from the information provided by the authorities in March 2019 that the average time to register and process an asylum application at first instance has in fact significantly increased.

Furthermore, given that no statistical data have been provided by the authorities concerning the examination of asylum applications on appeal, or about the reasoning of decisions given at second instance rejecting appeals, either on admissibility grounds or on the merits, the authorities could be requested to provide such information so that the Committee may evaluate also the effectiveness of the existing remedy against rejection decisions and the asylum procedure as a whole.

In conclusion, it transpires from the above-mentioned information that, despite the significant efforts made by Greece in the context of very pressing migration flows during the recent years, asylum procedures still show a number of significant challenges that require the adaptation of the measures taken to the new data.

1. Living conditions of asylum seekers

As noted by the Court at § 250 of the M.S.S. judgment, the obligation of the State to provide accommodation and decent material conditions to impoverished asylum-seekers has now entered into positive law, namely the EU “Reception Directive” 2003/09 which has been transposed to Greek law. According to the Reception Directive (now Directive 2013/33) living conditions of asylum seekers include: a) material reception conditions, namely housing, food, and clothing, provided in kind, or as financial allowances or in vouchers, and a daily expenses allowance; b) health care; and c) access to the labour market.

It emerges from the information provided by the Greek authorities that in December 2018, 47,848 asylum seekers were provided with accommodation, welfare and healthcare services on the mainland. It is also noted that under the EU funded ESTIA programme managed by UNHCR, as of March 2019 approximately 69,000 eligible refugee and asylum seekers had received cash assistance in 111 locations in Greece, amounting to €6.9 million.[11] (https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680946e11#_ftn11). Nevertheless, the number of available places for accommodation is not clarified in the updated action plan. It can be deduced from the reference made to the statement by the UNHCR Representative in Greece that in January 2019 the accommodation places available amounted to 47,000. The Council of Europe Commissioner for Human Rights (‘the Commissioner’) noted in her report published in November 2018[12]. (https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680946e11#_ftn12) that, in respect of living conditions of asylum seekers on the mainland, despite certain positive developments, the situation remained critical and might deteriorate rapidly if transfers of asylum seekers from the Aegean islands were not combined with both further significant increase in the capacities of the mainland’s reception facilities and an improvement of their conditions. In the same report, the Commissioner noted the need to further enhance migrants’ health care system, migrant children’s education attendance and to facilitate migrants’ access to the labour market.

Despite the positive information provided by the authorities indicating that the number of third-country nationals in RICs has been reduced due to transfers from the Eastern Aegean islands to the mainland, in a communication received on 16 April 2019 (DH-DD(2019)467 ([https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD\(2019\)467](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2019)467))), the **Greek Helsinki Monitor** and **Refugee Rights Europe** indicated a number of serious shortcomings notably on the RICs of the islands of Chios and Lesbos. The shortcomings concern, *inter alia*, overcrowding in camps, unsanitary living conditions therein and very inadequate access to health services. In a communication received on 24 April 2019 (DH-DD(2019)515 ([https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD\(2019\)515](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2019)515))), the **Greek Refugee Council** expressed similar concerns and noted that as regards the mainland, although the capacity has increased, the country-wide shortage of accommodation is leading to the overcrowding of many mainland camps while sexual and gender based violence is a major risk in some mainland sites.

It is noted that the Court has not examined the living conditions in the reception centres of the Aegean islands. In the *O.S.A. and Others* and *J.R. and Others*, the Court dismissed the applicants’ complaints concerning their conditions of detention in the reception center Vial, in Chios (hotspot) between March and May 2016.

It transpires from the above information that the Greek authorities, in cooperation with the European Commission, UNHCR and other stakeholders, have achieved significant progress in ensuring decent accommodation as well as welfare and healthcare services to asylum seekers. The measures taken to safeguard access to education for migrant children and to the labour market for asylum seekers are also important. However, the authorities could be invited to keep the Committee regularly updated on developments concerning living conditions of asylum seekers and be encouraged to take further steps in line with the recommendations made notably by UNHCR and the **Commissioner** to ensure adequate accommodation and decent living conditions for asylum seekers.

III. Reception and protection of unaccompanied minors

UNHCR noted in the factsheet published in March 2019[13]. (https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680946e11#_ftn13) that although there are 3,773 unaccompanied minors in Greece, only 1,085 places are available in shelters and apartments. As a result, many minors spend lengthy periods in “protective custody” (in police stations) or in reception centres at the borders waiting for a place in a shelter appropriate to their age, while others have limited options but to stay in informal housing or risk becoming homeless.

The Commissioner noted in her above-mentioned report that, as of 15 August 2018, there were 3,290 unaccompanied minors in Greece, while there were only 1,191 available places in dedicated shelters or supported, independent-living apartments. Among the 2,241 children registered on the waiting list, 127 were deprived of liberty under the regime of “protective custody”, 296 were hosted in RICs, 161 in open temporary accommodation facilities, 254 in “safe zones”, 413 in hotels, 437 were reported as homeless and 254 lived in informal housing arrangements. For almost 300 of these minors no location was reported.

The Commissioner expressed her concern about the reported poor shelter conditions and the lack of social support that most unaccompanied migrant children experience in Greece as well as about the deprivation of liberty of those detained under the “protective custody” regime. The Commissioner recommended that the Greek authorities immediately stop the detention of unaccompanied migrant children and take further measures to improve the living conditions of unaccompanied minors and ensure their full access to education.

The adoption in 2018 of the law on guardianship is a positive measure. The authorities could be invited to proceed to its prompt implementation and inform the Committee accordingly. Bearing in mind the significant discrepancy between the places available in accommodation facilities suitable for minors and the number of minors living in “protective custody” (police stations) or in reception centres at the borders waiting for a place in a shelter appropriate for their age, the authorities could be invited to address the issue by increasing the accommodation capacity in shelters and apartments suitable for minors and provide them with necessary and adequate welfare and health services.

1. Conditions of detention

According to the CPT 2018 visit report which was published in February 2019,^[14] (https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680946e11#_ftn14) conditions of detention in the pre-departure centres in Amygdaleza and Pyli were good and an open-door-regime was applied at these two centres. On the contrary, conditions of detention remained very poor at the centre in Moria (Lesbos) where repair works were required and persons detained there were locked in their rooms for around 22 hours per day. At the Fylakio (Evros region) pre-departure centre, the cells were overcrowded and material conditions were found to be unacceptable. Furthermore, the CPT considered decent the conditions of detention at Feres and Soufli (Evros region) Police and Border Guard Stations, including the provision of daily outdoor exercise. However, all other police stations visited were not suitable places to hold asylum seekers and irregular migrants and conditions of detention remained totally inadequate for stays exceeding 24 hours. Despite this, according to the CPT report, police stations throughout Greece were used for holding irregular migrants, including women and young children for prolonged periods.

As regards the provision of health-care in the pre-departure centres visited, the CPT found that the available resources were totally inadequate compared to the needs observed. As regards the detention of minors, the CPT noted that unaccompanied children were still held under the so-called “protective custody” for up to several weeks until their transfer to a dedicated open shelter facility, which is mainly due to the totally insufficient number of open shelters available.

The authorities indicated that 571 unaccompanied minors were detained in 2017 and 608 in 2018. According to the above-mentioned 2017 UNHCR recommendations to Greece and the aforementioned CPT report, accompanied and unaccompanied children are in some circumstances detained in closed reception or police facilities, sometimes with adults. In this context it is noted that in a judgment delivered on 28 February 2019 (*H.A. and Others v. Greece*), the Court found, *inter alia*, a violation of Article 3 due to the detention of nine unaccompanied minors in police stations in northern Greece for periods ranging from 21 to 33 days.

In view of the above-mentioned developments, the Greek authorities need to provide information on the measures taken and/or envisaged to: a) improve conditions of detention in all detention facilities where irregular migrants and asylum seekers are detained, including providing adequate health-care services, and b) ensure, as a matter of priority, that alternatives to the detention of minors are found and that, in the exceptional event that they are detained, they are held separately from adults and in suitable conditions corresponding to their vulnerability.

As regards the remedy concerning conditions of detention, as indicated in Memorandum

H/Exec(2014)4-rev (<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805929b7>), the position of the Greek authorities has been that conditions of detention were part of the lawfulness of detention and could be challenged through Article 76 of Law No. 3386/2005. The European Court has held that this provision constitutes an effective remedy, which must be exhausted before lodging a complaint to the European Court (admissibility decision of 27 January 2017, *Paul Josef and Others* (Application No. 76854/11)). Therefore, the Committee could consider closing the monitoring of cases involving this violation.

Financing assured: YES

[1] (https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680946e11#_ftnref1) M.S.S., A.F., A.L.K., A.Y., B.M., Bygylashvili, Chazaryan and Others, Chkhartishvili, de Los Santos and de La Cruz, F.H., H.H., Horshill, Kaja, Tatishvili and Rahimi.

[2] (https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680946e11#_ftnref2) M.S.S., A.L.K., F.H., S.G., Rahimi.

[3] (https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680946e11#_ftnref3) M.S.S., A.E.A., A.Y.

[4] (https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680946e11#_ftnref4) M.S.S. and B.M.

[5] (https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680946e11#_ftnref5) The S.D. and Rahimi groups of cases concern violations of the applicants’ right to liberty on account of their unlawful deprivation of liberty (violations of Article 5 § 1) and absence of judicial review of the lawfulness of their detention (violations of Article 5 § 4).

[6] (https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680946e11#_ftnref6) Information on measures adopted and examined by the Committee between 2011 and 2015 is available in the Notes of the 1288th meeting DH (<http://hudoc.exec.coe.int/eng?i=004-1219>) (CM/Notes/1288/H46-15) (https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Notes/1288/H46-15).

[7] (https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680946e11#_ftnref7) ECRE – AIDA, *Country Report: Greece*, March 2019, https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2018update.pdf (https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2018update.pdf), p.16.

[8] (https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680946e11#_ftnref8) Greek Ombudsman, *Annual Report 2018*, March 2019, <https://www.synigoros.gr/resources/docs/ee2018-p04-119-214-eid-them-enot.pdf> (<https://www.synigoros.gr/resources/docs/ee2018-p04-119-214-eid-them-enot.pdf>), p. 213 (in Greek).

[9] (https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680946e11#_ftnref9) ECRE-AIDA, *idem*.

[10] (https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680946e11#_ftnref10) <https://www.unhcr.org/58d8e8e64.pdf> (<https://www.unhcr.org/58d8e8e64.pdf>).

[11] (https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680946e11#_ftnref11) UNHCR, *Cash Assistance Update*, March 2019, <https://data2.unhcr.org/en/documents/download/68816> (<https://data2.unhcr.org/en/documents/download/68816>).

[12] (https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680946e11#_ftnref12) Report of the Commissioner following her visit to Greece from 25 to 29 June 2018, 6 November 2018.

[13] https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680946e11#_ftnref13) UNCHR Fact Sheet Greece 1-31 March 2019, <https://data2.unhcr.org/en/documents/download/69017> (<https://data2.unhcr.org/en/documents/download/69017>).

[14] (https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680946e11#_ftnref14) Report on the visit to Greece carried out by CPT from 10 to 19 April 2018, 19 February 2019.

Reports submitted for MMS – Rahimi referred to in the analysis

Greek Helsinki Monitor – Refugee Rights Europe https://search.coe.int/cm/pages/result_details.aspx?objectid=090000168094238b
(https://l.facebook.com/l.php?u=https%3A%2F%2Fsearch.coe.int%2Fcm%2Fpages%2Fresult_details.aspx%3Fobjectid%3D090000168094238b%26fbclid%3DIwAR3wQBN4BpLZ3CL1A%26BbTlbgxcbR4PsxVuWJ0FusQB1Px_8q4qIZtCa_A3yzGwwD31lx5aWRBudCN5Z9RbLun3cJiLRkOqGaLpL1dOsGCYDrqRg)

Greek Council for Refugees https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680945e4e
(https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680945e4e&fbclid=IwAR0ApgRMzL4TEOJRprNUZStK0C2fdD2D9eJXZncsleHnQ-pHkEXJUwop0DKs)

United Nations High Commissioner for Refugees https://search.coe.int/cm/pages/result_details.aspx?objectid=090000168094238b
(https://search.coe.int/cm/pages/result_details.aspx?objectid=090000168094238b&fbclid=IwAR2yckiWJ70OWKPX0_Lgq1v0L0RoCKlwpdGaHklMe-r20WoR7uuyb88ZU7I).

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