

GREEK HELSINKI MONITOR (GHM)

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**Communication on the execution of
*Makaratzis group of cases (applications No. 50385/99 etc.)***

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[**Greece**’s communication](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016808e4765) to the **Committee of Ministers** (CM) dated 4 October 2018 on the *Makaratzis group of cases* includes two fundamentally positive points.

First, the beginning of the functioning of the **National Mechanism for the Investigation of Arbitrary Behavior** (hereafter “**Mechanism**”) within the framework of the **Greek Ombudsman**.

Secondly, the reported recommendation of the **Mechanism** to the **Government** that, if no other effective remedy exists for a re-examination of the cases that led to **ECtHR** judgments so that perpetrators are punished proportionately to their actions, *“a written expression of apology by the Chiefs of Staff of the law enforcement agencies involved in each case towards the victims of the incriminating acts so that there is a moral reward for these persons and a commitment of the agencies to disciplinary procedures in accordance with the jurisprudence of the Court in the future.”* **GHM** would like to note that in some cases the violations of Articles 2 and/or 3 **ECHR** resulted exclusively or mainly from failures not of the disciplinary but of the criminal judicial procedures: hence, the future commitment in the apology should also include the criminal judicial procedures, which means that perhaps the apologies should also come from the **Supreme Court** leadership. The **Government** stated that it agrees with the recommendation of the **Mechanism**. In view of that development, **GHM**, that represents the victims in nine of the thirteen cases of the *Makaratzis group*, sincerely hopes that such letters of unequivocal apology will be sent to the victims of all cases before the December meeting of the **CM**, so that the latter welcomes such development. In a society and a polity like the ones in Greece, an apology is unfortunately so rare that such development will have even greater value than perhaps in other states.

Concerning the work of the **Mechanism**, it is first important to stress that it has the necessary hierarchical, institutional and practical independence from the law enforcement agencies whose alleged arbitrary behavior it is called to investigate, unlike the previous similar investigation mechanism **Greece** had legislated (but was never established). This does not mean that, as indicated below, the way the **Mechanism** has functioned to date leaves a lot to desire. Hence, **Greece** has to be asked to improve on the functioning of this **Mechanism** or of any other independent investigation mechanism it may institute in its place. The latter point is made as the **Mechanism** being part of the **Ombudsman** has no authorityto impose penalties on those found responsible for abuse of violence: **Greece** should promptly amend the law so that the **Mechanism** can impose penalties, or –and that will be unfortunate- remove the **Mechanism** from the **Ombudsman** and make it independent so that it can impose penalties.

The first shortcoming of the operation of the **Mechanism** concerns transparency. A visit to the **Greek Ombudsman** [website](https://www.synigoros.gr/?i=equality.en) shows that there is no reference at all to the **Mechanism** unlike references to other thematic divisions of the work of the **Ombudsman** (Human Rights, Social Protection, Quality of Life, State-Citizen Relations, Children's Rights, Equal Treatment), each of which is headed by a **Deputy Ombudsman**. The **Ombudsman**’s search engine produces [only one entry in Greek](https://www.synigoros.gr/?i=human-rights.el.interventionarearights) for the **Mechanism** mentioning the **Mechanism** as one of the competencies of the **Ombudsman**. Moreover, there is one section of the [annual report](https://www.synigoros.gr/resources/ee2017-p00.pdf) for 2017 that deals with the work of the **Mechanism** where the data provided by **Greece** in its recent communication to the **CM** are included, along with some specific cases followed by the **Mechanism**. However, as indicated in the 25 October 2018 [communication to the **CM**](https://redress.org/wp-content/uploads/2008/04/REDRESS-submission-to-the-CoM-on-the-execution-of-Zontul-v-Greece-25-October-2018-Copy.pdf) by **Redress** on the execution of the *Zontul case,* the **Mechanism** did not effectively involve them at all in its actions on the re-examination of their case, did not answer their queries, nor did they bother to inform them of its result that there could not be a reopening because of prescription, a conclusion established on 13 April 2018 by the **Mechanism**.

The second and more important shortcoming of the operation of the **Mechanism** concerns its decision that the new investigation is carried out not by it but, under its supervision, by the same agencies that had carried out the flawed investigations that led to the **ECtHR** judgments against **Greece**, in the *Zontul case*, as well as in most other cases. We refer here to the detailed related [submission](https://redress.org/wp-content/uploads/2008/04/REDRESS-submission-to-the-CoM-on-the-execution-of-Zontul-v-Greece-25-October-2018-Copy.pdf) by **Redress** which recalls, inter alia, that the **ECtHR** [stated](https://www.google.gr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=2ahUKEwierqbZvq7eAhUDIlAKHdtaARIQFjABegQICBAC&url=http%3A%2F%2Fhudoc.echr.coe.int%2Fapp%2Fconversion%2Fpdf%2F%3Flibrary%3DECHR%26id%3D001-59453%26filename%3D001-59453.pdf&usg=AOvVaw34fKZKeIjPfIPyDF0r-j1g) in *Kelly and Others v the United Kingdom* that: *“Even though it also appears that, as required by law, this investigation was supervised by the ICPC, an independent police monitoring authority, this cannot provide a sufficient safeguard where the investigation itself has been for all practical purposes conducted by police officers connected, albeit indirectly, with the operation under investigation.”*

The **CM** is requested to recall that in **GHM**’s two previous submissions, it was mentioned that a dozen ill-treatment allegations (most included in a latter by the **Commissioner for Human Rights** to the **Greek authorities**) were the objects of complaints to the **Ombudsman**,but the plaintiffs never received any information about their investigation. Moreover, in one such communication to the **CM**, **GHM** detailed the case of the investigation of a complaint by **George Kounanis**, at the time a **GHM Sexual Orientation and Gender Identity** activist, victim of alleged homophobic harassment and offending behavior by police officers on 20 December 2015 in Athens’ Constitution Square. As the alleged perpetrators belong to the **General Police Division of Attica** (GADA) any investigation by a **GADA** unit lacks objective impartiality, as per what was mentioned above. In April 2016, a **GADA**investigating unit sought to question **George Kounanis** in the framework of a **PDE**. **GHM** informed them that he will not participate in such investigation for the reasons explained above; yet they insisted, harassing him to testify. At the insistence of the **Ombudsman**, who vouched *“for the impartiality of the investigation”* [[as mentioned in his annual report pages 218-219](https://www.synigoros.gr/resources/ee2017-p00.pdf)] **GHM** finally agreed that **George Kounanis** testify in March 2018 to a **GADA** police officer who lacked objective impartiality as he belonged to the same police division with the alleged perpetrators, instead of being called by the **Ombudsman** to testify to them. For that case too, there is no information as to the result of the investigation by the **Ombudsman**.

In its communication, **Greece** mentions that the **Mechanism** has carried out his own investigations for only 4 out of the 223 cases referred to it since 9 June 1027, while for 136 he is simply supervising the disciplinary investigations carried out by what **GHM** considers as objectively partial investigation bodies usually affiliated to the law enforcement agencies whose members are the objects of those investigations. At the same time, more than one year after the **Mechanism** waslaunched there is not even one (1) case reported with a conclusion leading to the imposition of sanctions. **GHM** is indeed wondering how this is compatible with the fact that according to article 56 paragraph 10 of Law 4443/2016, the **Mechanism** has 10 full-time persons in its jurisdiction, unless of course these persons were never hired or were hired but contribute to the overall work of the **Ombudsman**: again, the absence of transparency does not allow outsiders to fully evaluate the existence of such resources.

Returning to the issue of transparency, **GHM** that represents the victims of nine out of thirteen *Makratazis group of cases* has never received any communication from the **Mechanism**. In **Greece**’s [communication](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016808e4765), there is an implicit explanation. *“For the others cases, the* ***Mechanism*** *confirmed that the reopening of the disciplinary cases could not lead to the punishment of the culprits, since the facts went back to such long dates that the prescription of the related disciplinary offenses were completed well before the entry into force of the new law. As a result, he decided not to seek the investigation of these cases from the competent services.”* **GHM** is stunned by such wrong affirmation that throws doubt on the efficacy of the **Mechanism**.The latter does mention therein that the cases it considers fall under the short prescription are misdemeanors *“in the absence of an internal criminal decision attributing to the facts in question a longer prescription.”* However, **Yannis Papakostas** and **George Sidiropoulos** were tortured with a taser gun in August 2002 and the domestic court consider it a felony case which has a 15-year prescription prolonged by 5 years once the case has been referred to trial. So, on 9 June 2017, the case had not been prescribed; nor was it prescribed in January 2018 when the **ECtHR** judgment was published; nor is it prescribed today; nor will it be prescribed before 2022… The victims expect the **Mechanism** and **Greece** to provide a lawful explanation as to why this case was not reopened or else launch the reopening immediately, especially in view of the fact that [the **ECtHR** objected](file:///C%3A%5CUsers%5CPanayote%5CDownloads%5CJudgment%20Sidiropoulos%20and%20Papakostas%20v.%20Greece%20-%20lenient%20punishment%20of%20police%20officer.pdf) also to *“the leniency of the penalty imposed on police officer C.E. [that] had been manifestly disproportionate in view of the seriousness of the treatment inflicted on Mr Sidiropoulos and Mr Papakostas.”* Such reply is expected promptly so that **CM** could review in December 2018 also the (non-)execution of that judgment in the framework of the new **Mechanism**.

A last invocation of transparency relates to the fact that **Greece** did not provide any replies to the 27 September 2018 **GHM** [communication](http://hudoc.exec.coe.int/ENG?i=DH-DD(2018)985E) to the **CM** that included the **Kounanis** case mentioned above; the five well-documented cases that had triggered a letter of concern by the **Commissioner for Human Rights** to the **Minister of Justice, Transparency and Human Rights** and the **Alternate Minister of Interior and Administrative Reconstruction** on 18 April 2017; another dozen ill-treatment allegations which were the objects of complaints to the **Ombudsman** by **GHM** or the **Advocates Abroad**, but the plaintiffs never received any information about their investigation; the death of an Albanian in a police station; and the unprecedented systematic police violence and illegal deportation of asylum seekers in Evros with more than 400 well-documented cases by several NGOs that includes also ill-treatment and push-backs of 15 persons documented by **CPT**.

**Definition of torture and other legislative changes**

*[We reprint here the excerpt from* ***GHM****’s 27 September 2018 communication that was left unanswered by* ***Greece****].*

In its December 2017 decision, the **CM** finally *“noted the information about the establishment of a committee tasked with examining whether the definition of torture in Greek law is compatible with the definition in Article 1 of the UN Convention against Torture; also noted the information concerning the examination by the authorities of the matter of conversion of custodial sentences imposed for torture to ensure that that perpetrators of torture or ill-treatment are proportionately and effectively punished; invited the authorities to keep the Committee informed about further relevant developments.”* **GHM** would like the **CM** to note that [in the subsequently submitted report](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/GRC/CAT_C_GRC_7_5851_E.pdf) to **UN CAT**,on 19 January 2018, **Greece** reiterated the -timewise very vague- promise to possibly amend the definition of torture, but made no mention of any consideration of other legislative amendments to prevent the conversion of custodial sentences to fines and assure that perpetrators of torture or ill-treatment are proportionately and effectively punished, simply because that committee was not asked to propose such amendments and has not done so on its own initiative.

Ironically, a week later, on 25 January 2018, the **ECtHR** published its [judgment in the *Sidiropoulos-Papakostas* case](http://hudoc.echr.coe.int/fre?i=001-180314)*,* finding **Greece** in violation of Article 3 ECHR in its procedural limb because: *“La Cour estime en conséquence que le système pénal et disciplinaire, tel qu’il a été appliqué en l’espèce, s’est avéré loin d’être rigoureux et ne pouvait engendrer de force dissuasive susceptible d’assurer la prévention efficace d’actes illégaux tels que ceux dénoncés par les requérants. Dans les circonstances particulières de l’affaire, elle parvient ainsi à la conclusion que l’issue des procédures litigieuses contre le policier n’a pas offert un redressement approprié de l’atteinte portée à la valeur consacrée dans l’article 3 de la Convention.”* It is to be recalled that the domestic judgment was the only final judgment in the Greek case-law under the felony dimension of torture (of two youth with a taser gun). Yet, the perpetrator police officer did not spend even one day in prison; he merely paid 5 euros per day for the 5-year custodial sentence imposed and converted to a fine to be paid in 36 monthly installments! A sentence to more than 5 years could not be converted to a fine; the low sentence imposed aimed to avoid his imprisonment!

**GHM** adds herein that an amended definition of torture could have been introduced a long time ago and implemented by the courts. It is however the usual practice of **Greece** to refer to the “Greek calends,” i.e. the new criminal code that may in the distant future be tabled before Parliament, changes that the government is not really willing to bring but wants others, like the **CM**, to believe are imminent. **Greece** is doing the same with its decision to “abolish blasphemy laws” when queried internationally: in the meantime some 300 judgments annually are based at least partly on blasphemy laws. On the contrary, on October 2018, one day after a street musician was arrested for begging, the begging legal provision was summarily drooped from the criminal code, [through an amendment tabled by MPs](http://www.avgi.gr/article/10811/9280214/katargeitai-e-dioxe-tes-epaiteias). The **CM** is urged to explicitly ask **Greece** to introduce the necessary amendments so that torture is properly defined and hence punished accordingly, while penalties imposed for convictions for torture or ill-treatment do not benefit from such attenuating circumstances that may lead to their reduction to lenient sentences.

**Absence of permission to publish the CPT report**

Finally, in view of the fact that **CPT** has been the witness of so much law enforcement violence in its 2018 visit, the **CM** should take into consideration that the non-publication of its report to date because of the absence of permission by **Greece** can only be held as an aggravating circumstance against **Greece**.