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Submission to the European Commission against Racism and Intolerance (ECRI) on Greece

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The coalition of three NGOs, **Greek Helsinki Monitor (GHM)**, **Minority Rights Group-Greece (MRG-G)** and **Coordinated Organizations and Communities for Roma Human Rights in Greece (SOKADRE)**, provide here information on the topics in this year's ECRI's list of questions that are directly related to those NGOs' current activities, led by **GHM** and supported by **MRG-G** and **SOKADRE**. They had previously submitted a similar report in January 2014.

I. EFFECTIVE EQUALITY AND ACCESS TO RIGHTS

a. Equality bodies

1. In the **Ministry of Justice** website there is a webpage <https://moj.gov.gr/ncri/> dedicated to the **National Council against Racism and Intolerance (NCRI)**. The content of the first page is:

“The National Council against Racism and Intolerance was established by Law 4356/2015 (...). It is a collective body providing advice and opinions and comes under the General Secretariat for Human Rights of the Ministry of Justice, Transparency and Human Rights. It was constituted by virtue of decision (...) [of] 10.03.2016 (...) of the Minister of Justice, Transparency and Human Rights. Pursuant to the law, the Council has the power to:

- Design policies to prevent and combat racism and intolerance in order to ensure the protection of persons and groups that become targets due to race, colour, national or ethnic origin, genealogy, social origin, religious or other beliefs, disability, sexual orientation, gender identity or expression;
- Supervise the implementation of the laws against racism and intolerance and the compliance thereof with international and European laws; and
- Promote and coordinate the activities of involved bodies for more effectively addressing the phenomenon and boost cooperation with civic society in such matters.”

2. In the second page there is a list of its 19 members (and their 19 alternates): 8 represent government agencies, 3 represent independent authorities, 3 represent unions (of workers, civil servants and journalists), 3 represent NGOs, 1 UNHCR and 1 the no longer existent **Immigration Council of the City of Athens**. No NGO from, or working on, minorities (**Turks, Macedonians, Roma, religious minorities**) is represented, while 1 NGO member is from the persons with disabilities, 2 alternate NGO members are from the LGBT+ and the second-generation immigrant communities, while 1 representative of the independent authority **National Commission for Human Rights** is also from the LGBT+ community. As it is obvious from the law quoted above, that membership was legislated by the government, and the **NCRI** is in fact dependent on and chaired by the **General Secretariat for Human Rights of the Ministry of Justice, Transparency and Human Rights**. Hence, it is evidently not a “fully independent body, i.e. set up as a separate legal entity outside the executive and legislature.” but in its own words an “*advisory body*” to the government. To date, six years after it was legislated, it has prepared a “**Guide for the rights of hate crime victims**” in Greek, English and French but not in the languages of the main migrant/refugee communities (**Albanian, Bulgarian, Romanian, Urdu, Georgian, Dari, Arab**) and of the ethnic minorities (**Turkish,**

Macedonian, Romani). It has also produced **2 TV Spots on refugees** and a **brochure on “Public Administration in the face of racist crime”** (only in Greek in the website). Finally, in 2020, it published a **“National Action Plan against Racism and Intolerance 2020-2023”** (and an ensuing **“Awareness raising – Publicity”**). Therein (pp. 58, 68-70) the state agencies, the independent authorities and the selected by the state **NGOs** made clear of their limited, in fact discriminatory, definition of *“groups vulnerable to discrimination (asylum seekers, beneficiaries of international protection, immigrants, Roma, people with disabilities and/or chronic condition, LGBTQI+)”*. Turks, Macedonians and religious minorities are not according to them groups vulnerable to discrimination, which is the reason why they were excluded from the government-dependent **NCRI**.

3. It is also claimed therein that *“the Directorate of State Security of the Hellenic Police Headquarters is responsible for maintaining statistics on incidents of racist violence, collecting, studying and evaluating them as well as submitting the annual report on cases of racist violence dealt by the relevant Services.”* However, such statistical data are not available on line unlike all other detailed statistical data maintained by Hellenic Police and available on line. **GHM** moreover finds offending the false claim that follows: *“During the period from 01.01.2019 to 31.12.2019, a total of two hundred and eighty two (282) incidents with probable racist characteristics were recorded throughout the Greek territory by the competent Services of the Hellenic Police. Between the years 2018 and 2019 there is an escalation in the number of cases recorded, from 226 to 282. The increase in recording cannot be considered as an exacerbation of the phenomenon of racist violence, on the contrary, it can be interpreted as an improvement of the efficiency of the relevant police services, because of the continuous educational activities and training in dealing with racism as well as the direct and constant control - supervised by the Directorate of State Security / Hellenic Police Headquarters and as a restoration of the victims’ of racist violence confidence in the Police as well as the easier reporting procedure. In this sense, the determination of the victim to report the incident is also crucial. At the same time, the data include orders from prosecutors to conduct preliminary examinations concerning, among other things, incidents that, although they took place in previous years, the competent public prosecutors, ex officio or on the basis of relevant complaints, ordered their examination during the previous year. The increase in reporting is therefore due to the improved ability of prosecutors and police authorities to identify and detect racist characteristics in the crimes reported to them, reflecting more accurately the true extent of the problem.”*

4. The numbers of cases recorded cited for 2018 and 2019, 226 and 282, are not the result of *“an improvement of the efficiency of the relevant police services, because of the continuous educational activities and training in dealing with racism as well as the direct and constant control - supervised by the Directorate of State Security / Hellenic Police Headquarters and as a restoration of the victims’ of racist violence confidence in the Police as well as the easier reporting procedure.”* They merely reflect the systematic filing of complaints for racist crimes by **GHM** in the framework of its **“Racist Crimes Watch”** that was in fact launched following related recommendations by **ECRI** and the **UN HRCttee** in 2015 (to be presented below). In 2018 and 2019, Prosecutors around the country were investigating (usually through police agencies but also through magistrates) 512 complaints filed by **GHM**, all published on the specialized <https://racistcrimeswatch.wordpress.com> website (and another 250 in 2020 and 2021). Greece should be challenged to produce disaggregated statistics as to the source of the cases it claims to have recorded, whether they were filed by victims alone, by victims though **NGOs**, by **NGOs** alone, or ex officio by **Prosecutors** or **Police**: in a state with an efficient rule of law the ex officio cases should have made up the large majority of cases.. Most important **Greece** should be asked to produce disaggregated statistics on the outcome (archiving or referral to trial with verdict and sentencing).

II. HATE SPEECH AND HATE-MOTIVATED VIOLENCE

a. Legislation

5. In its **“Report on Greece”** published on 24 February 2015, **ECRI** noted that *“[anti-racism] Law 927/1979... does not address the recommendation contained in §§ 18 b of ECRI’s General Policy Recommendation (GPR) No. 7 on national legislation to combat racism and racial discrimination ..., referring to insults and defamation, or 18 f, concerning the public dissemination, public distribution or*

production or storage of racist material” and “recommended that the offences that are still missing (see ... above) be included in the law.”

6. In its **“Concluding observations on the second periodic report of Greece”** published on 5 November 2015, the **UN Human Rights Committee (HRCttee)** *“was concerned that the new [anti-racism] Law 4285/2014 [amending Law 927/1979] and the provisions introduced in the Penal Code may hinder investigations and prosecutions of racist hate crimes involving public insults and defamation against groups”* concluding that *“the State party should review its legislation with a view to ensuring that all advocacy of national, racial or religious hatred is prohibited by law.”*

7. In its **“Concluding observations on the twentieth to twenty-second periodic reports of Greece”** published on 26 August 2016, the **UN Committee on the Elimination of Racial Discrimination (CERD)** was *“remained concerned that the new antiracism law No. 4285/2014 [amending Law 927/1979] is not fully compliant with the requirements of article 4 of the Convention, particularly as it 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. ... Recalling its general recommendations No. 7 (1985) and No. 15 (1993) relating to the implementation of article 4 of the Convention, the Committee recommends the State party to bring its anti-racism legal framework in full compliance with the requirements of article 4 of the Convention, and ensure its strict application.”*

8. The **Greek State** has opted not to implement this triple recommendation to criminalize again hate speech as it was a criminal offence before the 2014 amendments. This led most prosecutors, including the specialize prosecutors on racist crimes in Athens, to archive hundreds of complaints on hate speech filed by **GHM** in the framework of its **“Racist Crimes Watch”** project, although other prosecutors have pressed charges for hate speech. In fact, some of the prosecutors who archived the complaints reasoned their decisions with the claim that those expressing hate speech were merely *“expressing their personal opinions,”* irrespective of the fact that *“Nazism and racism are not matters of opinion, they are crimes,”* (**“Speech of European Parliament President David Sassoli marking the 75th anniversary of the liberation of Auschwitz”** on 29 January 2020) and that *“racism [does] not constitute an opinion but an aggression, and that every time racism was allowed to express itself publicly, the public order was immediately and severely threatened”* (**“Robert Faurisson v. France, Views of the HRCttee”** on 8 November 1996).

9. Of greater concern for a state that claims to uphold the rule of law is the fact that in a few cases where two complaints were filed for the same hate speech incident, one prosecutor archived it because the perpetrator was expressing his personal opinion, while another preferred referred it to trial in which the perpetrator was convicted: this indicates the absence of legal certainty, one of the fundamental principles of the rule of law.

10. Of equally grave concern is the fact that several convictions for hate speech at first instance were overturned on appeal, which also indicates the absence of legal certainty.

11. **ECRI** erroneously reported in 2015 that then Article 81(A) and now Article 82(A) of the Criminal Code on *“crimes with racist characteristics”* provides that for those convicted *“the sentences cannot be suspended.”* On the contrary, **ECRI** correctly reported that Article *“renders more severe the lowest sentences that can be imposed for hate motivated offences.”*

12. However, there are two dramatic differences between anti-racism Law 927/79 and Article 82(A) on *“crimes with racist characteristics.”* Article 5 of Law 927/79 provides that crimes defined with that law are prosecuted ex officio (that is without the requirement of a complaint by the victim) and the plaintiff (i.e. the victim) does not pay the usual fee for standing as “civil claimant” (this since 2019 has been transformed to standing “in defense of the charges”) which would allow him to be a party in the proceedings. None of these two provisions apply when the crime is prosecuted only with Article 82(A). First, unless the crime itself is prosecutable ex officio (felonies and some misdemeanors), the victim must file a complaint (within three months after the act) exposing him/her to potential risks from which the ex officio prosecution of Law 927/79 protects him/her. Secondly, s/he has to pay the court fee to stand “in defense of the charges” –

currently 40 euros- which many victims cannot afford. **GHM** has advocated that the ex officio and the no fee provisions are also extended to the crimes prosecuted under Article 82(A) of the Criminal Code but it seems to be alone in that advocacy in Greece (as it seems to be alone in filing complaints for racist crimes): **ECRI** is requested to make such recommendations.

b. Implementation

13. The following **ECRI** introductory observation **“Report on Greece”** published on 24 February 2015 remains valid six years later: *“ECRI, before analysing the different manifestations of hate speech in Greece today, wishes to stress the absence of any systematic prevention efforts. It also wishes to stress the lack of any effective responses: relevant criminal laws are not always applied and the situation is made worse by the non-condemnation of hate speech and the absence of self-regulatory measures amongst political parties or the media.”* [emphasis added].

14. Moreover it is ironic that **ECRI** will meet this year two ministers whose –in **ECRI**’s own words– *“dehumanizing remarks”* **ECRI** highlighted in its 2015 report: **Nikos Dendias, Minister of Public Order** in August 2012 (*“an invasion of these dimensions [by irregular migrants]... is a bomb on the foundations of the society and the state”*) and in October 2013 (*“congratulated police for dissolving ‘[Roma] ghettos of lawlessness where abduction of children occurred”* [false claim as there was no abduction]) and **Foreign Minister** today and **Sofia Voultepsi, MP** in 2014 [*“during a live television broadcast she called refugees unarmed invaders, weapons in the hands of the Turks”*] and **Deputy Minister for Integration in the Ministry for Migration and Asylum** today.

15. In its **“Concluding observations on the twentieth to twenty-second periodic reports of Greece”** published on 26 August 2016, the **UN Committee on the Elimination of Racial Discrimination (CERD)** *“remained concerned at the still low invocation and application of anti-racism legal provisions and the low rate of convictions in courts”* and *“recommended that the State party intensify its measures to strengthen the application of anti-racism provisions.”*

16. In its October 2019 **Action report concerning the Sakir group of cases** to the **Council of Europe Committee of Ministers, Greece** provided data on complaints and prosecution of hate crimes that confirmed **UN CERD**’s concern on *“the still low invocation and application of anti-racism legal provisions and the low rate of convictions in courts.”* In that data, **Greece** reported for 2015-2017 368 complaints for alleged racist crimes, 127 criminal prosecutions, 19 convictions (but not details on sentences imposed) and 4 acquittals. It also reported an additional 421 complaints for 2018-2019 but failed to give any information on what happened to them. It also claimed that in mid-2019 there were 220 court briefs with the PB (racist violence) signalization.

17. In assessing the information submitted by **Greece**, **the CM’s Secretariat** correctly wrote: *“The data provided by the authorities indicate a continuous rise in the number of reported incidents of racially motivated violence between 2015 and 2018. Compared to the total of 615 incidents, the data provided by the authorities reveal that the criminal charges (127 in total) and especially the convictions (19 in total) that took place in 2015-2017 are low. The two conviction judgments of 2017 and 2019 described above (status of execution) are significant. However, this does not allow an overall assessment of the progress made, since no similar, qualitative information has been provided on the other 17 convictions in the period 2015-2017, and no information has been provided on the years 2018-2019. A more in-depth, qualitative analysis is necessary, in order to assess the effectiveness of the measures adopted to date.”*

18. **GHM** has been the plaintiff in the vast majority of those cases, hence it alone is responsible for the “explosion” in the figures since 2017. **GHM** will provide an initial analysis here, with a detailed analysis to follow later on. In the period from 2015 through mid-October 2019, **GHM** has filed some 800 complaints for over 1,000 alleged racist crimes (as some complaints include several incidents – especially the ones related to “unlawful deportations or pushbacks”). **The vast majority of these complaints are still at the**

hands of prosecutors; some led to archiving and a few to referrals to trials. GHM is collecting a large number of related decisions to be able to document these trends.

19. We provide here indicative information on decisions to archive **GHM** complaints on alleged racist behavior issued by **Greece's** supposedly most important anti-racism prosecutor accessed this week:

- **A 2018 article on criminality in Greece by a then Appeals Court Prosecutor and now Deputy Prosecutor at the Court of Cassation** where he stated inter alia that *“illegal immigrants and refugees constitute a population group with a high rate of serious criminality ... Greece, with the armies of hordes of destitute aliens, tends to become not only a dump of human souls, but, worst of all, a dangerous arena of multifaceted and upgraded crime.”* With **Decision 2907/5-9-2019** the **Athens Prosecutor for Racist Crimes (who is also the National Point of Contact of OSCE/ODIHR on Racist Crimes for Greece and has recently been promoted to Deputy Appeals Court Prosecutor)** archived the **GHM** complaint as not racist arguing that the article is an analysis of the weaknesses of the criminal system in Greece, adding that the entry to Greece without proper procedures of the tens of thousands of foreigners is a crime of the competence of the first instance courts, even though not one prosecutor in such courts ever pressed such charges.
- **A 2018 post by a leader of a marginal “liberal” party** claiming that *“being a Muslim is a penal crime.”* With **Decision 2615/5-8-2019**, the same prosecutor archived the **GHM** complaint as not racist but arguing that the post was a critical review of the principles of “Mahometanism” (term not used by the Muslims or the state in Greece...), with references to dogmas of that religion making its followers act in ways that constitute penal crimes like threat and constitution of criminal organization...
- **A 2018 speech by the Mayor of Aspropyrgos**, a **Greater Athens** suburb with a significant Roma population, who spoke of *“the uncontrolled group of Roma that has been active in the region for several years cannot come to their senses... the daily behavior of this particular group, characterized by others as vulnerable, but whose racism against us we endure, while we are called racists, has continued to operate in our region for over 20 years.”* With **Decision 169/19-8-2019**, the same prosecutor archived the **GHM** complaint as not racist arguing that the **Mayor** did not refer to the Roma as a whole but to those Roma who engage in criminal activity and in fact repeatedly over the years, a claim that **GHM** states is at least unfounded recalling that Greece has been convicted twice for anti-Roma behavior (including school segregation) in that particular city led by its then Mayor.

20. In all three cases, the persons against whom the complaints were submitted were NOT asked to provide explanations as it usually happens with complaints: the supposedly specialized Athens Prosecutor for Racist Crimes took upon herself to argue on their behalf so as to archive the complaints.

21. More generally, Athens Prosecutors for Racist Crimes are prosecutors who are assigned that duty in addition to their other duties for one year and change year after year. During the one-year term of the aforementioned prosecutor (2018-2019), she archived several cases (including the three mentioned above) but did not refer anyone to trial. On the contrary, her predecessor (2017-2018) referred to trial in 2019 and 2020 the following nine cases:

- **An extreme right newspaper for a front page article** with the title *“Transvestite Parliament – Beat all ‘sissies’ – this abortion of a law [on civil unions] was voted by 148 ‘perverts.’”* [On 27 October 2020, the publisher was convicted by an **Athens Single-Judge Misdemeanors’ Court** to the maximum sentence of 3 years in prison and 20,000 euros as fine, suspended for three years. The appeal trial is scheduled for 27 October 2021.]
- **A former Foreign Minister** who **said in a television interview** that *“The only good Turk is a dead Turk. I believe it because I haven't found a good Turk. They lack elementary knowledge. The Turk does not have a sense of the law.”* [On 22 June 2020, he was acquitted]

- A at the time **member of the Political Committee of New Democracy** who wrote in a post that “*being gay, bi, and trans is a perversion and unnatural.*” [Trial postponed several times, now scheduled for 17 March 2022]
- The **leader of a marginal left party** who wrote a **conspiracy theory article** stating inter alia that “[*arriving*] *illegal immigrants are suspects for terrorist acts*” calling for a “*general rebellion.*” [Trial postponed several times, now scheduled for 11 March 2022]
- An **extreme right blog** which published a **hoax** alleging that “*Video shock: Pakistani fanatics declare jihad in Greece – small children are initiated in the use of weapons*” – the video is from a school play in the celebration of a Pakistani national day. [Trial postponed several times, now scheduled for 29 October 2021]
- A at the time **Deputy Minister of Education** who said in a speech before Parliament inter alia that “*with patience and perseverance Jews secured the ownership of the Holocaust so as to claim their vindication.*” [Trial cancelled as there it is in the competence of the Parliament where it is in theory pending]
- An **extreme right columnist** and an **extreme right blog** who published in front pages **an article** with the title “*Parliament a Jewish Synagogue!!!*” when a commemorative plaque for inter-war Greek Jewish MPs victims of the Holocaust was inaugurated in Parliament. [On 10 January 2020, they were acquitted]
- A **notorious author and self-professed Nazi** for **the manifesto of a new movement he founded** where he asked for “*the deportation of all Muslim minority members who identify as Turks.*” [On 13 January 2020, he was acquitted]
- A front page article in **Golden Dawn’s youth publication** with **extreme anti-immigrant references and a call for violent action against them.** [Trial postponed several times, now scheduled for 11 November 2021]

22. Her successor, the **Athens Prosecutor for Racist Crimes for 2019-2020**, engaged in 2020 in massive archiving of complaints (the authors of racist speech were merely “*expressing their personal opinions,*”) that will be detailed in a subsequent report. At the same time, she asked the **Head Athens Prosecutor** to file a complaint against **Panayote Dimitras** for intentionally filing false complaints (see below), an indication that she did not want the submission of complaints for hate speech.

23. **ECRI** has included in its “**Report on Greece**” published on 15 September 2009 the most notorious acquittal on appeal in 2009 (subsequently confirmed by the **Supreme Court** in 2010) after a conviction at first instance in 2007 of the aforementioned **notorious author and self-professed Nazi** for his book “**Jews: the Whole Truth.**” There had been several such acquittals on appeal of persons convicted at first instance until Law 927/79 was amended in 2014 (when hate speech was effectively decriminalized), with the result that only one (1) conviction had been upheld on appeal: **on 18 September 2008**, an extreme right weekly was convicted to a suspended sentence of 5 months in prison (on the basis of the no longer existing old Article 2 of Law 927/79 on hate speech) for the phrase in an article on 12 March 2006 “*thank God there are not even 1,500 Jews left in Thessaloniki*” for which **GHM** had filed a complaint and was joined by the **Central Board of Jewish Communities** as civil claimants. For the sake of completion, one more conviction with the pre-2014 version of the anti-racism law was upheld on appeal after 2014: on 11 May 2018, **an appeals court confirmed the first instance conviction** on 16 September 2014 of a **Golden Dawn** candidate in the 2012 elections to a suspended prison sentence of 1 year for public statements “*We are ready to open the ovens. We will turn them [Pakistani immigrants] into soap but we may get a rash... We will make lamps from their skin.... etc.*”

24. In recent years, there were two notorious acquittals on appeal of **Golden Dawn**'s two main leaders. In both cases, the charges based on the anti-racism law were dropped because repeated legal provisions aiming at alleviating the burden of the courts through the quashing of charges for crimes with "small social demerit" (that is with a maximum prison sentence up to one year) had led to an "amnesty" to all hate speech crimes (punishable with Article 2 of Law 927/79 carrying a maximum sentence of one year) committed before 1 September 2013 (latest amendment Article 8 Law 4198/2013), including for these two cases. Hence, the prosecutors had referred them to trial charging them with the usual incitement to commit a crime.

25. **Golden Dawn** founder **Nikos Michaloliakos** was acquitted on appeal on 18 January 2019 when an **Athens Three-Member Misdemeanors Court** overturned his conviction by an **Athens Single-Member Misdemeanors Court** on 9 February 2018 to a suspended 8-month prison sentence for incitement to commit crimes through a speech on 3 September 2011 in which, referring to journalists, publishers and his opponents, he said *"let them be afraid... if necessary we will get our hands dirty... we will break their heads I say it and do convey that message... if there is justice he too will be turned into soap, he [the publisher of the First Issue Viktoras Restis] and his Jewish children."* The case originated in a **GHM** complaint. What followed is telling. **GHM** on 28 January 2019 formally asked the **Supreme Court Prosecutor** to file for cassation, which a **Deputy Supreme Court Prosecutor** in fact did on 27 February 2019. However, on 23 April 2019, with **Judgment 850/2019**, the **Supreme Court** rejected the motion for cassation arguing inter alia that *"this Court has a specific power under the Constitution and the law, which does not include making a judgment on whether it is appropriate or permissible by the rules of art of rhetoric speech born in Greece [sic] that the leader of a political party uses the phrases in question in the context of his public speech in this case."*

26. **Golden Dawn's Parliamentary Spokesperson until 2019 Ilias Kasidiaris** was acquitted on appeal on 3 December 2018 when an **Athens Three-Member Misdemeanors Court** overturned his conviction by an **Athens Single-Member Misdemeanors Court** on 28 September 2017 to a suspended 6-month prison sentence for incitement to commit a crime through a speech on 15 May 2011 in the heavily Roma inhabited **Athens suburb of Aspropyrgos** where he had said inter alia for the Roma *"get rid of the human garbage who has been loaded on you, who are robbing you, who are killing you, who are committing crimes."* The case originated in a **GHM** complaint. A formal motion to the **Prosecutor of the Supreme Court** to file for cassation of that judgment was rejected as groundless.

27. Perhaps the most characteristic case of conflicting Prosecutor decisions on the same hate speech cases concerns the leader of an extreme right wing party, **Artemis Sorras**. On 9 March 2020, he was convicted by an **Athens Single-Member Misdemeanors Court** to a suspended prison sentence of 2 years and a 15,000 euros fine for two separate cases, joined in one trial, of ableism and antisemitism. The trial on appeal is scheduled for 9 November 2021. That trial had originated in a complaint by a disability rights group and a special order of the **Prosecutor of the Supreme Court**. At the same time, **GHM** had filed a complaint for the same racist speeches of **Artemis Sorras** which a prosecutor had archived it!

28. Moreover, an **Athens Prosecutor for Racist Crimes** has in some cases decided to refer to trial for hate speech parliamentarians (including **Golden Dawn** ones) and sought the lifting of their immunity. The **Parliament** agreed and lifted the immunity. However, when the cases came back from **Parliament**, they were assigned to other prosecutors who ... archived them! Details will be included in a subsequent **GHM** report.

29. **ECRI** is requested to take into consideration the **Racist Violence Recording Network** communication to the **Committee of Ministers** on the execution of the **Sakir – Gjikondi group of cases** dated 18 December 2020, wherein it is documented that *"the actual impact of Article 81A on pending criminal cases was quite limited:"*

"In other high-profile cases of racist crime, Greek courts acknowledged the racist motive of the crime, but avoided using the specific articles of the Criminal Code, either in its old form (Article 79 para.3d) or in the new one (Article 81A, now Article 82A). Indicatively: In the case of the attempted

murder, arson, robbery, etc. against Pakistani citizens R. Al., M. Ak., etc. (crime dates: 10 September 2012 and 22 September 2012, defendant: K. K.), although the Athens Mixed Juror Court (court decision: 325, 326/28-3-2014) ruled that the defendant had expressed “his desire that all the Pakistanis should be ousted”, “they smell”, and, as he explicitly told a witness, that “we killed him because he was a Pakistani”, it did not make use of the clause provided for in Article 79 para. 3(d). Similarly, the 2nd Athens' Mixed Juror Court of Appeal (471/9-11-2017) although it repeated in its description the racist motivation of the crimes, did not make use of the 81A clause. In the case of the dangerous bodily injury of Pakistani citizens L. Al., M. Iq. and M. H. in Ierapetra, Crete (crime date: 13 February 2013, defendants: P. G., D. Ar., etc.), although the Three Member Misdemeanor Court of Lasithi ruled (court decision 1079/13-11-2014) that the perpetrators were “motivated by xenophobic and racist feelings”, it did not make use of the 81A clause. In the case of the dangerous bodily injury of Afghani citizens Al. R. and R. M. (crime date: 16 November 2011, defendants: Sk. Th., L. I., M. G.), although both the 1st One-Member Misdemeanor Court of Athens (74344/10-7-2017, expedited process) and the 8th Three-Member Misdemeanor Court of Athens (3181/26-9-2018) described comprehensively the attack suffered by the victims after being asked by a group of perpetrators unknown to them about their “country of origin”, it did not make use of the 81A clause. Similarly, in most recent cases especially on the islands of north Aegean, the possible racist motivation of the attacks was not investigated in practice. Local police authorities seem to have disregarded the obligations of internal circular 7100-25-14δ/7-11/2014 and Public prosecutors routinely don't seem to include the hate crime element, despite the modus operandi of the perpetrators, meaning elements showing that the perpetrators may have acted in an extreme, xenophobic and organised manner. In addition, especially on the islands of Samos and Lesbos, critical challenges are observed regarding the investigation of racist crimes: in the case of Bangladeshi citizen E. Ud. in Lesbos (baton attack without provocation outside supermarket Lidl near Kara Tepe refugee camp), initially, the defendant has been prosecuted only for dangerous bodily harm without racist motivation. In a second stage, the prosecution was upgraded to the offense of the grave bodily harm, but still the racist motivation was not included. The court was postponed indefinitely due to the COVID19 restriction measures. With the new form of the article, racist motivation should be added in the early stage of criminal proceedings, by the local competent public prosecutor in order to become an issue during the ensuing court hearing.”

30. ECRI is urged to recommend to the Government that related legislation and its implementation are amended so as to also come in line with the very recent development of the ECtHR case-law in the Case of Budinova and Chaprazov v. Bulgaria (Application no. 12567/13) with third-party contributions inter alia by GHM:

“48. Greek Helsinki Monitor (...) pointed out that while the Court’s case-law under Article 10 of the Convention with respect to hate speech was quite well developed, the same could not be said of its case-law regarding the same point under Article 8 of the Convention. The case at hand was thus an excellent opportunity to bring the Court’s case-law into line with emerging trends and provide the victims of hate speech proper protection. (...)

1. Based on the case-law summarised in paragraphs **Σφάλμα! Το αρχείο προέλευσης της αναφοράς δεν βρέθηκε.** to **Σφάλμα! Το αρχείο προέλευσης της αναφοράς δεν βρέθηκε.** above, the Court finds that in cases such as the present one, where the allegation is that a public statement about a social or ethnic group has affected the “private life” of its members within the meaning of Article 8 of the Convention, the relevant factors for deciding whether that is indeed so include, but are not necessarily limited to, (a) the characteristics of the group (for instance its size, its degree of homogeneity, its particular vulnerability or history of stigmatisation, and its position *vis-à-vis* society as a whole), (b) the precise content of the negative statements regarding the group (in particular, the degree to which they could convey a negative stereotype about the group as a whole, and the specific content of that stereotype), and (c) the form and context in which the statements were made, their reach (which may depend on where and how they have been made), the position and status of their author, and the extent to which they could be considered to have affected a core aspect of the group’s

identity and dignity. It cannot be said that one of those factors invariably takes precedence; it is the interplay of all of them that leads to the ultimate conclusion on whether the “certain level” required under *Aksu* (cited above, § 58) and the “threshold of severity” required under *Denisov* (cited above, §§ 112-14) has been reached, and on whether Article 8 is thus applicable. The overall context of each case – in particular the social and political climate prevalent at the time when the statements were made – may also be an important consideration.”

III. Racist torture and other forms of ill-treatment during unlawful deportations or pushbacks of foreigners

31. A specific category of racist crimes is the worst ever in Greece systematic practice of torture and other forms of ill-treatment during unlawful deportations or pushbacks of foreigners. **ECRI is urged to include them in the hate crimes topic or consider them as an additional new topic.** GHM has collected related information and filed several complaints, none of which has led to a referral to trial. The same happened with the complaints filed after **Human Rights Watch** and **Amnesty International** published related reports based mostly on their own fieldwork.

32. On 23 June 2021, **Amnesty International** (AI) published a report with the telling title **Greece: Violence, lies and pushbacks** *“based on conversations with 16 people, who experienced 21 pushbacks. It primarily focussing pushbacks from the Evros border between June and December 2020. Based on their testimonies, these unlawful operations are estimated to have affected around 1000 people.”* The accompanying press release has an equally telling title **“Greece: Pushbacks and violence against refugees and migrants are de facto border policy”**. Therein AI states that *“Greek border forces are violently and illegally detaining groups of refugees and migrants before summarily returning them to Turkey, in contravention of their human rights obligations under EU and international law, new research from Amnesty International has revealed. The report, Greece: Violence, lies and pushbacks, documents how the Greek authorities are conducting illegal pushbacks at land and sea. It focuses primarily on unlawful operations in the Evros region, at the land border between Greece and Turkey. In February and March 2020, Greece violently pushed back refugees and migrants in response to Turkey’s unilateral opening of the land borders. By documenting incidents that occurred in the aftermath of those events, from June to December 2020, this new research demonstrates that human rights violations at Greece’s borders continue and have become an entrenched practice.”*

33. On the same day, 23 June 2021, **Human Rights Watch** (HRW) published the report **Frontex Failing to Protect People at EU Borders**. Therein HRW states: *“For more than a decade, UNHCR, the IOM, the Council of Europe Commissioner for Human Rights, the Committee for the Prevention of Torture, nongovernmental groups, and media outlets have reported the unlawful return, including through violent pushbacks, of groups and individuals from Greece to Turkey by Greek law enforcement officers or unidentified masked men who appear to be working in tandem with border enforcement officials. Since 2020 organizations including Human Rights Watch have documented multiple incidents in which Greek Coast Guard personnel, sometimes accompanied by armed masked men, abandoned migrants at sea, violently transferring people from Greek islands or from other boats to motorless rafts, and leaving them adrift near Turkish territorial waters. Nongovernmental organizations and the media have also reported in 2020 on persistent allegations that Greek border forces carried out pushbacks in some cases with violence through the Evros land border with Turkey. Human Rights Watch has documented such situations in 2008, 2018, and in March and July 2020.”*

34. One year earlier, on 3 April 2020, AI published the report **Caught in a political game: Asylum-seekers and migrants on the Greece/Turkey border pay the price for Europe’s failures**. Therein AI stated: *“Testimonies by asylum-seekers to Amnesty International provided a consistent picture of how Greek border forces implemented government policy to repel asylum seekers instead of taking their asylum claims. Asylum-seekers who spoke to us and other NGOs reported widespread practices included beatings by border guards with truncheons, periods of detention at sites in the border area ranging from hours to several days, and returning groups of asylum-seekers to Turkey in boats across the Evros river. Amnesty*

*International has previously reported on very similar abuses by Greek border forces implementing pushbacks in previous years. Amnesty International spoke to 23 men and women from Afghanistan, Jordan, Iraq, Morocco, Pakistan and Syria, all of whom had attempted to cross into Greece irregularly across the Evros river during the first week of March. They explained that they had either been apprehended directly after crossing the river or after walking through Greece for hours or in some cases up to four days. All of the 16 men whom Amnesty International spoke with, bar one man who was already injured at the time that he was apprehended, said that they had been beaten, most often with truncheons, with blows to the body or head but also with kicks and punches. According to the testimonies, beatings occurred at the time people were apprehended while being made to get into minibuses, and/or when they were held at detention sites in the border area. Some of the people we spoke to had obvious trouble walking and bruises on their bodies or head injuries. We spoke to a Syrian man after he had been pushed back from attempting to cross at the Pazarkule/Kastanies official border crossing point who was only able to walk with the assistance of a friend after he had been struck, he stated, by a Greek soldier using his gun. Asylum-seekers told Amnesty International that they were beaten by border forces wearing either military uniform, police uniform or by individuals in plain clothes working in cooperation with uniformed border forces. A health professional working in Turkey's border region told us that asylum-seekers commonly requested medical assistance following alleged beatings by Greek border guards, and that the numbers of people reporting such injuries had risen to an average of around 50 per day in that location during the first week of March, up from an average of six or seven per day in previous months. Fifteen people seeking safety, including those with young children, told Amnesty International that they were held in Greek detention facilities in the border area after being apprehended. None of those we spoke with had been informed by the Greek authorities of the reason for their detention, given an opportunity to seek asylum or provided access to lawyers during their detention. Detention periods described to Amnesty International ranged from several hours to several days. All 15 that we spoke with recounted that some or all their possessions, including phones, in some cases passports or other forms of identification, had been taken and not returned by the detaining Greek authorities. Some men, sometimes boys, had had their clothes or shoes taken from them. Asylum-seekers told Amnesty International that border forces also took their money, in some cases thousands of dollars – all the money with which they and their families had hoped to start a new life in Europe. Interviewees told Amnesty International that they and their families were driven by Greek security forces in minibuses to the Evros river border and taken across to the Turkish side in groups of 10-15 people. Some reported remaining for several hours without clothes, shoes or phone (for communication) in cold temperatures, posing a further risk to their health before they could receive assistance. Greek border forces used tear gas extensively against groups of asylum-seekers and migrants, including families with young children attempting to cross the border. On 4 March Amnesty International observed Greek border guards using tear gas constantly over the three hours that our delegation monitored the Pazarkule border gate. During this time several people returned to the Turkish side, visibly injured and complaining of being hit by tear gas canisters fired by Greek border forces. Other reports were received of use of projectiles and stun grenades that Amnesty International could not verify. A health professional working in Turkey's border region confirmed that some individuals had received medical treatment for injuries consistent with use of plastic bullets. Asylum-seekers and migrants frequently reported to Amnesty International and other NGOs that Greek border forces used live ammunition against them, both firing into the air and in their direction, as they attempted to cross the border. We were shown a bullet allegedly fired by a Greek soldier at a group of asylum-seekers as they attempted to cross the Evros river border south of the city of Edirne; allegedly, it narrowly missed them as it lodged in a tree. The Turkish authorities claim that three people were killed as the result of use of force by Greek border forces and that 164 had been injured by 5 March. A larger number of shootings have been alleged by asylum-seekers and migrants but remain undocumented. One well-documented case is that of **Muhammad Gulzari**, a 43-year-old Pakistani man who attempted to cross into Greece at the Pazarkule/Kastanies border crossing point on 4 March. According to an official statement by the Edirne Governor's office he was shot in the chest and pronounced dead in hospital on the same day, while five others were injured with gunshot wounds in the same incident. Amnesty International witnessed ambulances rushing from the scene at the time of the incident and spoke to a Pakistani man who was uninjured but covered in blood and said that he helped carry his friend from the scene after he had been shot. Amnesty International has received a copy of Muhammed Gülzari's autopsy report which records the fact that a 5mm 5,56 nub bullet was removed from his body. An investigation into the death by Turkish prosecutors*

continues. Another well-documented case is that of **Muhammad al-Arab**, a 22-year-old Syrian man, who also died in the area. The research group Forensic Architecture documented his fatal shooting on 2 March after he crossed into Greek territory.”

35. A few weeks before that, on 17 March 2020, **HRW** published the report **Greece: Violence Against Asylum Seekers at Border - Detained, Assaulted, Stripped, Summarily Deported**. Therein HRW stated: “Greek security forces and unidentified armed men at the Greece-Turkey land border have detained, assaulted, sexually assaulted, robbed, and stripped asylum seekers and migrants, then forced them back to Turkey ... the Greek government reinforced its border with police, army, and special forces, which fired teargas and *reportedly* rubber bullets at people who approached the Pazarkule crossing. Two asylum seekers who spoke to Human Rights Watch said that Greek security forces also used live fire to push people back. One of these people, interviewed in a hospital where he was getting treatment, said he was shot in the leg. *According to Turkish officials*, Greek security forces have shot and killed at least three asylum seekers or migrants, but Human Rights Watch has not verified this number. All those interviewed said that within hours after they crossed in boats or waded through the river, armed men wearing various law enforcement uniforms or in civilian clothes, including all in black with balaclavas, intercepted everyone in their group. All said the men detained them in official or informal detention centers, or on the roadside, and stole their money, mobile phones, and bags before summarily pushing them back to Turkey. Seventeen described how the men assaulted them and others, including women and children, through electric shocks, beating with wooden or metal rods, prolonged beating of the soles of feet, punching, kicking, and stomping. Human Rights Watch also interviewed five Turkish residents of border villages who described how between February 28 and March 6 they had helped care for large groups of people who returned injured and almost naked from Greece saying that Greek security forces had beaten, robbed, stripped, and deported them. In one case, an interviewee described Greek security forces sexually assaulting his wife when they crossed the border. “They [Greek security forces] tried to search my wife and touched her breasts,” said a Syrian man who was travelling with his wife and children. “Then they tried to take off her headscarf and her trousers. When I tried to stop them, they beat me really badly with their fists, feet, a heavy plastic rod, and a metal stick. They hit my 2-year-old daughter with a heavy plastic stick on the head so that she still has a bruise.” Human Rights Watch saw a bruise underneath the girl’s hair. In most cases, the interviewees, said that armed men stripped them down to their underwear, including some women, and forced them across the Evros river back to Turkey. Many said that they were passed between various groups, suggesting coordination between police or soldiers and the unidentified men... Some of the interviewees said they tried multiple times to enter Greece and were each time forcibly returned. Taken together, the interviewees described 38 deportation incidents involving almost 4,000 people, although some of these could be double counts... Their accounts confirm patterns that Human Rights Watch documented in similar situations in 2008 and 2018. In mid-2018, the *Council of Europe’s Committee for the Prevention of Torture* said it had received “several consistent and credible allegations of pushbacks by boat from Greece to Turkey at the Evros River border by masked Greek police and border guards or (para-) military commandos.” And in November 2018, the Council of Europe’s *human rights commissioner called on Greece to investigate allegations* of Greek abuses at Turkey’s border, in light of information pointing to “an established practice.””

36. The publication of such reports should have triggered ex officio prompt, thorough, unbiased and effective criminal and disciplinary investigations. The fact that this did not happen is the best proof that Greek authorities intentionally sanction (in the meaning of authorize) such unlawful behavior that amounts to torture or ill-treatment instead of intentionally sanctioning (in the meaning of punishing) it. Greek Helsinki Monitor took action which confirmed that, as it too was sanctioned (in the meaning of punished)!

37. On 18 March 2020, **GHM** filed a **Complaint report to Prosecutor of Court of Cassation for illegal deportations, torture and attempted rape in Evros** with the 17 March 2020 fully documented report and some related tweets by **Human Rights Watch** describing a series of illegal deportations, acts of torture and an attempted rape by agents of the Greek authorities in Evros.

38. On 8 May 2020, **GHM** filed a second **Complaint report to Prosecutor of Court of Cassation for illegal deportations, torture and shooting deaths of migrants/refugees in Evros** with the 3 April 2020 fully documented report (with dozens of testimonies from victims) of **Amnesty International** describing a series of illegal deportations, acts of torture and deaths of migrants/ refugees shot by Greek authorities in **Evros**. Of particular importance, were two confirmed deaths from deadly shootings by Greek forces in **Kastanies, Evros**, of 43-year-old Pakistani **Muhammed Gulzari** on 4 March 2020 (with eyewitness testimony from **Amnesty International** and a video of the investigation teams of **Forensic Architecture, Bellingcat and Lighthouse Reports**, which reconstructs the events of that day and is reported today by **Efimerida Syntakton** on its [website](#)) and of 22-year-old Syrian **Mohammad Arab** on 2 March 2020 (audiovisual documentation from **Forensic Architecture** available on the [website](#)). Also the disappearance of **Fatma** from Syria on 29 February 29 2020, south of **Edirne**, after shootings were fired against her, her husband and their six children.

39. In both complaints, **GHM** requested immediate, thorough and impartial investigations of these allegations of crimes, with an investigation of the racist motive, and added that, in order to be impartial, they cannot be done by the prosecutorial and police authorities of Evros Prefecture, as until then they have given the impression that they were deprived of the necessary objective impartiality since hundreds of previous complaints have been “investigated” and archived, that is, covered up, something that has exposed **Greece** internationally, as well as before the relevant human rights bodies of the **UN** and the **Council of Europe**.

40. The **Prosecutor of the Court of Cassation** ignored the request to exempt the prosecutorial and police authorities of Evros Prefecture, sent both complaints to the **Appeals Prosecutor for Thrace** who in turn assigned them to the Evros local **Prosecutors of Orestiada and Alexandroupoli**.

41. The **Prosecutor of Alexandroupoli** soon after it received the two complaints archived them. At the time of this writing **GHM** has not yet had access to the reasoning of the two archiving decisions.

42. The **Prosecutor of Orestiada** summoned **GHM’s Panayote Dimitras** to testify in the framework of both investigations. For the first investigation, related to the **HRW** report, **Panayote Dimitras** submitted on [10 June 2020 a memo](#) with the **HRW** report in Greek and a detailed documented description of the two shooting deaths of asylum seekers in the Evros border, also on behalf of the relatives of the victims represented by the **Istanbul Bar Association (IBA)** lawyers and **Greek Helsinki Monitor**. A request was made that the case file is sent to the **Greek Consulate in Istanbul** so that the **IBA** lawyers and the relatives of the victims testify and provide all the evidence they have gathered from forensic and other authorities in Turkey. It was suggested that **HRW** and **AI** representatives are also called to testify, and it was mentioned that these cases were already the object of applications to the **ECtHR**. For the second investigation, related to the **AI** report, **Panayote Dimitras** submitted on 19 April 2021 the same 10 June 2020 memo with a cover letter recalling that he had testified on 10 June 2020 on the same matters, asking that the two case files be merged and again that to send the case file to the **Greek Consulate in Istanbul**, adding the authorization of a relative of the shooting death victim **Muhammad al-Arab** to **GHM** in the framework of an application submitted to the **ECtHR**.

43. Subsequently, **GHM** was informed that the **Prosecutor of Orestiada** had archived on 20 November 2020 the case file related to the 18 March 2020 **GHM** complaint with **HRW** report. In the archiving decision, all allegations mentioned by **GHM** in the complaint are listed but the source of these allegations is deliberately falsely claimed to be “*reproduction of publications of the Turkish authorities and messages in social media... reproduction of Turkish publications of questionable credibility*” that cannot be confirmed, while their alleged perpetrators cannot be found. It is noteworthy that in the archiving decision the prosecutor makes a reference to a sworn statement by an **Orestiada Security Police** officer who supposedly stated that all police operations are by the book and that his **Security Police** has never received any related complaints. However, in the case file, there is a statement by that officer in which he stated, on 13 November 2020, that he was assigned to investigate the allegations in the **Human Rights Watch** report (and not some Turkish authorities’ publications...) only to conclude that all actions were by the book. Nevertheless, the officer’s sworn statement shatters the credibility of the Prosecutor’s decision with its two

false allegations therein that the **GHM** complaint was based on Turkish (state and other) sources -the officer correctly stated that the source was **HRW**- and that **Hellenic Police** had never received any complaints – the officer did investigate several complaints received by the **Hellenic Police**. **Most importantly though it is revealing that the Human Rights Watch allegations about pushbacks were investigated by an officer of the police division which is directly implicated in the alleged unlawful and violent pushbacks: hence he was investigating allegations about the operations he and/or his colleagues were carrying out!**

44. **GHM concludes that it is evident that, for the very detailed allegations in the HRW report, both investigating authorities, of the Prosecutor and of the Hellenic Police, intentionally failed to carry out proper investigations. There is a large number of such “cover-up investigations” for a series of allegations of abuses by law enforcement agents in the Evros border area, many on file with GHM and available upon request.**

45. **ECRI** is requested to take into account that **GHM** is aware of two applications to the **ECtHR** for pushbacks in Evros in February 2020 which have already been communicated to Greece, *L.A. and Others against Greece* (a Syrian mother with two children) and *A.A. against Greece* (a Syrian unaccompanied minor) ([applications nos. 12237/20 and 12736/20](#)) as **GHM** is cooperating with **Istanbul Bar Association** lawyers on these and other applications. Another application, *Hasani v. Greece*, on a pushback of an Iranian in 2019, was also communicated ([application no. 38555/19](#)). These applications concern multiple Article 3 violations and therein are described practices of pushbacks similar to the ones described in the **HRW** and the **AI** reports, as well as in several complaints filed by **GHM**.

46. Nevertheless, the most compelling conclusive evidence of an ongoing practice of illegal and violent pushbacks since at least 2018 is offered in the [CPT report on Greece](#) published on 19 November 2020 and copied here in full:

The practice of pushbacks across the Turkish border and at sea

53. In the report on the 2018 visit, the CPT addressed the issue of pushback operations from Greece to Turkey via boat across the Evros River border. In the course of the 2020 visit, the CPT’s delegation again received consistent and credible allegations obtained through individual interviews in different places of detention of foreign nationals being detained, having their belongings confiscated and subsequently being pushed back across the Evros River border to Turkey. The allegations mainly referred to incidents that had taken place prior to March 2020 but within the previous six months. The persons who alleged that they had been pushed back from Greece to Turkey had subsequently re-entered Greek territory and had been apprehended and detained by the Greek police. By letter of 16 April 2020, the Hellenic Police assured the Committee that all police officers operating in the Evros region act in accordance with the law and in compliance with human rights standards. The *modus operandi* of the police along the border is summarised along the same lines as set out in the response of the Greek authorities to the report on the 2018 visit.

54. The persons who alleged to have been pushed back in the period prior to March 2020 described having been held for short periods in various detention facilities situated not far from the Evros River. Further, the persons alleged that they had had their personal belongings, including mobile phone and in some instances footwear, confiscated by their guards who had escorted them to the river and supervised the pushbacks (these persons all wore balaclavas which hid their faces and were dressed either in military-style fatigues or police uniforms).

55. A few of the persons met during the March 2020 visit alleged that they had initially been detained with other migrants, including families, who had subsequently been sent back across the river to Turkey. These persons described having been held together with many other people for a number of hours in a facility, the layout of which corresponded to that of the Poros detention facility visited by the delegation. Indeed, the Greek authorities confirmed to the CPT’s delegation

that this facility had indeed been used for holding migrants for several hours before taking them to Feres or Soufli Police and Border Guard Stations. However, as the Hellenic Police did not keep any record of the persons who had been held at the Poros detention facility, it was not possible to trace the location to which these persons had been transferred. Records at Feres and Soufli did not state whether they had been held at Poros or not. The CPT is not convinced by the explanation provided to its delegation that the details of all persons taken to Poros were recorded upon entry to the facility and that at the end of each day, the form containing the information on these persons was simply thrown away. Moreover, persons held at the Poros facility claimed that while their personal belongings were taken away (bags, mobiles), they did not have to provide any individual personal information at that stage.

56. A telling manifestation of the human impact of this pushback practice is represented by a girl of two and a half years old who, along with her older brother of 21 years, was separated from her mother and father and five other siblings. The whole family had crossed into Greece on 29 February 2020 and had been apprehended in a field and taken to the quasi-official Poros centre. There were so many migrants present that some of them had had to remain in the courtyard sitting on the concrete floor in the rain. The officers, dressed in camouflage uniforms and with balaclavas over their faces, allegedly confiscated the mobile phones of the migrants as well as their personal bags and kicked anyone who did not obey their orders to remain seated. After around six or seven hours, the camouflaged officers are said to have loaded most of the migrants, including the mother and four of her children, onto about six vehicles and transported them to the Evros River, where they were put into wooden boats and taken across to the Turkish side. A day later, the father and another brother were pushed back across the river in a similar manner. All the belongings of this family, including a backpack with clothes and identity and property documents as well as money, were allegedly taken by the officers. The brother and his little sister were taken to Feres Police and Border Guard Station and two days later to the Filakio RIC. They were served with deportation papers to Afghanistan. The anguish of the mother who was forcibly separated from her child in such a manner cannot be put into words. And yet, this is but one tragic illustration of the pushback practice.
57. The evidence supporting the case that migrants are pushed back across the Evros River to Turkey after having been detained for a number of hours, without benefiting from any of the fundamental guarantees, by Greek officers operating in an official capacity is credible. The onus is now upon the Greek authorities to ensure that this practice ends once and for all, and that any officers (police or military) operating outside of official command structures are held to account and sanctioned accordingly. Moreover, the CPT reiterates that every instance of detention of a person must be fully and accurately recorded so that there can be no arbitrary detention.
- 58. The CPT reiterates its recommendation that the Greek authorities act to prevent any form of pushbacks taking place across the Evros River border by law enforcement officials and military personnel. All foreign nationals arriving at the border or present in the territory of Greece who wish to request international protection should be effectively protected against the risk of *refoulement*, including possible chain *refoulement*. In particular, they should have effective access to an asylum procedure which involves an individual assessment of the risk of ill-treatment, on the basis of an objective and independent analysis of the human rights situation in the countries concerned. To this end, clear instructions should be given to Greek police and border guards to ensure that irregular migrants who have entered Greek territory must be individually identified and registered, and placed in a position to effectively make use of the legal remedies against their forced return. The CPT would like to be informed of the actions being taken by the Greek authorities to ensure that such pushbacks no longer take place.**
59. The CPT's delegation also received a number of consistent and credible allegations concerning acts by the Greek Coast Guard to prevent boats carrying migrants from reaching any Greek

island. For example, in early March 2020, the Greek Coast Guard allegedly stopped a boat with almost 50 persons on board and removed the fuel leaving the migrants and the boat to float about aimlessly. It was apparently only some 15 hours later that the Coast Guard returned to tow the boat to Lesbos island. Moreover, since the delegation's visit, credible allegations have emerged of migrants having reached the island of Samos from Turkey by boat before being re-embarked on a dinghy by Greek officers and towed by a Greek Coast Guard vessel back to Turkish waters, where they were allegedly left adrift overnight until recovered by the Turkish Coast Guard on the afternoon of the following day. As the European Court of Human Rights has repeatedly made clear, whenever the State through its agents operating inside or outside its territory exercises control and authority over an individual, and thus jurisdiction, the State is under an obligation to secure to that individual the rights and freedoms of the European Convention on Human Rights. **The CPT would appreciate the comments of the Greek authorities on these matters. It also wishes to be informed of the official operating instructions provided to the Greek Coast Guard whenever they encounter a boat carrying migrants.**

47. CPT in its report introduced also the allegations of pushback operations in the Aegean Sea, calling them "credible:" *"The CPT's delegation also received a number of consistent and credible allegations concerning acts by the Greek Coast Guard to prevent boats carrying migrants from reaching any Greek island."* **GHM** has collected such allegations for the period since March 2020 and submitted complaint reports to **Prosecutors** as well as the **Ombudsman**. Many months to more than one year later, several of these complaints were archived in ways that indicated a determination not to carry out independent and effective investigations but to cover up the illegal practices and secure impunity to the alleged perpetrators.

48. The most indicative such cover up concerns a **Complaint to the Prosecutor of the Supreme Court dated 27 August 2020 on 36 pushback operations of 1389+ foreigners in March – July 2020**. The complaint was assigned to the **Prosecutor of the Naval Court of Piraeus**. The latter joined it with a **separate complaint GHM had filed on 3 March 2020 on the first of these 36 pushbacks** that included a video broadcasted by **BBC** and **Euronews**. **BBC** described the video: *"Greek coast guards fire into sea near migrant boat: Footage has emerged of Greek coast guards firing into the sea near a migrant dingy, and shoving it around, as they attempted to force it back towards Turkey."* Nevertheless, on 14 October 2020 the **Prosecutor of the Naval Court of Piraeus** archived the whole case file. In the archiving decision the **Prosecutor** made clear he had based his conclusions on a statement by a **Hellenic Coast Guard Chief of Operations** (examined as witness and not as suspect) that explained why the actions of the **Hellenic Coast Guard** boat on 2 March 2020 including the fire shots were legal and aimed at deterring the foreigners which in the text were implicitly described as enemies... As for the long comprehensive complaint with 36 pushback operations of 1389+ foreigners in March – July 2020, it was also archived as *"repetitive of the claims in the complaint of 3 March 2020"* [!!!] without any investigation!

49. **GHM** has also similar archiving decisions for other complaints on individual incidents (non)investigated by the **Prosecutor of the Naval Court of Piraeus** available upon demand. In one, the eyewitnesses of an attempted pushback, foreigners who in the end of the day were towed by the **Hellenic Coast Guard** to Lesbos and were therefore available to testify and the **NGO lawyer Marianna Tzeferakou**, known to the **ECtHR** from her successful applications, who had alerted the **Hellenic Coast Guard** about the dinghy in peril (with a pregnant woman about to deliver) on 13 June 2020 were never asked to testify so that the **Prosecutor** could base its deliberately false conclusions on a **Hellenic Coast Guard** letter (not even a statement) to him sent almost four months later...

50. In view of this denial of justice, on 4 May 2020 **GHM** submitted a **Criminal complaint to Supreme Court Prosecutor calling for the investigation of 147 cases of illegal, violent, racist pushback or deportation of 7000+ foreigners in March-December 2020**. Therein, **GHM** stated *"We request the exclusion of the Prosecutor's Office of the Athens Naval Court from the judicial investigation due to the denial of justice and bias with which he handled the previous "Criminal complaint for serial illegal pushbacks of foreigners March – July 2020" that we submitted to you on 27 August 2020."* The **Supreme Court Prosecutor** accepted the request and sent that complaint to 16 **Prosecutors of First Instance** for

criminal investigations: **First Instance Prosecutors of Rhodes, Naxos, Syros, Samos, Chios, Mytilene, Thessaloniki, Alexandroupoli, Orestiada, Drama, Thesprotia, Kos, Chania, Rethymno, Heraklio and Lasithi.**

51. Moreover, on 20 July 2021, **GHM** submitted an additional **Criminal complaint to Supreme Court Prosecutor calling for the investigation of 55 cases of illegal, violent, racist pushback or deportation of ca. 3000 foreigners in January-May 2021** asking again the exclusion of the **Prosecutor's Office of the Athens Naval Court** from the judicial investigation. However, this time, the **Supreme Court Prosecutor** merely sent it to the **Head of the Athens First Instance Prosecutor** who immediately forwarded it to the **Prosecutor of the Naval Court of Piraeus!** It is indicative that the **Prosecutor of the Naval Court of Piraeus** is not competent to investigate allegations against police officers and soldiers included in the complaint...

52. Therefore, there are now well-documented allegations about 200+ deportations/pushbacks in a fifteen-month period at the hands of the Prosecutors as well as the Greek Ombudsman involving ca. 10,000 victims. GHM welcomes the 8 July 2021 public call by the EU Commissioner Ylva Johansson that *“there is a need for thorough and transparent investigations by the Greek authorities into such allegations”* or else *“the Commission will not hesitate to make use of all its powers under the Treaties, including where necessary the launch of infringement procedures.”*

53. However, there is little hope that any of these investigations will be effective as **Prosecutors** tend to side with the **Government** and contribute to cover-up and impunity. This is why in its report **“Greek NHRI sheds light on the situation of migrants at its borders and challenges of NGOs assisting refugees”**, published on 15 July 2021, the **Greek National Commission for Human Rights** stated that *“The GNCHR has recommended the Greek authorities to establish an official independent mechanism for recording and monitoring informal pushbacks complaints and to effectively investigate allegations of pushbacks and disproportionate use of force in order to hold those responsible accountable and protect victims.”* **GHM** would like to note though that the **GNHCR** misreported therein that *“only two pushbacks cases were investigated in 2020 by the Hellenic Police and four cases by the Greek Prosecutor, but no case of pushback has ever resulted in a trial before a court,”* whereas it is evident from the documentation detailed here that there were more than 40 pushback allegations investigated...

IV. Harassment and Persecution of Human Rights Defenders

54. Another topic that **ECRI** is urged to include in its evaluation of Greece is the widespread harassment and persecution of human rights defenders, already referred to above.

55. The **Prosecutor of the Naval Court of Piraeus** not only does not properly investigate complaints but he also claims that they are evidently and intentionally false aiming at discrediting the **Hellenic Coast Guard**. For two of them, he has fined **Panayote Dimitras** with the costs of a first instance trial of 200 euros imposed on the person convicted in that trial, without even summoning **Panayote Dimitras** to explain himself about the claim that he was aware that his allegations were false: in essence he convicted **Panayote Dimitras** “in absentia” evidently aiming with such chilling decisions to dissuade **Panayote Dimitras** to continue his work.

56. This is not a unique case but part of a pattern to harass and persecute human rights defenders that evidently expose the widespread illegalities of the **Government**. The following is telling:



Greece: Ongoing crackdown on migrants' rights defenders as pushbacks of people on the move continue

Statement

Geneva, 28 January 2021 - The World Organisation Against Torture (OMCT) is deeply concerned about the criminalisation of human rights defenders and humanitarian organisations providing assistance and defending the rights of migrants and asylum seekers on Lesbos island and urges the Greek authorities to immediately put an end to the outlawing of solidarity with people on the move.

On September 28, 2020, the Lesbos Police Directorate issued a **press release** indicating that 33 human rights defenders from four international NGOs working on migrants' rights in Lesbos were to face charges including "espionage", "violation of state secrets", "creation of and participation in a criminal organisation" and "violations of the migration law", for allegedly "having provided confidential information to refugee flows from Turkey via closed groups and internet applications under the guise of humanitarian action". The press release further pointed out that the Greek intelligence service as well as the Greek counter-terrorism unit of the Hellenic police were involved in the investigations. Moreover, the text stated that the NGO members did carry out those illegal activities, thereby violating their presumption of innocence.

The OMCT underlines that the names of the 33 human rights defenders were not mentioned in the press release. Furthermore, at the time of publication of this statement, none of the individuals concerned have received any official communication regarding the ongoing investigation against them.

Nonetheless, the criminal file and the names of the allegedly investigated NGOs were leaked to several Greek media outlets following the publication of the Lesbos Police's press release. This triggered a smear campaign against the NGOs Mare Liberium, Sea Watch and Josoor International Solidarity, as well as against the project Alarm Phone and the association FFM e.V, whose names appeared in the leaked information. Moreover, several newspapers **inaccurately reported** that the 33 human rights defenders had been arrested.

"The persecution of rights defenders and organisations on charges of "facilitation of irregular migration" and even "espionage" attacks the essence of the right to defend rights in Greece", said Gerald Staberock, OMCT Secretary General. "Our intelligence and counter-terrorism services must protect our security and rights. When 'they protect us from defending rights' it is not only cynical but outright dangerous for democracy".

Greek authorities publicly stigmatise the work of those defending migrants' rights by equating their work with human smuggling. In a press conference held on December 8, 2020, the Greek Minister for Migration and Asylum, Mr. Notis Mitarachi, **accused** the NGO Aegean Boat Report of facilitating the illegal crossing of migrants from Turkey into Greece. The unfounded accusations levelled against the NGO were **categorically rejected** by Aegean Boat Report. In an **interview** with the newspaper The Times in December 2020, Mr. Mitarachi further claimed that Al-Kahir Foundation and Aegean Boat Report are funding human traffickers to help migrants reach Greece.

Non-governmental organisations that work on migrants' rights play an **essential role** to defend the human rights of people on the move in a context of systematic violations of international human rights standards by the Greek authorities, including illegal **pushbacks and collective expulsions of migrants**, as recently **denounced** by the UN Committee Against Torture (UNCAT).

The Greek state has consistently failed to submit the information concerning the alleged intimidation and harassment of human rights defenders and humanitarian workers and volunteers that was **required** by the UNCAT.

We strongly condemn this crackdown on civil society actors in Greece and call on the authorities to put an end to the ongoing criminalisation of NGOs and volunteers working in the country in the field of humanitarian assistance to migrants and asylum-seekers, and to guarantee in all circumstances that they are able to carry out their legitimate human rights and humanitarian activities without fear of reprisals.

57. **ECRI** is requested to take into account that almost a year later none of these 33 **NGO** activists has been summoned in the framework of the related investigation, which was probably meant as a chilling effect and a threat on the activists. On the contrary, on 19 July 2021, the same authorities made a similar announcement alleging felony crimes committed by 4 **NGO** activists of 4 **NGOs** and 6 asylum seekers from Syria and Afghanistan. [The alleged crimes were:](#)

“In terms of their methodology of action (modus operandi), the stakeholders, acting in a humanitarian manner, through closed groups and applications on the internet, but also by using a specific application of telephone connections, provided migration flows from Turkey, but also received from information and confidential information relating to:

- the gathering places on the Turkish coast and the time of start of specific migration flows to the islands of the Northeast Aegean (Lesvos, Chios and Samos),
- the coordinates (longitude and latitude) of specific migration flows and their direction at a specific time and place,
- the number of foreign nationals aboard third country boats, as well as the prevailing situation during the voyage of the boats, their final destination (sunbathing area),
- photographic material from third-country nationals aboard boats both during the voyage of the boats and after landing in areas of the islands of the Northeast Aegean,
- details of the operational work of the vessels of the Hellenic Coast Guard,
- the locations of military installations and photographs of military vehicles,
- details of the accommodation structures of foreigners in the islands of the Northeast Aegean.

In addition, after using this information, they provided instructions to foreign nationals of third countries upon arrival in Greek territory, concerning their transition either to inaccessible areas of the islands to hide or to areas and structures of health support, systematically complicating the work of competent Greek authorities.”

58. In effect, such public police actions aim at creating a chilling effect on human rights activists and humanitarian workers and at criminalizing solidarity and human rights work. What police authorities described in these allegations of felony crimes is in effect the work carried out by civil society that has recorded or sometimes prevented scores of unlawful pushbacks or deportations, which are the real felony crimes.

59. On 3 September 2019, in its conclusions and recommendations on Greece, [UN CAT](#) stated:

Human rights defenders and humanitarian workers and volunteers

48. The Committee is seriously concerned about consistent reports of intimidation and harassment of human rights defenders and humanitarian workers and volunteers. In that connection, it regrets that only scant information has been provided by the State party regarding the cases raised by the Committee, including the prosecution and later acquittal of three Spanish firefighters, Manuel

Blanco, José Enrique Rodríguez and Julio Latorre, and two Danish volunteers, Salam Aldin and Mohammed el-Abbassi, who were accused of trying to help migrants enter Greece via the island of Lesbos, and the arrest and pending trial of foreign NGO volunteers Sarah Mardini and Sean Biner on people-smuggling, espionage and money-laundering charges (art. 16).

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

(a) **Ensure that human rights defenders and humanitarian workers and volunteers are protected against threats and intimidation, and to allow them the necessary latitude to carry out their activities;**

(b) **Ensure that human rights defenders and humanitarian workers and volunteers are not prosecuted for engaging in aid work, including by participating in maritime search-and-rescue activities. The State party should refrain from detaining and persecuting humanitarian workers and volunteers as a means of intimidating them or discouraging them from delivering vital emergency assistance to refugees and migrants.**

60. One year later, Greece failed to properly address, in the follow-up report, the related UN CAT concerns which led the latter to give Greece a double failing grade:

**Human rights defenders and humanitarian workers and volunteers
(para. 49 (a) of the Committee's concluding observations)**

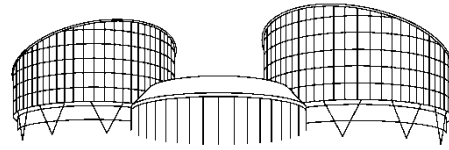
The Committee also regrets that the information submitted by the State party in its follow-up replies does not address the specific concerns mentioned in its concluding observations, mainly regarding the alleged intimidation and harassment of human rights defenders and humanitarian workers and volunteers (1/D).

[Meaning of grades 1/D: The information is vague and incomplete and/or fails to address the recommendations (unsatisfactory - 1). The information provided is insufficient to assess implementation (the State party has not provided enough information on the measures taken to implement the recommendation - D)]

61. On 1 April 2021, **Panayote Dimitras** was summoned as a suspect for having allegedly filed “*false complaints*” and was given access to the related court brief that had been launched on 2 April 2020. The charge specified that the alleged false complaint was the complaints **Panayote Dimitras** had filed as **GHM Spokesperson** that had been archived by the **Athens First Instance Prosecutor** with the approval of the **Athens Appeals Prosecutor**. The **Prosecutor** had also ordered an investigation into the lawfulness of the operation of **GHM** and the existence of similar organizations in the other European countries. It should be mentioned that in the court brief there was not even one (1) archiving decision, let alone all of them for whose “false” character **Panayote Dimitras** was accused as suspect. Moreover, according to **Article 580 of the Code of Criminal Procedure**, when a complaint is archived and the Prosecutor believes it was an intentionally false complaint, s/he fines the plaintiff with the court expenses: as explained above, this is what the **Prosecutor of the Naval Court** did in two such cases, when he fined **Panayote Dimitras** with the costs of a first instance trial of 200 euros imposed on the person convicted in that trial. In none of the archiving decisions by the **Athens Prosecutor of First Instance** such a fine was imposed; on the contrary, in almost all of them it was explicitly said that there was no ground to impose such fines! **This fact makes very obvious that the complaint against Panayote Dimitras and GHM was launched by the special Athens Prosecutor for Racist Crimes just to intimidate and deter the NGO that has submitted some 80% of the complaints for racist crimes since 2014, with ca. 40 of those cases having been referred to trials while another ca. 60 having led to the pressing of charges against unknown perpetrators. That special Athens Prosecutor for Racist Crimes has also archived hundreds of complaints with the justification that racist speech was an expression of personal opinions and/or the alleged racist acts could not at present incite racial hatred.**

V. Emblematic cases of Roma: torture and ensuing impunity now before the ECtHR and attempted eviction stopped by several interim measure by the ECtHR and the UN HRCtee

62. On 18 March 2021 the **ECtHR** communicated to Greece the following application filed by **GHM**:



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Published on 6 April 2021

FIRST SECTION

Application no. 44758/20

[Athanasios PANAYOTOPOULOS and Others against Greece](#)

lodged on 30 September 2020

communicated on 18 March 2021

SUBJECT MATTER OF THE CASE

The applicants, three Greek nationals belonging to the Roma ethnic group, allege that they were subjected to acts of police brutality amounting to ill-treatment and/or torture during their arrest, transfer to and detention at the police station. They also complain that the competent authorities failed to carry out an adequate investigation into the incident and that the impugned events were motivated by racial prejudice.

QUESTIONS TO THE PARTIES

1. Were the applicants subjected to treatment contrary to Article 3 of the Convention as a result of the police officers' acts that took place during the applicants' arrest, transfer to and detention at the police station on 8 October 2016?
2. Given the applicants' Roma origin, did the treatment complained of demonstrate discrimination on the part of the State agents and was, in consequence, in violation of Article 14 taken in conjunction with Article 3 of the Convention?
3. Did the authorities conduct an effective and prompt investigation into the applicants' allegations, as required under the procedural head of Article 3 of the Convention? Have the authorities failed in their duty to investigate possible racist motives for the acts complained of, in violation of Article 14 taken in conjunction with Article 3 in its procedural aspect?
4. The respondent Government are requested to submit the documents relating to the administrative investigation.

63. As it is mentioned in the application, despite repeated requests for the forensic examination of the victims all the way up to government human rights officials, **Greece** denied the victims such crucial evidence, obviously as it later emerged because it wanted to secure the impunity of the alleged perpetrators of police violence. Procedurally also, when the investigating judge closed the ridiculous one-month ceremonial criminal 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 also refused access to the file, again in violation of the law. Both requests were made so that an application to the **ECtHR** could be filed already then, but the refusals made that impossible. The file was however assigned to a different **Prosecutor**. Seven months later, on 25 September 2019, she tabled a motion to the **Indictment Chamber**. In her description of the facts, she included unsubstantiated fake claims, with the most important one being that the disciplinary investigation had been completed by that time (whereas it is still on-going!) and made no reference to the hospitalization of the first applicant who had suffered a heart attack and serious injuries on his genitals. So, the police officers carried out their duties correctly. The injuries could have been provoked when the two cars crashed (!!! no one had made that claim) or when they jumped off the bridge (the fake story). The fake facts allowed her to conclude that not only there should not be a referral to trial, but the three Roma should be fined 360 euros for having intentionally made false claims! On 20 December 2019 the Indictment Chamber agreed. As for the **Ombudsman, in its quality as National Mechanism for the Investigation of Arbitrary Incidents**, as late as 20 October 2020 (exactly four years after the alleged torture!), he informed **GHM** that the sworn administrative investigation (EDE) was not completed and hence access to the related file for the purpose of the application to the **ECtHR** was refused, including access to its own report dated 14 October 2020: given that he wrote therein that once concluded he will inform **GHM** and as no such information has been provided until mid-July 2021 (almost 5 years after the facts), it can be concluded that the EDE is still going on! The **Committee of Ministers** is requested to note that the Roma and their representative **GHM** had not been involved at all in the disciplinary investigation (and were intentionally denied access to its documents as said above, as there is an intention even by the **Ombudsman** not to involve the victims in its investigation) and all the information provided here became available to them when they received copies of the criminal case file in early 2020.

64. **GHM** calls this case emblematic because before reaching the **ECtHR** it was discussed with **Greece** by the **UN Human Rights Committee**, by the **UN Committee against Torture** and by the **Council of Europe Commissioner for Human Rights** which however apparently incited **Greece** rather than seriously, promptly and effectively investigating the well-documented allegations, punish with heavy fines the (poor) victims because, when called to testify in the framework of a complaint filed not by them but by **GHM**, they repeated again what they had said from the very beginning and were treated as liars! The relevant excerpts follow (**Greece** did not reply to **UN CAT**).

UN Human Rights Committee
124th session
8 October–2 November 2018

**Report on follow-up to the concluding observations
of the Human Rights Committee**

(...) Greek Helsinki Monitor describes the cases of three Roma, Thanasis Panayotopoulos, Yannis Bekos and Vasilis Loukas (one of whom was hospitalized as a result), who claim to have been the victims of torture by police officers. While several complaints submitted through the mechanisms in place were left unanswered, the individuals refused to testify in an internal investigation by local police that was subordinated to the division that they claim tortured them. (...)

[C]: The Committee regrets 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. It therefore requires information on:

(a) the measures taken to punish, as well as the sentences imposed on, law enforcement officials for misconduct, ill-treatment or disproportionate use of force, after the adoption of the Committee's concluding observations; (b) the progress of investigations made into the cases of Thanasis

Panayotopoulos, Yannis Bekos, Vasilis Loukas and similar ones; (...) The Committee reiterates its recommendation.

[GHM note: the grade “C” UN HRCttee gave to Greece on that means “peply/action not satisfactory: a response has been received, but action taken or information provided by the State party is not relevant or does not implement the recommendation.”]



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



Ref: CommHR/NM/sf 020-2017

Mr Stavros KONTONIS
Minister of Justice, Transparency
and Human Rights of Greece

Mr Nikolaos TOSKAS
Alternate Minister of Interior
and Administrative Reconstruction of Greece

Strasbourg, 18 April 2017

“In addition, I received information about the alleged severe beating, amounting to torture, of three Greek nationals of Roma origin who claimed that in October 2016 they were subjected to the above treatment by officers of the Western Attica Police Division, in the course of an interrogation. Reportedly one of the victims was transferred to hospital having suffered a heart attack and serious injuries on his genitals. I understand that a complaint has been lodged with the Athens Special Prosecutor on Racist Violence.”

Response:



**HELLENIC REPUBLIC
MINISTRY OF INTERIOR
THE ALTERNATE MINISTER**

*Athens, 15 May, 2017
Ref.: 8304-A*

For the two (2) cases of alleged ill-treatment of aliens by police officers on the island of Samos in February and March 2017, as well as for the complaint lodged by the Greek Helsinki Monitor concerning ill-treatment to three (3) Greek nationals of Roma origin in October 2016, two (2) separate Preliminary Administrative Inquiries have been ordered and are still ongoing, in order to find out whether offences were committed by the police officers involved and, if so, to take relevant disciplinary action against them.

[Source](#)

**UN Committee against Torture
Sixty-seventh session**

Summary record of the 1764th meeting*

Held at the Palais des Nations, Geneva, on Thursday, 25 July 2019, at 3 p.m.

Chair: Mr. Modvig

**Consideration of reports submitted by States parties under article 19 of the Convention
(continued)**

Seventh periodic report of Greece (continued)

“50. **Mr. Hani** said he would appreciate information on the criteria used to calculate the capacity of the tents used at reception centres, bearing in mind reports that tents designed to hold 12 persons were sometimes shared by as many as 100. He also wished to know whether any investigations had been carried out into the excessive use of mechanical restraints in psychiatric institutions. He would be grateful for further information on the frequent and widespread use of ill-treatment by police to obtain confessions; in that regard he wished to know why the case concerning alleged ill-treatment in 2016 of three young Roma – Thanasis Panayotopoulos, Yannis Bekos and Vasilis Loukas – had reportedly been closed, despite the fact that the matter had been raised by the Council of Europe Commissioner for Human Rights in a letter of concern to the Greek Government on 18 April 2017.”

65. The other emblematic case for **Roma rights** concerned an attempt to evict **Roma** families in the Athens suburb of **Aspropyrgos**, between 27 June and 3 July 2020, without both any lawful base (prior court order or municipal decision serviced to the Roma allowing for the possibility to file legal remedies against them) and any offer of adequate alternative housing now incorporated in the Greek legal system. It was prevented only thanks to consecutive interim decisions, [on 6 July 2020 by the HRCttee](#) following a **GHM** communication, and [on 10 July 2020 by the ECtHR](#) following an application on behalf of the **Roma federation ELLAN-PASSE**. It should be added that **Greece** took retaliatory action on 8 July 2020, with threats against **Panayote Dimitras** and arrests of six Roma men from these families for “stealing electricity” after having unlawfully raided their homes (see **OMCT**’s 29 July 2020 Urgent Intervention “[Intimidation and reprisals against a human rights defender and two Greek Roma families](#)”).

VI. Minority rights and systematic failure to implement ECtHR judgments

66. **Finally, the last new topic that ECRI is urged to include in its review of Greece is the systematic refusal of Greece to implement ECtHR judgments related to the violation of the freedom of association of Turkish and Macedonian minority associations.**

67. **The Turkish and Macedonian minorities** as well as the rare **NGOs** working on minority rights had appreciated the extensive and comprehensive review of minority rights in “[ECRI Report on Greece](#)” published on 15 September 2009 and were understandably disappointed that the topic was not included in **ECRI**’s “[Report on Greece](#)” published on 24 February 2015.

68. In the “[ECRI Report on Greece](#)” published on 15 September 2009, **ECRI** first recalled that “*in its third report, ECRI encouraged the Greek authorities to take further steps toward the recognition of the freedom of association and expression of members of the Macedonian and Turkish communities living in Greece,*” and then concluded that “*ECRI strongly recommends that the Greek authorities take measures to recognize the rights of the members of the different groups living in Greece, including to freedom of association, in full compliance with the relevant judgements of the European Court of Human Rights.*”

69. In defiance of its obligations under several international treaties and specifically among them the obligation to execute the **ECHR** judgments, **Greece** deliberately refuses to comply with these judgments

and also denies registration to new associations of ethnic Macedonians and ethnic Turks. This is aptly as reflected in the most recent related decisions of the **Council of Europe Committee of Ministers**.

70. On 9 June 2021, the **Council of Europe Committee of Ministers** felt necessary to issue a second interim resolution (the first was issued in 2014) on the non-execution of judgments related to the **Turkish minority associations**:

Interim Resolution [CM/ResDH\(2021\)105](#)

Execution of the judgments of the European Court of Human Rights

Bekir-Ousta and Others group against Greece

(Adopted by the Committee of Ministers on 9 June 2021 at the 1406th meeting of the Ministers' Deputies)

Application	Case	Judgment of	Final on
35151/05	BEKIR-OUSTA AND OTHERS	11/10/2007	11/01/2008
34144/05	EMIN AND OTHERS	27/03/2008	01/12/2008
26698/05	TOURKIKI ENOSI XANTHIS AND OTHERS	27/03/2008	29/09/2008

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that the Committee supervises the execution of final judgments of the European Court of Human Rights (hereinafter “the Convention” and “the Court”),

Noting that the present cases concern violations of the applicants’ right to freedom of association (Article 11), in particular due to the domestic courts’ rulings not to register their associations in *Bekir-Ousta and Others* and *Emin and Others*, and a decision leading to the dissolution of their association in *Tourkiki Enosi Xanthis and Others* for reasons criticised by the Court as non-compliant with the Convention;

Recalling that following the decision CM/Del/Dec(2017)1280/H46-13, on 10 October 2017, amendments were adopted to the Code of Civil Procedure which allowed the applicants to request reopening of the proceedings before domestic courts;

Recalling also that, according to the Court's case-law, such proceedings are an important aspect of the execution of its judgments and their existence demonstrates a Contracting State's commitment to the Convention and the Court's case-law (*Bekir-Ousta and Others*, Application No. 35151/05 (dec) 1.12.2016, § 25)

Reiterating its concern that the re-opening of the proceedings initiated by the applicants are still pending, that the Court of Cassation hearing of 16 October 2020 in *Tourkiki Enosi Xanthis* took place two years after the lodging of the appeal and that no decision has been rendered yet; also noting that the Court of Cassation hearing of the appeals lodged by the applicants in *Bekir-Ousta and Others* and *Emin and Others* which had been scheduled for 18 March 2022 has now been brought forward to 1 October 2021.

With regard to general measures that may have an impact on the individual measures in these cases, reiterating with deep concern, that domestic courts have rejected a similar application of an association contrary to the principles set out in the Court’s judgments in these cases and that this association appears to remain unregistered today, took note of the latest information provided by the authorities, in reply to the Committee’s decisions, concerning the wide dissemination and awareness-

raising among legal professionals concerning the Court's judgments, including their translation and online publication on widely-accessed legal websites, the 2020 public conferences and Parliament's meeting and debate focusing on the execution of the Court's judgments, and the training on the European Convention on Human Rights provided by the National School of Judges;

REITERATED its deep concern that 13 years after the European Court's judgments, and seven years since the adoption by the Committee of Interim Resolution [CM/ResDH\(2014\)84](#), the applicants' applications have still not been re-examined by domestic courts on their merits in the light of the Court's case-law;

UNDERLINED that a contracting State's obligation under Article 46 of the Convention to fully and effectively comply with the Court's judgments through the adoption of timely measures extends to the interpretation by domestic courts of domestic legislation;

EXHORTED the authorities to ensure that the outstanding appeals in *Tourkiki Enosi Xanthis and Others, Bekir-Ousta and Others and Emin and Others* are decided by the Court of Cassation promptly and in full and effective compliance of Article 11 of the Convention and the Court's case-law, and invited the authorities to inform the Committee rapidly about the outcome of these proceedings;

ENCOURAGED the authorities to continue their efforts concerning awareness-raising of the European Convention and the Court's case-law among legal professionals, notably judges, and to also draw on any resources offered by the Council of Europe, such as the HELP (Human Rights Education for Legal Professionals) Programme so that domestic case-law is fully and effectively aligned with the Court's judgments;

While awaiting the decision of the Court of cassation on the appeal examined in October 2020, DECIDED to resume consideration of this group of cases at the 1411th meeting (September 2021) (DH).

71. On 5 December 2019, the **Council of Europe Committee of Ministers** issued one more decision on the non-execution of judgments related to a **Macedonian minority association**:

MINISTERS' DEPUTIES Decisions [CM/Del/Dec\(2019\)1362/H46-9](#)

5 December 2019

1362nd meeting, 3-5 December 2019 (DH)

H46-9 House of Macedonian civilization and others v. Greece (Application No. [1295/10](#))

Supervision of the execution of the European Court's judgments

Reference document
[CM/Notes/1362/H46-9](#)

Decisions

The Deputies

1. recalled that this case concerns a violation of the right to freedom of association due to the refusal of national courts to register an association on grounds of public order, which the Court considered disproportionate compared to the legitimate aims pursued by the national courts;

2. recalled the obligation of a Contracting State, under Article 46 of the Convention, to comply promptly, fully and effectively with the judgments of the Court and that this obligation extends to the interpretation of national legislation by the courts;
3. took note of the dissemination of the Court's judgment in this case by the authorities in order to ensure that the case-law of national courts concerning the registration of associations is fully aligned with that of the European Court, and of the authorities' commitment to examine ways in which they could further enhance the systematic dissemination of the Court's judgments;
4. noted that the applicant association has not so far obtained any fresh consideration by the Greek courts of the merits of its request for registration, taking due account of the findings of the Court;
5. noted, in this respect, the authorities' position that the question of individual measures should be closed, as the applicant association did not request, within the time-limit set, the reopening of its case under Article 758 of the Code of Civil Procedure, which was amended in 2017 in order to allow such reopening;
6. noting, however, that some issues pertaining in particular to the interpretation of Article 758 of the Code of Civil Procedure are currently pending before the Court of Cassation, invited the authorities to keep the Committee informed of any developments in Greek case-law of relevance to the present case, in particular as regards the above-mentioned provision;
7. decided to resume examination of this case at one of their forthcoming DH meetings.

72. For both group of cases, the **Council of Europe Committee of Ministers** emphasized that its further decisions will be based on then pending **Supreme Court** judgments on the cases of the three **Turkish minority associations**. One of them was in fact published on 29 June 2021. The **Supreme Court**, with judgment 840/2021, **rejected the appeal of the Tourkiki Enosi Xanthis and Others**. The [text of the judgment](#) was uploaded at the **Supreme Court** website on or around 5 July 2021. However, the text was censored: almost all references to the terms "*Turkish Union*", "*Western Thrace*", "*Turkish minority*", as well as to the **ECtHR** judgments against Greece and Bulgaria on related bans to the operation of ethnic Macedonian minority associations in those two countries were replaced with "...". So, **Greek Helsinki Monitor** from related publicly available information (as it does not have access to the **Supreme Court** judgment) [published a "restored" version](#) replacing the "..." with the corresponding texts in brackets and with bold letters.

73. In essence, the **Supreme Court** examined the merits of the case, summarized the **ECtHR** judgment, but then repeated the arguments in its previous 2005 judgment on this case and concluded again that the **Turkish Union of Xanthi** should be dissolved in conformity with article 11 paragraph 2 of the **ECHR**, even though in its 2008 judgment the **ECtHR** had rejected exactly the same arguments. Most crucially, the **Supreme Court** added a new argument that totally rejected the right to individual self-identification claiming that all those with Greek citizenship can only be called "**Greeks**" while "**Turks**" can be called only those with **Turkish citizenship**! In essence, Greece is a 100% ethnically clean country... Additionally, claims to an **ethnic Turkish minority** identity are serving the state agenda of **Turkey**... "*The nationals, repatriated or not, having the same or a different religion, speaking the same or a different language, who acquired Greek citizenship in any way (by birth, legalization, marriage, naturalization, etc.) are called Greeks and only Greeks, and the term "Turk" or "Turkish", in the established sense in the Greek language, which, according to the Constitution of Greece, is the official language of the State, does not refer to a Greek citizen, who simply adheres to another religion from the prevailing religion in Greece and speaks a non-Greek language, but mainly a foreign national (Turkish citizen). It also follows from the appellant's above-mentioned purpose that its operation seeks to promote, directly within the borders of the Greek Territory, the state agenda of a foreign state (Turkey).*"

74. This judgment sets a legal precedent for any future judgments concerning ethnic minority associations, be they **Turkish** or **Macedonian**. Naturally, the appeals of *Bekir-Ousta and Others* and *Emin and Others* scheduled to be heard by the same **Supreme Court** on 1 October 2021 with the corresponding judgments probably issued in mid-2022 are not expected to lead to a different outcome as the judgment on the appeal of *Tourkiki Enosi Xanthis* will be treated as legal precedent. Likewise, any judgment of any Greek court on the *House of Macedonian Civilization and others* will have the same negative result as in the past, which already occurred with the dissolution of another Macedonian minority association and the deregistration of another Macedonian minority association. International organizations like **ECRI** should shed any hope that Greece is trying to implement individual and general measures to execute these two sets of judgments.

75. **GHM** has recommended to the **Committee of Ministers** to decide to examine the *Bekir-Ousta and others* group of cases against Greece and the *House of Macedonian Civilization and others* case at every human rights meeting and consider joining them; to invite the **Secretary General** to write a letter to the **Minister of Foreign Affairs of the Hellenic Republic** to underline both the fundamental importance of freedom of association, especially for minority associations, and the unconditional obligation to abide by the judgments of the **Court**; and to state that should no tangible progress as regards execution measures have been achieved by the time of the December 2021 **Committee of Ministers** meeting to consider all appropriate means at their disposal to secure the execution of the judgments in this group, including infringement.

76. **ECRI** is therefore urged to note that its review of Greece in 2021 occurs at a time when, following that Supreme Court judgment, the country is officially and institutionally discriminating against those of its citizens who have a different, minority ethnic identity, not only denying them the right to publicly proclaim such identity but effectively making such proclamation illegal and tantamount to be considered as agents of the neighboring countries, Turkey and North Macedonia. This is a paramount occurrence of racism and intolerance the two phenomena against which **ECRI's** mandate is by definition. Hence, this topic has to be included in **ECRI's** Greek-specific agenda for 2021.