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### DH-DD(2023)1315

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1483<sup>rd</sup> meeting (December 2023) (DH)

Communication from an NGO (Greek Helsinki Monitor) (18/10/2023) in the case of Sidiropoulos and Papakostas v. Greece (Application No. 33349/10).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1483<sup>e</sup> réunion (décembre 2023) (DH)

Communication d'une ONG (Greek Helsinki Monitor) (18/10/2023) dans l'affaire Sidiropoulos et Papakostas c. Grèce (requête n° 33349/10) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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DGI

18 OCT. 2023

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

**The President of the Committee of Ministers**  
**Department for the Execution of Judgments of the European Court of Human Rights**  
**Council of Europe**  
**Strasbourg**  
**France**  
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18 October 2023

**Execution of *Sidiropoulos and Papakostas* group of cases (applications No. 33349/10 etc.)**

Mr President

Under Rule 9(2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments we submit the attached memo on the execution of the *Sidiropoulos and Papakostas* group of cases (applications No. 33349/10 etc.) and request that the memo is also uploaded at your website.

Yours faithfully

**Panayote Dimitras**  
**Executive Director**  
**Greek Helsinki Monitor**

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**Communication on the execution of**  
***Sidiropoulos and Papakostas* group of cases (applications No. 33349/10 etc.)**

**A. Introduction**

1. The **Committee of Ministers** (CM) is requested to recall that **Greek Helsinki Monitor** (GHM) has been the representative of the applicants in the leading case under examination ***Sidiropoulos-Papakostas v. Greece***. [As stated in the dedicated webpage](#), “*These cases concern ill-treatment by law enforcement agents (substantive violation of Article 3 in Konstantinopoulos and Others No. 2) and the lack of effective investigations into death, torture, or other forms of ill-treatment in the context of law enforcement (procedural violations of Article 2 in Fountas and of Article 3 in Sidiropoulos and Papakostas, Konstantinopoulos and Others No. 2 and Torosian).*”

2. The **Committee of Ministers**, in its [September 2021 recommendations](#) related to the general measures in *Makaratzis group v. Greece (Application No. 50385/99)*, “*decided... to close the supervision of all cases except for Sidiropoulos and Papakostas, Konstantinopoulos and Others (No. 2) and Fountas, by adopting Final Resolution CM/ResDH(2021)190, and to continue supervising the outstanding general measures under a new group of cases named Sidiropoulos and Papakostas.*”
3. The present communication is a mere and limited in scope update to **GHM**’s comprehensive [“Communication on the execution of the general measures in Makaratzis group of cases \(applications No. 50385/99 etc.\)”](#), dated 20 July 2021, to which we respectfully refer the **Committee of Ministers’ Deputies**.

## **B. UN CAT on appropriate penalties and abolition of prescription**

4. On 15 June 2022, **UN CAT** published a [List of issues prior to submission of the eighth periodic report of Greece](#) by a deadline of 9 August 2023. As it regularly happens, **Greece** failed to submit its report by that deadline. Moreover, as the **National Commission for Human Rights** has not published any observations on a draft of a state report to **CAT** which is a prerequisite for the final submission of the state report to **UN CAT**, which means that there is not even a draft report. Some issues are relevant to the present group of cases.
5. Namely, related to Articles 1 and 4 of the **Convention**, **CAT** asked: “*With reference to the Committee’s previous concluding observations [at its seventy-third session (19 April–13 May 2022)], please indicate whether the State party’s criminal laws have been amended to ensure that all acts of torture as defined in article 1 of the Convention are punishable by appropriate penalties which take into account their grave nature, in accordance with article 4 (2) of the Convention. Please also provide information on the measures taken to ensure that such acts are not subject to any statute of limitations.*”
6. These concluding recommendations are directly related to what has been aptly summarized in the [Notes](#) on the present group of cases “*Leniency or lack of penalties: Leniency and disproportionate sentences imposed by domestic courts on law enforcement agents, even in cases where (aggravated) torture occurred (Zontul §§ 106-108, Sidiropoulos and Papakostas §§ 90-96); imposition of suspended sentences (Sarwari and Others § 131); lack of punishment in both administrative and criminal proceedings (Bekos and Koutropoulos § 54, Sidiropoulos and Papakostas § 97) ... Reopening of criminal investigations: The authorities recalled that at its 1331st meeting (December 2018) (DH), the Committee noted with regret that reopening of criminal investigations in all 13 cases of the group (as it then stood) was not possible due to prescription under the Greek criminal law in force.*”

## **C. Greek Ombudsman on the execution of the Konstantinopoulos and Fountas judgments**

7. The **Committee of Ministers** is also requested to consider the **Ombudsman**’s extremely detailed review of what effectively is the failure to execute the judgment in *Konstantinopoulos and Others No. 2* in its [2021 Special Report](#) (p. 144): “*Therefore, the rejection of the judgments and the principal facts established by ECtHR during the review of the disciplinary procedure and the challenge of the Court’s findings through the identification of errors point to a series of legislative overrides and derogations.*” It was reiterated in the **Ombudsman**’s [2022 Special Report](#) (p. 125), published only in Greek yesterday 17 October 2023, where the **Ombudsman** informed that he formally closed his involvement as he cannot substitute the authorities and impose sanctions on the perpetrators of the violations established by the **Court**. He also noted therein about “*the oxymoron which wants the conviction of the country for its substantive and procedural violation of Article 3 ECHR to be unrelated and independent of disciplinary responsibilities*” for the officers.
8. In the same [2021 Special Report](#) (p. 141), the **Ombudsman** did not merely close the case of the execution of the judgment in *Fountas* because the reopening of the administrative investigation could not restore the non-involvement of the family of the deceased, but he also concluded with his authority that, in order to ensure the effective access of either the relatives of the deceased or the victims themselves to the

documents of the disciplinary case file, the legislation and/or the practice need be amended. He “*proposed either the issuance of a relevant circular order by the Hellenic Police or in case its issuance is prevented by no. 247/2015 Opinion of the LCS - which, as is apparent from the LCS website, has been accepted by the competent Minister and pursuant to Art. 9 para. 8 of L 4831/2021 has a binding nature for the Administration- the revocation of the act of acceptance. Alternatively, for reasons of legal certainty, it has been proposed that a corresponding provision be added to the provisions of PD 120/2008 on the disciplinary law of police personnel.*” It will significantly enhance the possibility of such a legislative change if the **Committee of Ministers** makes a similar recommendation.

#### **D. The case of torture of Roma and ensuing impunity pending before the ECtHR**

9. The [Athanasios PANAYOTOPOULOS and Others against Greece](#) application before the **ECtHR** is waiting for the judgment. However, there was a very meaningful domestic development. The **Administrative First Instance Court of Athens** with its **Judgment 5332/26-4-2022** (available upon request) on the **Athanasios Panayotopoulos’** lawsuit for compensation for his ill-treatment filed on 18 June 2018 ordered a forensic examination of the case file including an inspection of the sites where the alleged acts had occurred on 8 October 2016, an examination that did occur six years after the facts. On the one hand, that was an admission by the **Administrative Court** that the absence of such an examination when it was repeatedly asked on the day of the alleged ill-treatment and on the following days was a failure of the criminal and administrative investigations. On the other hand, it was a case-law that showed that when necessary forensic doctors can investigate cases several years later, when necessary and on the basis of available documents plus interviews of the victims, contrary to **Greece’s** claim in another case included in [Greece’s recent communication](#) (pages 4-6) that “*a forensic examination of the applicants, 8 or 9 years after the facts, would not result in any findings.*” The **Administrative First Instance Court of Athens** judgment is unfortunately still pending as the hearing after the submission of the forensic report was set for 29 September 2023.

#### **E. Statistical data**

10. **Greece** was asked by the **Committee of Ministers** to submit “*updated statistical and qualitative information about criminal investigations into ill-treatment by law enforcement officers and their outcomes, showing the impact of the measures taken to date.*” [The data provided in Greece’s communication](#) on 6 October 2023 are telling about the continuing prevailing impunity. In 2021-2022, there was only one case of criminal charges brought under the torture article 137A CC for which it appears (although it is not clear) that there was an acquittal, while in two of the five cases where charges were brought for other violence, there were two convictions to up to 6 months imprisonment, probably suspended. Most crucially, no data was provided on the number of criminal complaints filed, most of which are filed without any charges being pressed.

#### **F. Committee of Ministers’ concerns not addressed by Greece**

11. The **Committee of Ministers** is requested to note that **Greece** did not address its concerns about “*the findings contained in the 2020 CPT report*” and call on “*the authorities to redouble their efforts in order to enhance the effectiveness of criminal investigations in line with the CPT recommendations.*”

#### **G. Ombudsman’s recommendations not addressed by Greece**

12. Moreover, **Greece** lists extensively the statistical data and the findings of the investigations by the **Ombudsman** but does not offer any information on how these concerns were addressed. We excerpt here the most characteristic conclusions from his [2021 Special Report](#) (pages 25 and 31-32): “*The first immediate and general conclusion regarding the cases referred to the Mechanism in 2021, and those processed during the same year, does not represent a reversal compared to those recorded in previous special annual reports. The persistence or reproduction of the same dysfunctions during disciplinary procedures, apart from the difficulty or time involved in any institutional and practical adjustment, raises*

*reasonable concerns about the difference between the law and the manner or degree of its application, a finding at risk of being transformed into a distinction between “law in practice” and “law on paper” ... The content of the above assessments and conclusions and their durability over time, despite the Ombudsman’s constant remarks, largely justify the difficulty of establishing a stable relationship of confidence between citizens and the police. Inadequate disciplinary control does not serve the principles of legality, necessity and proportionality that should characterize police action, precisely because of its nature of interfering directly with fundamental, individual rights, and therefore does not guarantee the principles of transparency and accountability. The deficit punishment of disciplinary misconduct determines the corresponding lack of victim identification. The total number of relevant judgments that have already been issued by the ECtHR against the country, but also of the pending appeals, with police violence representing a significant percentage thereof, does not simply function as an additional argument of the above assumption, but also as a reminder of the guaranteed function assigned to EMIDIPA.”*

13. In his [2022 Special Report](#) (page 24-26), the **Ombudsman** reiterates: *“The systematicity with which almost every annual report of the Ombudsman records the same failures and deficiencies in the internal process of investigating disciplinary offenses and, therefore, their durability over time, despite persistent recommendations and repeated interventions by the Authority, led it last year to highlight the danger between “law in practice” and “law on paper”. This year's findings do not simply confirm the same trend, but register a new danger that emerges from the worsening of the already recorded defects.”* The danger is the fact that the law enforcement investigating authorities ignore more and more the **Ombudsman’s** recommendations even when he is forced to submit them twice. In addition, when according to the law he refers such extreme cases of defiance to the competent **Minister** who has the authority to overturn the decisions of these bodies made in defiance of the **Ombudsman’s** recommendations, the **Ombudsman** reports that since 2020 the **Minister** fails to address the referrals. This in turn has encouraged the investigating agencies to *“institutionally bypass the Ombudsman by issuing disciplinary decisions without his prior opinion, by ignoring his recommendations without documentation, and sometimes with an attitude of hostility towards them.”*

**Recommendations to Greece that the Committee of Ministers is requested to make:**

14. **We urge the Committee of Ministers to recommend that the criminal legislation be amended to exclude the possibility of lenient sentences, securing instead that violations of Article 3 ECHR are punishable by appropriate penalties which take into account their grave nature. Also, and more importantly, Greece must be urged to abolish the prescription for such crimes which makes it almost impossible to reopen cases after ECtHR judgments.**
15. **Moreover, the Committee of Ministers is requested to ask Greece to submit a fully comprehensive report on how it complies with each and every recommendation made by the Ombudsman in its aforementioned two recent reports, a small number of which were mentioned above.**
16. **Finally, Greece should be asked to provide a detailed updated statistical and qualitative information about criminal investigations into ill-treatment by law enforcement officers and their outcomes, showing the impact of the measures taken to date, in a way that it will be transparent how many complaints are filed and how many of them lead to the pressing of charges, to the referrals to trials, and to judgments at first instance, on appeal, and before the Supreme Court.**