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Contact: Ireneusz Kondak
Tel: 03.90.21.59.86

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Meeting: 1531st meeting (June 2025) (DH)

Item reference: Action Report (06/05/2025)

Communication from Greece concerning the group of cases of Modestou v. Greece (Application No. 51693/13)

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Réunion : 1531^e réunion (juin 2025) (DH)

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Communication de la Grèce concernant le groupe d'affaires Modestou c. Grèce (requête n° 51693/13)
(anglais uniquement)

ACTION REPORT ON THE EXECUTION OF THE JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS IN THE CASES OF

**a) MODESTOU v. GREECE (application no 51693/13, judgment of
16.03.2017, final on 18.09.2017) and**

**b) LEOTSAKOS v. GREECE (application no 30958/13, judgment of
04.10.2018, final on 04.01.2019)**

DGI

06 MAI 2025

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

I. DESCRIPTION OF THE CASES

Modestou

The case concerned the violation of Article 8 of the European Convention on Human Rights on account of a search and seizure operation carried out at the applicant's home and office in occupier's absence on the basis of a widely drafted order, issued by the Public Prosecutor at the Athens Court of Appeal.

In September 2010, in the context of a preliminary police inquiry, the applicant's home was searched, and two computers and hundreds of documents were seized on the orders of the public prosecutor.

In November 2012, the applicant applied to the Indictment Division of the Court of Appeal to have the search declared null and void, the seizure order was lifted and the seized items returned. However, his application was dismissed in February 2013. The court's decision was based, inter alia, on an assessment of whether a search and seizure operation could be carried out in the context of a preliminary police inquiry. The applicant unsuccessfully appealed against that decision.

The Court held that the search had been carried out in the context of a preliminary police inquiry, prior to the institution of criminal proceedings against the applicant. Its purpose had been to seek evidence and indications of his involvement in a criminal organisation. Accordingly, it had pursued the aims of preventing disorder and crime. Furthermore, according to the Court, the search had been accompanied by certain procedural safeguards, namely it had been ordered by the public prosecutor at the Athens Court of Appeal on the basis of a search warrant while the search had been carried out by a police officer accompanied by a deputy prosecutor.

Nevertheless, the Court found certain shortcomings incurred in the search and seizure investigation: a) the search warrant issued by the public prosecutor had been

worded in general terms. The Court held that there might be situations where it would be impossible to draw up a warrant with a high degree of precision. However, in such cases, and in particular – as in the present case – where domestic law did not provide for prior judicial scrutiny of the lawfulness and the necessity of the investigative measure in question, other safeguards should be in place, particularly in terms of the execution of the search warrant, so as to offset any inadequacies in the issuing and content of the warrant.

b) The applicant was present at any time during the search, which lasted twelve and a half hours, and it was not clear from the file whether the investigating officers had attempted to inform him of their presence or of their actions, even though the Code of Criminal Procedure required the person carrying out the search to invite the occupant of the premises to attend.

c) The Court observed that there had been no immediate retrospective judicial review. The Indictment Division of the Court of Appeal, to which the applicant had applied, had given its decision more than two years after the events and had devoted most of it to determining whether a search and seizure operation could be carried out during a preliminary police inquiry. The domestic authorities had therefore fallen short of their obligation to provide “relevant and sufficient” reasons to justify issuing the search warrant at issue.

Leotsakos

The case concerned the search of the professional premises of the applicant, a lawyer, in September 2010 and the seizure of computers and documents. The search was carried out in the framework of the same criminal preliminary inquiry as in *Modestou* by virtue of the same search warrant and concerned the applicant personally. The Court found the same shortcomings of the search procedure as in *Modestou* and concluded that there had been a violation of Article 8 of the Convention. The only difference between the two cases was that the premises where the search was conducted was the office of a lawyer.

II. INDIVIDUAL MEASURES

In *Modestou* the applicant was awarded 2.000 € as just satisfaction for non-pecuniary damage as well as 2.000 € for costs and expenses. The Greek Government paid these amounts to the applicant in due time.

The criminal proceedings instituted against the applicant for having set up a criminal organisation were concluded by virtue of the 552/2023 and 689/2023 joint decisions of the Court of Appeals of Athens. The domestic court terminated the proceedings either due to the absence of a criminal complaint from the victim (page 2598) or because it found the acts time-barred (pages 2600- 2620). Finally, the applicant was acquitted of the remaining charges (pages 2621- 2623). In any event, the applicant invoked before the above domestic court the judgment of the European Court of Human Rights, as referenced in pages 1174-1183 of the domestic decision. The violation thereby came to an end as the domestic court, in accordance with the ECtHR judgment (pages 2126-2127 of the domestic decision), excluded from the case-file the findings of the impugned search.

In *Leotsakos* the applicant was awarded 2.000 € as just satisfaction for non-pecuniary damage as well as 2.034 € for costs and expenses. The amounts awarded are at the applicant's disposal and will be paid once the necessary data is furnished.

The criminal proceedings instituted against the applicant were concluded by virtue of the 3701, 2738, 1844a, 1364/2022 joint decisions of the Court of Appeals of Athens. The domestic court found -at first instance- the applicant guilty of fraud and sentenced him to sixteen years of prison time (pages 881-883 of the decision). The applicant, however, passed away a year later (in October 2023). According to domestic legislation any pending trial in the context of the above criminal prosecution is terminated, as is the execution of the sentence imposed. There is no possibility for reopening of the domestic trial not only on the grounds of his passing but also given that the shortcomings identified by the Court related to the criminal investigation and not with the criminal trial that ensued. In any event it flows from the above-mentioned judgment that the applicant did not raise before domestic courts the issue of the violation of Article 8 of the Convention in connection with said research at the premises of his law office as he was entitled to do.

III. GENERAL MEASURES

Introduction

The cases concern two rather isolated incidents, since the search warrants on the basis of which the searches were conducted were drafted and issued by the same prosecutor in the framework of the same case. More specifically, the violation stemmed from: a) the manner in which the search warrants were drafted by the Public

Prosecutor at the Athens Court of Appeal and b) the particular circumstances under which the search and seizure operations based on said warrants were carried out. Consequently, the Greek authorities are of the opinion that both cases concern erroneous implementation of the law regulating the search and seizure operations in the framework of preliminary inquiry, preliminary investigation or main investigation in criminal procedure. Therefore, the wide dissemination of the Court's judgments is the adequate and appropriate measure to prevent similar violations.

Translation and dissemination

The judgments at issue were translated into Greek. This translation is publicly accessible at the website of the Legal Council of the State (www.nsk.gov.gr). The judgments were sent to the Ministry of Justice, Transparency & Human Rights and to all the competent judicial authorities and prosecutors' offices.

Further legislative measures

It is noted that additional safeguards are to be provided concerning the search and seizure of data in the framework of investigation of criminal offences.

In both cases the Court noted that the applicants had not been given precise information about the scope of the search and that it had never been elucidated whether the computers and documents seized had a direct link with the offence being investigated.

Directive 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences was adopted in April 2016. The Directive seeks to ensure a high level of data protection while also ensuring that investigation and prosecution of crime is not inhibited. The Directive applies to both cross-border and domestic processing of personal data and it ensures that suspects, victims, and witnesses have their fundamental right to personal data protection properly upheld.

According to the provisions of the Directive the competent judicial and prosecutorial authorities, as well as the officers charged with preliminary inquiries or preliminary investigations (e.g police officers) are required to process the personal data of the suspects and accused individuals in compliance with the principles governing the processing of personal data and grant the requests of suspects and

accused concerning provision of information, access to data, as well as correction and deletion of data. Thus, while access to the data of a file or record held by the Police or judicial authorities was regulated solely by the provisions of the Code of Criminal Procedure, the above rights will be further safeguarded by the EU legislation. It is noted that the Directive establishes a supervising authority to which all individuals alleging that their personal data are violated can address their complaints.

Chapter D of Law 4624/2019 transposes into national law Directive 2016/680. Specifically, article 59 transposes article 18 of the Directive and includes specific provisions by the national legislator to ensure that, within the context of criminal investigations and proceedings, the rights to information regarding processing, access, rectification or erasure, and restriction of personal data—pursuant to the provisions of Articles 54 to 56—are exercised in accordance with the provisions of the Code of Criminal Procedure, any special procedural provisions, the Code on the Organization of Courts and the Status of Judicial Officers, as in force at any given time.

IV. CONCLUSION

In view of the above-mentioned the Greek Government considers that no further individual or general measure are necessary and thus, the supervision of the above cases should be terminated.