



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



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Mr Stavros KONTONIS

Minister of Justice, Transparency
and Human Rights of Greece

Mr Nikolaos TOSKAS

Alternate Minister of Interior
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Strasbourg, 18 April 2017

Dear Ministers,

Further to the constructive dialogue that I initiated with your authorities during my visit to Greece in July 2016 and the subsequent exchange of letters, I would like to share with you some further information and thoughts concerning the need to eradicate ill-treatment by law enforcement officials.

I am very concerned by the fact that I continue to receive alarming information concerning instances of alleged ill-treatment, including torture, by Greek police officers. Recently my attention was drawn to four well-documented cases of migrants, including minors, who claimed, *inter alia*, that they had been victims of severe beatings by police officers in Samos and Chios, in November 2016 and in January and February 2017. As a consequence, some of the victims suffered serious injuries such as loss of hearing, knee dislocation and foot breaking. Arbitrary deprivation of liberty in substandard conditions in the police stations of the above islands, as well as denial of access to a lawyer and to medical care were also reported. I understand that these cases led to the lodging of complaints with the Greek Ombudsman. It is to be noted that there are four other cases of alleged ill-treatment of migrants by Greek law enforcement officials, and lack of effective investigations, currently pending before the European Court of Human Rights. The relevant applications were lodged between 2011 and 2016 and have been communicated to the government.

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.

I am afraid that these very serious cases illustrate, once again, the long-standing and systemic problem of law enforcement officials' excessive violence and commitment of serious human rights violations that require determined and systematic action by Greece. I noted with interest the adoption in December 2016 of Law 4443/2016 establishing a national mechanism for investigating incidents of arbitrariness in security forces and in detention facilities. While regretting the fact that the recommendations made by the Greek National Commission for Human Rights and myself, in order to enhance effectiveness, were not followed, I do hope that this new mechanism will contribute to the fight against and the eradication of impunity.

However, I consider that further, preventive measures are necessary to put an end to this phenomenon, such as systematic, initial and ongoing, training of all law enforcement officials, prosecutors and judges. As I stressed in my letter of 25 July 2016, Greece can usefully draw on the rich expertise of the Council of Europe Programme for Human Rights Education for Legal Professionals (HELP). Furthermore, in the selection, recruitment and promotion of police, special attention should be paid to reports of past misconduct, racist attitudes, and the ability of individuals to withstand stressful situations. The

recruitment of officers among minority groups would also help reduce the risk of racially motivated violence and contribute to making law enforcement forces more representative of the Greek society's diversity. Useful guidance in this context can be drawn from the 2001 European Code of Police Ethics, and ECRI's General Recommendation No. 11 on combating racism and racial discrimination in policing.

In addition, I recall the Strasbourg Court's case law according to which in cases of ill-treatment by state agents adequate means of remedy is the one provided by criminal law. I would thus invite you to overhaul the existing criminal law and practice, and to remedy existing shortcomings, such as the one concerning the definition of torture in Article 137A §2 of the Criminal Code. As I noted in the report following my 2013 visit to Greece, the above provision defines torture as the "planned" (μεθοδευμένη) infliction by a public official on a person of severe physical, and other similar forms of pain. This condition though does not exist in the internationally established definition of torture contained in Article 1 of the 1984 Convention against Torture (CAT) that was ratified by Greece in 1988 and, under Article 28§1 of the Greek Constitution, prevails over domestic legislation. Due to the requirement for a planned, systematic character of severe ill-treatment, to date Greek courts have only once, in 2014, convicted a police officer for torturing two Greek national detainees by electric shocks during interrogation. Moreover, the above provision of the criminal code does not include in its ambit torture inflicted at the instigation or with the consent or acquiescence of a public official or a person acting in an official capacity, which is part of the CAT definition of torture. Therefore, I reiterate my call to ensure that the definition of torture contained in the criminal code is fully aligned with the CAT definition.

Another major issue of substantive criminal law that I would like to raise with you is the following: I have noted that in recent years Greece, in its efforts to decongest prisons, has amended Article 82 of the Criminal Code and allowed courts to convert custodial sentences (even of five years' imprisonment that may cover felonies such as torture) into pecuniary penalties and community service. It is noteworthy that under the Strasbourg Court's case law and the 2011 Guidelines of the Council of Europe Committee of Ministers on eradicating impunity for serious human rights violations, when serious human rights violations have been proven, the imposition of a suitable penalty should follow. The sentences which are handed out should be effective, proportionate and appropriate to the offence committed. As a consequence, I would call on you to review existing legislation in order to ensure that adequate, dissuasive penalties are always imposed by courts and fully executed in all cases of ill-treatment by law enforcement agents.

Please note that a copy of this letter will be sent to the Greek Ombudsman for his information as he is, under Greek law, the national mechanism for investigating incidents of arbitrariness in security forces and in detention facilities.

I look forward to receiving your reply and continuing a constructive dialogue with you and the Greek government.

Yours sincerely,



Nils Muižnieks