



Strasbourg, 8 January 2019

CPT (2019) 01-RT

ROUND-TABLE

PROFESSIONAL POLICING:

**ROLES AND RESPONSIBILITIES OF NATIONAL ACTORS IN RELATION TO THE
(ILL-)TREATMENT OF APPREHENDED PERSONS IN GREECE**

ATHENS, 10-11 JANUARY 2019

CONCEPT NOTE¹
(finalised 31 January 2018)

¹ This concept note was prepared by Dr Natasa Mavronicola, Senior Lecturer in Law at Birmingham Law School, University of Birmingham (n.mavronicola@bham.ac.uk). Any errors are the author's own, and the views expressed do not represent those of the author's employer (the University of Birmingham), or the Council of Europe's.

Contents

| | |
|---|----|
| ABBREVIATION/ACRONYM INDEX..... | 3 |
| INTRODUCTION – AIMS OF THE ROUND-TABLE | 4 |
| I. GREECE’S OBLIGATIONS UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)..... | 5 |
| A. The negative obligation: duty not to torture or inflict cruel, inhuman or degrading treatment | 6 |
| B. The positive obligations: general and operational duties to prevent and protect, to investigate, and to redress | 7 |
| II. MAJOR ISSUES CONCERNING LAW AND TORTURE/ILL-TREATMENT IN GREECE..... | 10 |
| A. Incidence of torture/ill-treatment | 10 |
| B. Domestic law and implementation | 12 |
| III. MAJOR ISSUES REGARDING OPERATIONAL SAFEGUARDS IN GREEK LAW ENFORCEMENT | 19 |
| A. Third party notification | 20 |
| B. Access to a lawyer | 20 |
| C. Access to a doctor | 20 |
| D. Information on rights | 21 |
| E. Custody records | 21 |
| F. Conduct of interviews | 22 |
| IV. PERSISTENT PATTERNS OF DISCRIMINATION IN GREEK LAW ENFORCEMENT..... | 22 |
| A. Reports recording discrimination | 22 |
| B. ECtHR judgments showing discrimination in Greek law enforcement | 23 |
| C. Key concerns going forward | 24 |
| V. ILL-TREATMENT IN GREEK LAW ENFORCEMENT AS A SYSTEMIC ISSUE – PATHWAYS TO CHANGE | 25 |
| Exploring Pathways to Change | 25 |
| VI. QUESTIONS ON THE WAY FORWARD | 28 |
| A. Law (criminal liability and sanctions) | 29 |
| B. Operational safeguards | 29 |
| C. Institutional culture | 29 |
| D. Independence, accessibility and effectiveness of complaint and investigation mechanisms | 30 |
| CONCLUSION..... | 30 |

ABBREVIATION/ACRONYM INDEX

- ❖ CAT: Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- ❖ CCLEO: Code of Conduct for Law Enforcement Officials
- ❖ COE: Council of Europe
- ❖ CPT: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- ❖ ECHR: European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms)
- ❖ ECPE: European Code of Police Ethics
- ❖ ECPT: European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- ❖ ECtHR: European Court of Human Rights
- ❖ ENAR: European Network Against Racism
- ❖ EU: European Union
- ❖ FRA: European Union Agency for Fundamental Rights
- ❖ HR Committee: Human Rights Committee
- ❖ ICCPR: International Covenant on Civil and Political Rights
- ❖ IPCAN: Independent Police Complaints Authorities' Network
- ❖ NPM: National Preventive Mechanism
- ❖ ODIHR: OSCE Office for Democratic Institutions and Human Rights
- ❖ OHCHR: UN Office of the High Commissioner for Human Rights
- ❖ OPCAT: Optional Protocol to the Convention against Torture
- ❖ OSCE: Organization for Security and Co-operation in Europe
- ❖ RVRN: Racist Violence Recording Network (Greece)
- ❖ SPT: Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- ❖ UNCAT: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- ❖ UNSRT: United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

INTRODUCTION – AIMS OF THE ROUND-TABLE

The prohibition of torture and related ill-treatment is absolute under international and European human rights law. However, there is a persistent gap between the absolute character of the prohibition and its fulfilment in practice. Torture and related ill-treatment unfortunately remain rampant across the world. It is imperative to close this gap, and this conference takes place in the spirit of this commitment.

This round-table offers a unique opportunity for the Greek authorities and the Council of Europe to explore pathways towards eradicating ill-treatment in Greece, by focusing on the treatment of apprehended persons by law enforcement officials.

There are two central aims in bringing us together to discuss the roles and responsibilities of national actors in safeguarding apprehended persons from ill-treatment. One is ensuring the Greek legal system's conformity to the letter and spirit of the law on torture and related ill-treatment. The other is to turn aspiration and legal provisions into reality: to shape protection from torture and related ill-treatment in the most effective way possible, through the safeguards, processes and organisational culture necessary to eradicate the practice of ill-treatment across all law enforcement contexts in Greece.

The concept note accordingly proceeds as follows. First, it outlines Greece's obligations under the ECHR to safeguard the right enshrined in Article 3 ECHR, which provides that 'no one shall be subjected to torture or to inhuman or degrading treatment or punishment', particularly as they relate to the treatment of persons in custody. Second, based on an examination of relevant materials, it distils key issues calling for action, and accordingly for particular discussion at this conference. Third, it probes pathways towards change, reflecting indicatively on relevant recommendations, studies, practices or initiatives pursued elsewhere. Finally, it tables a set of topics and questions for discussion at the conference.

I. GREECE'S OBLIGATIONS UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

Greece bears international legal obligations to refrain from subjecting persons to torture or to related ill-treatment and to take positive measures to protect persons within its jurisdiction from torture and other cruel, inhuman or degrading treatment or punishment. These obligations stem from an array of legal instruments, including the ECHR, the ICCPR, and the UNCAT, and customary international law. It is also a signatory to the ECPT, which established the CPT to monitor places of deprivation of liberty with the purpose of strengthening the protection of such persons from torture and related ill-treatment. The CPT has carried out 15 visits to Greece since 1993. This external monitoring was enhanced following the ratification of OPCAT and the establishment of a National Preventive Mechanism within the Greek Ombudsman's Office mandated to visit all places of detention.

This section briefly distils the obligations emanating from the right not to be subjected to torture or to inhuman or degrading treatment or punishment, notably under ECHR.

A. The negative obligation: duty not to torture or inflict cruel, inhuman or degrading treatment

First and foremost there is an absolute obligation (often referred to as the negative obligation) on all of the State's agents not to torture or inflict related ill-treatment. This covers a range of actions. As defined in the UNCAT, torture refers to the deliberate infliction of serious physical or mental suffering for purposes such as eliciting a confession, punishing, intimidating, or for any reason based on discrimination of any kind. Inhuman or degrading treatment or punishment (referred to as 'ill-treatment' or 'related ill-treatment' in this concept note) include actions which cause substantial suffering or humiliation, or which involve arbitrary invasions of bodily or mental integrity.

Key to establishing ill-treatment in custody is the ECtHR's well-established principle that if an individual is taken into State custody in good health but is found to be injured at the time of release, a presumption operates that proscribed ill-treatment has taken place; it falls on the State to provide a plausible explanation of how those injuries were caused, failing which the ECtHR will tend to make a finding of violation of Article 3 ECHR.² The State's duty to account for injury or other harm is amplified where a person dies in the State's custody.³ A potential acquittal of individual State agents in criminal proceedings does not necessarily absolve the State of responsibility, or of the onus of accounting for the injuries suffered.

However, this shorthand does not exhaust the scope of what amounts to proscribed ill-treatment. To begin with, it is possible to inflict substantial and prolonged pain without leaving evident marks of ill-treatment on the body of the victim. This has been observed through practices that have made news headlines over the years, such as waterboarding.

Notably, the norm against torture and related ill-treatment demands that a powerless person's physical and mental integrity are thoroughly respected. As the ECtHR has highlighted:

where an individual is deprived of his or her liberty or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by the person's conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention.⁴

This rule applies irrespective of any indication of injury and clarifies that no violence against powerless persons within State agents' control – for example, persons who are handcuffed or otherwise not in a position to attack anyone or defend themselves – is acceptable. The slaps on persons in custody by police officers were thus found to violate Article 3 ECHR in *Bouyid v Belgium*.⁵

Psychological or 'mental' torture or related ill-treatment are also prohibited. This includes threats of torture, as was the case in *Gäfgen v Germany*.⁶ Other examples of such torture or related ill-treatment include sexual or related humiliation or degradation, mock executions, or threats of ill-treatment against friends and family.

² See, for example, [Selmouni v France](#) App no 25803/94 (ECtHR, 28 July 1999), para 87; [Ribitsch v Austria](#) App no 18896/91 (ECtHR, 4 December 1995), para 34.

³ See, for example, [Edwards v UK](#) App no 46477/99 (ECtHR, 14 March 2002), para 56; [Salman v Turkey](#) App no 21986/93 (ECtHR, 27 June 2000), para 99.

⁴ [Bouyid v Belgium](#) App no 23380/09 (ECtHR, 28 September 2015), para 100.

⁵ [Bouyid v Belgium](#) (n 4).

⁶ [Gäfgen v Germany](#) App no 22978/05 (ECtHR, 1 June 2010).

State agents should be alert to particular vulnerabilities of people in their custody, whether they stem from age, health, including mental health, drug addiction, difficulty to communicate, disability, or other factors, and treat them with appropriate care. This can be vital to respecting the prohibition of ill-treatment. In the case of minors, for example, the ECtHR has stressed that certain behaviour against minors may violate Article 3 ECHR simply because they are minors.⁷

The negative obligation to refrain from ill-treatment goes hand in hand with positive obligations to protect persons from ill-treatment and hold perpetrators accountable.

B. The positive obligations: general and operational duties to prevent and protect, to investigate, and to redress

1. Substantive positive obligations

The right not to be subjected to torture or related ill-treatment requires Greece to set up legal provisions, protection mechanisms, and remedies, and to enforce these.

Greece is required, in line with its international obligations, to institute laws which:

- (a) criminalise torture and wilful ill-treatment proscribed by Article 3;
- (b) provide for proportionate sanctions reflecting the wrongfulness of torture or wilful ill-treatment;
- (c) do *not* provide for limitation periods which time-bar redress and do *not* accommodate amnesties or other forms of immunity where a State agent is accused of torture or wilful ill-treatment.⁸

In addition, it is necessary for compensation to be provided for pecuniary and non-pecuniary harm sustained as a result of torture or related ill-treatment.⁹ Victims of torture and related ill-treatment should receive such full rehabilitation as may be possible.¹⁰ These requirements are aimed at ensuring that the legal system effectively proscribes and deters torture and related ill-treatment, and that ill-treated persons receive adequate redress and reparation. The effective implementation of such legal provisions is part and parcel of Greece's obligations. To ensure full respect for human rights in law enforcement, it is necessary to put in place not just legal frameworks but also to develop the right training, cultures, attitudes and enforcement practices.¹¹

⁷ [Bouyid v Belgium](#) (n 4), para 110; ECPE, para 44.

⁸ See [Cirino and Renne v Italy](#) App nos 2539/13 and 4705/13 (ECtHR, 26 October 2017), paras 110-112; [Azzolina and others v Italy](#) App nos 28923/09 and 67599/10 (ECtHR, 26 October 2017), paras 149-165; [Yeter v Turkey](#) App no 33750/03 (ECtHR, 13 January 2009), para 70. See, too, [Zontul v Greece](#) App no 12294/07 (ECtHR, 17 January 2012), para 96; [Gäfgen v Germany](#) (n 6), paras 118-119.

⁹ [Aleksakhin v Ukraine](#) App no 31939/06 (ECtHR, 19 July 2012), para 60.

¹⁰ See HR Committee, [General Comment No. 20: Article 7](#), para 15; Art. 14 UNCAT; CAT, [General Comment No. 3 on Article 14 of UNCAT](#).

¹¹ See, on this, [MC v Bulgaria](#) App no 39272/98 (ECtHR, 4 December 2003). See, too, Art. 10 UNCAT.

The right also requires operational steps to be taken to minimise or avert known risks of torture or related ill-treatment. Failure to take all reasonable precaution against excessive force in the planning, preparation and conduct of law enforcement operations, including arrests, increases the risk of ill-treatment and, in principle, breaches the State's operational duties to prevent ill-treatment. Additionally, should there be injuries inflicted in the context of a police operation, medical treatment must be provided promptly. In this regard, it bears mention that States have a duty under the prohibition of torture and related ill-treatment to carefully regulate the deployment of weapons or other means in the context of apprehension or while an individual is in detention. UNSRT Nils Melzer has indicated that a weapon should be considered 'inherently cruel, inhuman or degrading' if it is specifically designed or of no other practical use than to employ unnecessary, excessive or otherwise unlawful force against persons, or to inflict pain or suffering on powerless persons.¹² Moreover, other weapons carry significant risks of being used in a cruel, inhuman or degrading manner;¹³ this issue has recently been highlighted with regard to electrical discharge weapons (such as Tasers) in particular.¹⁴

2. Procedural positive obligations

These requirements are connected to the duty to investigate allegations of torture or related ill-treatment, often referred to as the 'procedural' duty under Article 3 ECHR. This duty is focused on establishing the relevant facts and determining responsibility, leading to the identification and, where relevant, the punishment of those responsible. It aims to secure redress for the ill-treatment, and to bring about steps towards non-repetition of such ill-treatment.¹⁵ The ECtHR has clarified that Article 3 ECHR requires the authorities to investigate allegations of ill-treatment when they are 'arguable'¹⁶ and irrespective of whether the ill-treatment complained of is at the hands of State agents or non-State actors.

There are a set of minimum requirements that the investigation must fulfil:

- The investigation must be independent and impartial: the persons responsible for any inquiries and those conducting the investigation should be independent of anyone implicated in the events, meaning not only that there should be no hierarchical or institutional connection but also that the investigators should be independent in practice.
- The competent authorities must act with exemplary diligence and promptness.
- The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, a detailed statement concerning the allegations from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical reports.
- The investigation must be subject to public scrutiny, therefore requiring transparency and accessibility.
- The complainant must be afforded effective access to the investigatory procedure.¹⁷

¹² [UNSRT Report 2017](#), paras 51, 62.

¹³ [UNSRT Report 2017](#), paras 52-57.

¹⁴ [UNSRT Report 2017](#), paras 53-54; [CAT/C/AUS/CO/4-5](#), 23 December 2014, para 13; [CAT/C/USA/CO/3-5](#), 19 December 2014, para 27; CPT, 20th Annual Report (2010), paras 69-73; Neil Corney, '[Less lethal systems and the appropriate use of force](#)' (Omega Research Foundation, 2011), p. 6.

¹⁵ See Art. 1 of the [UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#).

¹⁶ [M and others v Italy and Bulgaria](#) App no 40020/03 (ECtHR, 31 July 2012), para 100.

¹⁷ *Ibid*, para 100; see also [Bati and others v Turkey](#) App nos 33097/96 and 57834/00 (ECtHR, 3 June 2004), paras 134-137. See also [Opinion of the Commissioner for Human Rights Concerning Independent and Effective Determination of Complaints Against the Police](#), 12 March 2009, CommDH(2009)4, p. 3; CPT, 14th Annual Report (2004), paras 31-42.

It is worth noting, in this regard, that the ECtHR has clearly stipulated that where State agents have been charged with offences involving ill-treatment, they should be suspended from duty while being investigated or tried and should be dismissed if convicted.¹⁸

The State's positive duties include ensuring that the judicial proceedings are adequate. The ECtHR reviews whether domestic courts submitted the case to careful scrutiny, so that the deterrent effect of the judicial system in place and the significant role it is required to play in preventing violations of the prohibition of ill-treatment are not undermined.¹⁹ The ECtHR has reiterated that if the State responded to wilful ill-treatment by State agents merely by offering compensation, while not doing enough to prosecute and punish those responsible, it would be possible for State agents to 'abuse the rights of those within their control with virtual impunity, and the general legal prohibition of torture and inhuman and degrading treatment, despite its fundamental importance, would be ineffective in practice'.²⁰ Thus, the outcome of investigations, including the relevant sanction, must be commensurate to the gravity of the ill-treatment, and uphold the deterrent effect of the system.²¹

It is important to underline that in any investigation, States are under a duty to take all reasonable steps to unmask any racist motive and to establish whether or not racial or ethnic hatred or prejudice may have played a role in the events.²² Indeed, failure to explore a potential racist motive in relation to an allegation of police brutality may be found to amount to discrimination, as in *Petropoulou-Tsakiris v Greece*²³ and *Bekos and Koutropoulos v Greece*.²⁴

¹⁸ [Gäfgen v Germany](#) (n 6), para 125; [Abdülsamet Yaman v Turkey](#) App no 32446/96 (ECtHR, 2 November 2004), para 55.

¹⁹ [Ali and Ayşe Duran v Turkey](#) App no 42942/02 (ECtHR, 8 April 2008), paras 61-62. See also [Okkaly v Turkey](#) App no 52067/99 (ECtHR, 17 October 2006), paras 65-66; [MC v Bulgaria](#) (n 11), para 131.

²⁰ [Jeronovičs v Latvia](#) App no 44898/10 (ECtHR, 5 July 2016), para 106.

²¹ [Cestaro v Italy](#) App no 6884/11 (ECtHR, 7 April 2015), para 205; [Gäfgen v Germany](#) (n 6), para 124. See, too, [Guidelines and reference texts on eradicating impunity for serious human rights violations](#), adopted by the Committee of Ministers on 30 March 2011 (COE 2011).

²² See, for example, [Beganović v Croatia](#) App no 46423/06 (ECtHR, 25 June 2009), paras 93-94; [Petropoulou-Tsakiris v Greece](#) App no 44803/04 (ECtHR, 6 December 2007), para 62.

²³ [Petropoulou-Tsakiris v Greece](#) (n 22), paras 61-66.

²⁴ [Bekos and Koutropoulos v Greece](#) App no 15250/02 (ECtHR, 13 December 2005), paras 69-75.

II. MAJOR ISSUES CONCERNING LAW AND TORTURE/ILL-TREATMENT IN GREECE

Greece is, lamentably, not the only country where there is a problem of ill-treatment. To change matters, it is nonetheless important to be responsive to the nature of the problem as it arises in Greece. This section highlights some key aspects of the problem of ill-treatment of apprehended persons at the hands of law enforcement officials in Greece, in light of reports and related information by various bodies.²⁵ This is an indicative, non-exhaustive outline, provided with a view to exploring pathways for alleviating the problem.

Torture and related ill-treatment by law enforcement officials has been observed to occur in various contexts in Greece. These include, but are not limited to: action taken before, during, or immediately after arrest; in police stations; and in migration contexts, including in the context of migration detention and deportation.

A. Incidence of torture/Ill-treatment

Concern has been expressed repeatedly regarding the violence deployed by authorities in the course of arrests in Greece. The CPT has repeatedly noted numerous detailed, coherent and consistent allegations of police brutality, including kicks, slaps, punches and blows with batons (but also other objects) on or after arrest, as well as verbal abuse and threats, often with a racist element.²⁶ Similar issues were mentioned by the COE Commissioner for Human Rights in 2013.²⁷

In *Galotskin v Greece*, for example, the ECtHR found that, in the context of a verbal altercation with the police upon an identity check in 2001, the applicant had been subjected to police brutality including manifestly excessive force during his arrest and detention, in violation of Article 3 ECHR;²⁸ similar brutality was alleged in the course of the arrest of the applicant in the ‘sister’ case of *Zelilof v Greece*, and a violation of Article 3 also found.²⁹ In *Bekos and Koutropoulos v Greece*, one of the complainants detailed repeatedly being hit on the back with a truncheon, slapped and punched, both on arrest and at the police station, also in violation of Article 3 ECHR.³⁰

²⁵ Particular reference is made to: [CPT Report on 2013 Periodic Visit to Greece from 4 to 16 April 2013](#), 16 October 2014, CPT/Inf (2014)26 (hereafter ‘CPT Report on 2013 visit’); [CPT Report on 2015 Ad Hoc Visit to Greece from 14 to 23 April 2015](#), 1 March 2016, CPT/Inf (2016)4 (hereafter ‘CPT Report on 2015 visit’); [CPT Report on 2016 Ad Hoc Visits to Greece from 13 to 18 April and 19 to 25 July 2016](#), 26 September 2017, CPT/Inf (2017)25 (hereafter ‘CPT Report on 2016 visits’).

²⁶ [CPT Report on 2013 visit](#), para 15; [CPT Report on 2015 visit](#), paras 15-18; [CPT Report on 2016 visits](#), paras 64-66.

²⁷ COE Commissioner for Human Rights, [Report following visit to Greece from 28 January to 1 February 2013](#), 16 April 2013, CommDH(2013)6 (hereafter ‘Commissioner Report on 2013 visit’), paras 104-112.

²⁸ [Galotskin v Greece](#) App no 2945/07 (ECtHR, 14 January 2010).

²⁹ See also [Zelilof v Greece](#) App no 17060/03 (ECtHR, 24 May 2007).

³⁰ [Bekos and Koutropoulos v Greece](#) (n 24).

The CPT has indicated that ill-treatment, particularly against foreign nationals, including for the purpose of obtaining confessions, appears to be a frequent practice in police stations.³¹ It has suggested juveniles of Roma background are at particular risk of such ill-treatment when suspected of a crime.³² Incidents of ill-treatment are particularly striking in circumstances where individuals arrive at a police station voluntarily, in some instances to seek protection and the enforcement of law, only to be subjected to violence. In *Alsayed Allaham v Greece*,³³ for example, the victim was severely beaten by a police officer in a police station in Athens where he had gone to report a robbery, in violation of Article 3 ECHR. In *Stefanou v Greece*,³⁴ a 16-year-old boy of Roma background voluntarily attended Argostoli police station to find out about his friends, who had been arrested on suspicion of theft; on arrival, police officers punched and slapped him to get him to confess involvement in the theft, also in violation of Article 3 ECHR. There are numerous other findings and allegations detailed in relevant materials.³⁵ They reveal that ill-treatment on arrest and in police custody is geographically widespread and not isolated to particular areas or to particular police units.

As regards ill-treatment in the migration context, participants will undoubtedly be familiar with the case of *Zontul v Greece*, which involved a migrant being raped with a truncheon by a coast guard in 2001, resulting in a unanimous finding of *torture* against Greece.³⁶ Unfortunately, as Nikolaos Sitaropoulos suggests, such indictments are the tip of the iceberg.³⁷ One would refer indicatively, also, to the torture allegations detailed by Pro Asyl in the Chios submarine case, involving the mock execution, simulation of drowning and suffocation of a Moroccan migrant by two coast guard officers on board a navy vessel near Chios in 2007.³⁸ In his report on Greece in 2013, the COE Commissioner for Human Rights indicated his profound concern at persistent reports of torture and related ill-treatment inflicted by law enforcement officials, notably against migrants,³⁹ and has continued to highlight such incidents of ill-treatment, grave and persistent allegations of which continue to reach him – such as recent allegations of severe beatings of migrants by police officers in Samos and Chios.⁴⁰

Observations regarding the continuous incidence of ill-treatment against migrants in migration contexts and beyond have been made by, among others, the CPT, the CAT and the HR Committee,⁴¹ as well as by the Greek Ombudsman.⁴² It bears highlighting that the incidents of ill-treatment outlined above overwhelmingly concern victims who are migrants, persons (perceived to be) of foreign background, and persons of Roma background.

³¹ [CPT Report on 2015 visit](#), para 21.

³² [CPT Report on 2015 visit](#), paras 97-98.

³³ [Alsayed Allaham v Greece](#) App no 25771/03 (ECtHR, 18 January 2007).

³⁴ [Stefanou v Greece](#) App no 2954/07 (ECtHR, 22 April 2010).

³⁵ See, for example, [CPT Report on 2013 visit](#), paras 14-18; [CPT Report on 2015 visit](#), paras 12-21.

³⁶ [Zontul v Greece](#) (n 8).

³⁷ Nikolaos Sitaropoulos, '[Migrant Ill-treatment in Greek Law Enforcement—Are the Strasbourg Court Judgments the Tip of the Iceberg?](#)' (2017) 19(2) *European Journal of Migration and Law* 136, especially pp. 156-164.

³⁸ See Pro Asyl, '[The Truth May Be Bitter But It Must Be Told](#)': *The Situation of Refugees in the Aegean and the Practices of the Greek Coast Guard* (2007), pp. 10-11.

³⁹ [Commissioner Report on 2013 visit](#), p. 3 and paras 103-113.

⁴⁰ See [Letter from Nils Muižnieks, Council of Europe Commissioner for Human Rights, to Mr Stavros Kontonis, Minister of Justice, Transparency and Human Rights of Greece, and Mr Nikolaos Toskas, Alternate Minister of Interior, concerning ill-treatment by law enforcement officials](#), 18 April 2017..

⁴¹ See, for example, [CPT Report on 2016 visits](#), paras 14, 39, 53; CAT, [Concluding Observations on Greece](#), 27 June 2012, CAT/C/GRC/CO/5-6, para 12; HR Committee, [Concluding Observations on Greece](#), 3 December 2015, CCPR/C/GRC/CO/2, para 15.

⁴² Ombudsman, [2007 Annual Report](#), pp. 46-48; see also Ombudsman, Special Report, [The phenomenon of racist violence in Greece and the way it is handled](#), September 2013, pp. 22-24.

B. Domestic law and implementation

The Constitution of Greece prohibits ‘torture, any bodily maltreatment, impairment of health or the use of psychological violence, as well as any other offence against human dignity’ (Article 7(2)). No suspension of the prohibition is possible even in emergencies (Article 48). Moreover, there is a body of law prohibiting torture and related ill-treatment, and addressing the processing of complaints and pathways to redress. Unfortunately, however, this has not entailed the eradication of torture and related ill-treatment, or adequately discharged Greece’s obligations to address such ill-treatment. As Sitaropoulos suggests in a cogent analysis, ‘the relevant international and European human rights norms and standards have not as yet been fully embedded in the Greek national legal, especially the judicial, system’.⁴³ Below, I consider issues relating to criminal liability and sanctions for torture and related ill-treatment, complaints and investigation mechanisms, and operational safeguards.

1. Criminal liability and sanction for torture and wilful ill-treatment

Torture definition in Penal Code

Article 137A of the Greek Penal Code criminalises ‘torture and other offences against human dignity’. The definition of torture in Greece is provided in Article 137A(2) of the Penal Code as the ‘methodical’ (*μεθοδική*) infliction on a person of severe physical, and other similar forms of, pain or suffering (or the use of tools or substances that can subvert the victim’s will). Greek case law indicates that, for the infliction of pain or suffering to fulfil this requirement, there must be a certain degree of repetition and duration.⁴⁴ Elisavet Symeonidou-Kastanidou suggests that the way this element of the definition has been applied is chiefly responsible for rendering the provision virtually useless.⁴⁵ (It is worth noting that Symeonidou-Kastanidou suggests that an alternative interpretation of the term is warranted, namely that it refers to ‘deliberate’ ill-treatment.) The issue was strikingly exposed in *Zontul v Greece*: finding the rape of Mr Zontul by a coastguard using a truncheon to be torture, the ECtHR deplored the fact that, the ill-treatment being found to be an offence against human dignity (per Article 137A(3) of the Greek Penal Code), the chief perpetrator was sanctioned with a suspended sentence converted into a fine of 792 Euros. It held Greece had not discharged its obligations to appropriately penalise and deter torture and related ill-treatment.⁴⁶

The CAT, CPT and COE Commissioner for Human Rights have called on Greece to amend its definition of torture so as to bring it into clear conformity with Article 1 UNCAT and ECtHR case law.⁴⁷ In his reply to the COE Commissioner for Human Rights’ aforementioned letter of April 2017, the Minister of Justice noted that the issue of the torture definition would be examined by the Law-Making Committee tasked with the reform of the Penal Code.

⁴³ Sitaropoulos (n 37), p. 163.

⁴⁴ See, for example, Leonidas Kotsalis (ed), *The European Convention on Human Rights and Criminal Law* (Nomiki Vivliothiki 2014), p. 97.

⁴⁵ Elisavet Symeonidou-Kastanidou, ‘The concept of torture and other offences against human dignity in the Penal Code’ (2009) *Ποινικά Χρονικά* 3. See also *Zontul v Greece* (n 8), paras 47-51. I would, also, highlight the absence of reference to discrimination in Article 137A(1) of the Penal Code.

⁴⁶ *Zontul v Greece* (n 8), paras 85-109.

⁴⁷ CAT, *Concluding Observations on Greece*, 27 June 2012, CAT/C/GRC/CO/5-6, para 9; CPT, 2015, para 43; *Commissioner Report on 2013 visit*, para 108. See also Sitaropoulos (n 37), pp. 153-154.

Limitation periods

Another major issue relating to criminal liability for torture and related ill-treatment are the limitation periods applicable to the relevant provisions of the Penal Code (torture is subject to a 15-year limitation period and other offences against human dignity to a 5-year limitation period). The re-opening of criminal cases on the basis of a finding by the ECtHR is, moreover, restricted to revisions that would be in favour of the defendant.⁴⁸ These barriers to effective redress are incompatible with international standards on redress for serious human rights violations and with the demands of Article 3 ECHR in particular, as elaborated by the ECtHR. The issue is compounded by delays in investigations, highlighted below.

Adequacy and effectiveness of criminal sanction

Moreover, there are grounds for profound concern at the inadequacy of sanctions imposed for crimes of torture and related ill-treatment. In *Zontul v Greece*, the six-month suspended sentence, which was converted into a fine of 792 Euros, was found to be manifestly disproportionate to the severity of the ill-treatment to which he had been subjected, thus failing to act as an appropriate deterrent or as an adequate form of redress.⁴⁹

A significant dimension of this issue has been recent legislative reform aimed at alleviating overcrowding in Greek prisons by amending Article 82 of the Penal Code and broadening the scope for converting sentences of imprisonment (of up to five years) into fines and community service.⁵⁰ In the only case in which a police officer was convicted of the crime of torture in relation to the infliction of electric shocks on two young men, the imposition of a sentence of six years' imprisonment was altered into a sentence of five years' imprisonment on appeal, which was in turn converted into a fine of 5 euros daily, payable in 36 monthly instalments.⁵¹ This occurred in spite of the provision in Article 137B of the Greek Penal Code for minimum sentences of ten years' imprisonment in cases of the use of systematic torture methods such as electric shock,⁵² due to the application of a complex set of standards, including mitigation considerations and the recent amendments. The ECtHR recently pronounced on the case, *Sidiropoulos and Papakostas v Greece*, finding that the lenient sanction imposed on the police officer had been manifestly disproportionate given the seriousness of the treatment inflicted on the victims.⁵³

This discloses serious shortcomings in ensuring that law enforcement officials face sanctions which are commensurate to the gravity of the ill-treatment they inflict on persons within their control, in contradiction of ECtHR case law. Moreover, the lack of adequate sanction of torture and related ill-treatment entails that officers may operate on the assumption that they will not be held properly to account if they ill-treat someone,⁵⁴ thus increasing the likelihood of ill-treatment and recurrence. The problem of conversion of custodial sentences into fines in torture cases was noted in the COE Commissioner for Human Rights' aforementioned letter of April 2017. The Justice Minister replied that he shared the Commissioner's concerns and that the matter would be considered.

⁴⁸ Article 525(1) and 525(5) of the Code of Penal Procedure.

⁴⁹ *Zontul v Greece* (n 8), paras 107-109.

⁵⁰ See, for example, Law 3904/2010 and Law 4093/2012.

⁵¹ Athens Mixed Jury Appeals Court Judgment 80, 81, 82/2014, 14 February 2014. See the analysis of the case in Greek Helsinki Monitor et al, *Contribution to the List of Issues prior to the Submission of the Periodic Report of Greece* (2014), p. 2.

⁵² See also *Sarwari and others v Greece* App no 38089/12.

⁵³ *Sidiropoulos and Papakostas v Greece* App no 33349/10 (ECtHR, 25 January 2018), para 96.

⁵⁴ This was highlighted in *CPT Report on 2013 visit*, para 14.

It must be mentioned that the cases of torture or related ill-treatment which result in findings of criminal liability and (largely inadequate) sanctions represent only a fraction of reported incidents, which in turn likely reflect a fraction of actual incidents of ill-treatment, not least due to a number of barriers and other elements impeding or dissuading ill-treated persons from complaining.⁵⁵

2. Complaints and investigation mechanisms

It has been frequently highlighted that the duty to investigate allegations of torture or other wilful ill-treatment by State officials is not adequately discharged by Greek authorities. Currently, the investigation routes include disciplinary (also referred to as ‘administrative’) proceedings and criminal proceedings, as well as the new National Mechanism for the Investigation of Arbitrary Behaviour, which has been integrated into the Ombudsman’s Office and operational as from June 2017.

Administrative proceedings

The administrative procedure to investigate allegations of ill-treatment can be initiated *ex officio* and carried out by the local police service to which the suspected police officer belongs, according to the applicable law and notably the 2008 Disciplinary Code.⁵⁶ Most investigations take place in the first instance as Preliminary Inquiries, following a written complaint, and upon the decision of a superior officer of the law enforcement official in question. These inquiries tend to be carried out either by the superior officer or by another senior officer appointed by them.

In a few cases, a more formalised Sworn Administrative Inquiry (EDE) is pursued, because of clear indications that a serious disciplinary offence may have been committed. The law provides for the mandatory assignment of such an inquiry to police officers belonging to a different service in cases of allegations of ‘torture and other offences against human dignity’ under Article 137A of the Penal Code.⁵⁷ The CPT nonetheless observed that, in practice, relevant inquiries might still be allocated to a police officer from the same service as the officer suspected of ill-treatment.⁵⁸ Moreover, the UNSRT has highlighted that Sworn Administrative Inquiries are chiefly orientated towards protecting the rights of the officer under investigation.⁵⁹

⁵⁵ See, for example, [CPT Report on 2015 visit](#), paras 25-26. See also [Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Manfred Nowak on his mission to Greece](#), 21 April 2011, UN doc. A/HRC/16/52/Add.4 , para 36.

⁵⁶ See [Disciplinary Code](#), adopted by Presidential Decree 120/2008 on ‘Disciplinary law for police staff’.

⁵⁷ Arts. 10(1)(c) and 26(4) of the [Disciplinary Code](#), *ibid.*

⁵⁸ [CPT Report on 2015 visit](#), para 27.

⁵⁹ [UNSRT Report on Greece](#), 2011 (n 55), para 15.

Criminal proceedings

The triggering of a criminal procedure normally occurs through order of the public prosecutor at the police investigator's request or *ex officio*. It can be carried out in parallel with the administrative procedure. If the administrative investigation concludes that the police officer suspected of ill-treatment has committed a criminal offence, the file must be passed on to the prosecutor.⁶⁰ If the prosecutor finds that there is sufficient evidence to proceed, they can order a summary investigation, to be conducted under their supervision by a magistrate or a police officer.⁶¹ Alternatively, the prosecutor can order an ordinary investigation, which is conducted by an investigative judge. If the public prosecutor does not proceed with the investigation or if the criminal complaint is dismissed as unfounded, a complainant can appeal before the public prosecutor of the appeal court.⁶²

3. Major shortcomings identified in investigations

Several of the *Makaratzis* group of judgments, which are the subject of supervision by the Committee of Ministers, disclose repeated failures to discharge the duty to conduct an effective investigation under Article 2 (right to life) and Article 3 ECHR.⁶³ In this section, some of the major shortcomings arising in the context of investigations are set out.

Excessive length of proceedings

The excessive length of relevant proceedings has been repeatedly highlighted. The CPT has raised 'the lack of promptness and expeditiousness in carrying out investigations and the passive role of prosecutorial or judicial authorities as regards starting an investigation into allegations of ill-treatment',⁶⁴ which contradicts the requirements of Article 3 ECHR. The issue can be taken to form part of 'long-standing, serious shortcomings concerning excessively lengthy judicial proceedings that hinder every person's access to justice and effective protection of their human rights', as put by the COE Commissioner for Human Rights in 2013.⁶⁵ It is notable that in *Galotskin v Greece* and *Stefanou v Greece*, the applicants were not only able to show that they had been subjected to police brutality contrary to Article 3 ECHR, but also that the excessive length of the proceedings violated their right to a fair trial under Article 6 ECHR.⁶⁶ The CPT indicated that the system as it stood in 2015 was 'characterised by systemic failings by the police and judicial authorities to conduct prompt, thorough, independent and impartial investigations, aimed at bringing the perpetrators of ill-treatment to justice',⁶⁷ underlining that the delays formed part of wider and pervasive inadequacies in the process of investigation and redress.

⁶⁰ Art. 37(2)-(3), Code of Penal Procedure.

⁶¹ This can direct the investigation to the Internal Affairs Directorate of the Hellenic Police (IAD).

⁶² [CPT Report on 2015 visit](#), para 31.

⁶³ See, for example, the following cases: *Bekos and Koutropoulos v Greece* (n 24) (paras 53-55); *Zelilof v Greece* App no 17060/03 (ECtHR, 24 May 2007) (paras 54-64); *Galotskin v Greece* (n 28) (paras 41-51); *Zontul v Greece* (n 8) (paras 94-114). Moreover, a number of cases are pending before the ECtHR in that regard, such as *Koutra and Katzaki v Greece* App no 459/16. See, too, cases in which a finding of a breach of the investigative duty under Article 2 ECHR has been made, such as: *Makaratzis v Greece* App no 50385/99 (ECtHR, 20 December 2004) (paras 73-79); *Karagiannopoulos v Greece* App no 27850/03 (ECtHR, 21 June 2007) (paras 65-71); *Celniku v Greece* App no 21449/04 (ECtHR, 5 July 2007) (paras 60-70).

⁶⁴ [CPT Report on 2015 visit](#), para 24. See also [CPT Report on 2013 visit](#), paras 20-23.

⁶⁵ [Commissioner Report on 2013 visit](#), para 100.

⁶⁶ *Galotskin v Greece* (n 28), paras 54-60; *Stefanou v Greece* (n 34), paras 65-69.

⁶⁷ [CPT Report on 2015 visit](#), para 24.

Issues of thoroughness in evidence gathering and assessment and victim participation

Investigations into allegations of ill-treatment have often been found not only to lack promptness, but also to lack rigour and thoroughness, including in evidence-gathering and assessment, as well as victim participation. Besides many other cases outlined elsewhere in section II.B.3, the cases of *Kalamiotis v Greece* and *Katsaris v Greece* before the HR Committee disclose multiple failings and offer an instructive indication of concerns over the rigour and adequacy of investigations.

Kalamiotis v Greece involved the dismissal of a complaint of ill-treatment by a person of Roma background following a procedure in which he was not allowed to participate and where the concerned police officer's statement played a key role. The HR Committee found this investigation ineffective and contrary to Article 7 ICCPR.⁶⁸ In the case of *Katsaris v Greece*, a litany of inadequacies in the investigation of a complaint of police ill-treatment of a person of Roma background – such as failure to conduct a forensic medical examination, and excessively long preliminary investigations – were compounded by discrimination by the authorities, resulting in multiple violations of the ICCPR.⁶⁹ In relation to victim participation, the case of *Zontul v Greece* is also instructive: the ECtHR found that the Greek authorities had failed in their duty to inform the victim, who was living abroad, of key developments in the domestic proceedings, with the result that he had been unable to avail of his rights as a civil party to claim compensation.⁷⁰

Independence of administrative bodies engaged in investigations

The dual investigative routes of administrative and criminal proceedings do not always guarantee that the trigger and progression of investigations are sufficiently insulated from the officers implicated. The Disciplinary Code does not provide for the mandatory suspension from service of police officers who have allegedly resorted to ill-treatment, pending the outcome of administrative or criminal proceedings against them.⁷¹ This contradicts ECtHR doctrine, and raises the risk that they might be in a position to repeat such acts or obstruct the investigation.⁷² Moreover, the decisive role that may be played by members of the police, including the Internal Affairs Directorate (IAD), does not guarantee the requisite independence.

Independence concerns arise not only as a matter of law, but also as a matter of fact, especially insofar as, in a number of cases and in various parts of the proceedings, more weight appears to be placed on the testimonies of accused officers, substantial testimony is unduly omitted, or credible allegations are summarily dismissed.⁷³ These concerns sparked repeated recommendations by the CPT, among others, for the institution of a fully independent and effective police complaints mechanism.⁷⁴

⁶⁸ [Kalamiotis v Greece](#), CCPR/C/93/D/1486/2006 (HR Committee, 5 August 2008), paras 7.2-7.3.

⁶⁹ [Katsaris v Greece](#), CCPR/C/105/D/1558/2007 (HR Committee, 30 August 2012).

⁷⁰ [Zontul v Greece](#) (n 8), paras 110-113.

⁷¹ Art. 5(3) of the [Disciplinary Code](#) (n 56).

⁷² [CPT Report on 2015 visit](#), paras 27-28. See [Gäfgen v Germany](#) (n 6), para 125; [Yaman v Turkey](#) (n 18), para 55.

⁷³ See, for example, [CPT Report on 2015 visit](#), paras 27-29, 31-40; [Zelilof v Greece](#) (n 29), paras 59-63; [Galotskin v Greece](#) (n 28), paras 45-50; [Bekos and Koutropoulos v Greece](#) (n 24), paras 53-54; [Zontul v Greece](#) (n 8), para 101.

⁷⁴ See, for example, [CPT Report on 2015 visit](#), para 30; [CPT Report on 2013 visit](#), para 14.

Adequacy of the response by prosecutors and courts

Indeed, the case law and other findings also indicate that the response of prosecutorial and judicial authorities to well-substantiated cases of torture or related ill-treatment is not sufficiently robust. This becomes clear from cases such as *Kalamiotis* and *Katsaris*, outlined above, as well as from cases such as *Zontul*,⁷⁵ *Sidiropoulos and Papakostas*,⁷⁶ *Sarwari*,⁷⁷ and the Chios submarino case. Indicatively, in the Chios submarino case, the two coast guard officers, one of whom was initially convicted of complicity to aggravated torture and the other of aggravated torture (with suspended three- and six- year sentences respectively) were acquitted on appeal, amid reports that the prosecutor suggested that torture could not have occurred as there was no evidence that the officers involved were trained in torture methods.⁷⁸ Sitaropoulos speaks of a ‘bluntness’ towards ill-treatment in the highest echelons of the judiciary;⁷⁹ this is demonstrated by the failure of Greece’s Court of Cassation, Areios Pagos, to take into account in a criminal case the defendant’s claims that his confession to the police was obtained through ill-treatment, including the use of falanga, during his interrogation, resulting in a finding against Greece before the HR Committee.⁸⁰

In 2015, the CPT made reference to significant inadequacies in investigations of allegations of ill-treatment. It paid particular attention to 34 cases of alleged ill-treatment which the Internal Affairs Directorate (IAD) of the Hellenic Police had investigated and returned to the Public Prosecutor’s office for further action, and of which the IAD reminded the Public Prosecutor by letter dated 16 April 2014.⁸¹ The CPT highlighted two illustrative cases. In one case, the competent prosecutor concluded that there was no evidence to substantiate a complaint of excessive force on arrest and ill-treatment in custody, in spite of incriminating CCTV footage, which also indicated witness intimidation, and a corroborating medical report. The relevant prosecutor did not interview the witness or the police officers involved in the incident before dismissing the complaint.⁸² In another case, concerning very specific allegations of assault by police officers, including of the use of an ‘electric shock device’, the prosecutor ignored the findings of a medical examination disclosing suspected injuries and dismissed the complaints as manifestly unfounded, calling the claims ‘untrue’.⁸³ The CPT found the prosecutorial response to have been ‘manifestly insufficient’ and to raise ‘serious concerns about the commitment of the Greek authorities to combat impunity within the Hellenic Police’.⁸⁴ In 2016, the CPT noted that no updates had been provided on the 34 cases highlighted in the 2014 letter to the Public Prosecutor by the IAD.⁸⁵

⁷⁵ [Zontul v Greece](#) (n 8), paras 106-109.

⁷⁶ See n 53 above.

⁷⁷ [Sarwari and others v Greece](#) App no 38089/12. See the [press release](#) on the domestic proceedings by the Lawyers’ Group for the Rights of Refugees and Migrants, 23 March 2012.

⁷⁸ Eleni Roussia, ‘[Coast guards tried for torture are acquitted](#)’, *Avgi*, 7 November 2014; Damian Mac Con Uladh, ‘[“Why did you annoy them?” Coastguard officials acquitted of torture convictions](#)’, 12 November 2014.

⁷⁹ Sitaropoulos (n 37), p. 159.

⁸⁰ [Kouidis v Greece](#), CCPR/C/86/D/1070/2002 (HR Committee, 26 April 2006): violation of Art. 14(3)(g) ICCPR.

⁸¹ [CPT Report on 2015 visit](#), para 33.

⁸² [CPT Report on 2015 visit](#), para 38.

⁸³ [CPT Report on 2015 visit](#), paras 34-36.

⁸⁴ [CPT Report on 2015 visit](#), paras 37, 39.

⁸⁵ [CPT Report on 2016 visits](#), para 67. In its response, the Greek government directed the CPT to contact the Ministry of Justice, Transparency and Human Rights for complete answers: [Response of the Greek Government to the report of the CPT on its visits to Greece](#), 26 September 2017, CPT/Inf (2017)26, p. 18.

Adequacy of sanctions

Cases such as those cited above suggest that the lack of robustness tends to permeate the whole of the proceedings, including sentencing, so that the sanctions ultimately provided for criminal acts amounting to torture or other ill-treatment are manifestly disproportionate and insufficiently dissuasive (see some further examples in section II.B.1 above). The inadequate penal sanctions are compounded by inadequate disciplinary measures. For example, in *Sidiropoulos and Papakostas v Greece*, the ECtHR highlighted that the police officer who had tortured the young men had effectively never suffered from the consequences of his actions as a police officer, having left the police force of his own volition, having served for a further eight years after the incident and indeed having been promoted. The disciplinary proceedings could not be resumed after the criminal proceedings had been completed, as the police officer had left the police by that time. This led the ECtHR to find that both the criminal and disciplinary system, as applied in the case, were seriously lacking in rigour and lacked the deterrent effect necessary to secure the effective prevention of torture.⁸⁶

Ultimately, these inadequacies boil down to impunity. The message emerging is that law enforcement officials who ill-treat those within their control may not be held to account, or will not face commensurate sanctions reflecting the gravity of their acts. There is therefore no effective redress and no effective deterrence; victims are discouraged from coming forward; and the system does not provide the outcomes needed to enable concrete and targeted action towards non-repetition.

4. Recent developments aiming to establish an effective complaint mechanism

Law 4443/2016 established the National Mechanism for the Investigation of Arbitrary Behaviour, integrated into the Ombudsman's Office, covering all law enforcement and detention establishment officials. The mandate of the new mechanism (operational as from June 2017) comprises collecting, recording, assessing and further transmitting to the competent bodies complaints regarding torture and other offences against human dignity within the meaning of Article 137A of the Penal Code, as well as other types of illegal behaviour, including discriminatory treatment. The Ombudsman evaluates all submitted complaints which fall within its specific competence and decides either to investigate them itself or to forward them to the competent disciplinary body. In conducting its investigation, the Ombudsman may obtain any information or documents relating to the case, unless they have been classified as secret on grounds of national defence, national security or international relations. Furthermore, the Ombudsman may take statements from witnesses, conduct on-site investigations and order experts' reports. Implementation of the Ombudsman's findings is not compulsory, but the disciplinary body to which any matter is forwarded is under an obligation to give specific reasons justifying any divergence from these.⁸⁷

The Ombudsman is also empowered to request the reopening of an administrative investigation in cases where the ECtHR has found the initial investigation ineffective.⁸⁸ This has recently taken place in relation to the case of *Zontul v Greece*.⁸⁹

⁸⁶ [Sidiropoulos and Papakostas v Greece](#) (n 53), paras 89-100.

⁸⁷ See Committee of Ministers, Supervision of *Makaratzis v Greece* group of cases, [Status of Execution](#) and other information; see Law 4443/2016, Part D (Δ), notably Article 56.

⁸⁸ Committee of Ministers, *Makaratzis* [Status of Execution](#), *ibid*.

⁸⁹ Ombudsman, [Press Release: 'New disciplinary investigation on the torture of a foreign national by the Coast Guard following the Ombudsman's request and the finding against Greece by the European Court'](#), 28 December 2017. Note the Greek Helsinki Monitor's request for re-examination of all 11 cases in

According to the *Status of Execution* report issued by the Committee of Ministers, during its first two months of operation the National Mechanism received 34 complaints against police officers, four of which were submitted directly by alleged victims. 29 complaints were forwarded by the police; one concerned a judgment of the ECtHR; six cases did not fall within the Ombudsman's competence. In two cases, the Ombudsman has decided to carry out the investigation itself, while the rest were forwarded to the competent disciplinary body.⁹⁰

It remains to be seen how the work of the Ombudsman, in its capacity as National Mechanism, may address the problems identified. Nonetheless, there is significant cause for concern in relation to several matters, including:

- the potency of the mechanism: its findings and recommendations are not binding, and do not directly impact on criminal proceedings;
- the extent to which it remains embedded into, and reliant on synergies with, a dual system of investigations that has repeatedly proved ineffective or otherwise inadequate - including the indication that it remains highly reliant on administrative procedures that have been repeatedly indicted as inadequate in discharging Greece's investigative duty; and
- that obstructions and disincentives against lodging complaints appear to remain in place.

It is thus still questionable whether the investigative system currently operative in Greece is capable of fulfilling the Article 3 ECHR procedural duty, and how far concerns as to independence, promptness, diligence and effectiveness, have been alleviated. In light of the concerns highlighted throughout this note, there are good grounds for believing that, even with the Ombudsman's best efforts, the current system may continue to present an 'environment of powerlessness'⁹¹ for those subjected to ill-treatment at the hands of law enforcement officials, unless a more substantial and systematic reform of law and practice takes place.

III. MAJOR ISSUES REGARDING OPERATIONAL SAFEGUARDS IN GREEK LAW ENFORCEMENT

The absence of vital safeguards and communication avenues falls within the preconditions of torture. Nigel Rodley has highlighted that 'torture happened to people when they were held at the sole mercy of their captors and interrogators' and that '[t]he longer they were denied access to and from the outside world (i.e. to family, lawyers, doctors, courts) the more they were vulnerable to abuse by those wishing to obtain information or confessions from them'.⁹²

Greek law provides for various operational safeguards towards the prevention of torture and related ill-treatment of apprehended persons. I will be briefly considering some key safeguards towards preventing torture and related ill-treatment: (a) third party notification; (b) access to a lawyer; (c) access to a doctor; (d) information on rights; (e) custody records; and (f) the conduct of interrogations (or, rather, interviews). Unfortunately, the CPT has found that the safeguards provided are inadequate, or inadequately implemented in practice.⁹³ The ineffectiveness of these safeguards contributes to obstructing prevention of ill-treatment and accountability for such ill-treatment.

[Communication on the execution of Makaratzis group of cases](#), 3 November 2017, p. 1; see, in this regard, Committee of Ministers, *Makaratzis Status of Execution* (n 87).

⁹⁰ Committee of Ministers, *Makaratzis Status of Execution* (n 87).

⁹¹ [UNSR Report on Greece](#), 2011 (n 55), para 36.

⁹² Nigel Rodley, '[Reflections on Working for the Prevention of Torture](#)' (2009) 6(1) *Essex Human Rights Review* 15, p. 15.

⁹³ See [CPT Report on 2013 visit](#), paras 26-34; [CPT Report on 2015 visit](#), paras 45-54; [CPT Report on 2016 visits](#), paras 68-75. See also [UNSR Report on Greece](#), 2011 (n 55), paras 42-46.

A. Third party notification

While there is a right to notify a family member or another person of one's choosing provided for by law,⁹⁴ the CPT has repeatedly recorded its frequent ineffectiveness in Greek police practice. In particular, there are repeated allegations that persons are impeded from making such contact within the first 24 hours of being in police custody, and sometimes find themselves unable to avail of the right due to lacking the funds to purchase a phone card.⁹⁵

B. Access to a lawyer

Greek law provides for the right of access to a lawyer.⁹⁶ Unfortunately, however, the right often proves to be 'theoretical and illusory'.⁹⁷ Moreover, there is concern that entitlement to have a lawyer present does not apply from the outset of police custody, but rather only when a detained person becomes an 'accused' person.⁹⁸

The ineffectiveness in practice of the right of access to a lawyer is attested by a number of observations of the CPT. It has highlighted that, in practice, the vast majority of persons detained by the police did not have access to a lawyer during the first few hours of their deprivation of liberty, including during interrogation. Notably, the lack of legal aid provision for the period of investigation and police interrogation entails that many are unable to avail of access to a lawyer because they cannot afford the legal fees. These problems entail that a lawyer's presence is not guaranteed at the time when this safeguard is most needed, that is, when persons are most at risk of ill-treatment. Additional issues include the lack of rigour displayed by *ex officio* lawyers when they attend, as well as the issue that, where access to a lawyer is availed of, there is frequently a lack of respect for lawyer-client confidentiality, with reports that consultations with lawyers by persons in custody are openly or secretly monitored or recorded by investigating police officers.⁹⁹

C. Access to a doctor

CPT reports indicate that the right of access to a doctor¹⁰⁰ remains ineffective in practice for a significant number of apprehended persons. There are repeated allegations of detained persons, particularly those alleging ill-treatment by the police, not receiving the requisite medical treatment or examination. Requests to see a doctor are often refused or delayed. There is a tendency not to respect the principle of medical confidentiality, as police officers continue to be present during medical examinations, including in hospital, and to obtain medical information on detained persons. There does not tend to be a system of regular visits by doctors or nurses to places of detention.¹⁰¹

⁹⁴ See [Police Circular 4803/22/44](#), para 3(d). See also [Presidential Decree 254/2004, 'Code of police ethics'](#), Art. 3.

⁹⁵ See [CPT Report on 2013 visit](#), para 27; [CPT Report on 2015 visit](#), para 46; [CPT Report on 2016 visits](#), para 69.

⁹⁶ See, notably, Arts. 96-104 of the Greek Penal Code. See also [Presidential Decree 254/2004, 'Code of police ethics'](#), Art. 3.

⁹⁷ [CPT Report on 2015 visit](#), para 47.

⁹⁸ [CPT Report on 2013 visit](#), para 29; see Arts. 96-104 of the Greek Penal Code.

⁹⁹ On these and other issues, see [CPT Report on 2013 visit](#), paras 28-29; [CPT Report on 2015 visit](#), paras 47-48; [CPT Report on 2016 visits](#), paras 23, 70.

¹⁰⁰ On which see para [Police Circular 4803/22/44](#), para 3(g), and [Presidential Decree 141/1991](#), Art. 60(3)(θ). See also [Presidential Decree 254/2004, 'Code of police ethics'](#), Art. 3.

¹⁰¹ See [CPT Report on 2013 visit](#), paras 30-31; [CPT Report on 2015 visit](#), paras 49-51; [CPT Report on 2016 visits](#), paras 71-73.

The CPT has, moreover, criticised shortcomings in securing a forensic medical examination in cases of allegations of ill-treatment, notably that such examinations are not carried out in a timely and proactive manner.¹⁰² It should be noted, in this regard, that doctors attending to such incidents themselves require training on identifying instances of torture or related ill-treatment.¹⁰³

D. Information on rights

Currently, an information leaflet (Δ-33 form) detailing the rights of detained persons appears to be available in various languages in police stations across Greece. Moreover, the Greek government has indicated that form Δ-34 enables detainees to make a complaint during detention about ill-treatment or other rights violations and to ‘any authority, agency or organisation’.¹⁰⁴ At the same time, the CPT has repeatedly met foreign nationals who stated that they were unable to understand the information provided and that they had signed documents in the Greek language without knowing their content.¹⁰⁵ Moreover, the provision of the Δ-34 form is plagued by allegations that it is not provided unless requested, and that it cannot be submitted confidentially;¹⁰⁶ this discloses substantial barriers to the effective exercise of the relevant rights.

E. Custody records

The CPT has highlighted that custody records are often superficial or poorly kept, containing errors or omissions, for instance as regards arrival times, placement in a cell, and other matters.¹⁰⁷ These records are vital for accountability purposes, and it is important that individualised records – if possible also in electronic format¹⁰⁸ – are maintained and updated thoroughly.

¹⁰² See, for example, [CPT Report on 2015 visit](#), paras 41-42.

¹⁰³ See Helen McColl, Kamaldeep Bhui and Edgar Jones, ‘[The Role of Doctors in Investigation, Prevention and Treatment of Torture](#)’ (2012) 105(11) *Journal of the Royal Society of Medicine* 464; see also OHCHR, [Manual on Effective Investigations and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment \(‘Istanbul Protocol’\)](#) 2004, HR/P/PT/8/Rev.1.

¹⁰⁴ [Response of the Greek Government to the report of the CPT on its visits to Greece](#), 26 September 2017, CPT/Inf (2017)26, p. 35.

¹⁰⁵ [CPT Report on 2015 visit](#), para 52; [CPT Report on 2016 visits](#), para 74.

¹⁰⁶ [CPT Report on 2015 visit](#), para 25; [CPT Report on 2016 visits](#), para 74.

¹⁰⁷ [CPT Report on 2013 visit](#), para 34; [CPT Report on 2015 visit](#), paras 53-54; [CPT Report on 2016 visits](#), para 75.

¹⁰⁸ See [CPT Report on 2015 visit](#), para 53; [Response of the Greek Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) on its visits to Greece](#), 26 September 2017, CPT/Inf (2017)26, pp. 34-35.

F. Conduct of interviews

In 2013, the CPT was critical of Greece for not drawing up a Code of Conduct on interrogations, as it had recommended in 2005, highlighting that many of the allegations of ill-treatment the CPT had received during the 2013 visit related to the time of interview.¹⁰⁹ It suggested that such a code should particularly include notifying the detainee of the identity of the persons present during the interview, recording the time the interview begins and ends, authorised duration, breaks and other matters. The Greek government's response was that relevant legal provisions are adequate.¹¹⁰ In light of the magnitude of the problem of ill-treatment, this may require reconsideration.

Moreover, the CPT has repeatedly called for the electronic (audio and/or preferably video) recording of police interviews, as a significant additional safeguard against ill-treatment of detainees.¹¹¹ The CPT has also highlighted the need for training in advanced, recognised and acceptable interviewing techniques to be provided to all relevant officials, but also the need for crime investigation to place focus on real evidence, reducing reliance on information and confessions obtained through questioning.¹¹²

The above outline paints a picture of apprehended persons being rendered doubly powerless: finding themselves in a situation of significant power imbalance, they often lack effective access to safeguards to mitigate this imbalance and may be at the mercy of persons who ill-treated them or continue to ill-treat them. In light of the recognised significance of operational safeguards towards preventing torture and other ill-treatment, I indicate below that the recommendations put forward by the CPT on these matters should be followed.¹¹³

IV. PERSISTENT PATTERNS OF DISCRIMINATION IN GREEK LAW ENFORCEMENT

A. Reports recording discrimination

Relevant judgments and reports reveal significant and seemingly entrenched patterns of discrimination. They indicate that many of those ill-treated by law enforcement officials are persons (perceived to be) of foreign or Roma background. The RVRN has continuously recorded numerous incidents of racially motivated police violence.¹¹⁴ Reporting on its 2013 visit, the CPT indicated that many foreign individuals in detention made allegations of being subjected to racist insults by police officers on arrest or while at the police station, and such verbal abuse was frequently combined with physical ill-treatment.¹¹⁵ According to more recent CPT reports, the issue has not dissipated.¹¹⁶

¹⁰⁹ See [CPT Report on 2013 visit](#), para 33.

¹¹⁰ [Response of the Government of Greece to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) on its visit to Greece from 4 to 16 April 2013](#), 16 October 2014, CPT/Inf (2014) 27, p. 29.

¹¹¹ [CPT Report on 2013 visit](#), para 33; [CPT Report on 2015 visit](#), para 22; [CPT Report on 2016 visits](#), para 66.

¹¹² [CPT Report on 2013 visit](#), para 33.

¹¹³ See [CPT Report on 2013 visit](#), paras 26-34; [CPT Report on 2015 visit](#), paras 45-54; [CPT Report on 2016 visits](#), paras 68-75.

¹¹⁴ RVRN, [2016 Annual Report](#), pp. 13-14; RVRN, [2015 Annual Report](#), pp. 21-22; RVRN, [2014 Annual Report](#), pp. 12-14.

¹¹⁵ [CPT Report on 2013 visit](#), para 18; see also paras 15, 64.

¹¹⁶ See, for example, [CPT Report on 2015 visit](#), para 19.

In his 2013 report on Greece the COE Commissioner for Human Rights noted with concern a substantial number of incidents of ill-treatment of migrants and persons of Roma background by law enforcement officials,¹¹⁷ also highlighting that numerous migrants he met informed him of attempts to report racist attacks to the police being met with insults and ill-treatment.¹¹⁸ The Commissioner registered particular disquiet with regards to estimates of police support for neo-Nazi party Golden Dawn, and called on the authorities to relieve of their duties any law enforcement officers who are exercising such duties motivated by racism.¹¹⁹ The Ombudsman has also recorded complaints of racially charged misconduct by the police, which – as recounted in its 2013 special report on racist violence – varied from refusal to investigate complaints about ill-treatment to verbal and physical violence by police officers.¹²⁰

The FRA's recent report on discrimination indicates, strikingly, that over 80% of persons of Asian background stopped by police in Greece felt they had been victims of ethnic profiling, while the figure for persons of Roma background was 63%.¹²¹ In a recent survey of migrants by ENAR, 66.6% of the migrants surveyed who had the experience of a police stop or other police encounter, reported being treated 'fairly' or 'very respectfully', but in Greece this figure was only 40.2%, with 34.6% feeling they had been treated 'very disrespectfully'.¹²²

B. ECtHR judgments showing discrimination in Greek law enforcement

The cases of *Bekos and Koutropoulos v Greece* and *Petropoulou-Tsakiris v Greece* resulted in findings by the ECtHR of a violation of Article 14 (prohibition of discrimination) in conjunction with Article 3 ECHR: the failure to investigate racial motives in police ill-treatment of individuals of Roma background constituted discrimination.¹²³ In *Bekos and Koutropoulos*, the ECtHR found that, in spite of a body of testimony alleging racial abuse by the police responsible for ill-treating the applicants, and a submission referring to numerous oral testimonies concerning similar incidents of ill-treatment of persons of Roma background, no proper inquiries were made into racial motives for the incident.¹²⁴ In *Petropoulou-Tsakiris*, the ECtHR found it unacceptable that not only was there no attempt on the part of the investigating authorities to verify whether the behaviour of the policemen involved in the violent incident displayed anti-Roma sentiment, but also that the Deputy Director of Police made derogatory remarks in the course of the administrative investigation, including that complaints raised by persons of Roma background were exaggerated and formed part of their 'common tactic to resort to the extreme slandering of police officers with the obvious purpose of weakening any form of police control'. The Court concluded that this disclosed 'a general discriminatory attitude on the part of the authorities'.¹²⁵

¹¹⁷ [Commissioner Report on 2013 visit](#), paras 104-112. See, too, [Letter from COE Commissioner](#), 18 April 2017 (n 40).

¹¹⁸ [Commissioner Report on 2013 visit](#), para 123. See also RVRN, [2016 Annual Report](#), pp. 3, 16-22; see also [Sakir v Greece](#) App no 48475/09 (ECtHR, 24 March 2016).

¹¹⁹ [Commissioner Report on 2013 visit](#), para 122.

¹²⁰ Ombudsman, Special Report, [The phenomenon of racist violence in Greece](#) (n 42), pp. 16-27.

¹²¹ FRA, [Second European Union Minorities and Discrimination Survey: Main Results](#) (2017), pp. 69-71.

¹²² ENAR, [Survey: Migrants speak up! Key Findings](#) (2017), p. 10.

¹²³ [Bekos and Koutropoulos v Greece](#) (n 24), paras 69-75; [Petropoulou-Tsakiris v Greece](#) (n 22), paras 61-66.

¹²⁴ [Bekos and Koutropoulos v Greece](#) (n 24), paras 72-74.

¹²⁵ [Petropoulou-Tsakiris v Greece](#) (n 22), paras 64-65. Similarly and strongly damning is the finding of the HR Committee in [Katsaris v Greece](#) (n 69), para 10.7.

Case law also attests to failure by law enforcement authorities to respond adequately to patterns of racist violence. For instance, in *Sakir v Greece*, the ECtHR noted that Greek law enforcement authorities had failed to link the attack against an Afghan national with the widespread phenomenon of racist violence, particularly in the area of the particular incident, in their investigation of the attack, which the ECtHR found to be inadequate.¹²⁶ Indeed, as the ECtHR highlighted, relevant reports by the Greek Ombudsman and by NGOs disclosed significant shortcomings in the police response to racist violence, including failure to intervene during such attacks, as well as failure to investigate adequately.¹²⁷

Discrimination on other grounds, not least LGBTQI+ status, is also a key concern. The case of *Zontul v Greece* represents a situation where the victim of torture found himself at the intersection of xenophobia and homophobia.¹²⁸ This highlights the often multi-faceted character of discrimination, reinforcing the need for an intersectional approach to non-discrimination, taking on board gender, race, ethnicity, religion, belief, sexual orientation, gender identity or expression, disability, age, or perceptions thereof.

C. Key concerns going forward

Again, it bears underlining that the recorded incidents of racially motivated or otherwise discriminatory ill-treatment by police officers, and relevant case law, reflect only a fraction of the problem, with strong indication that many incidents go unreported, not least due to victims' insecurity vis-à-vis law enforcement,¹²⁹ their lack of faith in law enforcement,¹³⁰ or other barriers, including language barriers.¹³¹ The Ombudsman has highlighted that victims of racist violence, many of whom are migrants, are often reluctant to file a complaint, for various reasons, including their relative vulnerability as against State agents, their insecurity in light of their immigration status, lack of information and obstacles to contacting institutions able to provide them with support, as well as their belief that they have no prospect of finding justice.¹³²

Various reforms have taken place in recent years with a view to addressing patterns of discrimination and racist violence and the authorities' response to such incidents, such as establishing a National Council against Racism and Intolerance and special prosecutors for racist violence; the extent to which they are effective in alleviating the problems outlined continues to be under review.¹³³ In light of the interconnectedness between these discriminatory patterns and the problem of ill-treatment by law enforcement in Greece, the issue of discrimination within law enforcement calls for discussion at the round-table.

¹²⁶ [Sakir v Greece](#) App no 48475/09 (ECtHR, 24 March 2016), paras 70-72.

¹²⁷ See, for example, Amnesty International, [Greece: A Law Unto Themselves: A Culture of Abuse and Impunity in the Greek Police](#) (2014), pp. 22-23.

¹²⁸ See *Zontul v Greece* (n 8), paras 16, 79. On such discrimination within Greek society, see, for example, RVRN, [2015 Annual Report](#), pp. 6-8, 13-19.

¹²⁹ This is a general issue in relation to complaints of ill-treatment (but there is good reason to believe it affects marginalised persons to an even greater extent). See, for example, [CPT Report on 2015 visit](#), para 25.

¹³⁰ See, for example, [Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance Mutuma Ruteere on his mission to Greece](#), 4 May 2016, UN doc. A/HRC/32/50/Add.1, paras 47-50.

¹³¹ See [UNSR Report on Greece](#), 2011 (n 55), para 34.

¹³² Ombudsman, Special Report, [The phenomenon of racist violence in Greece](#) (n 42), p. 27.

¹³³ See, notably, Committee of Ministers, Supervision of *Sakir v Greece*, [Status of Execution](#) and other information.

V. ILL-TREATMENT IN GREEK LAW ENFORCEMENT AS A SYSTEMIC ISSUE – PATHWAYS TO CHANGE

The materials overwhelmingly point to a problem of substantial proportions, which is of a systemic and structural character. Among the significant and persistent incidents of ill-treatment, which are met with inadequate accountability, there are well-grounded concerns regarding the prevalence of discrimination in the way certain persons are treated at the hands of Greek police. The CPT has rightly called the issue of police ill-treatment ‘widespread and deep-rooted’,¹³⁴ and has called for a comprehensive strategy and determined action to combat it.¹³⁵

To alleviate the problem, a very significant step for the authorities is to acknowledge that ill-treatment by law enforcement officials is systemic, and involves widespread (tolerance of) prejudice, abuse of power, and impunity. There is therefore no room for accepting the status quo. The authorities must act urgently and systematically to eradicate it.

Exploring Pathways to Change

A recent study by Richard Carver and Lisa Handley¹³⁶ examined the effectiveness in preventing torture of a range of mechanisms aimed at torture prevention, notably:

- operational safeguards, with emphasis on the initial period in custody;
- monitoring by oversight bodies, such as NPMs, the CPT or SPT;
- complaint mechanisms for individuals who allege torture or related ill-treatment;
- investigation and prosecution.

The study disclosed that operational safeguards in the context (and particularly the early period) of liberty deprivation were by far the most effective in reducing the risk of torture. It found that relevant safeguards can, if implemented effectively and promptly, operate to reduce opportunities for ill-treatment, in line with the idea that torture is a ‘crime of opportunity’. Effective investigation, prosecution and sanction mechanisms were found to be the next most important torture prevention pathway: when they operate consistently and robustly, the risk of torture falls. Monitoring was also considered to contribute to prevention in various ways, although less directly than detention safeguards and effective investigation and prosecution. Independent complaint mechanisms were found to have decisive impact only where they were closely linked to judicial investigations and prosecutions.¹³⁷

Central to the study’s findings was that law has little impact in terms of torture prevention on its own. Key to prevention is practice, including the rigorous and effective implementation of relevant legal norms.¹³⁸ The often substantial gap between law and practice must therefore be closed.

¹³⁴ [CPT Report on 2015 visit](#), para 21; [CPT Report on 2016 visits](#), para 66.

¹³⁵ See [CPT Report on 2015 visit](#), summary and para 44.

¹³⁶ Richard Carver and Lisa Handley, [Does Torture Prevention Work?](#) (Liverpool University Press 2016).

¹³⁷ On all these matters, see Carver and Handley (n 136), chapter 3.

¹³⁸ Carver and Handley (n 136), chapter 3, especially p. 52.

Institutional culture is central to closing this gap. As regards policing culture in particular, a hands-on integration of human rights and non-discrimination within its core values and practice can reduce the risk of police misconduct. It can also increase society's trust in the police. This in turn can promote co-operation and make policing considerably more effective.¹³⁹ Accordingly, a well-resourced reform of policing culture can have lasting dividends in closing cycles of violence and upholding the rule of law.

In light of the observations made above, it is important for the Greek authorities to address, in a co-ordinated manner:

1. the adequacy of legal provisions on criminal liability and sanction;
2. the adequacy and effective implementation of operational safeguards for persons in custody;
3. the institutional culture of law enforcement; and
4. the independence, accessibility and effectiveness of complaint and investigation mechanisms, including the rigour of the prosecutorial and judicial authorities.

1. Adequate legal provisions on criminal liability and sanction

It is hoped that reform is forthcoming to align the definition of torture in Article 137A of the Penal Law with international law, notably Article 1 UNCAT. Moreover, the relevant law should more straightforwardly guarantee proportionate and effectively dissuasive sanctioning for torture and wilful ill-treatment, and should not leave room for undue mitigation or the application of limitation periods. In addition, the law should be rigorously enforced, a matter which is closely tied to the accessibility and effectiveness of complaint and investigation mechanisms.

In response to concerns relating to the above issues,¹⁴⁰ a letter from the Ministry of Justice to the COE Commissioner for Human Rights indicates that the relevant Law-Making Committee established to reform the Penal Code has been instructed to examine the compatibility of the current definition of torture under Article 137A with Article 1 UNCAT. Moreover, in regard to the conversion of custodial sentences for the purpose of decongesting Greek prisons, there is an assurance that Greece 'will not sacrifice justice in the name of prisons' decongestion' and a commitment to ensure that the perpetrators of torture are proportionately and effectively punished.¹⁴¹ These undertakings, among others, can be discussed at the round-table.

¹³⁹ See Mike Hough, Jonathan Jackson and Ben Bradford, '[Legitimacy, Trust and Compliance: An Empirical Test of Procedural Justice Theory Using the European Social Survey](#)' in Justice Tankebe and Alison Lieblich (eds), *Legitimacy and Criminal Justice: An International Exploration* (Oxford University Press 2013).

¹⁴⁰ [Letter from COE Commissioner](#), 18 April 2017 (n 40).

¹⁴¹ [Reply by Mr Stavros Kontonis, Minister of Justice, Transparency and Human Rights of Greece, to the letter of Nils Muižnieks, Council of Europe Commissioner for Human Rights, concerning ill-treatment by law enforcement officials](#), 28 April 2017, CommDH/GovRep(2017)7.

2. Adequacy and effective implementation of operational safeguards

All safeguards discussed above should be optimised, including by making better provision for access to a lawyer, and rigorously enforced in all places of detention. The participants' attention is drawn to the recommendations of the CPT in this regard.¹⁴² It is worth recalling that strengthening operational safeguards should include targeted training in professional interviewing techniques.¹⁴³ Moreover, for such operational safeguards as access to a doctor and lawyer to be effective, the independence and rigour of such professionals should be ensured, including through relevant training.

3. Institutional culture of law enforcement

The CPT has rightly called for 'a police culture where it is regarded as unprofessional to resort to ill-treatment'.¹⁴⁴ This should also ensure that law enforcement officials facilitate, rather than obstruct, access to operational safeguards and accountability mechanisms.

Translating human rights into police practice requires hands-on, practical incorporation into training and police processes, and not purely theoretical instruction and box-ticking. There are numerous useful tools and pathways to doing this.¹⁴⁵ There may also be room for exploring avenues of collaboration with experts on effective human rights-based policing. A valuable example of changes to policing culture is Northern Ireland, where an overhaul in police practice after the Good Friday Agreement of 1998 resulted in a human rights-based approach to policing, with due focus on non-discrimination, which has seen significant improvement in the prevention of ill-treatment and the upholding of the rule of law.¹⁴⁶

Torture thrives in a climate of vilification and marginalisation. Institutional racism, xenophobia and other forms of prejudice and discrimination do not just tarnish law enforcement operations, but also constitute conditions in which ill-treatment is more likely to take place. Systematic efforts to eradicate discrimination within law enforcement are therefore needed. Policing culture should be guided by the essence of human rights: that they pertain to all on account of their humanity, without distinction. This is a hallmark of democratic policing. It also ensures effectiveness by avoiding the alienation of particular communities or groups.

In considering the way forward, emphasis can be placed on the CPT's recommendations of incorporating equality and non-discrimination into recruitment criteria and training, but also of making active efforts to recruit police officers from minority groups within Greece.¹⁴⁷ Attention is also drawn to the pertinent recommendations of the UN Special Rapporteur on the human rights of migrants, which include improving the human rights training of all persons working in the area of migration as well as public campaigns on racism and xenophobia and human rights education and awareness-raising in the educational curriculum.¹⁴⁸ The latter recommendation recognises that the wider societal and political environment cannot be neglected.

¹⁴² See, on this, [CPT Report on 2013 visit](#), paras 26-34; [CPT Report on 2015 visit](#), paras 45-54; [CPT Report on 2016 visits](#), paras 68-75.

¹⁴³ [CPT Report on 2013 visit](#), para 33.

¹⁴⁴ [CPT Report on 2015 visit](#), para 23.

¹⁴⁵ See, for example, OSCE/ODIHR, [Guidelines on Human Rights Education for Law Enforcement Officials](#) (2012); OSCE/ODIHR, [Guidebook on Democratic Policing](#) (2008); see also FRA, [Fundamental rights-based police training: A manual for police trainers](#) (Publications Office of the EU 2013).

¹⁴⁶ See, further, Michele Lamb, 'A Culture of Human Rights: Transforming Policing in Northern Ireland' (2008) 2(3) *Policing: A Journal of Policy and Practice* 386.

¹⁴⁷ [CPT Report on 2013 visit](#), para 25.

¹⁴⁸ [Report of the Special Rapporteur on the human rights of migrants François Crépeau on his mission to Greece](#), 24 April 2017, UN doc. A/HRC/35/25/Add.2, paras 141-143. See also [Report of the Special](#)

Lastly, a change in institutional culture is also connected to accountability. A widespread understanding that torture and other wilful ill-treatment is wrong and that criminal liability flows from it, and will be enforced, can shape attitudes and behaviours.

4. Independent, accessible, and effective complaint and investigation mechanisms

Further action is needed to secure the accessibility and effectiveness of complaint mechanisms for persons who allege ill-treatment in police custody. Obstructions and omissions such as those identified above should be eliminated.¹⁴⁹ Among other matters, detainees should be able to submit complaints confidentially and, where necessary, through access to interpretation services.¹⁵⁰ There should be a ‘firewall’ between complaints mechanisms and the immigration authorities.¹⁵¹ There should also be protection for law enforcement officials who blow the whistle on ill-treatment.¹⁵²

As Carver and Handley point out, it is vital to the effectiveness of complaint mechanisms that they are tied to binding legal processes and outcomes. While all relevant authorities should support the Ombudsman’s work as National Mechanism for the Investigation of Arbitrary Behaviour and be responsive to its requests and recommendations, it should be questioned how far this mechanism cures the problems outlined above. Alternative options should be considered, taking into account the experience of other models in Europe.

It is also important to pursue the training and awareness of legal professionals involved in all parts of relevant accountability processes, including prosecutorial and judicial authorities. It is noted that the COE Commissioner for Human Rights has recommended that Greek authorities draw on the rich body of expertise found in the Council of Europe’s European Programme for Human Rights Education for Legal Professionals (HELP).¹⁵³

VI. QUESTIONS ON THE WAY FORWARD

The commitment of the Greek government to torture prevention was reaffirmed in the letter sent by Greece’s Minister of Justice, Transparency and Human Rights to the COE Commissioner for Human Rights in April 2017. The letter included recognition that ‘preventive measures, and especially training of law enforcement personnel, judges and prosecutors are of high importance and can decisively help to effectively combat such incidents’.¹⁵⁴ In this spirit, it is hoped that the issues outlined above can be approached with full commitment to systematic reform, which must proceed with urgency.

[Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance](#), 4 May 2016 (n 130), paras 71-75.

¹⁴⁹ See, generally, [CPT Report on 2015 visit](#), paras 24-60.

¹⁵⁰ [CPT Report on 2015 visit](#), para 24.

¹⁵¹ [Report of the Special Rapporteur on the human rights of migrants](#), 24 April 2017 (n 148), para 140.

¹⁵² [CPT Report on 2015 visit](#), para 23.

¹⁵³ [Letter by COE Commissioner of Human Rights Nils Muiznieks to Mr Nikolaos Toskas and Mr Nikos Paraskevopoulos](#), 25 July 2016, CommHR/NM/sf 036-2016. See HELP’s [website](#); see also its [e-learning site](#).

¹⁵⁴ [Reply by Greek Minister of Justice to COE Commissioner](#), 28 April 2017 (n 141).

Thematic tracks for discussion:

A. Law (criminal liability and sanctions)

1. Are changes in the law to respond to the problems identified above feasible and forthcoming?

This question refers in particular, but not exclusively, to:

- i. reforming the definition of torture in Article 137A(2) of the Penal Code;
- ii. removing limitation periods in relation to crimes of torture and other wilful ill-treatment;
- iii. guaranteeing commensurate and dissuasive sanctions for torture and other wilful ill-treatment.

2. What are the resource implications of such potential changes, if any?

3. Can the Council of Europe be of any assistance in the process?

B. Operational safeguards

1. How can changes to law and/or practice better secure key operational safeguards for persons in custody? This refers in particular, but not exclusively, to:

- i. facilitating contact with family or third parties for all persons in custody, including those lacking funds;
- ii. ensuring apprehended persons, including those lacking funds, can secure the presence of a lawyer from the beginning of custody and, notably, during interview, and that *ex officio* lawyers perform such work expertly and rigorously;
- iii. facilitating prompt access to doctors and regular visits by nurses/doctors across all places of custody for purposes of treatment and/or medical examination where requested, and ensuring full respect for medical confidentiality;
- iv. ensuring full information on rights – including to submit complaints – is provided from the outset of anyone’s deprivation of liberty;
- v. the creation and maintenance of detailed custody records;
- vi. clear standards and training on the conduct of human rights-compatible interviews in police custody.

2. What are the resource implications of such potential changes, if any?

3. Can the Council of Europe (and other European law enforcement bodies) be of any assistance in this process?

C. Institutional culture

1. How can positive changes in the practice and culture of law enforcement officials be brought about? This includes – but is not limited to – consideration of:

- i. widespread and systematic training of law enforcement officials in human rights-compatible policing, including apprehension, interviewing, and other law enforcement operations;
- ii. mainstreaming human rights into the recruitment, training, practice and culture of law enforcement officials;
- iii. making equality and non-discrimination a central pillar of such organisational reform, including through recruitment of persons representing minority groups.

2. Would it be useful to explore practices of mainstreaming human rights into law enforcement and other legal processes? Can collaboration with policing experts from other States or external bodies facilitate such reform?
3. What are the resource implications of undertaking such action, if any?
4. Can the Council of Europe (and other European law enforcement bodies) be of any assistance in this process?

D. Independence, accessibility and effectiveness of complaint and investigation mechanisms

1. How can the independence, accessibility and effectiveness of complaint and investigation mechanisms and processes be improved? This includes – but is not limited to – consideration of:
 - i. removing obstructions to, and facilitating, the submission of complaints of torture and related ill-treatment to all relevant authorities;
 - ii. ensuring that complaints and investigation mechanisms are both independent and effective in leading to the identification and, where relevant, the punishment of those responsible, and reconsidering limits to the Ombudsman’s powers in this context;
 - iii. strengthening all relevant actors’ response to allegations of torture or other ill-treatment, at all stages of the investigative process;
 - iv. widespread initiatives to ensure prosecutors and courts engage fairly and robustly with torture and wilful ill-treatment as criminal offences.
2. What are the resource implications of such changes, if any?
3. Can the Council of Europe (and other European states or networks like IPCAN) be of any assistance in this process?

CONCLUSION

This round-table can form the basis for engaging in a deep-rooted transformation of law enforcement and accountability mechanisms in Greece. Eradicating torture and related ill-treatment from law enforcement is central to upholding a democracy rooted in respect for human rights and the rule of law. Moreover, there is a connecting thread between the perceived legitimacy of and public trust in the police and the effectiveness of the police in securing compliance with the law. A human rights-based approach to policing, and notably to the treatment of apprehended persons by law enforcement officials, enforced rigorously, will go a long way to strengthen not only confidence in law enforcement, but also the legitimacy and effectiveness of the entire legal system.