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Meeting: 1383rd meeting (29 September - 1 October 2020) (DH)

Communication from an NGO (Refugee Support Aegean) (21/08/2020) concerning the group of cases SAKIR v. Greece (Application No. 48475/09).

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

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Réunion : 1383^e réunion (29 septembre – 1^{er} octobre 2020) (DH)

Communication d'une ONG (Refugee Support Aegean) (21/08/2020) concernant le groupe d'affaires SAKIR c. Grèce (Requête n° 48475/09) **[anglais uniquement]**

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

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DES ARRETS DE LA CEDH

RSA Submission to the Committee of Ministers of the Council of Europe

in the case of *Sakir v. Greece*

July 2020

Introduction

1. Refugee Support Aegean (RSA) is a non-profit organisation focusing on: strategic litigation in support of refugees; monitoring human rights violations; and the provision of legal, social and humanitarian support in individual cases. RSA is an implementing partner of the PRO ASYL litigation project "Refugee Support Program Aegean" (RSPA).
2. Pursuant to Rule 9.2 of the Rules of the Committee of Ministers of the Council of Europe for the supervision of the execution of judgments, RSA submits the following considerations in the case of *Sakir v. Greece*:¹

Conditions of detention

3. The issues concerning conditions of detention in police stations and the lack of an effective remedy, amounting to violations of Articles 3 and 13 of the European Convention on Human Rights (ECHR), were examined in the *Siasios* group of cases, which was closed by the Committee in June 2018.²
4. RSA stresses, however, that there has been a significant change of circumstances since then. In particular, **the number of asylum seekers and other migrants currently detained in police stations has risen** without any improvement in relation to conditions of detention, whereas no remedies at domestic level have been proven effective.³
5. At the end of 2019, there were as many as 1,021 persons detained for immigration purposes in facilities other than pre-removal detention centres.⁴ While there are no up-to-date available data on the number of third-country nationals held in police stations for immigration purposes across the country, on 24 July 2020, there were 114 third-country nationals held in police cells on the Eastern Aegean islands. Of those 8 were detained in Lesbos (despite the fact of a pre removal center operation in the island), 18 in Chios, 27 in Samos, 8 in Leros, 3 in Kos (despite the fact of a pre removal center operation in the island) and 50 in other unidentified islands.⁵
6. RSA also notes that, according to UNHCR, detention amid the COVID-19 pandemic is unlawful and arbitrary insofar as deportations have been suspended, and should immediately be ceased.⁶

Individual measures in the *Sakir* case

7. In response to the Court's judgment, the Prosecutor of the Athens First Instance Court ordered the Director of Aghios Panteleimonas Police Station to initiate a fresh preliminary investigation into the assault on the applicant. In this regard, the applicant was summoned as a witness and his lawyers were requested to provide information about his whereabouts. The applicant could not be located and his

¹ App No 48475/09, 24 March 2016.

² Council of Europe Committee of Ministers, Resolution CM/ResDH(2018)224, 7 June 2018.

³ See RSA & Stiftung PRO ASYL, *Submission to the Committee of Ministers of the Council of Europe in the cases of M.S.S. v. Belgium and Greece & Rahimi v. Greece*, July 2020, paras 55-65.

⁴ Asylum Information Database, *Country Report Greece, 2019 Update*, June 2020, 195, <https://bit.ly/3jV6Kxm>.

⁵ General Secretariat for Information and Communication, *National Situational Picture Regarding the Islands at Eastern Aegean Sea*, 24 July 2020, <https://bit.ly/311FzYX>.

⁶ UNHCR, 'UNHCR stresses urgent need for States to end unlawful detention of refugees and asylum-seekers, amidst COVID-19 pandemic', 24 July 2020, <https://bit.ly/2EAfmt5>.

lawyers informed the authorities that they did not maintain contact with him. **No further actions were taken and the authorities closed the case.** RSA notes that the actions taken do not amount to an effective investigation.

8. RSA notes that the case concerns a broader issue which the authorities consistently fail to address or deliberately disregard. In particular, the case of *Sakir v. Greece* illustrates the prejudice towards foreigners by state organs and the direct links of police personnel with individuals belonging to or connected with far right / neo-nazi groups. No effective investigation has taken place in this regard. In addition, it is noted that in the ongoing case against the neo-nazi party Golden Dawn, the connections of said party with state officers, specifically police officers, has not been effectively addressed.⁷

General measures

Failure to apply legislative safeguards in practice

9. Despite positive legislative reforms taken in recent years, no improvement has been shown in practice to date. Parallel to the implementation of the *Sakir* judgment, the Greek authorities are required to transpose into domestic law and to implement in practice the provisions of European Union (EU) Directives on the rights and procedural safeguards of victims of crime, suspects and accused persons in the course of criminal proceedings. These are namely:
 - a. the Victims Rights Directive,⁸ transposed by L 4478/2017;⁹
 - b. the Directive on legal aid for suspects and accused persons,¹⁰ partially transposed into domestic legislation by the new Code of Penal Procedure;¹¹
 - c. the Directive on the right to information in criminal proceedings,¹² partially transposed into domestic legislation by the new Code of Penal Procedure;
 - d. the Directive on access to a lawyer,¹³ partially transposed into domestic legislation by the new Code of Penal Procedure; and
 - e. the Directive on the right to interpretation and translation,¹⁴ partially transposed into domestic legislation by the new Code of Penal Procedure.
10. Despite the transposition of EU law provisions in domestic legislation, **these core safeguards are rarely applied in cases involving refugees, migrants and asylum seekers in practice.** RSA notes in this regard that vulnerable cases of victims or accused persons such as asylum seekers, migrants and refugees **do not benefit from effective legal aid and representation** in the course of criminal proceedings. Furthermore, **police stations and hospitals largely operate without interpreters** and are

⁷ For details on the trial and accused persons, see Jail Golden Dawn, <https://bit.ly/2DjZBps>.

⁸ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime [2012] OJ L315/57.

⁹ Gov. Gazette A' 91/23.06.2017.

¹⁰ Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings [2016] OJ L297/1.

¹¹ L 4620/2019, Gov. Gazette A' 96/11.06.2019.

¹² Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings [2012] OJ L142/1.

¹³ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty [2013] OJ L294/1.

¹⁴ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings [2010] OJ L280/1.

thus unable to effectively deal with cases of non-Greek speakers.¹⁵ Specifically during police investigations, the lack of effective and professional interpretation is crucial and can lead to self-incrimination.

Unsuccessful attempts to change public, political and legal discourse and to collect disaggregated data

11. RSA stresses that foreigners, in particular third-country nationals and/or persons of colour, ethnic minorities or migration background face wide prejudice by the authorities in Greece and systematic failures in the administration of justice. For example, on 12 December 2018 the Prosecutor of the Supreme Court of Greece (*Εισαγγελέας Αρείου Πάγου*) issued to specific guidance all prosecutors in Greece for the effective application of current Article 82A of the Penal Code,¹⁶ in view of the applicable international and EU law provisions in order to tackle crime with racial bias and racist violence. The **Supreme Court Prosecutor ordered the collection and keeping of disaggregated data** in order for the authorities to ensure effective and proper assessment of the implementation of said legal provisions.¹⁷ Nevertheless, the Government has failed to provide such data to date.
12. Information obtained by RSA through lawyers practicing around the country confirms that **local prosecutors and courts rarely follow the circulars of the Supreme Court Prosecutor in dealing with racist violence crimes**. Such offences are **still treated as isolated incidents**.
13. Furthermore, as stated by the Supreme Court Prosecutor on 27 March 2019, Greece held the last position across the EU in 2016 and 2017 in terms of participation of judges and prosecutors in EU legal training projects. The Prosecutor also highlighted difficulties and problems in the training and exchange programmes held throughout 2018 and 2019.¹⁸
14. In July 2018, the Ministry of Justice and the Supreme Court Prosecutor urged public authorities to replace the term “*λαθρομετανάστες*” – a derogatory Greek word referring to an “illegal migrant” with a negative and racially biased connotation – used in prosecutorial and administrative documents with the neutral term “*παράτυπα εισερχόμενα στη χώρα άτομα*” – a legal term to describe “persons irregularly entering the country”.¹⁹ This was a necessary instruction given the wide use of the term in public, including political and judicial, discourse. Nevertheless, official reactions against abandoning such terminology were voiced after the Prosecutor’s instruction.²⁰
15. Furthermore, RSA notes that, **in the official Greek translation of the Sakir judgment** by the Translation Service of the Ministry of Foreign Affairs, **the term “λαθρομετανάστες” is**

¹⁵ See RSA & Stiftung PRO ASYL, *Submission to the Committee of Ministers of the Council of Europe in the cases of M.S.S. v. Belgium and Greece & Rahimi v. Greece*, July 2020, para 47.

¹⁶ L 4619/2019, Gov. Gazette A' 95/11.6.2019. Formerly Article 81A Penal Code.

¹⁷ Supreme Court Prosecutor, Circular 5/2018, 12 December 2018, <https://bit.ly/2P8oiYF>.

¹⁸ Supreme Court Prosecutor, Circular 1/2019, 27 March 2019, <https://bit.ly/3hUnymr>.

¹⁹ Ministry of Justice, Letter No 3144, 25 July 2018 and Supreme Court Prosecutor, Letter No 8191, 26 July 2018, <https://bit.ly/39EJKhe>.

²⁰ News 24/7, ‘Γεωργιάδης και Βορίδης επιμένουν στον όρο λαθρομετανάστες’, 1 October 2019, <https://bit.ly/3ghhu78>; One TV, ‘Επιμένει ο Αδ. Γεωργιάδης: Υπερασπίζεται τον όρο «λαθρομετανάστης»’, 3 October 2019, <https://bit.ly/2CWWhbj>; Avgi, ‘Ο Γεωργιάδης απειλεί και την πρώην Εισαγγελέα του Αρείου Πάγου Ξ. Δημητρίου για τον όρο «λαθρομετανάστης»’, 3 October 2019, <https://bit.ly/39H5eub>.

still used instead of the legally established terms,²¹ in dereliction of the aforementioned orders of the Prosecutor for the use of proper language by the administration.

Indirect grant of amnesty to perpetrators of racist crime

16. Since the Court's judgment in *Sakir*, the **Greek government has successively enacted legislation:** (a) allowing pending criminal **proceedings to lapse in crimes punishable by imprisonment of up to one year**; and (b) **declaring as statute-barred imprisonment of up to six months imposed by judgment that has not become definitive**. The above provisions are applicable to crimes committed until 31 March 2016,²² subsequently extended to 30 April 2020,²³ and to imprisonment sentences issued by 3 August 2016,²⁴ extended to 27 May 2020.²⁵ Similar provisions had been enacted in 2012 and 2013.²⁶
17. RSA notes that, although crimes under Article 82A of the Penal Code and L 927/1979 are specifically excluded from the above provisions,²⁷ most crimes involving racist bias and racist violence are not treated by prosecution services under these provisions. In practice, most racist crimes are examined as isolated offences under the main crimes applicable on the facts of the individual case e.g. mere insult, bodily injury etc. As such, **crimes characterised as such fall under the abovementioned provisions and are never tried and/or sentences are never served**.
18. Furthermore, **criminal actions by law enforcement officers related to police violence are not excluded** by the aforementioned legislative provisions. RSA is of the opinion that such provisions constitute **indirect amnesty to perpetrators of criminal acts specifically in the context of racist and police violence**. Against the backdrop of increasing racist violence incidents against refugees, asylum seekers and migrants,²⁸ such legislative initiatives illustrate the systemic failures in the administration of criminal justice in Greece and the lack of effective protection for victims of crime.

Case illustrating the continued occurrence of the *Sakir* violations

19. RSA draws the attention of the Committee to a recent case illustrating that the violations identified by the Court in *Sakir* continue to occur in practice. On 4 May 2020 at 15:00, a Palestinian asylum seeker, A.M., resident at the Reception and Identification Centre (RIC) of Leros, went to the Police Station of Leros in order to complain about the bodily injury inflicted upon him by police officers the previous afternoon. He testified before two police officers serving in Leros Police Station, stating in particular that the attack took place outside the entrance of the RIC, while the officers were on duty. He specifically claimed that he was passing by with his bicycle when a police officer stopped him without reason in the middle of the street and asked him in English: "do you speak Greek?". A.M. gave a negative reply and then a second police officer asked him: "are you Muslim?". A.M. gave him an affirmative reply. Then, several police officers attacked him and beat him with batons on his back and legs. A.M. claimed that he could recognise some of said police officers.

²¹ *Sakir v. Greece* [Greek translation], App No 48475/09, 24 March 2016, para 29, <https://bit.ly/3flzVGx>.

²² Article 8 L 4411/2016, Gov. Gazette A' 142/3.8.2016.

²³ Article 63 L 4689/2020, Gov. Gazette A' 103/27.5.2020.

²⁴ Article 9 L 4411/2016.

²⁵ Article 64 L 4689/2020.

²⁶ Article 4 L 4043/2012, Gov. Gazette A' 25/3.2.2012; Article 8(3) L 4198/2013, Gov. Gazette A' 215/11.10.2013.

²⁷ Article 63 L 4689/2020 excludes crimes of Article 82A Penal Code and not L 927/1979, which in any case is rarely applied by prosecutors and courts in Greece.

²⁸ See further RSA, 'Timeline of attacks against solidarity', <https://bit.ly/3hRWIAO>.

A.M. was referred to the hospital by the officers in charge of his complaint. On the same day, A.M. was called to the police station in order to identify the police officers following an identity parade, but no police officer appeared and the procedure was cancelled.

20. On the afternoon of 6 May 2020, five police officers who were on duty at the time and place of the alleged crime against A.M., testified as witnesses. They testified that the complaint of A.M. was false. Parallel to their testimonies, at 18:10, A.M. was called to testify again in the police station before two different police officers who had arrived in Leros from Kos. A.M. repeated his allegations. The new officers responsible for the inquiry insisted on trying to find out (a) why he had consulted a lawyer before lodging his initial complaint, (b) who told him to speak to a lawyer and (c) who were the lawyers that provided counselling to him. A.M. replied that he had consulted a lawyer working with UNHCR. He further mentioned that the perpetrators are racists. The police officer asked then: "why do you say this, that they are racists?". At 20:00, A.M. was transferred to the RIC of Leros. There, he was surrounded by 30 police officers without uniforms. One of the police officers started yelling at A.M.: "Tell us now by whom you claim you were hit". A.M. recognised one of the perpetrators.
21. No official identity parade records were kept. It is noted that despite the fact that a lawyer willing to represent A.M. informed the police about her intention to be present during the identity parade, she was not informed by the officers in charge, despite the fact that she was waiting outside the police station. As a result, the victim remained without representation during the entire procedure.
22. At 20:30, A.M. testified again. His third testimony mentions that earlier that day, A.M. was brought to the RIC for an "identification procedure" and that he identified one police officer.
23. On 6 May 2020 at 22:05, police officer N.D. brought charges against A.M. for the offence of making false accusations against him. At 22:35, A.M. was arrested for the crimes of false testimony²⁹ and false accusation.³⁰ A.M. spent the night in the police cell.
24. No further actions were taken in relation to the initial complaint brought by A.M. and he was not able to receive copies of the relevant file.
25. On 7 May 2020, A.M. was transferred before the Prosecutor of the First Instance Court of Kos, who exercises jurisdiction on Leros island, despite COVID-19-related travel restrictions and the suspension of prosecutorial duties and court hearings. The Prosecutor pressed charges under the *flagrante delicto* (αυτόφωρο) procedure against A.M. for the criminal acts of repeated false testimony³¹ and repeated false accusations.³² The applicant signed a document notifying to him the numbers of the Penal Code provisions he was accused on – Articles 1,12,14,16,17, 18, 26, 27, 51, 53, 79, 94(1), 224(1) and 229(1) of the Penal Code – and of his referral for trial before the Three-Members Misdemeanour Court for *flagrante delicto* crimes (Αυτόφωρο Τριμελές Πλημμελειοδικείο) of Kos on 8 May 2020 at 12:00. Due to the special procedure applied in the case of *flagrante delicto* apprehended crimes, the applicant was not summoned with the accusation against him and did not receive any information in relation to his trial.

²⁹ Article 224 Penal Code.

³⁰ Article 229 Penal Code.

³¹ Articles 224(1) and 98 Penal Code.

³² Articles 229(1) and 98 Penal Code.

26. A.M. remained in custody in the Police Station of Kos. On 8 May 2020, his trial was postponed for the next day and the judges decided to maintain the detention measure against him. Accordingly, A.M. remained detained in the police station in Kos until his trial on Saturday 9 May 2020.
27. A.M. requested: to obtain the suspension of the trial against him in order for his initial complaint against the police officers to be examined by a prosecutor; to receive copies of the file against him and in particular a video from the entrance of the RIC at the time of the alleged crime against him; to include the results of his medical examination in the case file. All his requests were rejected by the Court and the trial took place without the possibility for witnesses to appear due to travel restrictions. A.M. was sentenced to 10 months' imprisonment suspended for three years and was set free. He appealed the sentence and is still waiting for the examination of his initial complaint against police officers by the Prosecutor.
28. The case of A.M. bears many similarities with the case of *Sakir*. In the case of *Sakir*, the main witness was intimidated with repeated testimonies which ended up in his arrest, criminal charges and detention in the same cell with Sakir. In the case of A.M., the victim who complained before the police for assault and bodily injury with racist bias by police officers had his complaint set aside and found himself in a criminal prosecution and subsequent conviction upon a hearing that raises serious fairness concerns. The main responsible authorities in both cases, police and prosecutors (and, in the case of A.M., judges) disregarded all the measures the Government claims to have taken in implementation of the *Sakir* judgment.
29. Furthermore, the authorities violated specific EU law provisions incorporating into domestic legislation main rights and procedural safeguards, corresponding to core general measures that need to be applied in practice for the proper implementation of *Sakir* judgment.



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