

Report¹

Round-Table on Professional Policing: Treatment of Apprehended Persons and Consequences

Athens, 10-11 January 2019

**organised by the Council of Europe and
the Greek Court of Cassation Prosecutor's Office**

¹ Report prepared by Dr Natasa Mavronicola, Senior Lecturer in Law at Birmingham Law School, University of Birmingham.

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Introduction

On the 10th and 11th of January 2019, the Council of Europe and the Greek Court of Cassation Prosecutor's Office held a round-table in Athens focusing on professional policing and how to prevent torture and other forms of ill-treatment at the hands of law enforcement authorities. The round-table sought to address the compatibility of Greek laws and practices with international standards in light of a series of judgments from the European Court of Human Rights (ECtHR) finding Greece to be in violation of the European Convention on Human Rights (ECHR) – notably Article 3 ECHR – as well as critical reports from the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

The round-table took place at the Forensic Science Division in Athens. Participants at the event included academic and professional experts, government officials, members of the Greek police forces and coastguard, as well as representatives of the courts and prosecution services (see Programme – Appendix I).

The tone of the round-table was set by an array of introductory speeches by key actors. As indicated in the opening remarks of Olga Gerovasili, Minister of Citizen Protection, the round-table reflected the commitment of the Greek government to addressing the problem of torture and other ill-treatment in the country. Nils Melzer, UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, commended the Greek authorities for taking steps to address the problem of ill-treatment and urged all relevant officials to show courage in confronting the issues.

Christos Giakoumopoulos reflected on a range of relevant findings adverse to Greece in respect of the treatment of apprehended persons, citing the *Makaratzis* group of cases² and other judgments, as well as reports of the CPT, the EU's Fundamental Rights Agency (FRA), and the UN Torture Rapporteur.³ Welcoming the Greek government's commitment to addressing the phenomenon, he indicated the key issues concern how best to do so.

Andreas Pottakis introduced the dual role of the Ombudsman's office as National Preventive Mechanism (NPM) and complaints mechanism, the achievements of the office in its limited time in these roles, and the need for securing a steady annual revenue for the performance of these functions. The vulnerable situation in which apprehended persons find themselves was underlined by Xenia Dimitriou-Vasilopoulou, who advanced the position that the State must at all times abide by its duty to comply with the law vis-à-vis those (suspected of) violating the law. Many of the introductory speeches, including those of Xenia Dimitriou-Vasilopoulou and Nils Melzer, highlighted the need to go beyond specific redress measures in respect of individual incidents, and to take systemic and structural measures to remedy the layered character of the problem and guarantee non-recurrence.

The remainder of this note records key aspects of the discussions conducted at the round-table and contemplates the next steps. Its substantive coverage of the proceedings is divided into the four thematic sections adopted at the round-table:

- (i) Domestic law;
- (ii) Operational safeguards;
- (iii) Institutional culture;
- (iv) Independence, accessibility and effectiveness of complaint and investigation mechanisms.

² See Committee of Ministers, Supervision of *Makaratzis v Greece* group of cases, [Status of Execution](#) and other information.

³ See summary provided in the [Concept Note](#) for the round-table (CPT (2019) 01-RT).

This is followed by concluding reflections on what is gleaned and what may be the next steps following the round-table proceedings.

1. Domestic law

Eftychios Fytrakis chaired the session on domestic law. In his brief contribution, he suggested that, beyond legal provision, what is needed is a holistic governance model that establishes the right structures and human resources – seen as a matter of quantity as well as quality. He referred to the importance of well-trained personnel as a key example.

He noted that since 2015 Greece has disclosed a spirit of co-operation and readiness to respond to the recommendations of the CPT, and lauded the fruits of collaboration with the Council of Europe, through training, workshops, and other activities.

Panayotis Brakoumatsos offered a sobering reminder of the recent history of torture and ill-treatment in Greece, not least the dictatorship years of 1967-74 as the high tide of such abuse, but also highlighted the frequency of the phenomenon today. He underlined that the legislative provisions criminalising torture and other ill-treatment, notably Articles 137A-C of the Penal Code, are underpinned by the Greek State's commitment to democracy and human dignity.

Whilst acknowledging that a range of ill-treatment may constitute a violation of Article 3 ECHR,⁴ Panayotis Brakoumatsos stressed that both legislator and judge have to distinguish between different instances of ill-treatment based on gravity. He outlined the relevant criminal law provisions, highlighting that Article 137B of the Penal Code restricts the cases attracting a minimum sentence of 10 years to those considered most serious, such as those involving serious injury or systematisation, or a pattern of conduct. Lesser ill-treatment, such as the infliction of slaps, will attract lighter sentences.

He noted that there is a single-digit number of findings of torture domestically, a fact which is not necessarily encouraging as it raises the question of hidden abuse. In his view, changing the law is not necessary – the problem lies in the implementation of the law by police, prosecutorial and judicial authorities, and the institutional cultures within these bodies that underpin the inadequate discharge of Greece's substantive investigative duties in that regard. His view in relation to limitation periods was that they ought not to be altered, given that crimes constituting serious human rights violations involve limitation periods of 15-25 years. In his view, if a civilised state cannot address such violations within such time then it is not a civilised state.

Sofia Vidali underlined that ill-treatment at the hands of the authorities is neither a new issue nor purely an issue which can be traced to the dictatorship years. She also stressed that the problem of ill-treatment of persons in custody is not one which can be distilled to isolated incidents – it is a systemic phenomenon produced by the structures and environments in which it occurs, as well as the wider socio-political environment. Torture, in Sofia Vidali's view, happens in grey zones, in crises, in the context of tensions and discrimination, in environments where the rule of law is undermined in the eyes of the public and the authorities tasked with enforcing it. Many people might be involved who enable or tolerate what occurs. Citing Amnesty International's 2012 report [Police Violence in Greece: Not Just 'Isolated Incidents'](#), she highlighted that the widespread denial of the systemic nature of the problem can amount to an elaborate structure of complicity or acquiescence in the ill-treatment, and stressed that an attitude of 'not my problem' can be pernicious: if it is a systemic problem then it is everyone's problem.

⁴ He cited cases like [Selmouni v France](#) App no 25803/94 (ECtHR, 28 July 1999) and [Aydin v Turkey](#) App no 23178/94 (ECtHR, 25 September 1997).

Urging a focus on particular patterns and contexts, Sofia Vidali placed importance on the issue of the over-policing of particular groups of people, including already vulnerable groups, and highlighted the killing of Zak Kostopoulos as one which occurred in a geographical space where lives count for less. Finally, she highlighted the significance of institutional culture – and stressed that a particular problem is the idea that is prominent within the police force that legal safeguards (of human rights) constrain police unduly. She posited that policies and attitudes can build up which diminish the social dimension of police work and which unify the perception of its tasks around the suppression of crime in a way which can legitimise illegal violence and torture. Ultimately violence becomes not the last resort, but the first resort, and as a result torture is not (or no longer) an infrequent phenomenon. Compounding this, sometimes there is not only tolerance but even positive reinforcement of torture and ill-treatment, with not only ‘collegial’ cover-ups and indifference, but also even congratulatory attitudes to violence against particular persons, and even informal training in unlawful violence. These can be part of a cycle of denial and rejection of responsibility through which torture is perpetuated, which can even reach a stage of ‘addiction to violence’.

In terms of shortcomings within the law, Sofia Vidali indicated that legislative reform is necessary to ensure that the law better aligns with Article 3 ECHR, given repeated findings that the law has served to immunise perpetrators of torture from the requisite sanctions. In addition, she suggested that in a context of a systemic phenomenon occurring at the hands of the State, victims will not readily report abuse; the extension or suspension of limitation periods (prescription rules) in respect of ill-treatment at the hands of State agents must therefore be examined. In relation to commensurate punishment, she indicated that the issues this raises pertain not just to policing but to the justice system. The issues therefore span law, law enforcement, and the justice system. Consequently, she suggested, the following initiatives should be pursued:

- law enforcement officials, prosecutors and judges should receive training based on lived experience and expertise and with a practical focus;
- independent and effective oversight and complaints mechanisms should be secured, with the capacity to deal with individual as well as collective complaints; and
- there should be revision of policies and practices, including the regulation of preventive police action, the approach to collecting evidence and witness statements, the standards applicable to arrest, etc.

Kostas Mavroidis highlighted that there are violations which stem from detention conditions and those which stem from subjectively egregious treatment. By way of example of the latter, he mentioned that one of his clients had had his ear cut and was subsequently not allowed to receive timely medical treatment. One of his observations in respect of the problem of ill-treatment in custody is that while some regulatory efforts have been made, attitudes are slow to change. He noted that access to a lawyer, when sought by those in custody, is regularly denied or otherwise obstructed. His key proposal was to secure the right of immediate contact with a lawyer for anyone in custody and to alleviate any impediments towards, including practices of active obstruction of, such contact.

Eftychios Fytrakis and Sofia Vidali engaged in discussion on the «μεθοδευμένη» element of Article 137A, affirming the normative pull in favour of restrictive interpretations of criminal law provisions and provisionally concluding that it may ultimately be for the legislature to give a more expansive definition by adjusting the wording of Article 137A.

2. Operational safeguards

The second panel focused on the issue of operational safeguards for apprehended persons, including the following: (a) third party notification; (b) access to a lawyer; (c) access to a doctor; (d) information on rights; and (e) custody records.

Dimitrios Anagnostakis suggested that the police forces in Greece are engaged in efforts to enforce the law while complying with human rights. He noted that the Ministry of Citizen Protection has increasingly realised and acted on the need to enhance the education and technical training of law enforcement agents. He highlighted that Greek police officers have, on the whole, responded positively to efforts to do so.

In her presentation, Julia Kozma made a strong case for upholding the highest standards of operational safeguards, both because they amount to vital rights in themselves and because they offer essential protection against ill-treatment. She proceeded to outline the necessary steps to fulfilling these operational safeguards, notably that persons in custody must:

- be informed of their rights as soon as possible;
- be meticulously registered upon arrival at the police station;
- have access to a doctor on request without impediment or a 'filtering' process by police; and
- have access to a lawyer.

Julia Kozma emphasised that the relevant safeguards must not only be enshrined in law, but must be effectively applied in practice, and highlighted the role of designated custodial officers in this endeavour, and in improving the treatment of persons in custody more generally. Ultimately, she stressed that the relevant operational safeguards can and will be circumvented by those who consider ill-treatment to be an effective and necessary part of their job. Accordingly, the police have to drive a culture change which underlines the ineffectiveness of ill-treatment and promotes more effective ways of solving crime which are also human rights-compliant. In addition, any indifference to brutality on the basis of 'solidarity' between police officers, and between prosecutors and the police, must be eradicated, particularly since it undermines the effective functioning of the (criminal) justice system, which relies on public confidence, which in turn is affected by how police treat people in custody.

Christos Manouras highlighted action taken in respect of arbitrary behaviour and ill-treatment of persons in detention, and at the same time underscored enduring problems, including the lack of necessary resources and prolonged detention in police custody due to delays in prison transfers, generally linked to prison overcrowding. He indicated that, as a means of ensuring that human dignity and human rights are respected in custody, directions have been given explicitly forbidding the use of torture and other ill-treatment and requiring that those in custody are informed of the reasons for their arrest and notified of their rights, and provided with a form for filing complaints. He suggested that all detained persons' rights are in principle guaranteed by the Greek police and that particular care is given to vulnerable persons, not least those who are foreign. He encouraged round-table participants to examine the Greek Police [Guide on Police Behaviour towards Vulnerable Groups](#).

A police officer intervened to highlight that witnesses and suspects at the police station are not automatically entitled to a lawyer – they only become entitled to a lawyer upon designation of the charge against them.⁵ There was also an intervention by a prosecutor who indicated that there was no solidarity between police and prosecutors in respect of illegal behaviour. She concluded that there is dignity and goodwill in spite of resource issues, and with the right attitudes any incidents of brutality can be eliminated.

⁵ See also [CPT Report on 2013 visit](#), para 29; Arts. 96-104 of the [Greek Code of Criminal Procedure](#). But note [Presidential Decree 254/2004](#), 'Code of police ethics', Art. 3.

Dimitrios Anagnostakis concluded by indicating that a great deal has been achieved, but more needs to be done to counter the phenomenon of ill-treatment of persons in detention.

3. Institutional Culture – moving from interrogation to investigative interviewing

Xeni Dimitriou-Vasilopoulou opened the panel by recounting incidents of the ill-treatment of minors in the past, which led to a successful campaign for improving juvenile policing. She underlined the importance of remembering where we started and where we are aiming to get to.

Michael Kellett's contribution to the round-table encompassed his experiences on the trajectory followed in UK policing practices, in particular through positive changes in training and the promotion of effective investigative interviewing. His overarching message was that human rights compliance, and adopting a system for investigative interviewing with built-in human rights safeguards, makes police officers better at their job.

Taking the CPT's 2015 visit report⁶ on Greece as his starting point, he focused on excerpts from two paragraphs – paragraph 21 and paragraph 22. In paragraph 21 the CPT laments that 'infliction of ill-treatment ... including for the purposes of obtaining confessions, continues to be a frequent practice'. In paragraph 22 it enjoins the authorities to approach interviews of suspects with the aim of 'obtain[ing] accurate and reliable information in order to discover the truth about the matter under investigation, not to obtain a confession from somebody already presumed, in the eyes of the interviewing officers, to be guilty'.

Michael Kellett suggested that the UK has seen a successful transition from the situation lamented in paragraph 21 to the approach promoted in paragraph 22, although ill-treatment and other human rights violations have not been wholly eradicated. Addressing Professor Vidali's reservations about the transposition of common law models of investigative interviewing into Greece, he suggested that police work is similar everywhere and the model can therefore be transposed.

He painted a particularly striking picture of UK policing practices pre-reform: a confession culture involving psychological tricks, untruths, intimidation and (threats of) violence, all without contemporaneous records of interrogation, and with the frequent use of *voir dire* in the criminal courts. Investigators were not trained in interviewing techniques, and were known for their capacity to obtain confessions; and lawyers were regularly not present during interrogation. The confession culture often involved, in many instances of the commission of crime, a police response of rounding up the usual suspects and obtaining a confession through the use and escalation of practices incompatible with human rights. While it was relatively easy to obtain a confession in these circumstances, it would not necessarily solve crime. Innocent people were (sometimes very dramatically) found to have been convicted, and in all those cases the guilty persons went on to commit more crime.

A key turning point was the [Police and Criminal Evidence Act](#) of 1984 ('PACE'). This statute, and its [Codes of Practice](#), made several changes by imposing obligations on the police that provided essential safeguards against ill-treatment. Individuals have the right to free legal advice if they are questioned by the police (see, inter alia, s. 58 PACE). Echoing Julia Kozma's perspective, Michael Kellett stressed that the presence of a lawyer protects not only the suspect/witness, but also the police. Contemporaneous notes of interviews were taken, and now interviews are audio-visually recorded. Moreover, the statute's Codes of Practice have facilitated a change in practices and indeed in culture. Michael Kellett suggested that the

⁶ [CPT Report on 2015 visit](#).

results have been very positive, with fewer innocent people and more guilty people convicted, and fewer complaints against the police. According to Michael Kellett, therefore, getting from paragraph 21 to paragraph 22 requires the following steps: recognition of the need to change; the will to change; making investigative interviewing the rule rather than the exception; making electronic recording of interviews the rule, rather than the exception; close monitoring and supervision by senior officers; investment in training, infrastructure and administrative support (including transcription services for interviews); involving the whole criminal justice system in the reform process; and legislative change. Accordingly, it is not sufficient for the police unilaterally to agree to change; wider reform and monitoring are needed. He advocated pursuing the professionalisation of policing in general, and investigative interviewing in particular. The model of the UK College of Policing [Professionalising Investigations Programme \(PIP\)](#) was given as an example.

Theodoros Theodorou indicated that the techniques and methodologies of investigative interviewing can already be found in Greek policing practices, having been incorporated from abroad, and that training on such practices is ongoing. He highlighted the importance of communicating the message that ‘interrogation’ («ανάκριση») does not mean torture, humiliation, or serious deprivation. He suggested that incidents of brutality are taking place because police officers are not adequately trained in the right techniques, or see them as unduly time-consuming. This is a mistake, in his view, which results in using beatings as a shortcut, leading to false confessions and undermining law enforcement and the public’s trust in law enforcement. His conclusion was that the Greek police force has the techniques and knowledge to deliver good interviewing and that this needs to be more holistically implemented.

Ioannis Ilias offered some commentary on the law as well as on policing culture. He indicated that the torture and ill-treatment discussed at the round-table might relate to either Article 137A or Article 137B. He suggested that it is risky to extend or remove prescription rules, as this can in fact bring about serious delays in the criminal process.. He viewed Article 137A as adequately capturing the wrong of torture, but agreed with other speakers that the element of «μεθοδευμένη» should be removed, insofar as it operates to exclude individual incidents from the definition of torture.

He noted that no case which had culminated in adverse findings against Greece by the ECtHR had been investigated ex proprio motu by a prosecutor, and this is a concern. Furthermore, he suggested that there is a problem in terms of complaints of ill-treatment even being made, including out of fear of reprisals, or reaching prosecutors. This is a systemic problem and one that might be fostered by a culture of tolerating ill-treatment and discouraging complaints. It is therefore vital to establish and communicate a commitment against arbitrary violence across the law enforcement and justice system.

In Ioannis Ilias’ view, the issue of ill-treatment can also be one of overarching policy. As he highlighted, at this overarching level there is abiding tension between the due process and crime control models of criminal justice, and under the latter, excessive pressure for particular outcomes can detrimentally affect the delicate balance struck and contribute to the proliferation of ill-treatment. He placed emphasis on the issues that need to be addressed structurally and systemically, notably: transparency and visibility; the ‘us and them’ approach that can pervade policing practices and the context in which they are embedded; and the lack of independence of oversight mechanisms. He proposed that three steps should be taken: (1) increasing the transparency and visibility of law enforcement practices, including through recording and record-keeping; (2) substantive technical training but also education on legality and due process across law enforcement bodies, which should be hands-on and practically orientated, and not mere box-ticking; and (3) independent and impartial complaints and oversight mechanisms.

Xeni Dimitriou-Vasilopoulou concluded this session by stressing that all those involved in the administration of justice – including law enforcement officers, prosecutors and judges – are professionals and must protect themselves and their integrity by ensuring non-arbitrary behaviour across the board.

4. Effectiveness of complaint and investigation mechanisms

In this panel, Georgios Vaggelis discussed the role of the Office of Internal Affairs of the Greek Police in protecting people who come into contact with the police but also protecting the integrity and professionalism of the police, and the Office's fundamental goals of eradicating corruption in the police force and enhancing public confidence in the State in general and the police force in particular. He described it as a self-sufficient body which is set up towards independence. He focused on two dimensions of the Office's work: its main characteristics and functions; and its accessibility and effectiveness. In doing so, he underlined that torture and other ill-treatment are considered to be matters of top priority (citing circular 6004/1/182, dated 24-10-2012).

He set out some of the key characteristics of the Office of Internal Affairs, including the direct governance exercised by the chief of police, the excellent credentials of its staff, and the oversight of the organisation by prosecutorial officials, who can demand preliminary investigations and other actions. Georgios Vaggelis suggested that it would be beneficial to make this oversight a full-time role. In addition, he highlighted its capacity to make relevant audio or video recordings, take witness statements, and conduct investigations, including by disapplication of the principle of confidentiality. Persons can make a complaint to the service in person; by phone (available 24/7); by email; or by fax. Relevant information is available on its [website](#).

In terms of the institution's effectiveness, Georgios Vaggelis indicated that the service handled 201 cases concerning police ill-treatment and arbitrary behaviour in the period 2009-2017, 65 concerning incidents against Greek nationals and 136 against non-nationals. He identified 55 of the allegations as falling within the ambit of Article 137A of the Penal Code, and thus capable of being characterised as torture; 39 concerned foreign persons and 16 concerned nationals. He suggested that impressions of a disproportionate victimisation of foreign persons are therefore confirmed by the relevant data. He then recounted an illustrative case from 2017: seven police officers illegally detained, beat and racially abused a 43-year-old Greek man of Roma background, and abandoned this person in a remote location. A complaint was made promptly, which enabled the effective collection of evidence; the Office took swift action and ensured the perpetrators faced the justice process. He highlighted that this person had not been registered at the relevant police station, an element which served to underline the significance of maintaining records. The promptness of the complaint helped secure access to CCTV recordings and other evidence that helped ensure the verification of this person's complaints (case outlined in the Office's [2017 report](#), p. 103).

Chrysa Hatzi offered reflections on the new National Mechanism for the Investigation of Arbitrary Behaviour ('National Mechanism'), which has been integrated into the Ombudsman's Office and operational as of June 2017. She highlighted that it was set up after repeated recommendations by various actors, including the Ombudsman, regarding the independent and effective investigation of incidents involving arbitrary behaviour by the police. There was a strong sense, pre-2017, that effective change was needed for the benefit of police and for the purpose of strengthening the rule of law, and Law [4443/2016](#) forms a decisive starting point for bringing such positive change about.

As Chrysa Hatzi set out, the National Mechanism operates as a parallel mechanism for investigation and does not replace the bodies tasked with conducting disciplinary (also

referred to as ‘administrative’) proceedings and criminal proceedings. It focuses on individual instances of arbitrary behaviour. The National Mechanism has the capacity to conduct its own investigations, or to refer matters for investigation and indeed oversee an administrative investigation, and can also require the re-opening of an investigation following a finding against Greece by the ECtHR. The Mechanism can point those conducting the administrative inquiry to relevant case law, for instance in respect of the reversal of the burden of proof in cases where the complainant has endured injuries in detention. Once the outcome of the administrative investigation reaches the National Mechanism, the Mechanism assesses it. Crucially, it is given access to the full file and not just the conclusions, which enables a more effective assessment to take place.

The National Mechanism is currently preparing its first major report, but Chrysa Hatzi was able to indicate that the body had examined 300 cases in total. Reflecting on the effectiveness of the National Mechanism so far, Chrysa Hatzi emphasised that all of the requests and recommendations issued by the Mechanism have been accepted by the authorities. At the same time, she stressed that the National Mechanism does not have the power to compel action, but can only make recommendations (except in respect of requiring the re-opening of investigations following an adverse finding at the ECtHR). She indicated that those working at the Mechanism consider this to be a constraint, which it is in the capacity of the legislature to address. She cited various interventions of the Mechanism to ensure more thorough investigation of complaints. She expressed particular concern at continued shortcomings in investigating racist motives in violence against persons and indicated that the Mechanism has repeatedly requested closer investigation of these.

Chrysa Hatzi struck a measured note of optimism, suggesting that the Mechanism is already strengthening accountability and transparency, and is made effective by the breadth of the Ombudsman’s other competences and knowhow; but she indicated that there are nonetheless significant causes of concern. The concerns she noted were as follows:

Patterns of denial. As illustrative examples, she cited reports that no racist incidents have been recorded in Omonia, an area in Athens widely known for racially motivated attacks, and the continued emergence of arguments of the ‘he slipped and fell’ variety.

Failure to assess whether proportionate force has been used. There are continued failings in rigorously assessing the proportionality of force used in the conduct of arrests or other law enforcement operations.

Discounting of complainants’ accounts. Internal investigations tended to consider the report of the complainant to be unreliable.

Delays. There are well-documented delays in investigating complaints of ill-treatment at the hands of law enforcement authorities, with many investigations taking multiple years to complete, often at the expense of time-sensitive evidence and witness accounts.

Replicated statements. There is a problem of duplication of text between police officers’ statements and the findings of investigations.

Failure to keep complainants informed. There is a failure to inform complainants regarding the progress of investigation.

She made a number of suggestions:

- installing cameras in places of detention, recording interviews, and maintaining the recordings;
- giving full access to prosecutorial material to the Mechanism;
- ensuring the detachment of the investigator from the person being investigated, particularly in the initial stages of investigation;
- ensuring the legal characterisation of an incident per the doctrine of the ECtHR is reflected in the approach taken by the domestic authorities, including the courts;
- considering the adoption of expressions of apology as methods of redress, moral satisfaction and guarantee of non-recurrence, including where re-opening a case is impossible;

- revisiting limitation periods, at least prospectively, in respect of ill-treatment by law enforcement authorities;
- ensuring maximum co-operation between authorities and the National Mechanism.

Finally, Chrysa Hatzi expressed concern about the *ne bis in idem* principle being used to stymie administrative investigations and the Mechanism's role in assessing and re-opening investigations. She mentioned the Zontul case as an important example where the *ne bis in idem* principle was not applicable, given the fundamental flaws in the original investigation.⁷

Ultimately, Chrysa Hatzi concluded that the National Mechanism is an important guarantee of accountability, but requires further adjustments in the law, including towards ensuring that the domestic investigation reflects the characterisation of the wrong by the ECtHR, and relies on maximum co-operation to deliver on its key tasks effectively.

Konstantinos Georgiadis outlined two recent cases decided by the European Court of Human Rights: *Andersen v Greece*⁸ and *Sidiropoulos and Papakostas v Greece*.⁹ The case of *Andersen* involved a finding of a violation of Greece's investigative duty under Article 3 ECHR due to a number of failings, including lack of independence of the police officers who initially investigated the applicant's allegations, lack of critical assessment of the suspected perpetrators' account of events, and failure to accord proper weight to the applicant's testimony and the medical evidence provided. The case of *Sidiropoulos and Papakostas* was a 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. In the case, 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.¹⁰ 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, due to the application of a complex set of standards, including mitigation considerations and other recent amendments. The ECtHR found that the lenient sanction imposed on the police officer had been manifestly disproportionate to the gravity of the treatment inflicted on the victims.¹¹

He closed by mentioning the recent case of *Konstantinopoulos and others v Greece*.¹² The case concerned inmates of Grevena Prison who had complained of ill-treatment inflicted on them by members of a special police anti-terrorist unit during a surprise search of their cells in April 2013. The ECtHR found a violation of the substantive and procedural limbs of Article 3 ECHR and underlined failings in the investigation into the allegations of ill-treatment by the Greek authorities, finding that the investigation had not been thorough, prompt or independent.

Konstantinos Georgiadis encouraged all officials involved in discharging Greece's investigative duty in respect of ill-treatment to take the necessary action to remedy the shortcomings identified in the ECtHR's judgments.

Julia Kozma set out the significance and components of the duty to investigate under Articles 2 and 3 of the ECHR. She highlighted the variety of documents providing benchmarks for the

⁷ *Zontul v Greece* App no 12294/07 (ECtHR, 17 January 2012).

⁸ *Andersen v Greece* App no 42660/11 (ECtHR, 26 April 2018).

⁹ *Sidiropoulos and Papakostas v Greece* App no 33349/10 (ECtHR, 25 January 2018).

¹⁰ 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.

¹¹ *Sidiropoulos and Papakostas v Greece* App no 33349/10 (ECtHR, 25 January 2018), para 96.

¹² *Konstantinopoulos and others v Greece* App nos 29543/15 and 30984/15 (ECtHR, 22 November 2018).

investigation of (allegations of) torture and other ill-treatment,¹³ but underlined that ultimately the parameters of the investigative duty are determined by the Court and its rich case law. She emphasised that the duty to investigate is integral to the right to life and the right not to be subjected to torture or other ill-treatment, and that violation of the investigative duty is therefore considered a violation of the rights themselves, rather than of a subsidiary obligation. She also stressed that bringing perpetrators to justice is at the heart of the [United Nations Convention Against Torture](#), which binds Greece at international law. An effective investigation is key to fighting impunity and deterring substantive violations of these rights, and to ensuring justice and non-recurrence.

Examining the components of the duty and focusing on the trigger of the duty to investigate, she underlined that the duty to investigate is triggered in any circumstances where torture or ill-treatment is suspected, irrespective of whether there is an official complaint or not. She stressed that investigations must begin *ex officio* where any indication arises, for instance in the conduct of criminal proceedings, that ill-treatment may have occurred. Giving a broad overview of the elements of an effective investigation, she highlighted the following: Independence and impartiality. The ECtHR demands formal and practical independence, as well as perception of independence, of all involved, including officers who interview witnesses, supervising prosecutors, and forensic doctors; partiality will be found in a range of circumstances, for example where a prosecutor is overseeing the taking of criminal proceedings against the complainant and at the same time investigating said complainant's allegations of ill-treatment, where a prosecutor has a close relationship with the officer(s) being investigated, or where double standards are generally disclosed in that the prosecutors believing officers' accounts more than victims'.

- *Promptness*. The ECtHR demands the prompt commencement of investigations as well as the expeditious conduct of investigations. Even a three days' delay in demanding a forensic examination can fail to discharge the promptness requirement. If the process of carrying the case to a legal outcome takes multiple years, that can also fail the promptness requirement.
- *Adequacy*. The investigation must be capable of determining whether there is criminal liability involved, as well as identifying and, where appropriate, punishing those responsible for the ill-treatment at issue. This means the investigating body has to have all the necessary competences. For example, if the investigating body lacks the competence to order forensic examinations, or to compel witnesses to testify, this will entail that the investigation does not fulfil this requirement.
- *Thoroughness*. All reasonable steps have to be taken to secure relevant evidence. For example, statements should be taken from everyone involved. Then there has to be a consistent and objective assessment of all the evidence gathered.
- *Victim involvement and public scrutiny*. The victim or their next-of-kin (if deceased) should be involved to the extent necessary to safeguard their interests in the case.
- *Examination of possibility of racial or other hate-based motive*. The possibility of such a motive has to be taken into account and examined in the course of the investigation. This has been a particular issue in a number of cases concerning Greece.

Julia Kozma highlighted that every one of these elements is found to have been violated in much of the case law against Greece. Moreover, a third of judgments against Greece finding

¹³ Julia Kozma cited an excerpt from the [CPT's 2004 Annual Report](#) as well as the Council of Europe's Commissioner for Human Rights' 2009 [Opinion Concerning Independent and Effective Determination of Complaints Against the Police](#).

a violation of its investigative duty have emerged in 2018, and there may be substantially more cases.¹⁴ Therefore addressing the shortcomings in Greece's discharge of its investigative duties is vital. Julia Kozma suggested that the Mechanism's function as a supplementary body is commendable, but will not cure the problems identified in respect of the bodies that take the decisive action in the investigation of ill-treatment.

5. Closing discussion

In closing, Christos Giakoumopoulos commended the readiness of everyone involved to address the problem of torture and ill-treatment, and the unanimous condemnation of these phenomena by round-table participants. He noted the Committee of Ministers' disappointment at the failure to reconsider the Zontul case on the basis of the characterisation by the ECtHR of what had occurred as torture. Looking beyond criminal and disciplinary redress, he underlined the Committee of Ministers' support for the issuing of apologies and guarantees of non-recurrence.¹⁵ There were a number of interventions in respect of non-retroactive punishment, and against expansive and counter-textual interpretations of criminal law provisions, as well as an intervention in respect of *ne bis in idem* which highlighted that the *ne bis in idem* principle pertains to the facts at issue, and not to their legal characterisation; accordingly, a change in the legal characterisation of the same set of facts does not displace the operation of *ne bis in idem*. Christos Giakoumopoulos stressed that the failure to align the characterisations of ill-treatment in Greece with those offered by the Strasbourg Court entails the international responsibility of Greece, and indicated that this falls to the legislature to address.

Xeni Dimitriou-Vasilopoulou flagged up the possibility of dealing with some cases through «ανάρρηση υπέρ του νόμου» (i.e. appeal or quashing 'in favour of the law', per Article 557 of the Code of Civil Procedure), which can allow the Greek Court of Cassation (Areios Pagos) to clarify the law without affecting the legal position of the parties to the dispute. The Areios Pagos Prosecutor has already done this in respect of the Manolada case (Chowdury and others v Greece).¹⁶ This addresses the legal position without direct implications for the victim or alleged perpetrator, in a manner that is nonetheless important in terms of sending a message on the legal position in the country itself and re-framing legal doctrine in a way that can cascade across lower courts. Finally, one intervention urged a more prospective focus on strengthening Greece's discharge of the investigative duty, given ongoing difficulties in securing individual measures in relation to cases decided by the ECtHR.

¹⁴ It is worth noting, in this regard, the recent ECtHR judgment in [Sarwari and others v Greece](#) App no 38089/12 (ECtHR, 11 April 2019).

¹⁵ See, further, Committee of Ministers, Supervision of *Makaratzis v Greece* group of cases, [Status of Execution](#) and other information.

¹⁶ [Chowdury and others v Greece](#) App no 21884/15 (ECtHR, 30 March 2017). The development at Areios Pagos is covered (in Greek) here: <http://www.kathimerini.gr/992616/article/epikairothta/ellada/anairesh-yper-toy-nomoy-gia-thn-yposesh-manwladas>.

6. Conclusions

As many of the round-table participants observed, torture corrodes not only the legal system itself, but also the public's trust in the system, and the rule of law as a whole. Many of the contributions at the round-table affirmed that the incidence of torture and other cruel, inhuman or degrading treatment at the hands of law enforcement authorities in Greece is linked to shortcomings in the law and its implementation. This includes the definition of torture (particularly the element of 'methodical' («μεθοδικευμένη») abuse), the guarantee of key operational safeguards for arrested persons, such as access to a lawyer or doctor, and the mechanisms for investigation and redress in respect of incidents of ill-treatment.

Many participants highlighted that torture and ill-treatment thrive in contexts of inadequately regulated or monitored power, and underlined the importance of guaranteeing independent complaint and oversight mechanisms. But participants also stressed that abuse, and acquiescence in such abuse, is often associated with institutional culture, as well as the wider socio-political environment, including the discrimination, stigmatisation, marginalisation, and powerlessness faced by persons seen as 'other' in today's Greece. The problem of torture and other ill-treatment in Greece therefore is multifaceted and encompasses some systemic and structural dimensions. Because of this, the measures necessary to prevent torture and other ill-treatment must also include steps to address the systemic and structural challenges which proliferate and entrench the abuse.

Accordingly, reform must include legislative amendment and targeted measures to strengthen accountability and oversight, but these measures must be supported by efforts by those in authority to instil an institutional culture within law enforcement which views torture and ill-treatment as inherently wrong, unprofessional, and antithetical to upholding the law. They must be underpinned by appropriate technical training in investigative interviewing, and the adequate resourcing of law enforcement services and the justice system more broadly. Finally, they must be bolstered by legal, structural and socioeconomic action against discrimination and inequality, and a political commitment to countering dehumanizing ideologies and practices.]

7. Possible steps forward

a. Law (criminal liability and sanctions) and its implementation

Enduring issues of concern include: the definition of torture; the sanctions attached to torture and ill-treatment at the hands of law enforcement agents; limitation periods (prescription rules) and their potential suspension in some situations.

It appears that there is widespread agreement that the term «μεθοδικευμένη» ('methodical' or 'planned') in Article 137A of the Penal Code restricts the Greek definition of torture to a significantly narrower category of wrongs than those understood to be torture under ECtHR doctrine. The extent to which this is a matter of interpretation that could be resolved through «ανάρτηση υπέρ του νόμου» before Areios Pagos, in respect of a case such as *Sidiropoulos and Papakostas*,¹⁷ may be explored. However given widespread concerns and the importance of the clarity and non-retrospectivity of the criminal law, the issue should best be addressed through legislative amendment, an issue that has been under consideration by the Ministry of Justice.

¹⁷ *Sidiropoulos and Papakostas v Greece* App no 33349/10 (ECtHR, 25 January 2018), para 96.

In addition, the Greek government should carefully consider how the relevant legislation, including Article 137B of the Penal Code, and its implementation, in light of past experience, might be adjusted to ensure commensurate punishment for acts of torture and ill-treatment. It should address the problem of the almost systematic -conversion of terms of imprisonment imposed for torture and other ill-treatment into non-custodial sentences (as in the case of Sidiropoulos and Papakostas, for example¹⁸).

The issue of prescription, and the way it runs and whether and when it may be suspended, in respect of disciplinary proceedings while criminal proceedings are running, or in respect of either type of proceedings while a case is pending before the ECtHR, should also be clarified. The Greek government should assess the possibility of making prospective (i.e. non-retrospective) adjustments to the length or operation of limitation periods to ensure that State agents who are perpetrators of ill-treatment are effectively brought to justice, without at the same time allowing for undue delays in contradiction of the promptness criterion of effective investigations.

As indicated recently by the Committee of Ministers, the government should also clarify how the *ne bis in idem* principle affects the potential re-opening of disciplinary as well as criminal proceedings in respect of any cases in which there has been an adverse ECtHR finding, or indeed other cases in which new evidence or a fresh assessment thereof emerges.

As the Committee of Ministers suggested, ‘information would be useful about: a) the suspension of statutory limitation periods for the offences that gave rise to the violations found by the Court; and b) in view of the *ne bis in idem* principle, the overall possibility to reopen disciplinary investigations in cases where criminal or disciplinary liability has already been decided upon’.¹⁹

b. Operational safeguards

The Greek government should take measures to ensure the following operational safeguards are effectively secured:

- that all persons in custody, including those lacking funds, can come into contact with family or third parties;
- that all apprehended persons, including those lacking funds, can have access to a lawyer from the beginning of custody and can have a lawyer present during interview, and that *ex officio* lawyers perform such work with rigour;
- prompt access to doctors for all apprehended persons, including a medical examination on the commencement of custody, and regular visits by nurses/doctors across all places of custody for purposes of treatment and/or medical examination where requested, with full respect for medical confidentiality;
- that full information on rights – including the right to submit complaints – is provided from the outset of anyone’s deprivation of liberty;
- the timely creation and maintenance of detailed custody records;
- that all police officers are informed and trained on the conduct of human rights-compatible interviews of suspects and witnesses.

The importance of securing access to a lawyer as soon as possible following arrest emerged repeatedly during the round-table, and is affirmed in key literature on the prevention of torture.²⁰ It is both a key safeguard against torture and a key guarantee of a fair trial. The

¹⁸ Ibid.

¹⁹ Committee of Ministers, Supervision of *Makaratzis v Greece* group of cases, [Status of Execution](#) and other information.

²⁰ See, for example, CPT, [Access to a lawyer as a means of preventing ill-treatment](#) (CPT/Inf(2011)28-part1).

Greek government should prioritise securing immediate – and free – access to a lawyer for all persons in custody. Furthermore, the Greek government should take steps to enable the electronic recording of interviews at police stations.

c. Institutional culture and training

Systematic, cross-cutting measures are needed for the purpose of changing minds, attitudes, general practice, and institutional culture. Three issues which emerged from the discussions must be addressed as a matter of priority:

- patterns, in some quarters, of denial or tolerance of ill-treatment, including the closing of ranks in ‘solidarity’ with suspected perpetrators of ill-treatment;
- the particular vulnerability faced by persons of foreign background or other protected status in custody, for various structural and practical reasons ranging from institutional racism to a lack of interpretation services;
- an enduring focus, in some quarters, on securing confessions by persons in detention.

An important aspect of fostering a change in institutional practices is strengthening law enforcement officials’ capacity to conduct their work in a human rights-compliant manner. Many relevant actors expressed the desire to maximise training in investigative interviewing techniques across Greece. Domestic, regional and international expertise should be harnessed to ensure training in investigative interviewing is provided to law enforcement officers across Greece. By way of a change in overarching aim and official attitudes, it is vital for interviews to aim to establish the true facts, rather than to elicit a confession.

d. Effectiveness of complaint and investigation mechanisms

It is essential that the investigation of allegations or indeed suspicions of ill-treatment fulfil all the criteria of an effective investigation as set out by the ECtHR. A key issue is that each of the multiple entities that could, at this point in time, be involved in discharging Greece’s investigative duty suffers from fundamental shortcomings in fulfilling a number of the requisite criteria. For example, the Police Department of Internal Affairs is not an independent, external oversight body; on the other hand, the newly established National Mechanism for the Investigation of Arbitrary Behaviour is not in a position to compel processes capable of leading to the prosecution and punishment of perpetrators of torture or ill-treatment, and largely relies on the dual system of (criminal and disciplinary) investigations that has repeatedly proved ineffective or otherwise inadequate in discharging Greece’s investigative duty.

The government should consider the best way forward towards ensuring that Greece is in a position to discharge its investigative duty under Article 3 (and Article 2) ECHR, including the possibility of providing the newly established National Mechanism with the capacity to compel rather than merely to recommend action; other ways of boosting the effectiveness of the National Mechanism, notably in light of the outcome of the investigations into the complaints submitted since the Mechanism commenced operations on 9 June 2017; or the possibility of establishing or refining current bodies to develop something akin to an Independent Police Complaints Mechanism,²¹ which has coercive capacity and is at the same time wholly removed from the chain of command of the police. The government’s efforts should also aim to ensure the thorough investigation of possible racist or other similarly prejudiced motives when ill-treatment occurs at the hands of law enforcement agents.

²¹ See, for example, the Independent Police Complaints Authorities’ Network: <https://ipcan.org/>.

e. Prospective and general orientation

During the discussions, one issue that emerged repeatedly is that certain constitutional and indeed human rights principles such as non-retroactive punishment and ne bis in idem stand in the way of certain individual measures, particularly of criminal (but also of disciplinary) redress, in the aftermath of an adverse judgment at the ECtHR. However, this makes it all the more vital to ensure that inadequate investigations do not occur again in future, and this requires general, prospective measures to secure effective institutions and an adequate legal framework which reflects the characterisation of the wrongs at issue by the ECtHR. The need to take general, prospective legal and practical measures across all the matters identified above cannot therefore be overstated. At the same time, apologies combined with guarantees of non-recurrence in respect of the particular incidents covered by the Makaratzis group should also be pursued.

f. The Council of Europe's role

To assist in Greece's efforts to eradicate torture and ill-treatment, the Council of Europe is in a position to set out, for the Greek authorities' consideration, examples of good practice or indeed mistakes and poor practices in respect of all of the above matters from States across the Council of Europe. Given the variety of legal frameworks across the 47 Member States, it is likely that Greek authorities will be able to identify similarities and synergies with certain States and devise ways of adapting appropriate practices and institutional mechanisms for the purposes of Greece's own legal system and socio-political backdrop. The Council of Europe can also assist in the conducting of a needs assessment and the facilitation of collaboration between relevant authorities.

Appendix I: Programme

ROUND-TABLE

Professional Policing: Treatment of Apprehended Persons and Consequences

Forensic Science Division, 2-6 Antigonis Street, Athens, Greece,
10-11(morning) January 2019

PROGRAMME

FIRST DAY – 10 January 2019

9:30-10.00 INTRODUCTORY REMARKS

- Ms Olga Gerovasili, Minister of Citizen Protection
- Ms Xenia Dimitriou-Vasilopoulou, General Prosecutor of the Supreme Court of Greece
- Mr Christos Giakoumopoulos, Director General Human Rights and Rule of Law, Council of Europe
- Mr Andreas Pottakis, Greek Ombudsman
- Prof Nils Melzer, UN Special Rapporteur on Torture

10:30-12:30 SESSION 1: Law (criminal liability and sanctions)

10:00-11:00 Chair: Ms Maria Giannakaki, Secretary General for Human Rights, Ministry of Justice, Transparency and Human Rights

Speakers:

- Prof Sofia Vidali, Professor of Criminology, Democritus University of Thrace, Department of Social Administration and Political Administration
- Mr Panayotis Brakoumatsos, Vice Prosecutor General of the Supreme Court of Greece
- Mr Kostas Mavroidis, Attorney-at-Law, Athens Bar

11:00-11:20 Coffee break

11:20-12:30 Discussion

Thematic tracks for discussion

1. *Are changes in the law to respond to the problems identified feasible and forthcoming? This question refers in particular, but not exclusively, to:*
 - a) reforming the definition of torture in Article 137A(2) of the Penal Code;
 - b) removing limitation periods in relation to crimes of torture and other wilful ill-treatment;
 - c) 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?*

12:30-14:00 Lunch break

14:00-15:50 SESSION 2: Operational safeguards

Chair: Mr Dimitrios Anagnostakis, Secretary General for Public Order, Ministry of Citizen Protection

14:00-15:00 Speakers:

- Dr Julia Kozma, member of CPT (Austria)
- Mr Christos Manouras, Police Colonel, General Policing Division

15:00-15:50 Discussion

Thematic tracks for discussion:

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:*

- d) facilitating contact with family or third parties for all persons in custody, including those lacking funds;
- e) 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;
- f) 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;
- g) ensuring full information on rights – including to submit complaints – is provided from the outset of anyone’s deprivation of liberty;
- h) the creation and maintenance of detailed custody records;
- i) 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 organisations) be of any assistance in this process?*

15:50-16:10 Coffee break

16:10-18:00 SESSION 3: Institutional culture – moving from interrogation to investigative interviewing

Chair: Ms Xenia Dimitriou-Vasilopoulou, General Prosecutor of the Supreme Court of Greece

16:10-17:15 Speakers:

- Mr Michael Kellett, former Detective Chief Inspector, Lancashire Constabulary, UK
- Mr Theodoros Theodorou, Police Major, Security Division of Attica (substitute: Mr Evangelos Dimoglou, Police Captain, Security Division of Attica)
- Mr Ioannis Ilias, Attorney at Law, Professor of Police Academy (substitute: Mr Kyriakos Babasidis, Attorney at Law, Professor of Police Academy)

17:15-18:00 Discussion

Thematic tracks for discussion

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:*
 - a) widespread and systematic training of law enforcement officials in human rights-compatible policing, including apprehension, interviewing, and other law enforcement operations;
 - b) mainstreaming human rights into the recruitment, training, practice and culture of law enforcement officials;
 - c) 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 organisations) be of any assistance in this process?*

SECOND DAY – 11 January 2019 (morning)

9:30-12.30	SESSION 4: Independence, accessibility and effectiveness of complaint and investigation mechanisms
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Chair: Mr Christos Giakoumopoulos, Director General, DG Human Rights and Rule of Law, Council of Europe

9:30-11:00 Speakers:

- Mr Georgios Vaggelis, Police Captain, Greek Police Internal Affairs Office of the Hellenic Police
- Ms Chrysa Hatzis, Senior Investigator, Greek Ombudsman's Office
- Mr Konstantinos Georgiadis, Adviser, State Legal Council
- Dr Julia Kozma, member of CPT (Austria)

11:00-11:15 Coffee break

11:15-12:30 Discussion

Thematic tracks for discussion

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:*
 - d) removing obstructions to, and facilitating, the submission of complaints of torture and related ill-treatment to all relevant authorities;
 - e) 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;
 - f) strengthening all relevant actors' response to allegations of torture or other ill-treatment, at all stages of the investigative process;

- g) 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 European states or networks like IPCAN) be of any assistance in this process?*

12:30-13:00

CONCLUSIONS

Mr Christos Giakoumopoulos, *Director General*, DG Human Rights and Rule of Law, Council of Europe